

Submission
No 163

INQUIRY INTO PROPOSED AERIAL SHOOTING OF BRUMBIES IN KOSCIUSZKO NATIONAL PARK

Organisation: Animal Defenders Office Inc.

Date Received: 13 October 2023



Animal Defenders Office

Using the law to protect animals

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Animal Welfare Committee

Legislative Council
Parliament of New South Wales
6 Macquarie Street, Sydney
New South Wales 2000

By email: animal.welfare@parliament.nsw.gov.au

16 October 2023

Dear **Animal Welfare Committee**

Thank you for the opportunity to contribute to your inquiry into the proposed aerial shooting of brumbies in Kosciuszko National Park (**the inquiry**).¹

About the Animal Defenders Office (ADO)

The ADO is a not-for-profit national community legal centre that focuses on helping animals and animal advocates. We are a member of Community Legal Centres NSW Inc. and Community Legal Centres Australia Inc. We have a governing Board of Management consisting of lawyers, public servants and other professionals, and a Legal Practice Committee of experienced lawyers and animal law experts who provide advice and guidance on our matters.²

Executive summary

The ADO does not support the proposal of the NSW Government (**Government**) to reintroduce aerial shooting in NSW to reduce the brumby population in Kosciuszko National Park (**KNP**) for the following reasons:

1. The methodology and statistical modelling used to survey and estimate the brumby population in KNP have been independently reviewed and found to be flawed and unreliable (Term of reference (**TOR**) (a)).³
2. There are animal welfare concerns, particularly animal cruelty concerns,⁴ associated with the proposed aerial shooting of brumbies (TOR (d) and (e)).

¹ <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2991#tab-termsofreference>.

² For further information about the ADO, please visit <http://www.ado.org.au>.

³ Claire Galea, *Independent biostatistical report on the Brumby population in the Kosciuszko National Park* (20 May 2023) (**Independent Report**) p 4.

⁴ *Prevention of Cruelty to Animals Act 1979* (NSW) (**POCTAA**) ss 4(2), 5.

3. There is ‘a risk of injuring or killing non-target animals’,⁵ including the native animals that the Government seeks to protect (TOR (c)).⁶
4. Approved non-lethal control measures should be considered and adopted rather than opting for a controversial and unapproved lethal measure (aerial shooting) (TOR (h)).⁷
5. The proposed adoption of aerial shooting is not supported by the current regulatory framework for the control of wild horse populations (TOR (d)).
6. Mass shooting of brumbies, whether done from the air or on the ground, generates public anger and legal action (TOR (g)).
7. The *Kosciuszko National Park Wild Horse Heritage Management Plan (Plan)*, the *Kosciuszko National Park Wild Horse Heritage Management Plan Draft Amending Plan (Draft Amending Plan)* and the *Aerial Shooting of Feral Horses (HOR002) Standard Operating Procedure (SOP)*, fail to provide sufficient controls to mitigate human safety risks (TOR (f)).
8. The environmental impacts of aerial shooting are not adequately considered (TOR (i)).⁸
9. In light of the above points, the proposed aerial shooting of brumbies would be unreasonable, unnecessary and unjustified (TOR (b), (e)).

Submissions

The Government is proposing to reinstate aerial shooting⁹ to reduce the brumby population in KNP to 3,000 horses by 30 June 2027.¹⁰

The ADO does not support the Government’s proposal for the following reasons.

1. **TOR (a): The methodology and statistical modelling used to survey and estimate the brumby population in KNP have been independently reviewed and found to be flawed and unreliable.**¹¹

According to the independent review by biostatistician Claire Galea, the 2022 brumby population survey results¹² (**2022 NPWS survey results**) are flawed to the point where ‘it is impossible to have any confidence in the population estimates provided’ in the results. This finding is based on the following factors.

- a. The levels of precision used for the Snowy Plains and the Southern Kosciuszko blocks were significantly above the ‘acceptable level of precision for wildlife population estimates.’¹³

⁵ Trudy Sharp, *Aerial Shooting of Feral Horses (HOR002) Standard Operating Procedure 3 (SOP)*.

⁶ State of NSW and Department of Planning, Industry and Environment, *Kosciuszko National Park Wild Horse Heritage Management Plan (2021) s 5 (Plan)*; *NSW Biodiversity Conservation Act 2016* (NSW) Sch 4 (**BCA**).

⁷ Office of Environment & Heritage NSW National Parks & Wildlife Service, *The urgent need for wild horse control 2 (Wild Horse Control)*.

⁸ Animal Biosecurity and Welfare, NSW Department of Primary Industries, *Animal carcass disposal 1 (Carcass Disposal)*.

⁹ State of NSW and Department of Planning and Environment, *Kosciuszko National Park Wild Horse Heritage Management Plan Draft Amending Plan 3 (Draft Amending Plan)*.

¹⁰ The Plan s 5.

¹¹ Independent Report p 4.

¹² NSW National Parks and Wildlife Service, *A survey of the wild horse population in Kosciuszko National Park, November 2022* (December 2022) (**2022 NPWS Survey Report**).

¹³ Independent Report p 8.

Notably, in the 2022 NPWS survey results, the author admitted that there were ‘logistical constraints to setting levels of survey precision’,¹⁴ and that the surveys were designed in a way that would achieve levels of precision ranging from 25% to 40% for the Cabramurra and Snowy Plains blocks.¹⁵ These levels are considerably above the acceptable level of precision, which is 20%¹⁶, and are therefore unacceptable.

- b. The confidence interval for the 2022 NPWS survey report is too wide at 46%.¹⁷ This ‘suggests that the sample from the survey does not provide a precise representation of the population mean’.¹⁸
- c. The KNP blocks surveyed are not enclosed, so wild horses can move between those blocks.¹⁹ On this point, Galea highlights that ‘[w]ithout specific photographic / video evidence of wild horses the possibility of double counting cannot be eliminated.’²⁰
- d. The 2022 NPWS survey results do not provide information about ‘the number of foals’ in KNP.²¹ It is important to do so because ‘the [expected] subsequent death of these animals if the mother is killed influences the population over time’.²²
- e. The 2022 NPWS survey results do not provide ‘statistical evidence of a population increase’.²³ This indicates that the brumby population in KNP did not change significantly over time.²⁴
- f. Not enough ‘time periods to model the population estimates of wild horses were used’, meaning that ‘no reliable population estimates can be determined’.²⁵
- g. The use of line transects is an inappropriate methodology to adopt ‘for estimating wild horse populations.’²⁶ Even if it were appropriate, Galea suggests that selection bias may have applied when the transect locations were determined.²⁷
- h. ‘Raw count data’, as opposed to averages, should have been used to estimate the brumby population in KNP.²⁸
- i. It is unclear what covariates were included in the 2022 report and as a consequence ‘the generalisability of the results across the entire four blocks should be interpreted with caution’.²⁹

¹⁴ 2022 NPWS Survey Report p 3.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Independent Report p 16.

¹⁸ Ibid.

¹⁹ Ibid 17.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid 15.

²⁴ Ibid.

²⁵ Ibid 12.

²⁶ Ibid.

²⁷ Ibid 11.

²⁸ Ibid 7-8.

²⁹ Ibid 13.

It is apparent from the above findings that there are cogent reasons to doubt the accuracy of the 2022 NPWS survey results. While the NSW Department of Planning and Environment (DPE) states that the ‘2020 and 2022 survey reports were peer-reviewed by independent experts from the CSIRO and the Queensland Department of Agriculture and Fisheries’³⁰, no details are provided of the reviews or of other reviews by non-government reviewers. In the absence of non-government, and therefore genuinely independent, reviews, the ADO supports Ms Galea’s overarching recommendation for an ‘[i]mmediate moratorium on the killing of all wild horses in the Kosciuszko National Park and an independent investigation into all population trends and subsequent control’.³¹ The ADO also suggests that consideration be given to incorporating other contemporary methods of population counts, such as drone and infrared technologies, as successfully deployed in recent efforts to count koala numbers in NSW.³²

2. TOR (d) and (e): There are animal welfare concerns, particularly animal cruelty concerns,³³ associated with the proposed aerial shooting of brumbies.

Animal welfare pertains to ‘all efforts to prevent cruelty, improve humane treatment’ and ‘reduce stress and strain’ when humans interact with non-human animals.³⁴ In NSW, the *Prevention of Cruelty to Animals Act 1979 (POCTAA)* makes it an offence to commit acts of cruelty upon animals,³⁵ including brumbies.³⁶ Acts of cruelty are committed upon animals if the animals are ‘unreasonably, unnecessarily or unjustifiably ... killed, wounded, ... tormented, ... terrified ... or ... inflicted with pain’ by a person.³⁷

Considering this definition, the ADO submits that there are animal welfare and animal cruelty concerns regarding the proposed aerial shooting of brumbies for the following reasons:

- a. For aerial shooting to ‘be a humane method of destroying feral horses ... [o]nly head (brain) or chest (heart [or] lung) shots must be used. Shooting at other parts of the body is unacceptable.’³⁸ On this point, the SOP states that while it is relatively easy to shoot brumbies in the chest from a distance, ‘[s]hots to the head [can] only be attempted at short ranges and in ideal conditions’ because a horse’s ‘brain is a relatively small target that is well protected by bone.’³⁹ This is problematic for four reasons:
 - i. First, the pilot cannot always ‘position the helicopter as close as is safe to the target animal to permit the shooter the best opportunity of a humane kill.’⁴⁰

³⁰ <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/tracking-the-wild-horse-population>.

³¹ Independent Report p 4.

³² Ashleigh Raper, ‘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>.

³³ POCTAA ss 4(2), 5.

³⁴ Peter John Chen, *Animal welfare in Australia: politics and policy* (Sydney University Press, 2016) xv.

³⁵ POCTAA s 5.

³⁶ Ibid sub-s 4(1), definition of ‘animal’.

³⁷ Ibid pars 4(2)(a), (d).

³⁸ SOP 2.

³⁹ Ibid.

⁴⁰ Ibid 4.

- ii. Second, '[s]hooting from a moving platform can significantly detract from the shooter's accuracy.'⁴¹
- iii. Third, it is only when brumbies are shot in the head that brain function ceases and insensibility is immediate.⁴² For chest shots, insensibility can occur 'after an interval ranging from a few seconds to a minute or more,' causing the animal to suffer before dying.⁴³
- iv. Fourth, 'it is very difficult to assess from a distance if an animal is dead'.⁴⁴ Here, even the SOP's 'policy of overkill ... , where a minimum of two shots are used per animal',⁴⁵ may not work since it is not easy to detect wounded horses in fly overs.⁴⁶ This is because of the way their colours blend with the landscape.⁴⁷ In addition, stationary animals are 'always much more difficult to detect from the air than a moving one'.⁴⁸

Considering the above factors, there is a real possibility that brumbies would be shot in the chest, rather than the head, and therefore 'unreasonably, unnecessarily or unjustifiably ... wounded, ... tormented, ... terrified or ... inflicted with pain' which is an act of cruelty under POCTAA.⁴⁹

- c. As mentioned above, NPWS did not 'provide any counts of the number of foals' in the 2022 survey⁵⁰ despite conducting the survey in springtime when foaling usually takes place.⁵¹ This has animal welfare implications because running 'aerial shooting programs when mares have dependent' foals could leave surviving 'foals to die a slow death from starvation'.⁵²
- d. A previous attempt by the Government to use aerial shooting as a means of reducing wild brumby populations resulted in animal cruelty charges being made against NPWS. The charges were laid in relation to the aerial shooting operations at Guy Fawkes River National Park (**Guy Fawkes**) in 2000. On that occasion 11 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.⁵³

⁴¹ Ibid.

⁴² Ibid 2.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid 2.

⁴⁶ Australian Brumby Alliance Inc. (ABA), *Guy Fawkes River National Park (2000-2002) Aerial Shoot Controversy* 5.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ POCTAA pars 4(2)(a), (d).

⁵⁰ Independent Report p 17.

⁵¹ SOP 2.

⁵² Ibid.

⁵³ <https://rspcaanimalcruelty.wordpress.com/2013/11/21/magistrate-dismisses-charges-brought-against-npws-by-the-rspca/>.

- e. In relation to aerial shooting of wild goats on Lord Howe Island in 1999 by NPWS, 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.⁵⁴

- f. Hamilton J went on to grant an injunction restraining a proposed cull by aerial shooting in the Woomargama National Park in 2003 on the grounds that ‘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.’⁵⁵

Inherent cruelty

The ADO submits that aerial shooting is inherently inhumane and cannot be made humane through management.

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 (ie the 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 **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.⁵⁶

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’.⁵⁷

⁵⁴ *Animal Liberation Ltd v National Parks & Wildlife Service* [2003] NSWSC 457 at [4].

⁵⁵ *Ibid* [9].

⁵⁶ Sharp, Trudy, 2011. *Aerial shooting of feral horses. Standard Operating Procedure*. <https://pestsmart.org.au/toolkit-resource/aerial-shooting-of-feral-horses/> p 2.

⁵⁷ 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.

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’.⁵⁸ 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 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.⁵⁹

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’.⁶⁰ 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 its inherent inhumaneness 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’.⁶¹ 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,⁶² 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’.⁶³

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’.⁶⁴

Killing foals

The SOP accepts that there will be ‘animal welfare implications of leaving dependent foals to die a slow death from starvation’.⁶⁵ Its response is merely to assert that ‘it is preferable not to run aerial

⁵⁸ SOP p 2.

⁵⁹ Ibid p 5.

⁶⁰ Ibid p 2.

⁶¹ Ibid p 4.

⁶² Ibid p 2.

⁶³ Ibid p 4.

⁶⁴ Australian Brumby Alliance Inc., *Guy Fawkes River National Park (2000-2002) Aerial Shoot Controversy. ABA Desktop Review Report October 2014*, p 5.

⁶⁵ SOP p 2.

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’.⁶⁶

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.

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’.⁶⁷

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.

Aerial shooting cannot be made humane through management

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.⁶⁸

However, in the matter regarding the proposed cull of wild goats in the Woomargama National Park in 2003, 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’.⁶⁹ 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.⁷⁰

Hamilton J 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**

⁶⁶ Ibid p 2.

⁶⁷ SOP 3.

⁶⁸ 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>.

⁶⁹ *Animal Liberation Ltd v National Parks & Wildlife Service* [2003] NSWSC 457 at [8].

⁷⁰ Ibid.

broad based assurances given as negating the potentiality of cruelty arising from a helicopter conducted cull in this instance.⁷¹

The ADO therefore submits that ‘broad based assurances’ regarding how well the aerial shoots of wild horses in 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 for wild horses in KNP.

In support of this submission, the ADO notes that, in its recently updated policy on feral horse control (July 2023), the Australian Veterinary Association still regards aerial shooting as being less humane than ground shooting.⁷²

3. TOR (c): There is ‘a risk of injuring or killing non-target animals’,⁷³ including the native animals that the Government seeks to protect.⁷⁴

While the SOP recognises the risk that non-target animals may be injured or killed ‘if shots are taken before’ the non-target animals are ‘positively identified’,⁷⁵ it fails to establish adequate controls to minimise the likelihood of this happening. This makes it probable that animals, including the native animals that the Government seeks to protect,⁷⁶ will be shot during the aerial shooting operations in KNP.

In addition to supporting the argument that the Government’s proposed aerial shooting of brumbies could constitute acts of cruelty under POCTAA, the probability of non-target native animals being shot shows that aerial shooting could harm ‘protected animals’, contrary to section 2.1 of the *Biodiversity Conservation Act 2016* (NSW).⁷⁷

4. TOR (h): Approved non-lethal control measures should be considered and adopted rather than opting for a controversial and unapproved lethal measure (aerial shooting)⁷⁸

According to the DPE, the NPWS ‘commenced on-ground implementation’ of the Plan in February 2022.⁷⁹ In November 2022 the DPE undertook an evaluation of the implementation of the Plan and released an evaluation report on 29 November 2022.⁸⁰

⁷¹ Ibid, [8]-[9] (emphasis added).

⁷² 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/>.

⁷³ SOP 3.

⁷⁴ The Plan s 5; BCA Sch 4.

⁷⁵ SOP 3.

⁷⁶ The Plan s 5; BCA Sch 4.

⁷⁷ BCA s 2.1(c).

⁷⁸ Wild Horse Control 2.

⁷⁹ <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/implementation-2021>.

⁸⁰ DPE, *Evaluation of the implementation of the Kosciuszko National Park Wild Horse Heritage management Plan (2021)*, 29 November 2022 (Evaluation Report), <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Pests-and-weeds/Kosciuszko-wild-horses/kosciuszko-national-park-wild-horse-heritage-plan-2021-evaluation-report.pdf>.

The Plan stipulates that control methods ‘will be selected for use based on **maximising animal welfare outcomes** (section 6.1), control effectiveness and ... management variables’.⁸¹ Thus far the brumby control program in KNP has reportedly used ground shooting, passive trapping and removal for domestication or destruction purposes.⁸² Importantly, the Evaluation Report states that ‘the current rate of removal is sufficient to have an impact on current population size, and seems scalable to the higher numbers required to reduce population size’.⁸³

Given that the Plan is still in a relatively early stage of implementation, that control methods must be selected based on maximising animal welfare outcomes, and that the Evaluation Report considers the current approved methods to be sufficient, the ADO submits that now is not the time to reintroduce a controversial lethal control method such as aerial shooting, which arguably still does not have a social licence to operate. Rather, the Government should focus its efforts on the existing approved non-lethal reproductive controls in the Plan. Implementation of methods such as immunocontraceptive vaccines⁸⁴ or neutering, should be expedited to supplement the methods currently being used in KNP.⁸⁵ Ways of maximising current practices such as trapping programs should also be explored.⁸⁶ The use of exclusion fencing could also be maximised. Although ‘exclusion fencing will not reduce the number of [brumbies] in the park’, it may be an effective ‘short to medium term method’ of excluding brumbies ‘from a specific area while other methods of control to reduce the[ir] population’ are being used.⁸⁷

5. **TOR (d): The proposed adoption of aerial shooting is not supported by the current regulatory framework for the control of wild horse populations.**

The ADO submits that the proposal to amend the Plan to include aerial shooting as a control method does not further the object of the *Kosciuszko Wild Horse Heritage Act 2018 (the Act)*, which is:

... to recognise the heritage value of sustainable wild horse populations within parts of Kosciuszko National Park and to protect that heritage.⁸⁸

The ADO submits that the proposal to use a control method that has serious animal welfare concerns neither recognises the heritage value of sustainable wild horse populations nor protects that heritage.

By contrast, the (current) Plan takes into account the object of the Act.⁸⁹ The Plan also states that ‘[b]est practice capture and control methods will be used in implementing the plan, consistent with

⁸¹ The Plan s 6, p 18, emphasis added.

⁸² Ibid; the Plan s 6.2;

⁸³ Evaluation Report, p 4.

⁸⁴ Jason I Ransom et al, ‘Behavior of feral horses in response to culling and GnRH immunocontraception’ (August 2014) 157 *Applied Animal Behaviour Science* 81, 82; The Options (n 72).

⁸⁵ Ben Masters, ‘The Future of America’s Wild Horses: The Options’ (National Geographic, 11 February 2017) <<https://www.nationalgeographic.com/adventure/article/wild-horse-management-options>> (**The Options**).

⁸⁶ Some brumby advocates are of the view that NPWS does not ‘put enough effort’ into trapping programs: Rubbo L and Marshall C, ‘NSW national parks need to lift ban on aerial shooting of feral horses, environment group says’, *ABC News*, 29/10/2020, <https://www.abc.net.au/news/2020-10-29/lift-ban-on-culling-brumbies-nsw-national-parks/12812824>.

⁸⁷ The Plan s 6.2.

⁸⁸ The Act s 4.

⁸⁹ The Plan, p 3.

animal welfare requirements'.⁹⁰ The ADO submits that adopting a control method that has serious animal welfare concerns is clearly inconsistent with these principles in the Plan.

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

The SOP is out of date

The 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'.⁹¹

The ADO submits that aerial shooting would not meet the standard of 'best practice approaches to animal welfare'. Moreover, the SOP was published 12 years ago (2011) and there is no reference to a review since then.⁹² 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 2023.⁹³ Further, the most 'recent' reference cited in the aerial shooting 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.⁹⁴

Inconsistency between the SOP and the Draft Amending Plan

The uncertainty regarding the environmental impact of aerial shooting (discussed below) is a concern given that the Draft Amending Plan advocates the use of aerial shooting 'in any area of the park',⁹⁵ meaning that any associated environmental impact would apply to the whole KNP. This proposed policy setting in the Draft Amending Plan is a concern because it appears to be inconsistent with the 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'.⁹⁶

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

6. TOR (g): Mass shooting of wild animals, whether done from the air or on the ground, generates public anger and legal action

It is acknowledged that aerial shooting of wild animals is a controversial practice and one which properly incites strong feelings of concern in the public.⁹⁷ It is also recognised that 'public

⁹⁰ The Plan, pp 2, 18.

⁹¹ The Plan, p 19.

⁹² The SOP is referenced in the draft Plan as 'Sharp 2011d' (pp 2, 5).

⁹³ AVA, *Control of feral horses and other Equidae*.

⁹⁴ Aerial shooting of feral horses (HOR002) SOP p 7.

⁹⁵ Draft Amending Plan p 1.

⁹⁶ SOP p 1.

⁹⁷ For an earlier example of this kind of public reaction see Dale Graeme Nimmo and Kelly K. Miller, 'Ecological and human dimensions of management of feral horses in Australia: a review' (2007) 34 *Wildlife Research* 408, 412. It describes how in the 1980s the Northern Territory's decision to reduce the brumby population in pastoral land by shooting 'received international

perception of operations is paramount to success'.⁹⁸ Shooting operations can lead to court action being taken against the participants. The most well-known case is the Guy Fawkes aerial shooting program in 2000 discussed above. In that case the NPWS carried out a three-day aerial cull of 606 brumbies.⁹⁹ There was considerable public outcry when evidence of inhumane practices and considerable animal suffering was released.¹⁰⁰ NPWS was charged with several animal cruelty offences and a state-wide policy not to use aerial shooting as a method of controlling brumby populations being adopted in NSW.¹⁰¹

As discussed earlier, 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 targeting wild goats in the Woomargama National Park in NSW.¹⁰² During the trial 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.¹⁰³

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.¹⁰⁴

In December 2018 there was another public backlash against a proposed aerial cull of brumbies at the Singleton Army Base in the NSW Hunter Valley.¹⁰⁵ Had it not occurred in the lead up to Christmas and in unseemly haste by the proponents of the cull, the ADO understands legal challenges would have been mounted.

Currently, the Government is proposing to reintroduce aerial shooting as an authorised control method in the Plan to meet its legislated population target by 2027. An inference that can be drawn from this is that NPWS will kill thousands of brumbies in less than four years. Given the public's reaction to previous aerial shooting operations in Australia in relation to far smaller numbers of animals, resorting to this lethal control method again is likely to generate public anger, legal action and international concern, which in turn could result in delays in reducing the brumby population in KNP. Relevantly, this would defeat the stated purpose of reintroducing aerial shooting in NSW.

attention' which included, for example, certain 'members of the Australian government' being 'tried and convicted' by the 'International Court of Justice for Animal Rights' for massacring horses.

⁹⁸ Evaluation Report p 6.

⁹⁹ <https://rspcaanimalcruelty.wordpress.com/2013/11/21/magistrate-dismisses-charges-brought-against-npws-by-the-rspca/>.

¹⁰⁰ Ibid 412-3.

¹⁰¹ Ibid.

¹⁰² *Animal Liberation Ltd v National Parks & Wildlife Service* [2003] NSWSC 457.

¹⁰³ Ibid [1].

¹⁰⁴ Ibid [9].

¹⁰⁵ Connell, C 'Concerns over proposed aerial cull of brumbies at defence base in NSW Hunter Valley', *ABC News*, 12/12/2018, <https://www.abc.net.au/news/2018-12-12/concerns-over-aerial-brumby-cull-at-nsw-defence-base/10610216>.

7. **TOR (f): The Plan, the Draft Amending Plan and the SOP fail to provide sufficient controls that will enable mitigation of human safety risks.**

The Draft Amending Plan would advocate the use of aerial shooting ‘in any area of the park’.¹⁰⁶ This proposed policy setting in the draft Plan is a concern because it appears to be inconsistent with the aerial shooting SOP which specifically limits the areas in which aerial shooting 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’.¹⁰⁷ It stands to reason that if horses may be concealed in such areas, so may humans. If aerial shooting will be permitted ‘in any area of the park’, which could include ‘areas of heavy cover’, and the park is to remain open during operations, then aerial shooting undertaken in these circumstances will inevitably present human safety concerns. Notably the SOP fails to set out controls that would mitigate human safety risks arising from such operations.

8. **TOR (i): Other relevant matters—environmental and economic concerns**

Carcass management and disposal

There is a risk that brumby carcasses would be improperly disposed of during or after aerial shooting operations in KNP, which could ‘have significant impacts on environmental, human and animal health.’¹⁰⁸

Guidance on carcass disposal during/after shooting is not provided in the Plan, the Draft Amending Plan, or the SOP.¹⁰⁹ According to the Plan, ‘[d]isposal of carcasses presents logistical challenges, including number, access, available resources and environmental constraints.’¹¹⁰ Despite this acknowledgement, the Plan fails to provide guidelines for effectively managing carcasses in KNP.

Recent reports of carcasses being left to rot in waterways suggest that carcass management is already a problem.¹¹¹ A recent media article reports that a visitor to the Snowy Mountains witnessed 171 brumby carcasses left to rot ‘on a seven-kilometre section of the Australian Alps Walking Trail’, including in pristine mountain streams.¹¹² The visitor said that the carcasses gave off an unbearable stench and created a visual eyesore for onlookers.¹¹³ He commented that, in the circumstances, the Government’s argument in favour of reintroducing aerial shooting ‘as a means of protecting the waterway quality’ in NSW ‘has now lost all credibility.’¹¹⁴

Considering the lack of specific guidelines on carcass management and the reported proliferation of carcasses in the Snowy Mountains, the ADO questions NPWS’ ability to effectively manage

¹⁰⁶ SOP 1.

¹⁰⁷ SOP 1.

¹⁰⁸ Carcass Disposal 1.

¹⁰⁹ The short paragraph on ‘Carcass Management’ in the Plan (s 6.2 p 21), states that ‘There are [sic] a range of management options available which will be considered on a case-by-case basis.’

¹¹⁰ Plan s 6.2.

¹¹¹ Peter Brewer, ‘If culling is the solution, should brumbies be shot and left to rot where they fall?’, *The Canberra Times*, 10 October 2023, <https://www.canberratimes.com.au/story/8380613/carcasses-left-to-rot-by-pristine-snowy-waters/>.

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

thousands of brumby carcasses in different parts of KNP if the proposed aerial shooting operations are implemented.

Assessment of environmental impacts

The Draft Amending 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.¹¹⁵

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 Plan before aerial shooting is contemplated as a wild horse control method in KNP.

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.'¹¹⁶ 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'.¹¹⁷ The SOP recommends that the 'cost of ammunition and extra flying time must not deter operators from applying this flyback procedure'.¹¹⁸

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 proposed adoption of aerial shooting as a control method for killing wild horses in KNP.

9. TOR (b): In light of the above considerations, the proposed aerial shooting of brumbies would be unreasonable, unnecessary and unjustified.

According to the Government, it intends to adopt aerial shooting¹¹⁹ as a means to reduce significantly the brumby population in KNP within a span of less than four years.¹²⁰ However, given the serious concerns outlined in these submissions, the proposed reintroduction of aerial shooting in NSW may be rightly regarded as unreasonable, unnecessary or unjustified, and a

¹¹⁵ Draft Amending Plan p v.

¹¹⁶ SOP p 1; emphasis added.

¹¹⁷ Ibid p 2.

¹¹⁸ Ibid.

¹¹⁹ Draft Amending Plan 3.

¹²⁰ The Plan s 5.

misguided response to the important public policy issues of controlling brumby populations while minimising negative animal welfare outcomes. The ADO submits that any consideration of aerial shooting should instead wait until the current Plan is reviewed after 30 June 2027 in accordance with its concept of adaptive management.¹²¹

Finally, the ADO submits that 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.

Thank you for considering our submissions.

Sincerely,

Tara Ward

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¹²¹ Ibid p 21.