

Eastern Grey Kangaroo: Draft Controlled Native Species Management Plan

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Submission by the NSW Young Lawyers Animal Law Committee

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The NSW Young Lawyers Animal Law Committee (**Committee**) makes the following submission in response to the Eastern Grey Kangaroo: Draft Controlled Native Species Management Plan (**Draft Plan**).

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 welfare and 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 help improve the lives of animals.

Summary of Recommendations

The Committee recommends that the following assessment should be undertaken in circumstances where a proposal is made to manage the impact of a species:

1. the impacts of the proposal on animal welfare must be identified; and
2. any identified impacts on animal welfare must be considered in the light of the environmental harm sought to be avoided, ensuring that:
 - a. any compromise to animal welfare is necessary to avoid the environmental harm (in the sense that it will be effective in avoiding the environmental harm, and there are no alternatives to achieve the same end that would have less of an impact on animal welfare, in other words, encroachments on animal welfare should be the minimum necessary to achieve the proposed outcome);
 - b. any compromise to animal welfare is reasonable and proportionate to the ends sought to be achieved. This means that at a minimum the benefits of the proposal should outweigh the

animal welfare harms, the benefits must be significant, and the animal welfare detriment cannot be unacceptable; and

- c. the proposal can be and will be executed and controlled in a way that meets high animal welfare standards and avoids unacceptable animal welfare outcomes.

Before a proposal which compromises animal welfare is accepted, the Committee considers that the decision-maker should be satisfied based on cogent evidence that the particular control method is necessary, reasonable and proportionate, and can be implemented in a way that meets high animal welfare standards. Further, the Committee's view is that, without offending the precautionary principle enshrined in the *Nature Conservation Act 2014 (ACT) (NCA)*, where the proposed control method involves a greater degree of animal welfare harm (for instance where the proposal involves a lethal or other particularly invasive control method) the evidentiary basis for adopting that control method should be proportionate to that greater degree of harm.

The Committee considers that the existing legal framework for the management of species under ACT legislation does not adequately balance animal welfare concerns as against competing interests and requires reform to incorporate a legal test to this effect.

The Committee observes that experts hold conflicting opinions regarding the need for control measures in respect of the Eastern Grey Kangaroo. However, if it is found that control measures must be implemented in the management of the Eastern Grey Kangaroo population in the ACT, the Committee supports the adoption of non-lethal control methods, including fertility control. The Committee does not support lethal control methods as it is not satisfied that animal welfare concerns have been appropriately balanced against competing interests and that a lethal control method can be implemented in accordance with high animal welfare standards.

Discussion

Background

The Draft Plan has been prepared pursuant to the NCA. The main object of the NCA is to “protect, conserve and enhance the biodiversity of the ACT”¹. Section 6 of the NCA sets out particular means by which this object is to be achieved, including:

¹ *Nature Conservation Act 2014 (ACT)*, section 6.

- protecting, conserving, enhancing, restoring and improving nature conservation;
- encouraging public appreciation, understanding and enjoyment of biodiversity;
- recognising the significant stewardship role that landholders have in managing the natural assets on their land;
- ensuring that members of the public have:
 - access to reliable and relevant information in appropriate forms to facilitate a good understanding of nature conservation issues; and
 - opportunities to participate in policy development, nature conservation planning and conservation work; and
- promoting the principles of ecologically sustainable development (**ESD**).

The NCA goes on to define the term ‘ecologically sustainable development’ as the “effective integration of economic and environmental considerations in decision-making processes”, which the NCA states is achievable through implementation of:

1. the precautionary principle;
2. the inter-generational equity principle;
3. conservation of biological diversity and ecological integrity;
4. improved valuation and pricing of environmental resources².

The term ‘inter-generational equity’ refers to the principle that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations. The term ‘precautionary principle’ means that, if there is a threat of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. The Committee notes that these definitions are consistent with the way the same terms are employed under the *Environment Protection and Biodiversity Conservation Act* (Cth) (the **EPBC Act**).

Kangaroos are protected species under the NCA. However, section 157 of the NCA permits the Minister to

² *Nature Conservation Act 2014* (ACT), section 6.

declare a native species to be a controlled native species if the Minister is satisfied that the species is having, or is likely to have, an unacceptable environmental, social or economic impact (such as where the species poses a risk to human health). The Eastern Grey Kangaroo (but not other species of kangaroo) has been declared a controlled natives species pursuant to this provision. Chapter 7 allows the conservator to prepare a draft controlled native species management plan. If a controlled native species management plan is inconsistent with an approved code of practice, or mandatory code of practice, under the *Animal Welfare Act 1992*, the code of practice prevails to the extent of the inconsistency.

Conflicting evidence as to the necessity for a cull to be undertaken

The Committee agrees with the observation of the ACT Government in the Draft Plan that the Eastern Grey Kangaroo is an important and iconic part of the natural environment in ACT and that kangaroo populations should be maintained as a significant component of the grassy ecosystems of the ACT. The Committee does not propose to comment in detail on population levels of the Eastern Grey Kangaroo nor their impact upon ACT ecosystems as those matters are outside the scope of the Committee's expertise.

However, the Committee notes that the primary grounds upon which the ACT Government relies in support of the cull are that the Eastern Grey Kangaroo is too numerous and as a result is having negative impacts on the native grassy ecosystems.³ The ACT Government also cites negative social and economic impacts including competition by the Eastern Grey Kangaroo with grazing farm animals and harm to humans caused by vehicular collisions.⁴

The Committee observes that there is disagreement among experts as to the necessity for a cull of the Eastern Grey Kangaroo in the ACT.⁵ A 2011 report by the Think Tank for Kangaroos (**THINKK**) states that at that time the estimated annual cost incurred by farmers due to kangaroos was placed at \$44 million or \$1.67 per kangaroo per year across Australia. This was significantly less than the \$200 million previously estimated.⁶

³ ACT Kangaroo Management Plan 2010, 7, 8.

http://www.environment.act.gov.au/__data/assets/pdf_file/0020/902423/Kangaroo_Management_Plan_complete_for_web.pdf

⁴ ACT Kangaroo Management Plan, 9, 10, 11.

⁵ The Canberra Times, 2016. 'Doubts over kangaroo culling science', 23 April. <http://www.canberratimes.com.au/act-news/doubts-over-kangaroo-culling-science-20160408-go1u5k.html>. Wicks, D, 'Cute baby seals and kangaroo pests', 1 May 2012 <https://www.voiceless.org.au/content/cute-baby-seals-and-kangaroo-pests>.

⁶ 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, 2. Sloane Cook and King Pty Ltd (1988). The Economic Impact of Pasture Weeds, Pests and Diseases on the Australian Wool Industry. Melbourne, consultant Report to the Australian Wool Corporation.

Scientists argue that the studies relied upon by the ACT Government to support the cull are too narrow and fail to take into account relevant matters such as the Eastern Grey Kangaroo's migration patterns and evolutionary effects that may encourage the animal to breed younger and more quickly.⁷ THINKK also argues that further research is required on the impact of kangaroo kills on the animals' social systems and long-term genetic integrity because the social structure of kangaroo groups is likely to have evolutionary significance in maximising the ability of individuals and kangaroo populations to reach their potential.⁸

Dr Daniel Ramp, a University of Technology Sydney conservation biologist and Director for the Centre for Compassionate Conservation, also argues that the evidence relied upon to justify culls in the ACT does "not hold up to... scrutiny based on peer-reviewed scientific literature".⁹ Dr Ramp argues that, conversely, Eastern Grey Kangaroo numbers are in decline. He suggests that attitudes towards land use by humans must also be considered.

The Committee considers that this suggestion is consistent with the objects of the NCA as well as, at a Federal level, the EPBC Act. The Committee submits that, particularly in circumstances where there is conflicting evidence, careful consideration must be given to all relevant factors contributing to a particular environmental impact before a decision is undertaken under the NCA, having regard to the principles of ESD, particularly the precautionary principle, inter-generational equity, and the conservation of biological diversity and ecological integrity.

While the precautionary principle provides that a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation where there is a threat of serious or irreversible environmental damage, the Committee considers that this principle should not be relied upon to justify a decision not to pursue further research and consider alternative management measures (if management is necessary) where there is uncertainty as to the extent of the impact of a particular species. The Committee submits that to do so would be in conflict with the object of the NCA, being the protection, enhancement and conservation of biodiversity.

Further, the precautionary principle must be appropriately weighted against the inter-generational equity principle and the requirement under the NCA for the implementation of conservation of biological diversity and ecological integrity. The Committee submits that the pressures of competing human land uses such as sheep and cattle grazing should be taken into account in making a decision as to the extent of the impact of the Eastern Grey Kangaroo on the ACT environment on the basis that any conservation efforts under the

⁷ Ibid.

⁸ Ben-Ami, D., Boom, K., Boronyak, L., Croft, D., Ramp, D., Townend, 3.

⁹ Ibid.

NCA must also involve planning for the management of human impacts on the environment and biodiversity to ensure they are ecologically sustainable. This is in accordance with the definition of 'conservation' given in the NCA, being "the protection and maintenance of nature while allowing for its ecologically sustainable use".¹⁰

The need to consider animal welfare

The Committee submits that animal welfare should be a mandatory consideration under the NCA. There are two reasons it is imperative to consider animal welfare. The first is the interests of the individual animals that will be impacted by any management proposal. There is increasing scientific support for the view that animals, including mammals such as the Eastern Grey Kangaroo, are 'sentient'.¹¹ Further, a number of jurisdictions have now officially recognised that animals are sentient, including New Zealand.¹² In relation to an animal, the concept of sentience means that the animal is "capable of being aware of its surroundings, its relationships with other animals and humans, and of sensations in its own body, including pain, hunger, heat or cold".¹³

The second reason animal welfare should be a mandatory consideration is that there is increasing community demand for the humane treatment of animals. This is evidenced by changing consumer patterns.¹⁴

¹⁰ *Nature Conservation Act 2014 (ACT)*, section 10.

¹¹ Philip Low, 'The Cambridge Declaration on Consciousness' (Paper presented at the Francis Crick Memorial Conference on Consciousness in Human and Non-Human Animals, Churchill College, July 7 2012) 2 <http://fcmconference.org/img/CambridgeDeclarationOnConsciousness.pdf>.

¹² Animal Welfare Amendment Act (No 2) 2015 (NZ) s 4. In France, Amendment No 59 to the Civil Code provides that 'Animals are living beings endowed sensitivity'. In the European Union, the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (signed at Lisbon, 13 December 2007) provides that 'In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.'

¹³ Jacky Turner, Stop – Look – Listen: Recognising the Sentience of Farm Animals (Compassion in World Farming Trust, updated version, 2006) 6.

¹⁴ Products featuring higher animal welfare attributes are gaining market share in Australia. Data from market researcher Euromonitor International has shown Australia's packaged vegan food market is currently worth almost \$136 million, set to reach \$215 million by 2020, and is the third fastest growing vegan market in the world. An Australian survey conducted between 2000-2004 found that 48% of people were more likely to buy free-range eggs than they were in previous years (Franklin, 'Human-nonhuman animal relationships in Australia: An overview of results from the first national survey and follow-up case studies 2000-2004', *Society & Animals*, 2007, vol. 15, pp 7-27). The retail market share for non-cage eggs has doubled in size from 24.8% of the market in 2005 to 50% in the 2012/13 financial year (Australian Egg Corporation Limited, Woolworths and cage eggs, media statement, 4 October 2013; IBIS World, *Industry Report: Egg Farming in Australia*, 2013). Australia's two major food retailers – Coles and Woolworths – have both made announcements that they will increase the animal welfare standards employed in the production of their branded products. See e.g. Coles Limited, 'Better Animal Welfare at Coles!', Coles Blog (9 January 2013) <http://blog.coles.com.au/2013/01/09/better-animal->

Accordingly, the Committee considers that where any proposal involves a greater degree of animal welfare harm, the evidentiary basis for adopting that proposal should be proportionate to that greater degree of harm. The proposal itself, and its impact on animal welfare, should also be proportional to the environmental harm that is sought to be avoided.

Proposed legal framework

The Committee considers that proportionality is the hallmark of an accountable government and good governance, and should form a tool for policy development and analysis, including in the context of managing the impacts of particular species.

More specifically, the Committee considers the decision-making process in respect of invasive species should draw on the process followed by the Australian Competition and Consumer Commission (**ACCC**) when determining authorisation applications under the *Competition and Consumer Act 2010* (Cth). Under that process:

1. the ACCC may not grant authorisation unless it is satisfied in all the circumstances that the proposed conduct would result in, or be likely to result in, a public benefit that outweighs the likely public detriment;
2. in order to identify the benefits and detriments that flow from proposed conduct, the ACCC compares the public benefits and detriments likely to arise in the future where the conduct occurs against the future in which the conduct does not occur.¹⁵
3. importantly, the onus is on the person seeking authorisation to demonstrate that there is sufficiently substantial public benefit to outweigh any detriment; and
4. the ACCC may decide not to grant authorisation where the substantial anti-competitive detriment from engaging in the proposed conduct is unacceptable or the proposed conduct results in only a

welfare-at-coles/, accessed on 6 April 2014); and Woolworths Limited, 'Animal Welfare'. Australian Pork Limited has committed to voluntarily phasing out sow stalls by 2017 (Australian Pork Limited, 'Housing' < <http://australianpork.com.au/industry-focus/animal-welfare/housing/>>, accessed on 6 April 2014). The Australian Competition and Consumer Commission (ACCC) has recognised that consumers are increasingly distinguishing products based on animal welfare standards and so has sought to crack down on producers who make misleading or deceptive animal welfare claims. The ACCC has also successfully prosecuted several producers of animal products for inappropriately labelling their products to represent that the animals used in production were kept in better conditions than they were (see e.g. ACCC v G.O. Drew Pty Ltd [2007] FCA 1246; ACCC v C.I. & Co Pty Ltd [2010] FCA 1511; ACCC v Bruhn [2012] FCA 959; ACCC v Turi Foods Pty Ltd (No 2) [2012] FCA 19; ACCC v Luv-a-Duck Pty Ltd [2013] FCA 1136; ACCC v Pepe's Ducks Ltd [2013] FCA 570); and ACCC v Pirovic Enterprises Pty Ltd (No 2) [2014] FCA 1028.

¹⁵ ACCC, Authorisation Guidelines (June 2013) at [5.20] available here <<http://www.accc.gov.au/system/files/Authorisation%20guidelines.pdf>>.

very small public benefit.¹⁶

Drawing on the recognised concept of proportionality, and the ACCC decision-making process in the authorisation context, the Committee proposes the following framework for balancing animal welfare interests against competing interests in the context of managing species overpopulation:

1. the impacts of the proposal on animal welfare must be identified; and
2. any identified impacts on animal welfare must be considered in the light of the environmental harm sought to be avoided, ensuring that:
 - a. any compromise to animal welfare is necessary to avoid the environmental harm (in the sense that it will be effective in avoiding the environmental harm, and there are no alternatives to achieve the same end that would have less of an impact on animal welfare, in other words, encroachments on animal welfare should be the minimum necessary to achieve the proposed outcome);
 - b. any compromise to animal welfare is reasonable and proportionate to the ends sought to be achieved. This means that at a minimum the benefits of the proposal should outweigh the harm to animal welfare, the benefits must be significant, and the animal welfare detriment cannot be unacceptable; and
 - c. the proposal can be, and will be, executed and controlled in a way that meets high animal welfare standards and avoids unacceptable animal welfare outcomes.

Before a proposal which compromises animal welfare is accepted, the decision-maker must be satisfied based on evidence that the particular control method is necessary, reasonable and proportionate, and can be implemented in a way that meets high animal welfare standards. The Committee recommends that the where the animal welfare detriment is greater (for instance where the proposal involves a lethal or other particularly invasive control method), the evidentiary basis for that particular control method is proportionate to that greater detriment.

Designation of the Eastern Grey Kangaroo as a controlled native species

The Committee questions the decision of the ACT Government to designate the Eastern Grey Kangaroo as a controlled native species in light of the issues discussed above regarding the evidence as to the necessity

¹⁶ *Ibid.*

of the cull. Further, the Committee notes that section 6 of the NCA provides that the object of the NCA is to be achieved through actions including ensuring that members of the public have opportunities to participate in policy development and nature conservation planning.

One effect of designating the Eastern Grey Kangaroo as a controlled native species is to remove the requirement for ACT Parks and Conservation to apply to the Conservator of Flora and Fauna for a licence to undertake the culling of the animal. A licence granted by ACT Parks and Conservation may be appealed. Appeals of culling licences granted to ACT Parks and Conservation have been brought in most years since the first ACT cull in 2009.¹⁷ Although ACT Parks and Conservation will still need to obtain approval from the Conservator for the number of kangaroos to be culled and in which reserves the culls are to be undertaken, the designation of the animal as a controlled native species has effectively removed any opportunity for the public to challenge culls.

The Committee submits that this has the effect of removing accountability to the public and limiting transparency. The Committee observes that, although appeals against the grant of licences have been successful, legal challenges have resulted in the recognition of legal problems with particular aspects of culling in the ACT. In 2016, his Honour Justice Michael Elkaim of the Supreme Court of the ACT overturned the conviction of a protester who interrupted a cull in Wanniasa, ACT, on the basis that the cull was being undertaken pursuant to an invalid licence and was therefore itself not valid.¹⁸

Proposed culling methods

The Committee makes two general, preliminary recommendations:

1. **If there is any reasonable doubt as to the efficacy of lethal control measures, then these measures should not be supported.** The Committee notes there is some question as to whether lethal control methods such as ground shooting are likely to be effective in removing an entire social group of animals. Indeed, in the feral camel context, records of numbers of animals removed through ground-based activities are poor.¹⁹ The Committee considers it would be inappropriate for animals to be killed or harmed in circumstances where there is reasonable doubt that this will achieve the stated objectives.

¹⁷ Canberra Times, 2017 'Roo cull will no longer need annual licence' 9 February <http://www.canberratimes.com.au/act-news/roo-cull-will-no-longer-need-annual-licence-under-new-act-kangaroo-management-plan-20170207-gu7xum.html>.

¹⁸ ABC News, 2016. 'Canberra kangaroo cull in 2015 was unlawful, judge says' 22 July <http://www.abc.net.au/news/2016-07-21/canberra-kangaroo-cull-in-2015-was-unlawful-justice-says/7648890>

¹⁹ WK Saalfeld and B Zeng, 'Review of non-commercial control methods for feral camels in Australia' Desert Knowledge CRC (2008) available at: http://www.nintione.com.au/resource/DKCRC-Report-47-Ch08_Saalfeld-and-Zeng_Review-of-non-commercial-control-methods-for-feral-camels-in-Australia.pdf

2. **If, in implementing any management proposal, compliance with acceptable animal welfare standards cannot be guaranteed, then the management proposal in question should not be supported.** In this respect the Committee submits that merely implementing management proposals in accordance with existing Codes of Practice (which are discussed further below) is not sufficient to ensure acceptable levels of animal welfare. There is seemingly significant variation in the extent to which animal welfare codes are enforced.²⁰ Further, many Codes of Practice have been developed against the backdrop of conflicting goals, such as profitability and economic efficiency versus animal welfare.²¹

Some commentators argue that this has resulted in Model Codes of Practice being based on selective science or even disregarding the science of animal suffering altogether in the pursuit of economic goals,²² and that Model Codes of Practice can serve to authorise and condone a range of painful and inhumane practices.²³ This means there is a risk that some codes, whilst portrayed as 'best practice', may in fact be at odds with socially accepted and well-recognised notions of high animal welfare standards.

In 2013 the ACT adopted the National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Noncommercial Purposes (NRMMC 2008b) (**Kangaroo Code**). The Kangaroo Code constitutes the primary regulatory instrument for the killing of kangaroos for non-commercial purposes. It sets out national standards for the killing of adult kangaroos and dependent young.

However, the standards under the Kangaroo Code have been critiqued, as has the enforcement of compliance with the standards. In 2012, THINKK released a report regarding compliance and enforcement of the law governing the killing of kangaroos.²⁴ The report focused primarily on the commercial industry. Although the culls undertaken in the ACT are not commercial in nature, the Committee considers that the concerns with the Kangaroo Code and compliance with its standards identified in the report are applicable in the ACT context.

²⁰ Steven White, 'Regulation of Animal Welfare in Australia and the Emergent Commonwealth: Entrenching the Traditional Approach of the States and Territories or Laying the Ground for Reform?' (2007) 35 Federal Law Review 347, 355.

²¹ Deborah Cao, *Animal Law in Australia and New Zealand* (2010) 208

²² A Dale, 'Animal Welfare Codes and Regulations – The Devil in Disguise' in P Sankoff and S White (eds), *Animal Law in Australasia* (2009), 191

²³ Deborah Cao, *Animal Law in Australia and New Zealand* (2010) 208

²⁴ Boom, K., Ben-Ami, D and Boronyak, L, 'Kangaroo Court:

Enforcement of the law governing commercial kangaroo killing. THINKK, the kangaroo Think Tank, University of Technology, Sydney' (2012)

Lethal culling methods

Kangaroos are culled primarily by shooting. The Kangaroo Code sets out procedures and specifications for the killing of kangaroos, including injured kangaroos, pouch young and young at foot. The purpose of the Kangaroo Code is "to ensure that all persons intending to shoot free-living kangaroos or wallabies for non-commercial purposes undertake the shooting so that the animal is killed in a way that minimises pain and suffering".²⁵

The Kangaroo Code further provides that, when shooting a kangaroo, "the primary objective must be to achieve instantaneous loss of consciousness and rapid death without regaining consciousness".²⁶ If certain conditions cannot be met, or if there is any doubt about achieving this goal, shooters must not attempt to shoot an animal. Shooters must aim so as to hit the animal in the brain, but if that is not practical or safe, aiming for the heart is acceptable. A third method, if the first two are impractical or unsafe, is to euthanise the animal with a heavy blow to the base of the skull so as to destroy the brain. There are also conditions regarding the killing of dependent young. Any female kangaroo that has been targeted is to be examined thoroughly for pouch young and where dependent young are found, they must be euthanised in accordance with the Kangaroo Code.

Problems that have been identified in relation to the standards under the Kangaroo Code and compliance with those standards include that:

- no inspection is undertaken at the point of kill and as such the killing of dependent young occurs without monitoring;²⁷
- State and Territory environmental departments bear the responsibility for enforcement of the Kangaroo Code (including in the ACT), and these departments have multiple interests that impact negatively on their ability to effectively enforce compliance;
- the carrying out of inspections and investigations regarding animal cruelty offences can be problematic. For instance, in the case of kangaroo culling, shooting is generally undertaken in the dark, when kangaroos are active, making it difficult not only for shooters to comply with the code but for inspections to be regularly and thoroughly undertaken;²⁸ and
- shooters encounter difficulty in capturing and killing young at foot, with the additional negative effect

²⁵ National Code of Practice for the Human Shooting of Kangaroos and Wallabies for Commercial Purposes, section 1.1.
<http://www.environment.gov.au/system/files/resources/8ae26c87-fb7c-4ddc-b5df-02039cf1483e/files/code-conduct-non-commercial.pdf>

²⁶ National Code of Practice for the Human Shooting of Kangaroos and Wallabies for Commercial Purposes, section 2.5.

²⁷ Boom, K., Ben---Ami, D and Boronyak, L, 25.

²⁸ Glenys Oogjes, 'Band-Aid Code Will Not Stop Joey Cruelty—Only an End to the Practices Will Do That' in Kangaroos Myths and Realities, (Australian Wildlife Protection Council, 3rd ed, 2005) 110.

of a lack of data of compliance by shooters in relation to dependent young and injured kangaroos.²⁹

In addition, there are inherent problems with the killing of kangaroos, including:

- factors such as shooters encountering impaired vision due to darkness and distance, weather conditions, the small target size of a kangaroo's head, unexpected movements of kangaroos and the skill and experience of the individual shooter, which may vary widely;³⁰
- non-fatal shots to a kangaroo's body, which are not avoidable in all instances, cause painful injuries and suffering to individual kangaroos. In this regard, data in relation to the commercial kangaroo industry indicates that 40% of kangaroos may have been mis-shot annually between 2005 and 2008, although a lack of monitoring by the commercial industry makes it difficult to ascertain more accurate figures;³¹ and
- the killing of dependent young is incidental to the killing of female kangaroos. Dependent young that are not caught and killed will die from starvation, exposure or predation,³² which the Committee submits is an unacceptable animal welfare impact.

The Committee observes that while it has been recommended by the RSPCA and THINKK that the Kangaroo Code be amended to include a condition prohibiting the shooting of females who are carrying pouch young, the condition has not been implemented.³³

The Committee considers that the animal welfare impact of culls undertaken by shooting is unacceptable where there is reasonable doubt as to whether acceptable animal welfare standards can be guaranteed and cannot be justified given the conflicting scientific opinions regarding the extent of the impact of the Eastern Grey Kangaroo in the ACT. This is particularly so where the legal framework does not make animal welfare a mandatory consideration and no assessment of the reasonableness or proportionality of a lethal method such as ground shooting has been undertaken. The Committee recommends that non-lethal control methods should therefore be prioritised.

Alternative management methods

²⁹ Boom, K., Ben-Ami, D and Boronyak, L, 45.

³⁰ David Nicholls, 'The Kangaroo – Falsely Maligned by Tradition' in Maryland Wilson and David B Croft (eds), *Kangaroos - Myths and Realities* (2005) 33, 38.

³¹ Ben-Ami D, Boom K, Boronyak L, Townend C, Ramp D, Croft D, Bekoff M, 'The welfare ethics of the commercial killing of free-ranging kangaroos: an evaluation of the benefits and costs of the industry' (2014) 23 *Animal Welfare* 1, 5.

³² D. B. Croft, 'Kangaroo management: individuals and communities' (2004) 26 (1) *Australian Mammalogy*, 101-8.

³³ National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Commercial Purposes (2008) s 5.; National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Non-commercial Purposes (2008) s 5.

The Committee recommends that, if it is determined that management of the Eastern Grey Kangaroo population is necessary, the ACT Government consider the following non-lethal alternatives to lethal culling methods:

- **Fertility control:** Rather than reducing populations of invasive species by killing animals, fertility control measures aim to reduce population growth rates by reducing fecundity and thereby reducing population size in the longer term.³⁴ The Committee considers that fertility control is the preferred method of control as it offers a humane and target specific alternative to lethal methods. The Committee considers that another important reason for employing fertility control methods is social. As the approach is humane, public acceptance is more likely than in the case of lethal methods.³⁵ There may also be long term economic benefits, because well planned fertility programs can prevent unnecessarily large population increases, thereby reducing the magnitude of future control programs.³⁶

The Committee commends the ACT Government for the research into fertility control methods it has undertaken to date. The Committee notes that several viable fertility control options exist at this time and, in particular, that GonaCon Immunocontraceptive Vaccine has been reported to be a promising fertility control method for kangaroos.³⁷ The Committee strongly supports continued research into this method as an alternative to lethal control methods.

- **Fencing:** Fencing refers to the construction of fences that target animals cannot cross in order to protect areas of designated high value vegetation, habitats or cultural sites and has been the most common method used to exclude invasive species from an area.³⁸ The best known fence is the dingo fence, which stretches 5614 kilometres covering three states (QLD, NSW and SA) to separate southern and eastern sheep grazing lands from cattle and dingo country and is highly effective.³⁹

A number of different types of fence have been used to purposely exclude feral herbivores: conventional stock fencing, electric fencing, and purpose-built fences.⁴⁰ Fences are typically used to break up areas into manageable blocks for control (similar to paddocks used for herd management on pastoral land), to exclude animals from water points, and to protect important areas. Exclusion

³⁴ Office of Environment & Heritage NSW National parks & Wildlife Service, 'Review of the 2008 Horse Management Plan and Wild Horse Management Program, Kosciuszko National Park' (2016)

³⁵ Jay Kirkpatrick and John Turner, 'Chemical Fertility Control and Wildlife Management' (1985) 8 BioScience 35

³⁶ Kirkpatrick and Turner, 35.

³⁷ ACT Government, Environment, Planning and Sustainable Development Directorate - Environment, 2017. 'Fertility Control' http://www.environment.act.gov.au/cpr/conservation-research/research/fertility_control

³⁸ WK Saalfeld and B Zeng, 'Review of non-commercial control methods for feral camels in Australia' Desert Knowledge CRC

³⁹ WK Saalfeld and B Zeng, 'Review of non-commercial control methods for feral camels in Australia' Desert Knowledge CRC

⁴⁰ WK Saalfeld and B Zeng, 'Review of non-commercial control methods for feral camels in Australia' Desert Knowledge CRC

fencing is being increasingly used to protect areas of high conservation value or to create refuges for native fauna.⁴¹

The Committee considers that the use of the non-lethal methods outlined above would be in accordance with the objects of the NCA while adhering to high animal welfare standards. This is particularly the case in circumstances where, as discussed above, experts hold conflicting opinions regarding the need for control measures in respect of the Eastern Grey Kangaroo and there is research demonstrating problems with the implementation of lethal control measures. The Committee does not support lethal control methods, as it is not satisfied that animal welfare concerns have been appropriately balanced against competing interests and that a lethal control method can be implemented in accordance with high animal welfare standards, and submits that non-lethal methods should be prioritised.

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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⁴¹ WK Saalfeld and B Zeng, 'Review of non-commercial control methods for feral camels in Australia' Desert Knowledge CRC