



Biodiversity Reforms - Have Your Say  
PO Box A290  
Sydney South  
NSW 1232

28 June 2016

Dear Sir/Madam

### **Submission on the Draft Code of Practice for Commercial Kangaroo Harvesting in NSW**

Thank you for the opportunity to provide a submission in relation to the Draft Code of Practice for Commercial Kangaroo Harvesting in NSW (the Code).

#### **About the Animal Defenders Office**

The Animal Defenders Office (ADO) is a non-profit, community law practice that specialises in animal law. The ADO offers information and representation for individuals and groups wishing to take action for animals. The ADO also produces information to raise community awareness about animal protection issues, and works to advance animal interests through law reform.

The ADO is a member of Community Legal Centres NSW Inc.

Our comments on the Code are set out below.

#### **The Code's objectives**

The NSW Government has prepared an example wildlife code of practice as part of the proposed biodiversity conservation legislative reform.

This submission provides comments on the example code of practice for commercial kangaroo harvesting, known as the Code of practice for commercial kangaroo harvesting in NSW (the Code).<sup>1</sup>

The Code states that its objectives are (clause 2):

- a) to ensure that the commercial kangaroo harvest is ecologically sustainable and
- b) to ensure kangaroo harvesting is humane and minimises the pain and suffering of the animal.

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<sup>1</sup> <https://www.landmanagement.nsw.gov.au/native-plants-and-animals/code-of-practice-for-commercial-kangaroo-harvesting-in-nsw/>.

The ADO submits that priority of these objectives should be reversed. As compliance with the Code would be a defence to the proposed offences of harming and dealing in animals (clause 4), the main objective of the Code should be to protect the kangaroo and to provide a clear message to shooters that the welfare of the kangaroos is the primary concern.

The two objectives also highlight a fundamental flaw in the proposed biodiversity conservation scheme.<sup>2</sup> The scheme is underpinned by ‘the principles of ecologically sustainable development’.<sup>3</sup> The Biodiversity Conservation Bill 2016 (the Bill) states that its purpose is (clause 1.3):

to maintain a healthy, productive and resilient environment for the greatest well-being of the community, now and into the future, consistent with the principles of ecologically sustainable development.

The ADO submits that it is inappropriate to include the protection of native animals in legislation based on and promoting the principles of ecologically sustainable development. These are often mutually exclusive goals.

### **Risk-based approach to regulating interaction with wildlife**

The Code is part of the proposed ‘risk-based approach’ to regulating human interactions with wildlife, which would include the shooting of kangaroos for the commercial industry (referred to in this submission as the commercial killing or shooting of kangaroos). The proposed approach differentiates between what are referred to as low- and high-risk activities. The risk-based approach provides defences for exempt activities and activities that comply with a code of practice. People undertaking so-called ‘lower risk’ wildlife activities would no longer require a licence but would need to carry out the activity following the requirements outlined in a code of practice. This is purportedly to allow the government ‘to concentrate enforcement efforts and more effectively regulate higher-risk activities.’<sup>4</sup>

The Code is an example code of practice drafted for this purpose. It means that the commercial killing of kangaroos is considered to be a relatively low-risk activity.<sup>5</sup>

The *Submissions Guide: Protecting our native plants and animals*<sup>6</sup> (Submissions Guide) states that the NSW Office of Environment and Heritage (OEH) will consider both the activity and the species when assessing risk. It states that the:

level of risk associated with wildlife interactions is based on the likely impacts on populations of native animals and plants, animal welfare, and human health and safety. Even for low-risk activities, the new approach seeks to ensure appropriate measures remain in place to protect

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<sup>2</sup> <https://www.landmanagement.nsw.gov.au/>.

<sup>3</sup> ‘A review of biodiversity legislation in NSW—Final Report’, by the Independent Biodiversity Legislation Review Panel (the Panel Report), p.iv; available at: <http://www.environment.nsw.gov.au/resources/biodiversity/BiodivLawReview.pdf>.

<sup>4</sup> The Panel Report, pp.14 and 64.

<sup>5</sup> ‘A new framework for managing wildlife interactions’, NSW government fact sheet, 3 May 2016; <https://biodiversity-ss.s3.amazonaws.com/Uploads/1462236218/A-new-framework-for-managing-wildlife-interactions.pdf>.

<sup>6</sup> <https://www.landmanagement.nsw.gov.au/native-plants-and-animals/submission-guide/>.

native animals and plants in the wild, to establish minimum standards of animal care and to maximise public safety.

It is difficult to understand how the commercial killing of kangaroos could be ‘unlikely to impact on animal welfare’, or ‘unlikely to harm [kangaroo] populations’, making kangaroo killing low enough of a risk not to require a licence. Both these ‘risk factors’ are inherent in the activity. The commercial killing of kangaroos inevitably impacts greatly on the welfare of individual animals (for example by killing, injuring, traumatising or orphaning them), and severely depletes kangaroo populations. This should put commercial kangaroo killing into the highest risk category. Only ‘non-interfering’ activities such as observing animals in the wild should qualify as a ‘low risk’ or code-based activity.

The ADO submits that a major problem with the Code, and the new approach in general, is that it only establishes ‘minimum’ standards of animal care. By contrast, the new approach aims to ‘maximise’ public safety. The ADO submits that the same standard or goal should apply to both—that is, to maximise animal care and public safety.

The Submissions Guide states that OEHL will also consider commercial elements in the activity. It appears that these have been given significantly more weight in the assessment of kangaroo killing than risks to animal welfare.

### **Reducing red tape**

Another justification for categorising activities such as kangaroo killing as low risk is that it would reduce red tape for these activities. It is claimed that the approach will ‘significantly reduce the number of licences, which will allow the government to concentrate enforcement efforts and more effectively regulate higher-risk activities.’<sup>7</sup>

The Submissions Guide states that ‘the government estimates the number of licences could be significantly reduced. OEHL currently issues approximately 20,000 licences for wildlife activities.’ It also states that the new approach ‘would significantly reduce the number of licences and streamline the process for people wanting to undertake activities in compliance with the rules.’

The ADO notes that during 2015 there were 281 licensed commercial harvesters nominated on a total of 2,965 commercial occupiers’ licences throughout the commercial harvest zone.<sup>8</sup> The ADO submits that the only sectors that would benefit from any deregulation of the commercial kangaroo killing industry would be the industry and the administrators of the regulatory scheme. The kangaroos, and those in our community who want a high level of animal care and to have confidence that native animals are not shot inhumanely, lose out.

The ADO also submits that killing kangaroos is a high risk activity both for the kangaroos and the Australian community. The kangaroo is an iconic animal with special cultural

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<sup>7</sup> <https://www.landmanagement.nsw.gov.au/home/biodiversity-reforms-overview/#protecting-our-native-plants-and-animals>.

<sup>8</sup> *NSW Kangaroo Management Program 2015 Annual Report*, p.15 (Annual Report 2015); available at <http://www.environment.nsw.gov.au/resources/nature/kmp/kmp-annual-report-160113.pdf>.

significance to indigenous and non-indigenous Australians. It is also an animal much loved by the international community, which means there is significant scrutiny of how we treat these unique native animals.

The commercial killing of kangaroos should therefore require more regulatory oversight, rather than less.

### **Skin-only killing**

The Consultation Note in the draft Code states:

In NSW there is a moratorium on skin only harvesting. As part of consultation OEH is seeking comments on the reintroduction of skin only harvesting and will consider all comments before finalising the Code.<sup>9</sup>

The ADO does not support the reintroduction of skin-only harvesting. The ADO understands that historically international markets have restricted the intake of skins on conservation grounds. Concern about the commercial shooting of kangaroos, and the negative welfare outcomes for the animals, have if anything increased in the 21<sup>st</sup> century. Before the practice was banned in NSW, skin-only shooting was difficult to police as it occurred in remote areas and a long distance from chillers. It also attracted unscrupulous or incompetent shooters—that is, shooters who were not accurate enough to achieve a clean shot to the brain to produce an instantaneous loss of consciousness.<sup>10</sup> It also meant that the large dominant males were targeted, which destroys the kangaroos' social structures. Finally it conflicted with the 'full utilisation' approach to killing native wildlife favoured by some in the community.

These factors are still compelling arguments against reintroducing the trade.

### **Enforcement**

The Code states that (clause 5):

Failure to comply with this Code means that an offence is committed and may be subject to a caution, penalty notice or prosecution.

The enforceability of the Code is absolutely critical to an assessment of whether the commercial shooting of kangaroos should be classified as a lower-risk and code-based activity. Kangaroo shooting is notoriously difficult to monitor and ensure compliance with animal welfare codes and laws. The killing takes place in remote areas and at night. Compliance activity is therefore minimal. For example, during 2015 a total of 355,824 kangaroos were killed in NSW as part of the commercial kangaroo industry<sup>11</sup> yet there were

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<sup>9</sup> Page 3.

<sup>10</sup> The *National code of practice for the humane shooting of kangaroos and wallabies for commercial purposes* (National Code) considers that an 'instantaneous loss of consciousness and rapid death without regaining consciousness' is, for the purposes of the Code, a 'sudden and humane death' (page 3); <http://www.environment.gov.au/biodiversity/wildlife-trade/publications/national-codes-practice-humane-shooting-kangaroos-and-wallabies>

<sup>11</sup> Annual Report 2015, p.2.

no ‘in the field’ audits or inspections of the sites where the animals are killed.<sup>12</sup> Only 8 infringement notices and 26 cautions were issued.<sup>13</sup> No licences were cancelled and no industry participants were prosecuted.<sup>14</sup> Any suggestion that there is a low risk of non-compliance in commercial kangaroo killing is therefore nonsensical. By its very nature kangaroo shooting has a high risk of non-compliance and inherent enforcement difficulties. Again, this suggests that killing kangaroos is an inherently high-risk activity.

The ADO also submits that it is not clear how the new framework will be enforced. Compliance requirements in the Code are minimal, consisting almost entirely of 3-monthly reporting requirements on certain procedural matters (clause 31).

The Code seems to be based on a self-regulatory compliance model. It requires that commercial operators must ‘report to OEHL any non-compliance with this Code immediately after becoming aware of the non-compliance’ (clause 25). It would not be unreasonable to suggest that many Australians have little confidence in self-regulation as a regulatory model in animal industries. The community has seen that where animal welfare competes with commercial interests, such as in the live export and greyhound racing industries, animal welfare always comes a distant second.

The Code requires that operators must report on the number of kangaroos shot in the body (clause 27).<sup>15</sup> It is not clear whether this reporting requirement is in addition to the immediate reporting requirement in clause 45. Clause 45 requires operators to report ‘any kangaroos shot in the body to OEHL, immediately via the Environment Line on 131 555 or at [info@environment.nsw.gov.au](mailto:info@environment.nsw.gov.au)’. As previously mentioned, kangaroos are shot at night and in remote areas. It is not clear whether clause 45 requires operators to report as soon as the kangaroo is shot. If so, the ADO queries whether it is realistic to expect that commercial shooters will stop their shooting at night to do this, and whether shooters have access to equipment and an internet connection when in the field to send an email ‘immediately’.

Clause 47 states that operators can only harm ‘as many kangaroos as the number of commercial tags they have purchased from OEHL’. Again, there is no indication as to how this will be enforced, and whether it includes pouch young or at-foot joeys.

Clause 56 requires that operators do not kill or possess, etc, kangaroo carcasses that weigh less than 14–15 kilograms. The ADO notes that this replicates conditions attached to commercial harvest licences during 2015.<sup>16</sup> It is not clear, however, whether the proposed requirement in clause 56 means that the current approach of not requiring commercial kangaroo shooters to record individual carcass weights<sup>17</sup> will be replaced by a requirement to weigh each individual animal. While this would be preferable, the ADO again queries how the proposed requirement would be enforced.

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<sup>12</sup> Annual Report 2015, Appendix A, Action 4.0.

<sup>13</sup> Annual Report 2015, p.16.

<sup>14</sup> Annual Report 2015, p.17.

<sup>15</sup> Under the National Code a body shot indicates an inhumane death for the animal; see footnote 10.

<sup>16</sup> Annual Report 2015, p.9.

<sup>17</sup> Annual Report 2015, p.9.

The ADO, therefore, submits that it is difficult to see how the proposed framework will be any less difficult to enforce than the existing license system. No enforcement improvements appear to be proposed in the Code.

## **Registration**

The Code would require that commercial operators register for commercial kangaroo killing (clause 11). The Code does not clarify how long the registration lasts. It also does not explain whether individual shooters of the registered businesses need to register in addition to the business (clause 16).

Individuals registering must provide evidence of their ‘authorisations and licences’ (clause 16). The relationship between these requirements and the competency requirements<sup>18</sup> in the *National code of practice for the humane shooting of kangaroos and wallabies for commercial purposes* is not clear.

Moreover, the Code does not contain sufficient checks to ensure a shooter meets the minimum competency requirements to kill kangaroos in a way that causes as little suffering as possible. Shooters must be able to identify kangaroos in the conditions in which they are shot (ie at night, in the dark). They must also be able to euthanase pouch young and at-foot joeys, again in a way that causes as little suffering as possible.

Finally, the Code does not make clear what registered operators need to do if their details change. This may happen, for example, if a new vehicle is used as part of the killing process<sup>19</sup> or a shooter loses his or her firearms licence. It is not clear whether there is a requirement to notify the authorities of such changes after registration.

In summary, the ADO submits that **the Code should not be adopted**. If kangaroo shooting is to be allowed under NSW law, it should be treated as a high-risk activity requiring significant monitoring and enforcement measures.

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<sup>18</sup> See Action 3.0 in Appendix A, Annual Report 2015.

<sup>19</sup> Vehicles are important to allow for opportunistic inspections under the Office of Environment and Heritage’s *New South Wales Commercial Kangaroo Harvest Management Plan 2012–2016*.