

The Killing of Kangaroos

The urgent need for humane alternatives

1. There are serious welfare challenges in native wildlife management in Australia. In the case of kangaroos, they principally arise from the industry which engages in their commercial killing. But I should like first to briefly advert to the kangaroo culling which has just taken place yet again in the ACT. For, in common with the commercial industry, it highlights, first, how far kangaroos have come to be devalued as an animal species; second, the lazy thinking which underpins the permissibility of such killing in such large numbers; and third, the urgent need for Commonwealth funding and leadership to enable the widespread adoption and expedited and unfragmented research of humane alternative measures.
2. In April 2012, the ACT Government published its kangaroo management plan. The plan opposes kangaroo relocation. It does so with arguments which rely upon supposition and which defy historical success in a number of relocation programs. In this respect, the ACT plan echoes the statement of commercial industry supporter, Professor Gordon Grigg of the University of Queensland, who on 18 March 2008 wrote how "translocation is fraught with practical difficulties " , that is to say, the stress involved with capture, post-capture myopathy, finding a suitable release site, and so on. In answer to these contentions, I would refer to the paper by Professor Steve Garlick and Dr Rosemary Austin presented in June 2010 at the National Wildlife Rehabilitation Conference in Adelaide entitled *Kangaroo Translocation: Program Efficiency and Welfare Goals*. You will find the paper by Google Search of the term 'kangaroo translocation'. The principal feature of successful translocation would appear to be translocation in small numbers in each week over say a year rather than by attempting it in one go. This requires planning and foresight. Then there are other means available too such as of course exclusion fencing.
3. In contrast, the means employed in such wrongheaded culling or by the commercial industry are self-evidently violent. So too is the non-commercial killing of kangaroos in Victoria, where there is no commercial industry. In Victoria, under the *Wildlife Act* 1975 it is permissible upon grant of a

licence. Anecdotally, little difficulty or scrutiny by the relevant department attends the grant of such a licence to say a farmer. So a violent life-ending means is employed, either because it is cheap and it is quick, or because someone stands to make a dollar in a similar vein to those who are poachers of the rhinoceros for its horn. However, in the last year the tide has finally begun to substantially turn in Australia in community perceptions of animal welfare. And so the challenge should begin again of the conventional but lazy thinking which underpins an ACT kangaroo management plan or the tolerance of a commercial industry.

4. As a nation we need to focus on alternative measures such as fertility control, where the emphasis moves from the kill rate to the birth rate, or upon the adoption of other humane measures such as kangaroo translocation. The number and diversity of methods relied upon to deal with animals labelled as 'pest' animals and which are introduced or feral animals, whether for example poisoning, myxomatosis, trapping or shooting, have all ultimately failed to stem the tide. I need only instance foxes, pigs, or rabbits. Nearly all the methods relied upon are starkly inhumane. The number and diversity of the methods reveal the extent of the problems perceived, the reactionary and short term genesis of their employment, and the frustration of those in charge of 'pest' animal control, despite the annual budgets for 'pest control' of federal, State and Territory governments running into many millions of dollars.

The central point is simply this: whether it is native wildlife or feral animal management, humane and non-lethal measures are available for population control.¹ The existing regime is unacceptable morally, and it doesn't work anyway. And it is the Commonwealth which needs to take responsibility and exhibit urgently the necessary national leadership.

The commercial killing of kangaroos

States primarily responsible for wildlife management

5. Wildlife management in Australia is the responsibility of the States. However, if wildlife or wildlife products are to be exported, the Commonwealth acquires jurisdiction under the *Environment Protection and Biodiversity Conservation Act 1999*.

The industry in the commercial killing of kangaroos is carried out in four States, namely, New

¹ The question of fertility control as it may assist the plight of feral animals is dealt with in Chapter 6 of my ebook, *Animal Law: Principles and Frontiers* published at the Barristers Animal Welfare Panel website: www.bawp.org.au.

South Wales, Queensland, South Australia and Western Australia. In the main, the commercial industry comprises the killing of the Red, Eastern Grey and Western Grey kangaroos. They are killed in part for human consumption and skin products, but mainly for pet food.

6. Two years ago Russia banned imports of Australian kangaroo meat, on the basis that Australian shooters were failing to meet food safety standards. The kangaroo industry complains that it has reached breaking point with failed attempts to re-open the trade into the Russian markets. Apparently, the industry claims that kangaroo shooters are leaving the industry and several processors have ceased business or stood down multiple numbers of staff. The federal Minister for Agriculture, Senator Ludwig, is not only working to re-open access to Russian markets, but also to create a market in China.

Kangaroo management plans

7. In each of these four States there is a Kangaroo Management Program for the purposes of the commercial industry. Originally, damage mitigation was one of the objects of such programs but the previous New South Wales Kangaroo Management Plan for 2002-2006 removed the damage mitigation object. The New South Wales Kangaroo Management Plan object became to “*maintain viable populations of kangaroos throughout their ranges in accordance with the principles of economically sustainable development.*” Each KMP fixes an annual harvests quota, the total of which in each year can vary, but which can be as high as some 4 million per annum

The welfare challenge of commercial killing of kangaroos

8. Animal societies contend that each year well in excess of 100,000 adult kangaroos are not shot cleanly, and that the manner in which some 300,000 joeys are killed or die is brutal.

Licensing of shooters

9. In New South Wales, for example, the relevant statute is the *National Parks and Wildlife Act 1974* (NSW) and its Regulations. The New South Wales government department responsible for the protection and care of native fauna is the National Parks and Wildlife Service. Kangaroos are “protected fauna” for the purposes of the New South Wales Act. It is an offence to harm them, except in accordance with a licence or other lawful authority. Licensing for the commercial killing

of kangaroos is provided for under the Act.

Trappers licences, as they are called, are subject to a series of conditions including, importantly, that:

- (a) kangaroos be shot in accordance with the *Code of Practice for the Humane Shooting of Kangaroos*;
- (b) the trapper may not be in possession of a carcass containing a bullet wound to the body.

In turn, an occupier's licence is necessary to conduct shooting in a particular place, which will specify the number of kangaroos entitled to be killed pursuant to that licence.

The kangaroo shooting code

10. The *Code of Practice for the Humane Shooting of Kangaroos* is brief.² Only the South Australian Kangaroo Management Program provides for an object which includes that the commercial kangaroo industry adhere to animal welfare standards.

The RSPCA 2002 report

11. In July 2002 RSPCA Australia published '*A Survey of the Extent of Compliance with the Requirements of the Code of Practice for the Humane Shooting of Kangaroos*'.³ In establishing compliance with the *Code*, the RSPCA only sampled skins and carcasses at chosen processors, and tanners. As the Report noted, sampling at the processor did not take into account the number of kangaroos shot in the field. It will be appreciated that most commercial shooting of kangaroos takes place at night in outback regions. Commercially killed kangaroos are then taken by the shooter to a chiller and then transported to a processor. Given the trappers licence conditions, it is reasonable to assume that shooters would not submit tagged carcasses with a body or neck shot.

Head shot v body shot

12. The *Kangaroo Shooting Code* stipulates a head shot, although it is not free from ambiguity. Animal societies contend that neck shots are not humane as they may not result in instantaneous

² A copy may be found at the Barristers Animal Welfare Panel website.

³ A link may be found at the BAWP website.

insensibility (unconsciousness). However, even a head shot can produce, for example, a blown off jaw and thus a slow and painful death. Thus a head shot to be humane must be a brain shot. As it is, a kangaroo head is a small target

13. The skin inspections of the 2000-2002 survey suggested a national average head shot of 95.9%, with the lowest head shot percentage in Queensland for human/pet consumption of 93.5% and the best result in New South Wales of 97.3%. Assuming there is not a head shot for 4% of some 4 million kangaroos shot annually, this equates to 160,000 kangaroos annually. This is a figure which excludes a calculation or projection for kangaroos which fail to be head shot in the field. It should be noted that the RSPCA 2002 Report (at para 4.4.4) stated that neck shots were the major contributor to the overall proportion of body-shot kangaroos.

The killing of joeys

14. As to the manner of killing joeys of shot female kangaroos, the *Kangaroo Shooting Code* sanctions decapitation in very small hairless young, a heavy blow to destroy the brain in larger young, or a shot to the brain “*where this can be delivered accurately and in safety.*”

Needless to say, young at foot which escape after their mothers are shot are likely to be taken by predators or die from starvation. Animals Australia estimates that some 300,000 joeys would meet their end as a result of shot female kangaroos.

The Commonwealth, and a significant AAT case

15. Turning to the Commonwealth, in December 2006 the federal Minister for the Environment made a declaration under the *Environment Protection and Biodiversity Conservation Act* 1999, section 303FO(2) that the New South Wales Commercial Kangaroo Harvest Management Plan 2007- 2011 was an “*approved wildlife trade management plan*” for the purposes of Part 13A of the federal Act. This plan was approved in the context of the Commonwealth’s powers in relation to the export of the products from NSW commercially killed kangaroos to overseas markets. Except in that context, the Commonwealth was without power to impose restrictions on the commercial killing of kangaroos. This decision by the Minister was the subject of an unsuccessful application by the Wildlife Protection Association of Australia Inc in the Australian Administrative Appeals Tribunal to review the Minister’s decision: see *Re Wildlife Protection Association of Australia Inc and Minister for the*

Environment and Heritage (2008) 106 ALD

16. The application attacked different parts of the plan, including that the plan did not satisfy requirements for the humane treatment of kangaroos and their young. Part 13A of the federal environment statute provided as one of its objects, “*to promote the humane treatment of wildlife.*”
17. In addition, the Tribunal was required by section 303FO(3)(f) of the federal environment Act to be satisfied that regulatory conditions for the taking of wildlife “*are likely to be complied with.*” Those regulatory conditions were imposed by Reg 9.A05 of the *Environment Protection and Biodiversity Conservation Regulations* 2000 (Cth). For the purposes of section 303FO(3)(f) that regulation included a condition that -

“ *(b) if the animal is killed, it is done in a way that is generally accepted to minimize pain and suffering.*”

Did the Plan ‘promote the humane treatment of wildlife’, as the AAT found?

18. The Tribunal determined that the object of Part 13A, “to promote the humane treatment of wildlife”, was satisfied by the Plan. It did so by adopting the premise (para 45 of the reasons) that it had been accepted by the applicant that shooting in the brain with a centrefire rifle:

“is probably the most humane method of killing ... in that it will cause the least pain, suffering and stress... On that basis we conclude that in circumstances where that is achieved, that is, where the shooting causes instantaneous death, the treatment of kangaroos is humane and, in that respect, the Plan satisfies the object of s.303B(1)(e) of the EPBC Act of promoting the humane treatment of wildlife.”

The Tribunal (at para 50) accepted that there would be “instances” where instantaneous death by brain shot is not achieved, and said:

“Any management plan that involves the commercial killing of free-ranging animals will involve a risk that perfection will not always be achieved. What is required is that the Plan achieve as near to perfection as human frailty will permit. We are satisfied that the system of accreditation, licensing, and compliance management achieves that object.”

19. Pausing there, it is one thing to act in a manner which promotes the humane treatment of wildlife

or a wildlife species, with no inhumane outcomes, such as with fertility control measures. It is quite another to say that the humane treatment of wildlife is promoted where shooting results in inhumane treatment and deaths for many wildlife; and to so conclude because quick painless deaths are achieved in given instances and greatly exceed, in percentage terms, those of inhumane treatment or lingering, painful deaths. It can be argued that the question was not whether humane outcomes were achieved in given instances, but whether the humane treatment of wildlife or, specifically, the kangaroo as a species, was promoted by the Plan. This included looking at, not only what the Plan provided, but at outcomes.

20. What the Tribunal did was to rely upon percentages rather than absolute numbers, and thus ignore the outcome in numbers or the inhumane consequences for so many. For it may be reasonably asked how the humane treatment is said to be promoted where inhumane consequences abound for so many? If the same outcome and reasoning were to be applied to a human population, or to say children, it is unlikely it would be characterised as 'humane' or as having promoted their humane treatment.

Regrettably, I do not have time to further discuss the Tribunal's reasons, although I do so in my e-book , *Animal Law: Principles and Frontiers* , published at the Barristers Animal Welfare Panel website: www.bawp.org.au.

Removal of merits review

21. In 2006, the Act was amended so that management plans and ministerial decisions on the grant of import and export permits could not be reviewed by the Australian AAT. Instead, all that is left is judicial review of whether the Ministerial decision was lawfully made, a decidedly much narrower focus for review.
22. Thus it is that the campaign must begin anew in the public domain to challenge the thinking which underpins such a lack of legal accountability and transparency , but more fundamentally the broader notion that the existing regime for killing kangaroos is one which our society can justify in defiance of the adoption or further research of identified humane alternatives.

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