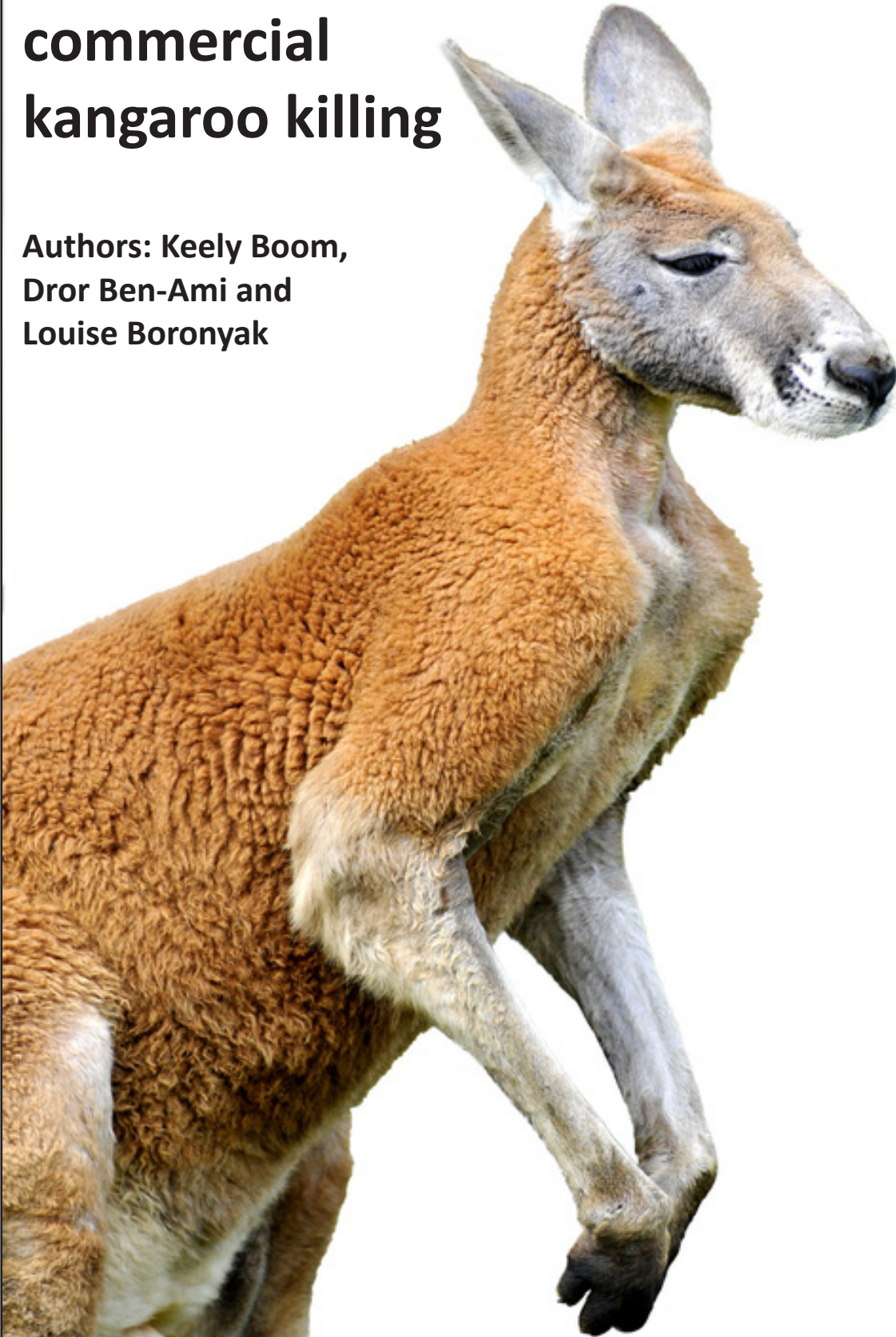




# **Kangaroo Court: Enforcement of the law governing commercial kangaroo killing**

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## THINKK'S MISSION

The mission of THINKK is to foster understanding among Australians about kangaroos in a sustainable landscape, through critically reviewing the scientific evidence underpinning kangaroo management practices and exploring non-lethal management options that are consistent with ecology, animal welfare, human health and ethics.

## THINKK SCIENCE AND POLICY

The Think Tank is governed by a Research Advisory Committee comprising of macropod experts- Dr Dror Ben-Ami, Dr Daniel Ramp and Dr David Croft, ISF sustainability expert Professor Stuart White and ISF animal and environmental law expert Keely Boom. ISF sustainability expert Louise Boronyak is THINKK's project manager. Other expert advisors include pioneering animal welfare expert Christine Townend and Indigenous elder Uncle Max Dulumunmun Harrison, inform and refine THINKK's research priorities and content.

## Kangaroo Court: Enforcement of the law governing commercial kangaroo killing

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## EXECUTIVE SUMMARY

This report provides a fresh and comprehensive analysis of compliance and enforcement of the law governing the commercial killing of kangaroos. Enforcement of animal welfare law in relation to the commercial kangaroo industry is unique because it is governed by a national Code – the *National Code of Practice for the Humane Shooting of Kangaroos and Wallabies* (Code). The Code provides the primary policy mechanism to protect kangaroo welfare and therefore it is important to assess the degree to which it is enforced in the field. This report investigates compliance to the Code by the various stakeholders through key stages of the industry. This chain of activity begins with the time when the kangaroos are killed and transported to chillers and goes through to when kangaroo carcasses are accepted for processing.

The Code provides the principal regulatory instrument for the kangaroo industry by establishing national standards for the killing of adult kangaroos and dependent young. The Code itself is not enforceable, but gains enforceability through integration into the state laws. As a result, this report provides a comparative analysis across the state agencies responsible for compliance and enforcement, as these regulatory authorities have a critical role to play in ensuring that the Code is complied with and enforced. The report highlights the key differences in terms of inspectorial practices and the resulting outcomes. The challenge facing the regulatory authorities is that the killing occurs at a multitude of locations that are widespread and continually changing.

The report has uncovered a number of key findings, these are summarised below:

- Data relating to the compliance and enforcement of the commercial kangaroo industry is limited and only a few studies have been undertaken. The primary sources of information on enforcement in the kangaroo industry are available from the annual reports prepared by the relevant state government agencies. However, there are differences between the jurisdictions both in terms of availability of data and information reported.
- The standardisation of inspections of the industry and reporting by state government agencies would help to overcome the variety amongst the jurisdictions both in terms of practices and reporting on the national Code.
- A fundamental problem is that government agencies do not inspect carcasses at the point of kill. Without inspections at the point of kill it is impossible for agencies to ensure compliance with the Code's conditions on killing dependent young and injured adult kangaroos.
- The regulations in some states, particularly Western Australia, need to be amended to ensure that the Code is enforceable against all parties involved in the commercial industry.
- Enforcement by state agencies is undermined by a conflict of interest because these agencies are responsible for both promoting the welfare of kangaroos and supporting the commercial kangaroo industry.
- Prosecutions rarely occur and where prosecutions have been successful, low fines are generally imposed.



The report highlights a number of areas for legal and policy reform to improve the animal welfare outcomes for kangaroos targeted by the commercial industry. The key recommendations include:

- The introduction of *National Standards for Reporting of Offences in the Commercial Kangaroo Industry* and *National Standards for Inspections of the Commercial Kangaroo Industry* to be adhered to by state agencies.
- In order to ensure compliance with all aspects of the Code state agencies need to allocate more resources for inspections of the industry, particularly of shooters. Video surveillance technology should be introduced to aid these inspections and improve reporting on the numbers of injured kangaroos.
- Prosecutions would be aided by mandating that heads remain on carcasses in order to determine whether carcasses have been shot correctly in the brain.
- To minimise conflicts of interest an independent department at the federal level or a number of independent departments at the state level should be established and given responsibility for enforcement as part of a wider reform of enforcement of animal cruelty laws.
- Harsher penalties should be made available in order to ensure that the regulatory system creates a sufficient deterrent for wrongful behaviour. These penalties should include higher fines, imprisonment and the strengthening of licence suspensions and revocations.





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## ABBREVIATIONS

AVMA	American Veterinary Medical Association
Code	<i>National Code of Practice for the Humane Shooting of Kangaroos and Wallabies</i>
DEC	Department of Environment and Conservation Western Australia
DECC	Department of Environment and Climate Change (now OEH)
DECCW	Department of Environment, Climate Change and Water (now OEH)
DERM	Department of Environment and Resource Management Queensland
DEWNR	Department for Environment, Water and Natural Resources South Australia
KMP	Kangaroo Management Plan or Kangaroo Management Program
NSW	New South Wales
OEH	Office of Environment and Heritage New South Wales
QLD	Queensland
QPIF	Queensland Police Service and Queensland Primary Industries and Fisheries
SA	South Australia
SFPQ	Safe Food Production Queensland
WA	Western Australia

# INTRODUCTION

## BACKGROUND AND OBJECTIVES

The study of compliance and enforcement of animal law is a relatively new field in Australia. As such, there has been little research into how the law ‘in the books’ is interpreted and applied by law enforcement agencies and courts.<sup>1</sup> Animal welfare provisions in the states and territories of Australia are found in general animal welfare legislation (e.g. *Prevention of Cruelty to Animals Act 1979* (NSW)) and in national model codes of practice. Other statutes relevantly incorporate animal welfare provisions through regulations and codes (e.g. *Food Act 2003* (NSW)). Responsibility for enforcement of animal welfare law is spread across multiple agencies in Australia both within and between jurisdictions which creates difficulties with communication and accountability. Furthermore, governments have delegated much of the crucial task of enforcement to private charities (primarily the RSPCA). It is difficult to obtain information about compliance and enforcement, which makes it difficult for the community to assess the effectiveness of enforcement of animal welfare law.

The commercial kangaroo industry occurs on four of the mainland states: New South Wales (NSW), Queensland (QLD), South Australia (SA) and Western Australia (WA). Enforcement of animal welfare law in relation to the commercial kangaroo industry is unique because it is governed by a national Code – the *National Code of Practice for the Humane Shooting of Kangaroos and Wallabies* (Code) – that is incorporated into state-based nature conservation legislation rather than general animal welfare legislation or food safety legislation. As a result, there are discrete issues that arise in relation to enforcement of the Code in relation to this large-scale wildlife industry – the world’s largest commercial kill of land-based wildlife in the world. Over the last decade 28 million kangaroos have been killed commercially<sup>2</sup> with a ‘by catch’ of approximately 8 million joeys.<sup>3</sup>

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<sup>1</sup> Keely Boom and Elizabeth Ellis, ‘Enforcing Animal Welfare Law: The NSW Experience’ (2009) 3 *Australian Animal Protection Law Journal* 6.

For other Australian literature on enforcement of animal protection law see e.g. Mark Gregory, ‘Commerce cruelty’ (1994) 19 *Alternative Law Journal* 186; Katrina Sharman, ‘Sentencing under our anti-cruelty statutes: Why our leniency will come back to bite us’ (2002) 13 *Current Issues in Criminal Justice* 33.

For international literature see e.g. Kirsten E Brimer, ‘Justice for Dusty: Implementing mandatory minimum sentences for animal abusers’ (2008-2009) 113 *Penn State Law Review* 649; Joseph Saunderson, ‘Enacting and enforcing felony animal cruelty laws to prevent violence against humans’ (2000) 6 *Animal Law* 1; Stephen Iannacone, ‘Felony animal cruelty laws in New York’ (2011) 31 *Pace Law Review* 748; Stephan K Otto, ‘State animal protection laws – the next generation’ (2005) 11 *Animal Law* 131; Delcianna J Winders, ‘Confronting barriers to the courtroom for animal advocates’ (2006-2007) 13 *Animal Law* 1.

The issues around enforcement of the law in rural, regional and remote communities are also under-researched. See e.g. Craig L Boydell, ‘Rural justice: A systems analysis of property offences’ (1985) 27 *Canadian Journal of Criminology* 289; Monique Hain and Chris Cocklin, ‘The effectiveness of the courts in achieving the goals of environment protection legislation’ (2001) 18(3) *Environmental and Planning Law Journal* 319; S L Smith, ‘An iron fist in the velvet glove: Redefining the role of criminal prosecution in creating an effective environmental enforcement system’ (1995) 19 *Criminal Law Journal* 12.

<sup>2</sup> The total number of kangaroos commercially killed is available here:

<<http://www.environment.gov.au/biodiversity/trade-use/wild-harvest/kangaroo/quota/2009.html>> accessed 1 May 2012.

<sup>3</sup> Based on R Hacker, S R McLeod, J P Druhan, B Tenhumberg, U Pradhan (2004) ‘Kangaroo Management Options in the Murray-Darling Basin.’ (Murray-Darling Basin Commission: Canberra)) with a 60% male harvest (or 40% female) the number of young at foot killed annually in the last decade is around 300,000 and the number of pouch young around 840,000.

If we compare this to other large wildlife based industries such as the Canadian seal hunt, the Canadian government approved the kill of around 220,000 to 365,000 harp seals annually in the period 2001 to 2011.<sup>4</sup> There have been claims that ‘kangaroos are humanely harvested’ and that ‘intensive government monitoring is directed to all aspects of the industry to ensure compliance with the regulations.’<sup>5</sup> However, there has been very little academic inquiry into whether the laws governing the kangaroo industry are adequately enforced.

This report seeks to provide an assessment of enforcement in relation to the commercial kangaroo industry, focusing particularly upon enforcement of the Code. It provides the principal regulatory instrument for the kangaroo industry by establishing national standards for the killing of adult kangaroos and dependent young. The Code itself is not enforceable, but gains enforceability through integration into the state laws.

An examination of enforcement of animal protection laws in relation to a commercial industry requires consideration of three issues. First, the standards that govern the particular industry must be assessed in order to establish the conditions placed upon persons operating in the industry. This assessment must include consideration of the adequacy of those standards, taking into account the animals concerned and the circumstances that surround the industry. For instance, an examination of the standards governing the kangaroo industry requires consideration not only of how adult kangaroos are killed (whose skins and carcasses are sold on) but also the treatment of dependent young whose mothers are killed as part of this industry.

The second issue is to assess the adequacy of inspections made of persons operating in the industry. Inspections play a major role in the detection of offences within animal industries because the victims are unable to report offences to the police or other regulatory authorities. Addressing the issue of inspections requires consideration not only of which agencies have responsibility for enforcement, but also their capacity to do so and the inspectorial practices that have been implemented. Finally, the outcomes of enforcement activities must be identified and examined. These enforcement outcomes include compliance letters, infringement notices and prosecutions.

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<sup>4</sup> See Fisheries and Oceans Canada, *Overview of the Atlantic Seal Hunt 2006 -2010*, <http://www.dfo-mpo.gc.ca/fm-gp/seal-phoque/reports-rapports/mgtplan-plangest0610/mgtplan-plangest0610-eng.htm> accessed 14 February 2011.

<sup>5</sup> Kangaroo Industry Association of Australia, <<http://www.kangaroo-industry.asn.au/>> accessed 4 March 2012.



## RESEARCH QUESTIONS

There are eight research questions central to this report. Together, the answers to these questions seek to provide a comprehensive and contemporary assessment of compliance and enforcement in the kangaroo industry. Questions 1-6 are addressed sequentially in this report. Questions 7 and 8 are considered throughout the report where relevant. The research questions are outline below:

### Research Questions

1. What information is currently available relating to compliance and enforcement in the commercial kangaroo industry?
2. What standards regulate the kangaroo industry in relation to animal welfare and what offences are prescribed?
3. Which government agencies are responsible for compliance and enforcement in the kangaroo industry?
4. Do government agencies carry out regular and adequate inspections of all levels of activity in the kangaroo industry?
5. What types of breaches are detected by government agencies? How do government agencies deal with breaches?
6. What are the rates of prosecution, conviction and sentencing for breaches of law in the kangaroo industry?
7. How do the standards of compliance and enforcement of the kangaroo industry compare to other animal industries in Australia?
8. Can the standards of compliance and enforcement in the kangaroo industry be improved and, if so, how?

## METHODOLOGY

To answer these research questions, there are two components to the methodology adopted. The first step was to locate and analyse the background material on the topic, for example in the format of journal articles and published reports. The second step was to locate and analyse the primary materials available, including the Code, legislation, regulations, annual reports of government agencies and other materials. This methodology is the accepted standard in law and is known as 'doctrinal research' or 'doctrinal methodology'.<sup>6</sup>

<sup>6</sup> Terry Hutchinson, *Research and Writing in Law* (3<sup>rd</sup> edition, 2010), 35 ff. See also P Ziegler, 'A general theory of law as a paradigm for legal research' (1988) 51 September *The Modern Law Review* 569; Terry Hutchinson, 'Developing Legal Research Skills: Context, Framework and Practice' (2008) 32(3) *Melbourne University Law Review* 1065; T Bettel Dawson, 'Legal research in a social science setting: the problem of method' (1992) 14(3) *Dalhousie Law Journal* 445; E Campbell, E Glasson, L Poh-Yorke and J Sharpe, *Legal Research: Materials and Methods* (3<sup>rd</sup> edition, Sydney: The Law Book Company Limited, 1998); J Yogis and I Christie, *Legal Writing and Research Manual* (4<sup>th</sup> edition, Toronto: Butterworths, 1994); C E Good, *Legal Research – Without Losing your Mind* (Charlottesville: LEL Enterprises, 1993); L Stein, 'A Methodology for Computer-based Retrieval of Legal Decisions' (1995) 69 *Australian Law Journal* 650; I Dobinson and F Johns, 'Qualitative Legal Research' in M McConville and W H Chui, *Research Methods for Law* (Edinburgh: Edinburgh University Press, 2007).

## REPORT STRUCTURE

- **Part 2** of the report provides a literature review and assessment of access to information about the kangaroo industry. The issue of access to information is touched on throughout the report. This part provides an assessment of previous studies by NSW Department of Primary Industries (formerly NSW Agriculture), RSPCA Australia, Animal Liberation and Thompson and Davies.
- **Part 3** describes the legal and regulatory framework of the industry, focusing particularly upon the Code of Practice and state laws and regulations. This part provides a comparison across the state regulations and suggests areas for reform.
- **Part 4** describes the enforcement agencies responsible for compliance and enforcement of the Code within each jurisdiction that participates in the commercial kangaroo industry.
- **Part 5** of the report describes and analyses the data available from government agencies and courts about inspections, penalty infringement notices and written cautions, investigations, prosecutions and sentencing. This part also provides a comparison of the kangaroo industry to livestock industries.
- **Part 6** summarises the key conclusions and recommendations.

## Section 1: Access to Information

### Research Question 1

What information is currently available relating to compliance and enforcement in the commercial kangaroo industry?

### BACKGROUND MATERIALS

There are a number of key secondary materials relevant to this report. In particular, a handful of previous studies have looked at compliance within the kangaroo industry. These studies were undertaken by NSW Agriculture (unknown year), the RSPCA (1985, 1987, and 2000/2002), Animal Liberation (2005-2008) and Thompson and Davies (2008). The most relevant and useful of these studies is RSPCA Australia's report of 2000/2002, which provides the most comprehensive study on compliance within the kangaroo industry. Unfortunately, this study is now 10 years old and is out-dated. For instance, the Code of Practice has since been amended to specify that kangaroos are to be 'brain' shot rather than 'head' shot.<sup>7</sup> Another field study on compliance is strongly needed to assess current rates of compliance. This section provides an overview of these background materials.

#### NSW DEPARTMENT OF PRIMARY INDUSTRIES (FORMERLY NSW AGRICULTURE) STUDY

The Vertebrate Pest Unit of NSW Agriculture (now NSW Department of Primary Industries) undertook a study to determine what ability shooters had to head-shoot under a range of conditions. The findings from this study have not been published. However, they are cited in RSPCA Australia's 2002 Report.<sup>8</sup> NSW Agriculture found that the shooter did not retrieve 1-2 injured kangaroos during a shoot, which amounted to about 1% of kangaroos shot by the shooter.<sup>9</sup> It is unclear how many shooters were included in the study and where they were operating. From the available information it appears that only one shooter was assessed. In addition, the study was unpublished and did not take account of observer influence. Due to these limitations, the NSW Agriculture study is of no utility in assessing compliance and enforcement in the kangaroo industry.

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<sup>7</sup> *National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Commercial Purposes* [herein 'Code'], Condition 2.4.

<sup>8</sup> RSPCA Australia, *Kangaroo Shooting Code Compliance: A Survey of the Extent of Compliance with the Requirements of the Code of Practice for the Humane Shooting of Kangaroos* (Prepared for Environment Australia, July 2002) available at <<http://www.environment.gov.au/biodiversity/wildlife-trade/publications/kangaroo-report/index.html>> accessed 3 August 2012 [herein 'RSPCA Australia Report 2002'], section 4.2.1.4.

<sup>9</sup> RSPCA Australia Report 2002, section 4.2.1.4.



## RSPCA STUDIES

### 1985 RSPCA Report

In 1984, the RSPCA accepted a consultancy from the (then) Australian National Parks and Wildlife Service to 'enquire into the incidence of cruelty to kangaroos during culling operations'.<sup>10</sup> The 1985 Report contained an overview of each State's approach to commercial and non-commercial killing. It also developed criteria for assessing the incidence of cruelty to kangaroos, provided estimates of the levels of cruelty involved and made a series of recommendations to reduce cruelty.<sup>11</sup> The methodology the RSPCA adopted was to engage in discussions with government agencies, non-government bodies, conduct a survey of veterinarians and conduct field inspections of skins and carcasses from commercially killed kangaroos.<sup>12</sup> The study was undertaken across the four mainland states where commercial shooting is allowed.

The 1985 RSPCA Report found that 'about 15% of all kangaroos culled for the industry have been taken inhumanely'.<sup>13</sup> The Report further found that there were higher rates of cruelty in the non-commercial killing and even higher rates in illegal killing.<sup>14</sup> The RSPCA's 1985 report found that about 7% of professional shooters chose the neck as the point of aim (taken from the results of a questionnaire survey of veterinarians).<sup>15</sup>

However, the study predated the introduction of the Code. In 1985, a *Code of Practice for the Humane Shooting of Kangaroos* was prepared by the (then) Council of Nature Conservation Ministers (now the Natural Resource Management Ministerial Council, NRMMC).<sup>16</sup> The Code was not implemented until after the release of the 1985 RSPCA Report.

### 1987 RSPCA Report

In 1986, the (then) Australian National Parks and Wildlife Service contracted the RSPCA to undertake a study entitled 'Incidence of cruelty to wallabies in commercial and non-commercial harvesting operations in Tasmania'.<sup>17</sup> The results were produced in a report released in 1987. Together the 1985 and 1987 Reports provide an opportunity to compare cruelty levels between Tasmania and the mainland at that particular point in time. The study found that the rates of cruelty in the commercial killing of wallabies in Tasmania were slightly higher than the rates of cruelty found in the killing of kangaroos on the mainland.<sup>18</sup>

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<sup>10</sup> RSPCA Australia, *Incidence of Cruelty to Kangaroos* (Prepared for the Australian National Parks and Wildlife Service, May 1985) [herein 'RSPCA Australia Report 1985'], 1.

<sup>11</sup> RSPCA Australia Report 1985.

<sup>12</sup> RSPCA Australia Report 1985, 18-26.

<sup>13</sup> RSPCA Australia Report 1985, 87.

<sup>14</sup> RSPCA Australia Report 1985, 87.

<sup>15</sup> RSPCA Australia Report 1985, Appendix 3.

<sup>16</sup> *Code of Practice for the Humane Shooting of Kangaroos* (1985).

<sup>17</sup> RSPCA Australia, *Incidence of Cruelty to Wallabies in Commercial and Non-Commercial Operations in Tasmania* (Prepared for the Australian National Parks and Wildlife Service, May 1987) [herein 'RSPCA Australia Report 1987'].

<sup>18</sup> RSPCA Australia Report 1987, 112.

## **2000/2002 RSPCA research**

In 1997, the KIAA approached RSPCA Australia to undertake an audit of the animal welfare controls of commercial kangaroo killing. The National Council of the RSPCA agreed that such a study was needed and approached the Commonwealth Government to fund it. In 1999 Environment Australia commissioned the RSPCA to undertake a survey of the extent of compliance with the requirements of the Code. The results were provided in the 2000/2002 Report.<sup>19</sup>

### *i. Methodology*

The primary sampling unit for the RSPCA's research was kangaroo skins and carcasses. Kangaroo carcasses are taken by the shooter to a chiller and are later transported to a processor. The RSPCA decided to use the processor as the sampling point of the skins and carcasses inspected on the basis that this 'made it possible to inspect samples from a number of locations at a single inspection point.'<sup>20</sup> For example, at one NSW processor a single batch of kangaroos were recorded as coming from Brewarrina, Bourke, Nyngan, Bellata, Moree, Carinda, Warren, Walget and Goondawindi.<sup>21</sup> The RSPCA also chose to use processors as the sampling point to enable the inspection of a large number of carcasses or skins at one location; to reduce the likelihood of any pre-warning that an inspection was about to take place which would affect the sample; and to ensure that the shooters were protected by a degree of anonymity.<sup>22</sup>

There were two stages to the survey. First, visits to the processors were carried out from July to September 2000 with a further two visits (to one tannery and one processor) in May 2002.<sup>23</sup> The total sample size and distribution across the States was determined by the consultancy contract which specified inspection of a minimum of 3,000 skins or carcasses with 1,000 in NSW, 1,200 in QLD, 500 in SA and 300 in Western Australia.<sup>24</sup> The contract further specified that within QLD half of the inspections were to be from the skin-only kill.<sup>25</sup> Furthermore, in NSW two-thirds of kangaroo carcasses inspected should be killed for pet-food and one-third killed for human consumption.<sup>26</sup>

In total, the RSPCA inspected twenty-four processors and two tanneries across the four States.<sup>27</sup> The processors ranged from small operations with two to three employees, to larger processors that employed around 50 people.<sup>28</sup> The RSPCA inspected 2,394 carcasses and 2,689 skins. Of these, 1,744 carcasses and 892 skins from kangaroos shot were for human consumption; 1,224 carcasses and 1,285 skins from kangaroos shot for pet food; and 590 skins from kangaroos shot by skin-only shooters.<sup>29</sup> At the time of the survey, NSW and SA did not allow skin-only shooting and skin-only shooting mainly occurred in WA and QLD. Such skin-only shooting occurred 'in remote areas where it is uneconomic to transport the carcass to the processor.'<sup>30</sup>

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<sup>19</sup> RSCPA Australia Report 2002.

<sup>20</sup> RSPCA Australia Report 2002, Section 4.2.1.3.

<sup>21</sup> RSPCA Australia Report 2002, Section 4.2.1.3.

<sup>22</sup> RSPCA Australia Report 2002, Section 4.2.1.4.

<sup>23</sup> RSPCA Australia Report 2002, Section 4.2.1.

<sup>24</sup> RSPCA Australia Report 2002, Section 4.2.1.

<sup>25</sup> RSPCA Australia Report 2002, Section 4.2.1.

<sup>26</sup> RSPCA Australia Report 2002, Section 4.2.1.

<sup>27</sup> RSPCA Australia Report 2002, Section 4.2.1.1.

<sup>28</sup> RSPCA Australia Report 2002, Section 4.2.1.1.

<sup>29</sup> RSPCA Australia Report 2002, Section 4.2.1.2.

<sup>30</sup> RSPCA Australia Report 2002, Section 4.2.1.2

The survey included 1,744 kangaroo carcasses for human consumption. Of these 411 carcasses had the heads on which aided the identification of bullet hole location.<sup>31</sup> However, carcasses destined for pet food were only available with their heads off.<sup>32</sup> The researchers inspected each carcass and recorded whether the sample was head-shot or body-shot based upon the location of the bullet holes found.<sup>33</sup>

## ii. Results

The RSPCA's results for body shots were divided up by State and by industry sector. The results showed a wide variation in the percentage of body-shot kangaroos, ranging from 0% to 11.76%.<sup>34</sup> A summary of these results is provided in **Tables 1-4** (by State) and **Table 5** (by industry sector).<sup>35</sup>

**Table 1: Observed prevalence of body shots (NSW)**

Product	Carcasses				Skins			
	Total	Body shots	% Body shots	% Head shots	Total	Body shots	% Body shots	% Head shots
Human <sup>a</sup>	574	3	0.52%	99.48%	156	4	2.56%	97.44%
Pet	73	0	0	100%	52	0	0	100%
Pet	143	1	0.70%	99.30%	65	1	1.54%	98.46%
Pet	84	0	0	100%	33	0	0	100%
Pet	138	1	0.72%	99.28%	130	0	0	100%
Pet	147	2	1.36%	98.64%	56	4	7.14%	92.86%
Pet	102	2	1.96%	98.04%	119	1	0.84%	99.16%
Pet	32	0	0	100%	68	8	11.76%	88.24%
<b>Total</b>	<b>1293</b>	<b>9</b>	<b>0.70%</b>	<b>99.30%</b>	<b>679</b>	<b>18</b>	<b>2.65%</b>	<b>97.35%</b>

<sup>a</sup> These kangaroos originated in NSW but were inspected at a QLD processor in May 2002.

**Table 2: Observed prevalence of body shots (QLD)**

Product	Carcasses				Skins			
	Total	Body shots	% Body shots	% Head shots	Total	Body shots	% Body shots	% Head shots
Human <sup>a</sup>	200	13	6.50%	93.50%	0	-	-	-
Human <sup>a</sup>	100	5	5.00%	95.00%	219	23	10.50%	89.50%
Pet	100	0	0	100%	100	0	0	100%
Pet	23	0	0	100%	102	4	3.92%	96.08%
Pet	35	1	2.86%	97.14%	70	6	8.57%	91.43%
Pet	71	0	0	100%	136	7	5.15%	94.85%
Pet	33	0	0	100%	145	7	4.82%	95.18%
Pet	80	5	6.25%	93.75%	72	8	11.11%	88.89%
Skin-only <sup>b</sup>	0	-	-	-	590	18	3.05%	96.95%
<b>Total</b>	<b>642</b>	<b>24</b>	<b>3.74%</b>	<b>96.26%</b>	<b>1434</b>	<b>73</b>	<b>5.09%</b>	<b>94.91%</b>

<sup>a</sup> Heads left on at the processor. <sup>b</sup> Skins of kangaroos shot by skin-only shooters inspected at a tannery in May 2002.

<sup>31</sup> RSPCA Australia Report 2002, Section 4.2.2.

<sup>32</sup> RSPCA Australia Report 2002, Section 4.2.2.

<sup>33</sup> RSPCA Australia Report 2002, Section 4.2.2.

<sup>34</sup> RSPCA Australia Report 2002, Section 4.3.

<sup>35</sup> All tables - RSPCA Australia Report 2002, Section 4.3.



**Table 3: Observed prevalence of body shots (SA)**

	Carcasses				Skins			
Product	Total	Body shots	% Body shots	% Head shots	Total	Body shots	% Body shots	% Head shots
Human	135	1	0.74%	99.26%	25	4	16.00%	84.00%
Human	50	0	0	100%	157	1	0.64%	99.36%
Human	0	-	-	-	128	6	4.69%	95.31%
Pet	51	0	0	100%	5	0	0	100%
Skins <sup>a</sup>	0	-	-	-	78	2	2.56%	97.44%
<b>Total</b>	<b>236</b>	<b>1</b>	<b>0.42%</b>	<b>99.58%</b>	<b>393</b>	<b>13</b>	<b>3.31%</b>	<b>96.69%</b>

<sup>a1</sup> These skins were inspected at a tannery and consequently the original purpose of shooting (i.e. human consumption or pet food) was not recorded.

**Table 4: Observed prevalence of body shots (WA)**

	Carcasses				Skins			
Product	Total	Body shots	% Body shots	% Head shots	Total	Body shots	% Body shots	% Head shots
Human <sup>a</sup>	111	10	9.00%	91.00%	51	4	7.84%	92.16%
Pet	28	0	0	100%	102	5	4.90%	95.10%
Pet	47	0	0	100%	2	0	0	100%
Pet	37	2	5.41%	94.86%	28	0	0	100%
<b>Total</b>	<b>223</b>	<b>12</b>	<b>5.38%</b>	<b>94.62%</b>	<b>183</b>	<b>9</b>	<b>4.91%</b>	<b>95.09%</b>

<sup>a</sup> Heads left on at processor

**Table 5: Observed prevalence of body shots by industry sector**

	Carcasses				Skins			
Product	Total	Body shots	% Body shots	% Head shots	Total	Body shots	% Body shots	% Head shots
Human	1170	32	2.74%	97.26%	736	42	5.71%	94.29%
Pet	1224	14	1.14%	98.86%	1285	51	3.97%	96.03%
Skin-only	0	-	-	-	590	18	3.05%	96.95%
<b>Total<sup>a</sup></b>	<b>2394</b>	<b>46</b>	<b>1.92%</b>	<b>98.08%</b>	<b>2611</b>	<b>111</b>	<b>4.25%</b>	<b>95.75%</b>

<sup>a</sup> Excludes the 78 skins inspected at a tannery in SA where the original purpose of shooting was not known.

Statistical analysis revealed that body shots were 2.7 times more likely to be detected from a skin inspection than from a carcass inspection.<sup>36</sup> On this basis, the RSPCA derived its national percentage for head-shot kangaroos upon skin inspections alone.<sup>37</sup> Analysis further revealed that kangaroos shot for human consumption had a lower head-shot rate (94.3%) than those shot for pet food (96.0%).<sup>38</sup>

<sup>36</sup> RSPCA Australia Report 2002, Section 4.3.1.1.

<sup>37</sup> RSPCA Australia Report 2002, Section 4.3.1.1

<sup>38</sup> RSPCA Australia Report 2002, Section 4.5.

Dr Hugh Wirth (RSPCA President) stated that ‘... we cannot ignore the 4% of kangaroos still being shot inhumanely – this represents around 100,000 kangaroos every year.’<sup>39</sup> In relation to joeys, Dr Wirth proposed that no female kangaroo carrying pouch young should be killed in order to prevent cruelty to joeys<sup>40</sup>. Dr Wirth declared that recreational shooting of kangaroos was ‘barbaric’<sup>41</sup>.

The RSPCA’s 2000/2002 survey found that the majority of non-head-shot kangaroos had been shot in the neck rather than the main part of the body.<sup>42</sup> **Table 6** provides a summary of the location of bullet holes, specifically whether the kangaroos were shot in the neck or below the neck.<sup>43</sup>

**Table 6: Positioning of identified bullet holes in skins and carcasses of kangaroos**

Sample		Total inspected	Body shots		
			Total	Shot in neck	Shot below neck <sup>a</sup>
<b>Skins</b>	Processor	2021	93	83	10
	Tannery	668 <sup>b</sup>	20	20	0
	<b>Total skins</b>	<b>2689</b>	<b>113</b>	<b>103</b>	<b>10</b>
<b>Carcasses</b>	Heads off	1837	18	18	-
	Heads on	411	28	28	-
	Skinned carcasses	146	0	0	-
	<b>Total carcasses</b>	<b>2394</b>	<b>46</b>	<b>46</b>	-
<sup>a</sup> Figures not available for carcasses shot below the neck as it was not possible to consistently locate entry bullet holes in carcasses with their skins on.					
<sup>b</sup> Includes 27 fleshed skins, one of which was recorded as neck-shot.					

The RSPCA found that 46 of the 2394 kangaroos inspected (head-off, head-on and skinned) had been shot in the neck.<sup>44</sup> However, the RSPCA noted that the carcasses with their heads off were difficult to examine because ‘if a kangaroo had been shot in the neck, then the head was removed at the point where it had been shot, as the vertebrate were usually broken where the bullet hit.’<sup>45</sup> A high detection rate was observed for kangaroos inspected with their heads on.<sup>46</sup>

The RSPCA further found that when neck shots were discussed with shooters and processors, there was often ‘confusion about whether the kangaroo should be accepted.’<sup>47</sup> The RSPCA recommended that the ‘definition of a head shot (shot to the brain) and the diagram in Schedule 2 in the Code of Practice must be clarified to unambiguously exclude neck shots.’<sup>48</sup> The RSPCA further stated that ‘[s]hooters, processors and dealers need to be educated about the difference between a neck shot and a head shot.’<sup>49</sup>

<sup>39</sup> RSPCA Australia, Media release 7 September 2002.

<sup>40</sup> RSPCA Australia, Media release 7 September 2002.

<sup>41</sup> RSPCA Australia, Media release 7 September 2002

<sup>42</sup> RSPCA Australia Report 2002, Section 4.3.3.

<sup>43</sup> RSPCA Australia Report 2002, Section 4.3.2.1.

<sup>44</sup> RSPCA Australia Report 2002, Section 4.3.3.

<sup>45</sup> RSPCA Australia Report 2002, Section 4.3.3.

<sup>46</sup> RSPCA Australia Report 2002, Section 4.3.3.

<sup>47</sup> RSPCA Australia Report 2002, Section 4.4.4.

<sup>48</sup> RSPCA Australia Report 2002, Recommendation 4.4.

<sup>49</sup> RSPCA Australia Report 2002, Recommendation 4.4.

By state, SA had the highest percentage of head-shot kangaroos (96.7% for human consumption and 98.2% for pet food).<sup>50</sup> SA was followed by NSW, WA and lastly QLD (90.4% for human consumption and 94.6% for pet food).<sup>51</sup> The RSPCA was unable to reach any conclusions as to the causes for these differences. Possible causes include a difference in the detection rate and differences in shooting practices.<sup>52</sup> The RSPCA recommended that State authorities take note of their relative performance and examine practices in their jurisdiction.

The 2000/2002 Report included the results of questionnaires sent to veterinarians and animal carers to survey treatment of injured kangaroos. Only a small percentage of veterinarians had treated kangaroos or observed dead kangaroos with injuries from obvious acts of cruelty.<sup>53</sup> In contrast, wildlife carers were much more likely to have treated injured kangaroos.<sup>54</sup> Most of these carers stated that the injuries were caused by vehicle collisions but some were reportedly due to rifles, shotguns, knives and dogs.<sup>55</sup>

### *iii. Comparison with 1985 Survey*

It is difficult to compare the 1985 and 2000/2002 surveys conducted by the RSPCA due to two reasons. Firstly, the State figures for 1985 fell below the respective lower 95% confidence limit<sup>56</sup> adopted in the 2000/2002 survey (with the exception of kangaroos shot for human consumption in NSW).<sup>57</sup> Secondly, there was only some raw data provided in the 1985 report.<sup>58</sup> However, the RSPCA were able to make some comparisons between the figures for QLD and NSW (**Table 7**). The RSPCA found that there was a 'highly significant' increase in the proportion of head-shot kangaroos from 1985 to 2000/2002 for both NSW and QLD.<sup>59</sup>

**Table 7: Estimated percentage (95% CI) of head-shot kangaroos from surveys in 1985 and 2000/2002 at processors in NSW and QLD**

Inspection	State	1985 (available data)		2000/2002	
Carcass	NSW	95.3%	(91.8-97.3)	99.3%	(98.7-99.6)
Carcass	QLD	93.5%	(90.6-95.5)	96.3%	(94.4-97.5)
Skin	QLD	82.3%	(71.2-89.8)	94.9%	(93.6-96.0)

<sup>50</sup> RSPCA Australia Report 2002, Section 4.3.1.2.

<sup>51</sup> RSPCA Australia Report 2002, Section 4.3.1.2.

<sup>52</sup> RSPCA Australia Report 2002, Section 4.4.2.

<sup>53</sup> RSPCA Australia Report 2002, Section 3.6.2.2.

<sup>54</sup> RSPCA Australia Report 2002, Section 3.6.2.2.

<sup>55</sup> RSPCA Australia Report 2002, Section 3.6.2.2.

<sup>56</sup> A confidence limit is used in statistical analysis to indicate the reliability of an estimate or generalisation.

<sup>57</sup> RSPCA Australia Report 2002, Section 4.3.2.

<sup>58</sup> RSPCA Australia Report 2002, Section 4.3.2.

<sup>59</sup> RSPCA Australia Report 2002, Section 4.3.2.

Nationally, the rate of head-shot kangaroos increased from 86% in 1985 (with 1,777,249 commercially killed) to 95.9% in 2000/2002 (with 2,745,798 commercially killed).<sup>60</sup> This means that in 1985, approximately 248,815 kangaroos were processed that were not head-shot. The improvement from 1985 to 2000/2002 is likely to be due to the introduction of the Code, an increased demand for head-shot kangaroos and a general increase in professionalism of the kangaroo industry.<sup>61</sup> In 2000, about 112,578 kangaroos processed were not head-shot. In relation to these figures, the RSPCA concluded that:

Although it is clear that there has been a significant reduction in the number of kangaroos that were body-shot by commercial shooters since 1985, given the size of the commercial kangaroo harvest, this is still a matter of considerable concern.<sup>62</sup>

#### *iv. Limitations*

The key limitation of the RSPCA survey was that it did not 'take into account the number of kangaroos shot in the field that were not taken to the chiller or processor.'<sup>63</sup> The RSPCA recognised that its results 'only represent the prevalence of head shots in kangaroos taken to processors' and that since 'many processors will only accept head-shot kangaroos, this sample must be regarded as a *conservative* estimate of the proportion of head-shot kangaroos in the total harvest.'<sup>64</sup> The RSPCA's survey did not include 'kangaroos that had been shot and injured but were not retrieved by the shooter.'<sup>65</sup>

The RSPCA did not attempt to directly sample kangaroos in the field through observations of shooters. The RSPCA explained that accuracy in such sampling methods is difficult to achieve 'because of observer influence affecting the results'.<sup>66</sup> Although hidden observers provide a means to overcome this problem, the remote nature of kangaroo shooting makes such an approach unfeasible.

#### *v. Non-commercial*

The RSPCA found that although there had been some general education of landholders since the 1985 report, there was 'no evidence to indicate that the problems associated with non-commercial killing have changed in any significant way.'<sup>67</sup> The RSPCA argued that 'more radical action is needed and recommends the phasing-out of existing non-commercial licensing systems to be replaced by the controlled use of commercial shooters for damage mitigation'.<sup>68</sup>

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<sup>60</sup> RSPCA Australia Report 2002, Section 4.3.2.

<sup>61</sup> RSPCA Australia Report 2002, Section 4.4.1.1.

<sup>62</sup> RSPCA Australia Report 2002, Section 4.4.1.

<sup>63</sup> RSPCA Australia Report 2002, Section 4.2.1.4.

<sup>64</sup> Emphasis added. RSPCA Australia Report 2002, Section 4.4.1.

<sup>65</sup> RSPCA Australia Report 2002, Section 4.4.1.

<sup>66</sup> RSPCA Australia Report 2002, Section 4.2.1.4.

<sup>67</sup> RSPCA Australia Report 2002, Section 7.

<sup>68</sup> RSPCA Australia Report 2002, Section 7.

vi. *Suggestion to improve enforcement/compliance*

In 2002 the RSPCA proposed that heads been retained for inspection.<sup>69</sup> In relation to kangaroos killed for skins, it is not practical for heads to be retained as the heads are not preserved by salt.<sup>70</sup> However, an alternative is for skins to include the skin covering the rear part of the head that would allow detection of bullet holes.<sup>71</sup> The RSPCA argued that if the kangaroo industry is to be 'monitored appropriately, then a formal auditing process is needed which involves the inspection of the most reliable sample available (in this case skins) to assess compliance with the Code.'<sup>72</sup>

### **ANIMAL LIBERATION STUDY**

Throughout 2005 to 2008, Animal Liberation assessed carcasses in 24 chillers throughout NSW and QLD.<sup>73</sup> Animal Liberation identified neck shot macropods as 'those whose heads were severed below the atlantal-occipital joint, a location where the cut is much more difficult to make.'<sup>74</sup> It could be argued that the low cuts may have been evidence of poor technique. However, a shooter would be unlikely to engage in such a difficult cut unless it was necessary to conceal a neck wound. Using this methodology, Animal Liberation found that an average of 40% of macropods per chiller may have been neck shot.<sup>75</sup>

The results found in the Animal Liberation data vary considerably from the RSPCA's 2000/2002 results where it was estimated that 4.1% of carcasses were not head shot. The RSPCA used a different methodology to Animal Liberation because they identified neck shots directly as entry bullet holes in or below the neck from carcasses in meat processing plants (24 processors and 2 tanneries across NSW, QLD, WA and SA). Thus, the methodology adopted by Animal Liberation may have identified neck shots missed by the RSPCA. However, the RSPCA's research encompassed a larger number of carcasses through sampling at processors. It is reasonable to conclude that the actual proportion of mis-shot kangaroos that are processed is somewhere between the two estimates.

The Animal Liberation study shared a key limitation with the RSPCA research in that there were no samples at the point of kill. Non head-shot kangaroos are generally not meant to be processed at all (although there is some variability across the states, see Section 3.B below), so the likelihood of identifying all mis-shot kangaroos at chillers, processors or tanneries is questionable. This limitation is likely to have led to a gross underestimate of the proportion of total non-head shot kangaroos.

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<sup>69</sup> RSPCA Australia Report 2002, Recommendation 4.3.

<sup>70</sup> RSPCA Australia Report 2002, Section 4.4.3.1.

<sup>71</sup> RSPCA Australia Report 2002, Section 4.4.3.1.

<sup>72</sup> RSPCA Australia Report 2002, Section 4.5.

<sup>73</sup> Dror Ben-Ami, *A Shot in the Dark: A Report on Kangaroo Harvesting* (Prepared for Animal Liberation NSW, 2009), 25.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

## THOMPSEN AND DAVIES

In 2008, Thompson and Davies published an article summarising their research of commercial shooters in SA.<sup>76</sup> They found that these shooters regularly ‘harvested’ from properties which they perceive to have the greatest kangaroo density and simply attach tags that have been issued for another property.<sup>77</sup>

Thompson and Davies argued that this practice occurs to enable shooters to ‘maintain good relationships with landholders and ensure continued access to land and to quota for their harvest activities.’<sup>78</sup> This research provides some evidence that there are some shooters in SA that may regularly breach the conditions of their licence (see Section 5.B-C below). Although the breaches do not concern the Code per se, they still provide an insight into the culture of shooters in the kangaroo industry.

## PRIMARY MATERIALS

In addition to the above studies, there are a number of primary sources that have been researched for this report, with the most important sources being the annual reports of the relevant government agencies.<sup>79</sup> The information provided in these annual reports varies by jurisdiction across Australia. However, they provide the best source for inspectorial and offence data on the industry and as a result have been heavily relied upon. At the same time, there are significant gaps in the information provided in these reports. A particular challenge is that there are differences among the jurisdictions both in terms of availability of data and information being provided.<sup>80</sup> These differences make comparisons across jurisdictions problematic.<sup>81</sup> Another source of primary materials is court decisions. However, most of the relevant cases occur in magistrates courts so information on the cases is limited, difficult to obtain and generally unavailable. This is a challenge faced by all researchers of animal cruelty offences as such cases rarely go beyond local courts. This report highlights gaps in government reporting where relevant and proposes *National Standards for Reporting of Offences in the Commercial Kangaroo Industry*. An overview of this recommendation is provided in **Table 8**: Recommendation for reporting of offences in the industry, outlined below.

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<sup>76</sup> D A Thomsen and J Davies, ‘Rules, norms and strategies of kangaroo harvest’ (2008) 14 *Australasian Journal of Environmental Management* 123

<sup>77</sup> Ibid, 128.

<sup>78</sup> Ibid, 129.

<sup>79</sup> See Section 6 below.

<sup>80</sup> See Section 6 below.

<sup>81</sup> See Section 6 below.



**Table 8: Recommendation for reporting of offences in the commercial kangaroo industry**

<b>Recommendation: National Standards for Reporting of Offences in the Commercial Kangaroo Industry</b>
<p>National standards for reporting of offences in the commercial kangaroo industry should be developed. These national standards should include:</p> <ol style="list-style-type: none"><li>1) Disclosure of annual statistics for Infringement Notices, compliance letters, warning notices and licence cancellations by all relevant enforcement agencies.</li><li>2) Statistical breakdown of enforcement activities by type of offence (including total number for each offence and penalties issued) that includes:<ol style="list-style-type: none"><li>a) One category for non-brain shot carcasses held at chillers or processors;</li><li>b) One category for offences relating to dependent young;</li><li>c) One category for offences relating to injured kangaroos held by shooters or left in the field.</li></ol></li><li>3) Disclosure of the total number of non-brain shot animals as a percentage of the total number of carcasses inspected; and as a percentage of the total number of animals killed.</li></ol>

**Key Findings: Access to Information**

A limited number of studies have been undertaken on compliance within the commercial kangaroo industry. Most importantly, RSPCA Australia released a report on compliance in 2000/2002 that found that 95.9% of carcasses at processors were shot in the head. By contrast, a study Animal Liberation over 2005 to 2008 found that 40% of carcasses at chillers may have been neck shot based upon where the carcasses head was severed. Both of these studies are limited by the fact that there were no samples at the point of kill.

The best primary sources of information on enforcement in the kangaroo industry are the annual reports prepared by the relevant government agencies. However, there are differences between the jurisdictions both in terms of availability of data and information provided.

## Section 4: Legal and Regulatory Framework

### Research Question 2

What standards regulate the kangaroo industry in relation to animal welfare and what offences are prescribed?

The primary instrument that regulates the kangaroo industry is the Code, which sets standards for shooters who are killing kangaroos. The Code is incorporated to various degrees in the relevant states through legislation and regulations. This section first describes the Code and its key provisions before assessing the enforceability of these standards through the state laws. Finally, it considers the variety across the states in terms of the current maximum penalties.

### NATIONAL CODE OF PRACTICE FOR THE HUMANE SHOOTING OF KANGAROOS AND WALLABIES

The Code regulates the commercial killing of kangaroos. The Code does not ‘override state or territory animal welfare legislation’<sup>82</sup> but is intended to provide technical procedures and specifications for the killing of kangaroos, including injured kangaroos, pouch young and young at foot. The purpose of the Code is to ‘ensure all persons intending to shoot free-living kangaroos or wallabies ... undertake the shooting so that the animal is killed in a way that minimises pain and suffering.’<sup>83</sup> The Code was approved by the Natural Resource Management Ministerial Council (NRMMC) in 2008. The Code further provides that ‘[e]xcept where specifically exempted by law, states and territories will require shooters to have a licence or permit issued by a relevant government authority. The licence or permit will specify any conditions or restrictions that may apply.’<sup>84</sup>

#### CONDITIONS ON THE METHOD OF SHOOTING

The Code provides that the primary objective for shooters ‘must be to achieve instantaneous loss of consciousness and rapid death without regaining consciousness.’<sup>85</sup> The Code states that if certain conditions cannot be met, or where there is any doubt about achieving a ‘sudden and humane death’, the shooter must not attempt to shoot the animal.<sup>86</sup> Shooters must aim so as to hit the target kangaroo in the brain. A diagram is provided in Schedule 2 of the Code (see **Figure 1**).

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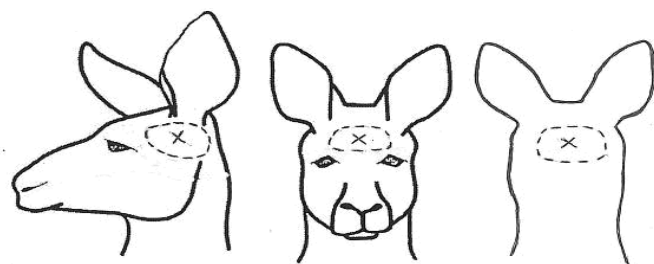
<sup>82</sup> Code, 6.

<sup>83</sup> Code, 6.

<sup>84</sup> Code, 6.

<sup>85</sup> Code, 9.

<sup>86</sup> Code, 9.



**Figure 1: Point of aim (X) for a shot to the brain and location of the brain (all kangaroos and wallabies)**

Notably, the Code does not provide that shooters are not permitted to shoot kangaroos in a location other than the brain, only that the brain is to be the place of aim. The conditions on the method of shooting of kangaroos are provided in **Table 9**.

**Table 9: Conditions on the method of shooting**

Type	Section	Details
Prohibition	2.4	Where the conditions set out below cannot be met, or where there is any doubt about achieving a sudden and humane death, shooting must not be attempted.
Goal	2.4	When shooting a kangaroo or wallaby, the primary objective must be to achieve instantaneous loss of consciousness and rapid death without regaining consciousness. For the purposes of the Code, this is regarded as a sudden and humane death.
Firearms and ammunition	2.4	Kangaroos and wallabies must only be shot with a combination of firearms and ammunition that complies with or exceeds those minimum specifications in Schedule 1.
		The combination of firearm and ammunition selected for the environmental conditions in which the shooter operates must ensure that sudden and humane death of the target animal is consistently achieved.
		A rifle must be fitted with a telescopic sight and be sighted in against an inanimate target before commencing each day or night's shooting. The telescopic sight should be re-adjusted on an inanimate target as often as required during each shooting session.
		Self-loading or semi-automatic rifles must not be used at any time.
		Sub-sonic ammunition must not be used.
Shooting platform	2.4	Kangaroos and wallabies must not be shot from a moving vehicle or other moving platform.
Target animal	2.4	The target kangaroo or wallaby must be standing (injured animals excepted) and clearly visible.
		The target kangaroo or wallaby must be stationary (injured animals excepted) and within a range specified in Schedule 1 that permits accurate placement of the shot.
		Shooters should avoid shooting female kangaroos or wallabies where it is obvious that they have pouch young or dependent young at foot except in special circumstances (i.e. the female kangaroo or wallaby is sick or injured or needs to be killed for management and/or ecological reasons).
Point of aim	2.4	A shooter must aim so as to hit the target kangaroo or wallaby in the brain (see Schedule 2).
		A shooter must not aim so as to hit the target kangaroo or wallaby in any other part of the body than that specified in (i) above.
Follow up	2.4	The shooter must be certain that each kangaroo or wallaby is dead before another is targeted.

### CONDITIONS ON THE KILLING OF INJURED MACROPODS

The Code states that injured macropods should be euthanased quickly and humanely.<sup>87</sup> The preferred method for euthanasing is a shot to the brain. However if this is impractical or unsafe, a shot to the heart is permissible. In addition, if either of these methods is impractical or unsafe, the shooter may euthanase the animal with a 'heavy blow to the base of the skull with sufficient force to destroy the brain'.<sup>88</sup> These three methods are ordered from most to least humane.

<sup>87</sup> Code, 12.

<sup>88</sup> Code, 12.

A key weakness of the Code is that it provides that shooters are allowed to shoot more than one kangaroo in a group before retrieving any carcasses. The shooter must be 'certain that each kangaroo or wallaby is dead before another is targeted.'<sup>89</sup> Yet this part of the Code is sufficiently ambiguous that shooters may continue shooting even when an animal is injured. In particular, shooters are required to take 'every reasonable effort' in locating and euthanasing but this condition is vague and left undefined. The condition does not provide enough specificity as to what a shooter must do in the event that an animal is injured in a group of kangaroos. The conditions under which the killing of injured macropods must occur is outlined in **Table 10**.

**Table 10: Conditions on the killing of injured macropods**

Type	Section	Details
Euthanasing	4.1	Injured animals must be killed by a method that will achieve a rapid and humane death, preferably by a shot to the brain (see Schedule 2).
		Under circumstances where a shot to the brain of an injured animal is impractical or unsafe, a shot to the heart is permissible (see Schedule 3).
		In circumstances where, for dispatch of an injured kangaroo or wallaby, a shot to either the brain or heart is impractical or unsafe (such as when the animal is moving but not able to stand), a heavy blow to the base of the skull with sufficient force to destroy the brain (see Schedule 2) is permissible. To ensure a humane kill, a suitably hard and heavy blunt instrument must be used.
Follow-up	2.4	If a kangaroo or wallaby is still alive after being shot, every reasonable effort must be made immediately to locate and kill it before any attempt is made to shoot another animal. The injured kangaroo or wallaby must be euthanased in accordance with the methods outlined in Section 4.

## CONDITIONS ON THE KILLING OF DEPENDENT YOUNG

The Code provides that any female kangaroo or wallaby that has been targeted, including injured animals, must be 'thoroughly examined for pouch young.'<sup>90</sup> Where dependent young are present, they must be euthanased in accordance with the specified methods. The recommended methods vary depending upon the age and size of the joey (**Table 11**). The methods include killing by decapitation and a heavy blow to the head. The American Veterinary Medical Association (AVMA) Report of the AVMA Panel on Euthanasia stated that '[p]ersonnel performing physical methods of euthanasia [such as a blow to the head or decapitation] must be well trained and monitored for each type of physical technique performed.'<sup>91</sup> However, no formal training is required for the killing of dependent young. While shooters are required to undertake a TAFE course that covers their legal requirements, paperwork requirements and how to correctly tag kangaroos, this course does not include training relevant to the Code's standards.<sup>92</sup>

<sup>89</sup> Code, 10.

<sup>90</sup> Code, 11.

<sup>91</sup> American Veterinary Medical Association, 'Report of the AVMA Panel on Euthanasia' (2001) 218 *Journal of the AVMA* 669, 681.

<sup>92</sup> See e.g. Department of Environment and Resource Management, *TAFE Course – Commercial Wildlife Harvesting Licences (Macropods)* <<http://www.ehp.qld.gov.au/factsheets/pdf/environment/en19.pdf>> accessed 3 September 2012.

As is discussed in **Section 6.A**, shooters are not inspected at the point of kill meaning that the killing of dependent young occurs without monitoring. One option for addressing the problem of cruelty to dependent young would be to introduce a male only kill and ban the killing of female kangaroos.<sup>93</sup> It is possible to distinguish between males and females because the males are larger.

**Table 11: Conditions on the killing of dependent young**

Type	Section	Details
Follow-up	2.4	If a female kangaroo or wallaby is shot then any dependent young at foot must be shot as soon as possible to avoid dispersal in accordance with the methods in Section 5.
		Once a female kangaroo or wallaby has been killed then its pouch must be thoroughly examined and any pouch young must be euthanased in accordance with the methods in Section 5.
Euthanasing	4.1	If the kangaroo or wallaby that is shot is female then any dependent young at foot must be shot as soon as possible to avoid dispersal, in accordance with the methods outlined in Section 5.
		Once a female kangaroo or wallaby has been killed then its pouch must be thoroughly examined and any pouch young must be euthanased in accordance with the methods outlined in Section 5.
	5.1	Where euthanasia is carried out using a blow to the head, the blow must be delivered with force sufficient to crush the skull and destroy the brain. The blow should be delivered with a suitably hard and heavy blunt instrument. The shooter must confirm that there has been lethal damage to the brain and that the animal is dead.
		Immediately after euthanasia, the shooter is required to examine each animal to confirm death. The shooter must check that there is no body movement, breathing and heartbeat to indicate that the animal is alive. The shooter must also check that there is no corneal reflex (where this is observable).
Acceptable euthanasia methods	5.1	Small furless pouch young (fits within the palm of the hand)
		Single forceful blow to the base of the skull sufficient to destroy the functional capacity of the brain.
		OR
		Stunning, immediately followed by decapitation by rapidly severing the head from the body with a sharp blade.
		All furred pouch young
		Single forceful blow to the base of the skull sufficient to destroy the functional capacity of the brain.
		Young at foot
		Single shot to the brain or heart where it can be delivered accurately and in safety using the firearms and ammunition specified in Part A or B of Schedule 1.

<sup>93</sup> See Keely Boom and Dror Ben-Ami, 'Shooting Our Wildlife: An Analysis of the Law and its Animal Welfare Outcomes for Kangaroos and Wallabies' (2011) 5 *Australian Animal Protection Law Journal* 44.

Although parts of the commercial kangaroo industry are regulated by the Commonwealth (and thus fall under a national approach) most of the industry is actually regulated by state regulations.<sup>94</sup> This state-based approach to regulation means that there is considerable variety across the states in terms of what licences are required for the different actors involved, the types of conditions that apply to licences and how those conditions are enforced. The Code provides national standards for animal welfare in the commercial kangaroo industry. However, the Code itself is not enforceable and only gains enforceability through integration into the state regulations.<sup>95</sup> In this regard, there is significant variety across the states (see also **Appendix**).<sup>96</sup>

A further issue is that the sale of a carcass shot other than in the brain would not necessarily be in breach of the Code unless the shooter aimed for a location other than the brain (see **Section 3.A.1** above). Therefore, the state regulations must specifically prescribe that the sale of a carcass with a shot other than in the brain is an offence if such sales are to be an offence. Providing that compliance with the Code is mandatory is not sufficient. States also have some discretion in deciding which carcasses will be held as non-compliant through the wording adopted in the regulations.

In QLD, licensed commercial shooters must take a macropod only in a way specified in the Code. This condition is specified in Section 10 of the *Nature Conservation (Macropod Harvesting) Conservation Plan*, a regulation made by the Governor on 15 December 1994. The maximum penalty for a breach of Section 10 is 165 penalty units, equivalent to \$16,500. In addition, Section 17 provides that licence holders for dead macropods (i.e. dealers and processors) must not accept a dead macropod taken in contravention of this plan. The maximum penalty is 165 penalty units (\$16,500).

In contrast, there are no specific conditions relating to the Code for licensees in the commercial kangaroo industry specified in the *National Parks and Wildlife Act 1974* (NSW). Nonetheless, Section 133(2) provides that the Director-General may attach any conditions or restrictions to a licence upon its issue. Similarly, Section 133(3) allows the Director-General to attach any conditions or restrictions to the licence after its issue; vary or remove any conditions or restrictions attached to the licence; or otherwise vary the licence.

In this respect, Condition 4 of Current Conditions on Commercial Fauna Harvester Licences, as provided in the NSW Handbook for Kangaroo Harvesters, states that the holder of a Commercial Fauna Harvesters Licence must only harm kangaroos in accordance with the Code. Condition 15 provides that the licensee must not possess or sell any kangaroo carcass containing a bullet wound in the body. Any kangaroo that has been shot in the body must be tagged (in accordance with Condition 10) and left in the field. In addition, Condition 1 of the Conditions on Harvester Chiller Registrations provides that only kangaroos shot in accordance with the licensee's Commercial Fauna

<sup>94</sup> Ibid.

<sup>95</sup> For discussion of the enforceability of codes of practice see generally Arnja Dale, 'Animal Welfare Codes and Regulations – The Devil in Disguise?' in Peter Sankoff and Steven White (eds), *Animal Law in Australasia* (Sydney: The Federation Press, 2009); Gregory, above n 1, 187-188; Mirko Bagaric and Keith Akers, *Humanising Animals: Civilising People* (Sydney: CCH Australia, 2012), 82-84.

<sup>96</sup> On delegated legislation see e.g. Dennis Pearce and Stephen Argument, *Delegated Legislation in Australia* (3<sup>rd</sup> edition, Chatswood: LexisNexis Butterworths, 2005); Roger Douglas, *Douglas and Jones's Administrative Law* (6<sup>th</sup> edition, Sydney: The Federation Press, 2009).



Harvester's Licence may be consigned to the chiller. Condition 5 of the Conditions on Commercial Occupier's Licences states that kangaroos must only be harmed in accordance with the Code.

Section 133(4) of the *National Parks and Wildlife Act 1974* (NSW) provides that a licence holder shall not contravene or fail to comply with any condition or restriction attached to the licence. The maximum penalty for individuals who contravene s 133(4) is 100 penalty units (equivalent to \$11,000) and in the case of a continuing offence, a further penalty of 10 penalty units for each day the offence continues. In the case of a corporation, the maximum is 200 penalty units and 20 penalty units for each day that a continuing offence continues. Penalty notices may be issued for s 133(4) amounting to \$300. Thus, it is reasonable to conclude that the conditions relating to the Code attached to licences in NSW are enforceable in accordance with s 133 of the *National Parks and Wildlife Act 1974* (NSW).

In SA, Regulation 22 of the *National Parks and Wildlife (Kangaroo Harvesting) Regulations 2003* (SA) provides that permit holders must not sell or supply the carcass of a kangaroo unless (a) the kangaroo was taken in accordance with the Code; and (b) the kangaroo has not suffered damage from a firearm other than damage to the head or damage to the head and such damage as results from a single shot to the heart. The maximum penalty for a breach of Regulation 22 is \$1000 and the expiation fee is \$150. SA does not place any conditions upon dealers or processors to not accept carcasses that have not been shot in accordance with the Code.

In WA there are no conditions contained in the Act or regulations that specifically relate to the Code. Regulation 6(3) of the *Wildlife Conservation Regulations 1970* provides that licences to take kangaroos for sale are subject to any condition endorsed on the licence and to the succeeding provisions of this regulation. Condition 1 of the Licence to Take Kangaroos for Sale<sup>97</sup> stipulates that all shooting is to be carried out in accordance with the provisions of the Code. Condition 2 provides that only kangaroos that have been killed by a single shot to the brain shall be delivered to a licensed kangaroo processor. In addition, Condition 2 of the Licence to Process in WA provides that the licensee shall only accept the carcasses of kangaroos that were killed by a single shot to the brain. Condition 4 of the Licence to Deal in Skins states that the licensee shall only accept the skins of kangaroos that were killed by a single shot to the brain.

However, the enforceability of the conditions in WA is unclear. Section 26 of the *Wildlife Conservation Act 1950* (WA) stipulates that any person who contravenes or who fails to comply with any provisions of this Act or the regulations is guilty of an offence against this Act and is liable, if no other penalty be prescribed, to a maximum penalty of \$4000 in the case of a contravention or failure to comply with a provision of the Act and of \$2000 in the case of a contravention or failure to comply with a provision of a regulation, and any licence issued pursuant to the provisions of this Act and held by him may be cancelled. Unlike in NSW, neither the Act nor the regulations of WA provide that failure to comply with a condition attached to the licence is an offence. Thus, it appears that these conditions may be unenforceable to some extent although other consequences may arise (e.g. suspension or cancellation of licences).

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<sup>97</sup> Department of Environment and Conservation, *Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012* (October 2007).

## DISCUSSION AND SUGGESTIONS FOR REFORM AROUND ENFORCEABILITY

The enforceability of the conditions contained in the Code varies across the states depending upon the extent to which the relevant legislation and regulations integrate its provisions into state law. The Code is clearly enforceable in QLD, where shooters must kill macropods in accordance with the Code while dealers and processors must not accept a dead macropod taken in contravention of the QLD *Nature Conservation (Macropod Harvesting) Conservation Plan*, although these requirements are flexible because the Code only specifies that the shooter must aim to shoot the kangaroo in the brain. All of these parties face a maximum penalty of \$16,500 if they breach these conditions. SA law makes the Code enforceable in relation to shooters through explicit inclusion in the regulations, but does not make it enforceable with regard to dealers or processors. The SA regulations should be amended to make the Code enforceable in relation to dealers and processors, as is the case in QLD.

The integration of the Code in NSW is potentially problematic because the conditions are simply issued or changed by the Director-General. However, it appears that the conditions placed upon Commercial Fauna Harvester Licences, Harvester Chiller Registrations and Commercial Occupier's Licences are enforceable by virtue of s 133. Nonetheless, there are no conditions placed upon processors to ensure that carcasses accepted comply with the Code. The NSW regulations should be amended to apply these conditions to processors.

Most problematic is WA, which is somewhat similar to NSW in its reliance upon conditions attached to the issue of licences. Although the *Wildlife Conservation Regulations 1970* (WA) provides that the licences are subject to any such condition, the regulation does not provide that the breach of these conditions constitutes an offence. It simply states that contravention or failure to comply with the provisions of the Act or the regulations is guilty of an offence. Thus, the regulations in WA should be amended to explicitly provide that failure to comply with the conditions attached to licences in the commercial kangaroo industry constitutes an offence.



## MENS REA AND OFFENCES IN THE COMMERCIAL KANGAROO INDUSTRY

At common law, persons do not face criminal liability unless the prosecution proves mens rea, or a guilty state of mind, in addition to proof of the unlawful act/omission. Courts adopt a presumption that mens rea is required. However, in the case of strict liability offences, the defendant is legally responsible regardless of whether they had a guilty state of mind (e.g. traffic offences). The question of whether mens rea is required for animal cruelty offences depends upon the wording in the statute and whether they are strict liability offences.<sup>98</sup> Generally, animal cruelty offences do not require proof of mens rea<sup>99</sup> but the accused may provide evidence that he or she acted under an honest and reasonable mistake and on that basis avoid liability.<sup>100</sup> The defence of honest and reasonable mistake applies only to strict liability offences and the burden for raising such a defence rests with the defendant. On the other hand, proof of mens rea would be required for certain offences, particularly if the statute uses the words such as ‘intentionally’, ‘recklessly’ or ‘willfully’<sup>101</sup> which would mean that the offence is not one of strict liability. None of the state regulations use such language and thus the offences relating to the Code across the States do not appear to require proof of mens rea.

## PENALTIES

As described above, there is significant variety across the states in terms of the current maximum penalties. Parties that breach the Code in QLD face penalties up to \$16,500. In NSW, the maximum penalty faced by a corporation is \$22,000 and an individual could face a penalty of \$11,000 (with higher penalties applicable for continuing offences in both cases). However, in SA the maximum penalty is significantly lower at \$1,000. In WA, it appears that no penalty is applicable in situations where a party has breached the Code. However, even if the penalties of the *Wildlife Conservation Act 1950* (WA) could be applied the maximum penalty would be low, at \$4,000 for breach of a provision of the Act and \$2,000 for breach of a provision of the regulation.

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<sup>98</sup> Philip Jamieson, ‘A Question of Criminal Guilt – Mens Rea under Animal Protection Law’ (1988-1989) 15 *University of Queensland Law Review* 75, 75; Deborah Cao, *Animal Law in Australia and New Zealand* (Sydney: Thomson Reuters, 2010), 128-129. See also *Fleet v Distict Court of NSW* [1999] NSWCA 363; *Anderson v Moore* [2007] WASC 135; *Pearson v Janlin Circuses Limited* [2002] NSWSC 1118.

In New Zealand the legislation specifies that cruelty offences are strict liability offences: *Animal Welfare Act 1999* (NZ), s 13. See also M Radford, *Animal Welfare Law in Britain: Regulation and Responsibility* (London: Oxford University Press, 2001), 234.

<sup>99</sup> See e.g. *Trenchard v Ryan* (1910) 10 SR (NSW) 618; *Ex parte Laidlaw*; *Re Coope* (1935) 52 WN (NSW) 184; *William Holyman & Sons Pty Ltd v Eyles* (1947) Tas SR 11.

<sup>100</sup> See e.g. *Department of Regional and Local Department v Emanuel Exports Pty Ltd et al* (unreported, Perth Magistrates Court, Magistrate Crawford, 8 February 2008) in Cao, above n 98, 129.

<sup>101</sup> See e.g. *Animal Welfare Act 2002* (WA), s 19(2)(c).

The penalties for these offences may be compared to those applicable in general to animal cruelty offences. The penalties imposed for animal cruelty offences in general also tend to be low, particularly in relation to commercial enterprises.<sup>102</sup> As with the offences discussed above, the maximum penalties for animal cruelty offences vary across the states. These penalties include terms of imprisonment from six months to five years and fines from \$2,000 to \$100,000 for individual offenders:

- NSW: the penalty for aggravated cruelty is \$110,000 for a corporation and \$22,000 or two years imprisonment or both for an individual.<sup>103</sup> The maximum penalty for an act of cruelty is \$5,500 or six months imprisonment or both for an individual and \$27,500 for a corporation.<sup>104</sup>
- SA: the penalty for aggravated cruelty is \$50,000 for a corporation or imprisonment for four years. The penalty for cruelty is \$20,000 or two years imprisonment.<sup>105</sup>
- QLD: the penalty for cruelty offences is a maximum fine of \$100,000 or two years imprisonment.<sup>106</sup>
- WA: the maximum penalty for cruelty is a fine of \$50,000 or five years imprisonment and the minimum penalty is \$2000.<sup>107</sup>

Clearly, the maximum penalties available for animal cruelty offences under the animal protection legislation are higher than under the state regulations incorporating the Code, both for individuals and corporations. Furthermore, the animal cruelty offences provide for the penalty of imprisonment whereas none of the state regulations specifically dealing with the commercial kangaroo industry allow courts to impose imprisonment.

While harsh penalties will not result in the prevention of all animal cruelty, higher fines and the risk of imprisonment for serious offences can act as important deterrents for wrongful behaviour. Deterrence remains a key goal of criminal law which refers to the aim of decreasing the risk of crime by punishing individual offenders for their wrongful behaviour.<sup>108</sup> The low penalties in WA and SA are unlikely to act as a sufficient deterrent especially if there are commercial incentives not to comply with the Code. Overall, harsher penalties should be made available under the state regulations for licensees who breach the Code. These penalties should include both higher fines and imprisonment in order to more closely reflect the criminal sanctions applicable under state animal protection legislation.

<sup>102</sup> A Markham, 'Animal Cruelty Sentencing' in Peter Sankoff and Steven White (eds), *Animal Law in Australasia: A New Dialogue* (Sydney: Federation Press, 2009), 292-295; Cao, above n 98, 139; Sharman, above n 1. See e.g. *Joyce v Visser* [2001] TASSC 116. A similar problem exists in other countries. See e.g. David J Wolfson, 'Beyond the Law: Agribusiness and the Systemic Abuse of Animals Raised for Food or Food Production' (1996) 2 *Animal Law* 123.

On the value of introducing mandatory minimum sentences for animal cruelty offences see Kirsten E Brimer, 'Justice for Dusty: Implementing Mandatory Minimum Sentences for Animal Abusers' (2008-2009) 113 *Penn State Law Review* 649.

<sup>103</sup> *Prevention of Cruelty to Animals Act 1979* (NSW), s 31(1).

<sup>104</sup> *Prevention of Cruelty to Animals Act 1979* (NSW), s 5.

<sup>105</sup> *Animal Welfare Act 1985* (SA), s 13.

<sup>106</sup> *Animal Care and Protection Act 2001* (Qld), s 18(1).

<sup>107</sup> *Animal Welfare Act 2002* (WA), s 19(1).

<sup>108</sup> See generally Mirko Bagaric, 'Incapacitation, deterrence and rehabilitation: Flawed ideas or appropriate sentencing goals?' (2000) 24 *Criminal Law Journal* 21; Mirko Bagaric and Theo Alexander, 'The capacity of criminal sanctions to shape the behaviour of offenders: Specific deterrence doesn't work, rehabilitation might and the implications for sentencing' (2012) 36 *Criminal Law Journal* 159.



The Code explicitly states that it does not over-ride general animal cruelty legislation. Thus, the general animal welfare provisions still apply to the commercial kangaroo industry, which means that the higher penalties could be applied if prosecutions are brought under that legislation. However, this situation raises questions about the utility of the general animal welfare laws in practice given the lack of resources and difficulties thereby created. Furthermore, it also raises complex questions about whether the co-existence of the offences under nature conservation legislation with the animal cruelty legislation constructs breaches of the Code as somehow merely ‘technical’ and therefore not needing the same level of penalties or enforcement. Indeed, the Code provides that its purpose is to provide technical procedures and specifications for the killing of kangaroos.<sup>109</sup> On one hand the Code is a ‘technical’ instrument yet it is also designed to ‘minimise pain and suffering’. These issues illustrate the fundamental contradictions in the way that animals are treated differently depending upon their use to humans.<sup>110</sup>

**Key Findings: Legal and Regulatory Framework**

The Code provides national standards for the commercial killing of kangaroos, including adult kangaroos and dependent young. The state regulations should be amended to ensure that the Code is enforceable against all parties in the commercial kangaroo industry to the extent that it is relevant. Furthermore, harsher penalties should be made available under the state regulations, including higher fines and imprisonment, to ensure that the penalties will act as a sufficient deterrent for wrongful behaviour.



<sup>109</sup> See page 20 above.

<sup>110</sup> See e.g. Tom Regan, ‘The Case for Animal Rights’ in Peter Singer (ed), *In Defense of Animals* (New York: Basil Blackwell, 1985).

## Section 4: Enforcement Agencies

### Research Question 3

Which government agencies are responsible for compliance and enforcement in the kangaroo industry?

### THE CONTEXT: RESPONSIBILITY FOR ENFORCEMENT OF ANIMAL WELFARE LAW IN GENERAL

Enforcement of animal cruelty laws in Australia is somewhat unusual because primary responsibility rests with a non-profit non-state body, namely the RSPCA.<sup>111</sup> However, there are other bodies involved in enforcement activities. In NSW, the enforcement bodies include the RSPCA, the Animal Welfare League and the NSW Police Force.<sup>112</sup> In QLD, the enforcement agencies are the RSPCA, the Queensland Police Service and Queensland Primary Industries and Fisheries (QPIF).<sup>113</sup> The QPIF has entered into an arrangement with the RSPCA Qld so that QPIF has primary responsibility for investigating breaches involving commercial livestock.<sup>114</sup> In SA, the bodies include the Department of Environment, Water and Natural Resources, the RSPCA SA, Primary Industries and Resources SA and the police.<sup>115</sup> In WA, the agencies involved in enforcement include RSPCA WA, the Department of Agriculture and Food WA, the Department of Environment and Conservation and the police.<sup>116</sup>

None of the state jurisdictions have established independent departments to deal with animal welfare. As a result, enforcement across animal industries often becomes political and may be given lower priority compared to other matters. Enforcement is marred by fluctuations in the number of inspectors, infrequently conducted inspections, the relocating and renaming of animal welfare branches and low rates of prosecution.<sup>117</sup> A further impediment is the difference in statutory provisions across Australia with respect to entering commercial premises.<sup>118</sup>

<sup>111</sup> For a discussion of the history of the RSPCA see Malcolm Caulfield, *Handbook of Australian Animal Cruelty Law* (Melbourne: Animals Australia, 2008), 171-172.

<sup>112</sup> *Prevention of Cruelty to Animals Act 1979* (NSW), ss 24D, 34B.

<sup>113</sup> *Animal Care and Protection Act 2001* (Qld), ss 114-116; *Police Powers and Responsibilities Act 2000* (Qld), chs 6 and 7.

<sup>114</sup> Cao, above n 98, 214; Queensland Government Department of Employment, Economic Development and Innovation, Primary Industries and Fisheries, *Animal Welfare Complaints in Queensland: Who to Call* <[http://www.dpi.qld.gov.au/4790\\_9641.htm](http://www.dpi.qld.gov.au/4790_9641.htm)> accessed 6 August 2012.

<sup>115</sup> *Animal Welfare Act 1985* (SA) ss 3, 28-30; Memorandum of Understanding Between Department for Environment and Heritage, Department of Water, Land and Biodiversity Conservation, Primary Industries and Resources South Australia and RSPCA (SA) Incorporated (October 2007). Also see Department of Environment, Water and Natural Resources, *Animal Welfare* <[http://www.environment.sa.gov.au/plants\\_animals/animal\\_welfare](http://www.environment.sa.gov.au/plants_animals/animal_welfare)> accessed 6 September 2012.

<sup>116</sup> See *Animal Welfare Act 2002* (WA), ss 5(1) and 33. Administration of the *Animal Welfare Act 2002* (WA) was transferred to the Department of Agriculture and Food WA from the Department of Local Government on 1 July 2011. Department of Agriculture and Food WA, *Animal Welfare* <[http://www.agric.wa.gov.au/PC\\_94958.html?s=0](http://www.agric.wa.gov.au/PC_94958.html?s=0)> accessed 6 September 2012.

<sup>117</sup> Cao, above n 98, 220.

<sup>118</sup> See pp 34-35 below.



The enforcement of animal welfare law with regard to commercial enterprises is also undermined in some state jurisdictions where the Primary Industries Departments are responsible for enforcement.<sup>119</sup> Such a situation has been described as ‘putting the foxes in charge of the hen house.’<sup>120</sup> A conflict of interest arises for such departments that are also responsible for ‘promoting animal welfare and nurturing their agribusiness clients.’<sup>121</sup> Cao argues that although it is difficult to assess the impact of this conflict (due to lack of access to information), it manifests in the focus upon promoting industry compliance rather than prosecuting offenders.<sup>122</sup> Furthermore, Cao contends that the enforcement mechanisms are ‘largely reactive and that, in most jurisdictions, only the “worst cases” are likely to be investigated and prosecuted.’<sup>123</sup>

## ENFORCEMENT OF THE CODE: QUEENSLAND

The Macropod Management Unit of the Department of Environment and Resource Management (DERM) manages QLD’s kangaroo industry. The 2011 Annual Report reveals that there are two Conservation Officers authorised for this purpose within the Macropod Management Unit.<sup>124</sup> Although these Conservation Officers undertake most of the compliance activities, the department also works collaboratively with national park rangers, the Queensland Police Service, and Safe Food Production Queensland (SFPQ).<sup>125</sup> Officers conduct scheduled and random inspections of shooters and dealers. Breaches are subject to enforcement action including warning notices, fines and prosecution.<sup>126</sup>

## ENFORCEMENT OF THE CODE: NEW SOUTH WALES

In NSW the Kangaroo Management Program of the Office of Environment and Heritage (OEH) (formerly DECCW) undertakes compliance audits primarily through staff based in Dubbo and Broken Hill through field investigations and compliance checks. Licensing staff scrutinise applications and reports and provide support to investigations. Additional OEH staff based in regional areas inspects chillers on an ad hoc basis. Compliance staff investigates referrals and reports of illegal shooting.

<sup>119</sup> Ibid.

<sup>120</sup> D J Wolfson and M Sullivan, ‘Foxes in the Hen House – Animals, Agribusiness and the Law: A Modern American Fable’ in C Sunstein and M Nussbaum (eds), *Animal Rights: Current Debates and New Directions* (New York: Oxford University Press, 2004), ch 9.

<sup>121</sup> Cao, above n 98, 220-221.

<sup>122</sup> Ibid, 221.

<sup>123</sup> Ibid. Cao cites Magistrate Wallace in *Animal Welfare Authority v Keith William Simpson* (unreported, Darwin Magistrates Court, Magistrate Wallace, 4 September 2008), 2 (‘in all likelihood other shippers from Queensland and New South Wales have been in the practice of doing the same things, taking the same sort of risks and everyone’s got away with it.’) See also *Department of Local Government and Regional Development v Gregory Keith Dawson* (unreported, Fremantle Magistrates Court, Magistrate Musk, 22 July 2008), 65 (the Prosecution submitted that ‘these sorts of offences are not easily detected, particularly given the vastness of WA livestock are not generally in the public eye.’).

<sup>124</sup> Department of Environment and Heritage Protection, *Queensland Commercial Macropod Management Program Annual Report 2011* [herein ‘QLD Annual Report 2011’], 20.

<sup>125</sup> Ibid.

<sup>126</sup> Department of Environment and Resource Management, *Queensland Commercial Macropod Management Program Annual Report 2010*, 22.

The NSW Police, the NSW Food Authority and interstate fauna protection agencies work with the Kangaroo Management Program to assist in enforcement.<sup>127</sup> The issuing of verbal cautions, written warning or infringement notices are made at the discretion of Kangaroo Management Program officers, in accordance with the Kangaroo Management Program's compliance policy and in consultation with the Team Leader Compliance. Prosecutions may be initiated in consultation with the Manager of the Kangaroo Management Program and the OEH Legal Services Branch.<sup>128</sup>

## ENFORCEMENT OF THE CODE: WESTERN AUSTRALIA

In WA, Wildlife Officers at the Department of Environment and Conservation (DEC) are responsible for compliance. In 2007, there were 16 such Wildlife Officers and one full-time kangaroo statistics officer.<sup>129</sup> Wildlife Officers 'routinely inspect for and are authorised to prosecute breaches of the *Animal Welfare Act 2002* during the course of their work.'<sup>130</sup>

## ENFORCEMENT OF THE CODE: SOUTH AUSTRALIA

In SA, the Department for Environment, Water and Natural Resources (DEWNR)<sup>131</sup> administers the compliance and enforcement program. Other Government agencies are responsible for administering compliance with meat hygiene legislation. The KMP provides that aims for the compliance and enforcement program are:

1. Maximise voluntary compliance;
2. Detect non-compliance;
3. Investigate, resolve and discipline incidents of non-compliance;
4. Apply consistency and fairness in dealings with the industry.<sup>132</sup>

In 2011, the Kangaroo Management Program had three staff at Port Augusta who undertook the majority of the compliance activities.<sup>133</sup> Other staff who are wardens under the Act assisted with investigations.

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<sup>127</sup> Department of Environment, Climate Change and Water, *New South Wales Commercial Kangaroo Harvest Management Plan 2007-2011, 2010 Annual Report* [herein 'NSW Annual Report 2010'], 16.

<sup>128</sup> Department of Environment, Climate Change and Water, NSW Annual Report 2010, 17.

<sup>129</sup> Department of Environment and Conservation, *The Commercial Kangaroo Industry in Western Australia: Compliance with Performance Measures Detailed in the Red Kangaroo (Macropus rufus) Management Plan for Western Australia 2003-2007 and Western Grey Kangaroo (Macropus fuliginosus) Management Plan for Western Australia 2003-2007, March 2007*, 6.

<sup>130</sup> Department of Environment and Conservation, *The Commercial Kangaroo Industry in Western Australia: Compliance with Performance Measures Detailed in the Red Kangaroo (Macropus rufus) Management Plan for Western Australia 2003-2007 and Western Grey Kangaroo (Macropus fuliginosus) Management Plan for Western Australia 2003-2007, March 2007*, 8.

<sup>131</sup> The Department of Environment, Water and Natural Resources (DEWNR) was created on 1 July 2012 by amalgamating the Department for Water and the Department of Environment and Natural Resources. See <[http://www.environment.sa.gov.au/About\\_Us](http://www.environment.sa.gov.au/About_Us)> accessed 5 July 2012.

<sup>132</sup> Department for Environment and Heritage, *The Kangaroo Conservation and Management Plan for South Australia 2008-2012*, 30.

<sup>133</sup> Department of Environment and Natural Resources, *2011 Commercial Kangaroo Harvest Report for South Australia* (March 2012) [herein 'SA Annual Harvest Report 2011'], 8.

## CONFLICTS OF INTEREST

Across the states, responsibility for enforcement of the Code rests with the environmental departments. These agencies are faced with multiple interests, including promoting the welfare of kangaroos and supporting the commercial kangaroo industry. The conflict of interest that arises for these departments is very similar to that faced by primary industries departments charged with the enforcement of animal welfare law with regard to commercial enterprises. The ability and resolve of enforcement agencies to prosecute is arguably impeded and instead much of the focus is upon promoting industry compliance.

A preferable situation would be for an independent department to be charged with responsibility for enforcement. Such reform could include the creation of independent office(s) for animal welfare. The Labor national conference in December 2011 unanimously passed a motion that the government establish an Independent Office for Animal Welfare at the federal level.<sup>134</sup> This federal body could have responsibility for enforcement of the Code or alternatively separate bodies could be established in each state. Such a move could be a part of wider reform of enforcement of animal cruelty laws. However, if a new body is only charged with enforcement of particular laws, such as those applying to the commercial kangaroo industry, the body would need to coordinate with existing enforcement agencies with respect to general animal cruelty laws, such as through a formal liaison.

### **Key Findings: Enforcement Agencies**

State government agencies are primarily responsible for compliance and enforcement in the kangaroo industry. The relevant agencies are the Macropod Management Unit of the Department of Environment and Resource Management (QLD), Kangaroo Management Program of the Office of Environment and Heritage (NSW), the Department of Environment and Conservation (WA), and the Department for Environment, Water and Natural Resources (SA). Other entities also have a role in enforcement, including national parks, the police and food safety agencies.

Enforcement by the state environmental departments is undermined by a conflict of interest because these agencies are responsible for both promoting the welfare of kangaroos and supporting the commercial kangaroo industry. An independent department should be given responsibility for enforcement, on a federal and/or state basis. The creation of such bodies should be undertaken as part of wider reform of enforcement of animal cruelty laws.

<sup>134</sup> The Sydney Morning Herald, *Animal welfare cruelled by conflict of interest* <<http://www.smh.com.au/opinion/politics/animal-welfare-cruelled-by-conflict-of-interest-20120215-1t5I2.html#ixzz25ZrF6Pf9>> accessed 4 September 2012.

## SECTION 5: ENFORCEMENT OUTCOMES

### Research Question 4

Do government agencies carry out regular and adequate inspections of all levels of activity in the kangaroo industry?

## INSPECTIONS

### THE CONTEXT: INSPECTIONS AND INVESTIGATIONS OF ANIMAL CRUELTY OFFENCES IN GENERAL

In NSW, a search warrant is generally required in order to enter land (which includes premises, a vehicle, vessel or aircraft) where an offence is suspected to have been committed.<sup>135</sup> The legislation provides exceptions to this requirement where the inspector believes on reasonable grounds that an animal has or will suffer significant physical injury or has a life threatening condition that requires veterinary treatment.<sup>136</sup> It seems that the NSW legislation provides inspectors with a right to conduct routine inspections of saleyards and land where farm animals are kept for commercial purposes.<sup>137</sup> Police are also empowered to detail vehicles or vessels in which farm animals are being transports if an act of cruelty is suspected.<sup>138</sup>

In QLD, an inspector that suspects that a farm animal offence has occurred on private property must first obtain the occupier's consent before carrying out an inspection.<sup>139</sup> However, exceptions apply where a search warrant has been issued,<sup>140</sup> or an animal welfare direction has been issued previously that indicated that the inspector proposes to return to the property at a certain date to ensure compliance.<sup>141</sup> A further exception applies where the inspector reasonably suspects that an animal has suffered a serious injury which may remain untreated for an unreasonable period of time;<sup>142</sup> where an animal is facing imminent death due to an animal welfare offence or an accident;<sup>143</sup> or where a delay in entering the premises will have implications for the gathering of evidence.<sup>144</sup> The QLD law has provisions that apply to the inspection of vehicles in which farm animals have been, are being or are about to be transported and where an act of cruelty is suspected.<sup>145</sup> There are also inspectorial powers granted to 'authorised officers' who conduct inspections to ensure compliance with mandatory codes.<sup>146</sup>

<sup>135</sup> *Prevention of Cruelty to Animals Act 1979* (NSW), ss 24D, 24E.

<sup>136</sup> *Prevention of Cruelty to Animals Act 1979* (NSW), ss 24E(2), 24F.

<sup>137</sup> *Prevention of Cruelty to Animals Act 1979* (NSW), 24G.

<sup>138</sup> *Prevention of Cruelty to Animals Act 1979* (NSW) s 24H.

<sup>139</sup> *Animal Care and Protection Act 2001* (Qld), ss 122(1)(a)-(b), 124.

<sup>140</sup> *Animal Care and Protection Act 2001* (Qld), s 122(1)(c).

<sup>141</sup> *Animal Care and Protection Act 2001* (Qld), s 122(1)(d), 159.

<sup>142</sup> *Animal Care and Protection Act 2001* (Qld), s 122(1)(e).

<sup>143</sup> *Animal Care and Protection Act 2001* (Qld), s 122(1)(f).

<sup>144</sup> *Animal Care and Protection Act 2001* (Qld), s 122(1)(g).

<sup>145</sup> *Animal Care and Protection Act 2001* (Qld), s 130-135.

<sup>146</sup> *Animal Care and Protection Act 2001* (Qld), ss 99-100, 108-113.

In SA, if an inspector reasonably suspected that an offence against farm animals has been committed, the inspector must apply for a warrant to investigate the premises or vehicle.<sup>147</sup> An exception is provided where there are reasonable grounds to believe that urgent action is required to mitigate or prevent serious harm to an animal.<sup>148</sup> The SA legislation also allows for routine inspections of vehicles and premises where there is no suspicion of an offence but only if procedural requirements are met.<sup>149</sup> However, the occupier must receive 'reasonable notice' of the inspection which may undermine the effectiveness of routine inspections in uncovering offences.<sup>150</sup>

In WA, an inspector that suspects that a farm animal offence has occurred must obtain the consent of the occupier or a person in charge of a place to carry out an inspection unless a search warrant has been obtained or at least 24 hours notice has been provided.<sup>151</sup> Entry to non-residential premises is permitted if an inspector reasonably suspects that an animal welfare offence has been or is likely to be committed.<sup>152</sup> Routine inspections may be conducted of public areas such as saleyards.<sup>153</sup>

Overall, the carrying out of inspections and investigations in relation to animal cruelty offences is generally problematic. The ability of inspectors to carry out their duties is limited to varying degrees but generally the effectiveness of possible inspections is undermined by requirements to obtain consent from the occupier or provide notice. These limitations mean that animal cruelty offences in commercial enterprises are generally difficult to detect.

## **INSPECTIONS OF THE COMMERCIAL KANGAROO INDUSTRY: QUEENSLAND**

### **Priorities**

In 2011 and 2010, DERM (QLD) identified seven priorities for its compliance activities. These priorities were:

1. Macropods are correctly tagged with 2011 harvest period tag;
2. Macropods are tagged with the correct species tag;
3. Macropods are tagged with the correct zone tag;
4. Ensure non-head-shot macropods are not traded;
5. Compliance with the Code;
6. Shooters produce/carry valid written landholder consent as per licence conditions;
7. Ensure timely, complete and accurate harvest returns from dealers.<sup>154</sup>

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<sup>147</sup> *Animal Welfare Act 1985* (SA), s 30.

<sup>148</sup> *Animal Welfare Act 1985* (SA), s 30.

<sup>149</sup> For example, these procedural requirements include that the inspector must take steps 'to minimise any adverse effect on the business or activities of the occupier'. *Animal Welfare Act 1985* (SA), s 31(1)(b)-(c). These requirements could be used to delay a routine inspection: Cao, above n 98, 218.

<sup>150</sup> *Animal Welfare Act 1985* (SA), ss 31(2), 31B, 32A.

<sup>151</sup> There are provisions relating to the inspection of vehicles when a farm animal offence is suspected to have taken place: *Animal Welfare Act 2002* (WA), ss 38(1), 38(3), 39, 59.

<sup>152</sup> *Animal Welfare Act 2002* (WA), s 38(1)(e).

<sup>153</sup> *Parliamentary Debates*, 10 March 2009, Questions on Notice – farm inspections by animal welfare inspectors, The Hon Peter Collier MP.

<sup>154</sup> QLD 2011 Annual Report, 20; QLD 2010 Annual Report, 22.

The carcasses are checked to ensure that non-head-shot kangaroos are not traded. DERM has not prioritised other equally important conditions in the Code, including the conditions on the killing of dependent young and conditions on the killing of injured kangaroos. It is relatively easy to inspect carcasses during the chain of sale to ensure that non-head-shot kangaroos are not traded. However, if DERM were to ensure that injured kangaroos are given 'a rapid and humane death, preferably by a shot to the brain' this would require inspections at the point of kill. Similarly, if DERM was to ensure that all dependent young are killed in accordance with the prescribed euthanasia methods, this would again require inspections at the point of kill. Clearly, DERM has not prioritised these conditions of the Code for its inspectorial activity.

## Inspections

Data is available for dealer site inspections and processing plant inspections in QLD in 2009,<sup>155</sup> 2010<sup>156</sup> and 2011.<sup>157</sup> The total number of inspections are summarised in **Table 12**.

**Table 12: Dealer site and processing plant inspections in QLD (2009-2011)**

Inspections	2009	2010	2011
Dealer site inspections	150	74	103
Processing plant inspections	10	13	9

In the last quarter of 2009, DERM (QLD) undertook a review of the operational aspects of its management program and as a result decided to inspect at least 1% of total carcasses in 2010.<sup>158</sup> DERM adopted a further target to make a detailed inspection of at least 10% of the carcasses inspected.<sup>159</sup> The same targets were used in 2011.<sup>160</sup> The target and total number of inspections are summarised in **Table 13**. The total number of kangaroos killed in QLD in 2010 was 830,618.<sup>161</sup> **Table 13** provides an overview of how DERM performed relative to these inspection targets in 2010 and 2011.

**Table 13: Carcass inspections in QLD (2010-2011)**

	Year	Target	Total target (% of total number killed)	Actual	Total actual inspections (% of total number killed)
<b>Inspections</b>	2010	8,306	1%	25,781	3.1%
	2011	10,133	1%	21,899	2.2%
<b>Detailed inspections</b>	2010	830	0.1%	2,290	0.28%
	2011	1,013	0.1%	1,793	0.18%

<sup>155</sup> Department of Environment and Resource Management, *Queensland Commercial Macropod Management Program* [herein 'QLD Annual Report 2009'], 20.

<sup>156</sup> Department of Environment and Resource Management, *Queensland Commercial Macropod Management Program Annual Report 2010* [herein 'QLD Annual Report 2010'], 22.

<sup>157</sup> Department of Environment and Heritage Protection, *QLD Annual Report 2011*, 20.

<sup>158</sup> Department of Environment and Resource Management, *QLD Annual Report 2010*, 22.

<sup>159</sup> Department of Environment and Resource Management, *QLD Annual Report 2010*, 23.

<sup>160</sup> Department of Environment and Heritage Protection, *QLD Annual Report 2011*, 20.

<sup>161</sup> Department of Environment and Resource Management, *QLD Annual Report 2010*, 23.



Reporting by DERM does not specify what a 'detailed inspection' entails as opposed to an 'inspection'. It is clear that DERM exceeded its inspection and detailed inspection targets for 2010 and 2011. It appears that DERM did not inspect the vehicles of any shooters in 2009, 2010 or 2011 as this was not disclosed in the annual reports.

## **INSPECTIONS OF THE COMMERCIAL KANGAROO INDUSTRY: NEW SOUTH WALES**

### ***Priorities***

Chillers in NSW were inspected for six possible compliance breaches:<sup>162</sup>

1. Non-head shot kangaroos;
2. Valid tags;
3. Correctly affixed tags;
4. Untagged kangaroos;
5. Display of premise registration number and licence number for either pet food or human consumption (NSW Food Authority);
6. Presence of other animal carcasses.

Shooters' vehicles are inspected for four possible compliance breaches:<sup>163</sup>

1. Appropriate registration through NSW Food Authority (either for human consumption or pet food);
2. Correctly set up/fitted out (as per NSW Food Authority Memorandum of Understanding);
3. Untagged carcasses;
4. Shooter carrying s. 123 licence.

None of these possible breaches concern the Code which indicates that shooters are not subject to inspections in relation to compliance with the Code. Furthermore, ensuring compliance with other aspects of the Code, such as the conditions on the killing of dependent young and the killing of injured kangaroos, has not been prioritised.

### ***Inspections***

The 2011, 2010 and 2009 Annual Reports states that compliance audits are carried out 'continuously' by Kangaroo Management Program (KMP) staff.<sup>164</sup> However, later in the same reports, OEH discloses that the vehicles of shooters' are inspected 'opportunistically'. This principally occurs when chillers are inspected in the early morning as this generally coincides with deliveries by shooters. However, no statistics are disclosed as to the actual number of shooters inspected.

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<sup>162</sup> Office of Environment and Heritage, *2011 Annual Report New South Wales Commercial Kangaroo Harvest Management Plan 2007-2011* [herein 'NSW Annual Report 2011'], 15.

<sup>163</sup> Office of Environment and Heritage, *NSW Annual Report 2011*, 15.

<sup>164</sup> Office of Environment and Heritage, *NSW Annual Report 2011*, 14 ('Compliance audits are performed continuously by KMP staff').

In 2009 and 2010 KMP compliance officers and/or NSW Food Authority compliance staff inspected approximately 200 chillers in Kangaroo Management Zones about four times each year. In 2011, 148 chillers were inspected about four times each year.<sup>165</sup> Flooding during 2011 and 2010 disrupted chiller operations, as a result, the impacted chillers were inspected less frequently.<sup>166</sup> In 2011, 44 chiller premises (about 30%) were inspected 5 or more times.<sup>167</sup> In 2010, 54 chillers (about 36%) were inspected five or more times.<sup>168</sup> It is not clear how frequently the other chillers were inspected during 2010 and 2011. There were also fewer inspections in the mid-to-latter part of 2009 as a result of the Russian ban of the importation of kangaroo meat and the closure of many chillers. The inspections are certainly not conducted 'continuously' and are more of an irregular occurrence. **Table 14** summarises these inspections.

**Table 14: Inspections of chillers in NSW (2006-2011)**

	2006	2007	2008	2009	2010	2011
Dealer owned chillers	n/a	n/a	205	227	143	138
Shooter owned chillers	n/a	n/a	23	19	7	10
Chillers registered full year	n/a	109	138	172	125	132
Chillers registered part year	n/a	107	90	74	25	6
Chillers that did not operate	n/a	28	n/a	n/a	n/a	
Total number of chillers	165	260	228	246	150	
Total number of inspections		788	1,100		659	490
Number of chillers inspected 5 or more times				60	54 (= ~36%)	

There were no reports of inspections of processors or tanneries by OEHL in the period 2006-2011.

## INSPECTIONS OF THE COMMERCIAL KANGAROO INDUSTRY: WESTERN AUSTRALIA

### Priorities

DEC has not disclosed its priorities for inspections of the commercial kangaroo industry.

### Inspections

Statistics for enforcement activity in WA are available in its 2010 Annual Report<sup>169</sup> and its Compliance Report of March 2007.<sup>170</sup> It would appear that no chillers were inspected in 2003, 2005 or 2007 and there is no reporting of shooters' vehicles being inspected. No statistics are provided for 2008 or 2009. In 2010, inspections were conducted of processors and chillers but there were no inspections of skin dealers or shooters.<sup>171</sup>

<sup>165</sup> Office of Environment and Heritage, NSW Annual Report 2011, 15.

<sup>166</sup> Office of Environment and Heritage, NSW Annual Report 2011, 15.

<sup>167</sup> Office of Environment and Heritage, NSW Annual Report 2011, 15.

<sup>168</sup> Department of Environment, Climate Change and Water, NSW Annual Report 2010, 17.

<sup>169</sup> Department of Environment and Conservation, *2010 Annual Report on the Commercial Harvest of Kangaroos in Western Australia* (March 2011) [herein 'WA Annual Report 2010'].

<sup>170</sup> Department of Environment and Conservation, *The Commercial Kangaroo Industry in Western Australia: Compliance with Performance Measures Detailed in the Red Kangaroo (Macropus rufus) Management Plan for Western Australia 2003-2007 and Western Grey Kangaroo (Macropus fuliginosus) Management Plan for Western Australia 2003-2007* (March 2007) [herein 'WA Compliance Report 2007'].

<sup>171</sup> Department of Environment and Conservation, WA Annual Report 2010, 13.

The data on inspections for WA is limited and inconsistently reported. Apart from 2010, there have been no other annual reports made available. The data relating to inspections of chillers is difficult to assess because the earlier data is limited to specific areas whereas the 2010 data is not. A summary of inspections of chillers in WA based upon the available data is provided in **Table 15** below.

**Table 15: Inspections of chillers in WA (2003-2010)**

	2003	2004	2005	2006	2007	2008	2009	2010
<b>Total number of chillers</b>	~420	~420	~420	~500	504	?	?	574
<b>Total number of inspections</b>	?	?	?	?	?	?	?	5
<b>Mean number of inspections per chiller</b>	?	?	?	?	?	?	?	0.0088
<b>Other information</b>		Every chiller in the eastern part of the Southern Zone and every chiller in the Central and Northern Zones from Geraldton to Port Hedland were inspected once.		Every chiller in the western part of the Southern Zone and every chiller in the South West Zone were inspected once.				

The available data reveals that a rate of inspection of processors has fallen from 2003-2007 to 2010. In 2003-2007, every processor in WA was inspected at least once. However, in 2010 the two processors were not inspected at all. These findings are presented in **Table 16** below.

**Table 16: Total number of inspections of processors in WA (2003-2010)**

	2003	2004	2005	2006	2007	2008	2009	2010
<b>Total number of processors</b>	23	26	25	26	22	?	?	23
<b>Total number of inspections</b>	?	?	?	?	?	?	?	21
<b>Mean number of inspections per processor</b>	?	?	?	?	?	?	?	0.91
<b>Other information</b>	Each processor was inspected at least once per year.	Each processor was inspected at least once per year.	Each processor was inspected at least once per year.	Each processor was inspected at least once per year.	Each processor was inspected at least once per year.			

In 2010, DEC did not conduct any inspections of shooters or skin dealers although it reported that there were 13 skin dealers and 432 shooters.<sup>172</sup> The available data on inspections of shooters in WA is presented in **Table 17** below.

**Table 17: Total number of inspections of shooters in WA (2003-2010)**

	2003	2004	2005	2006	2007	2008	2009	2010
<b>Total number of shooters</b>	308	314	407	404	339	?	?	432
<b>Total number of inspections</b>	?	?	?	?	?	?	?	0

## INSPECTIONS OF THE COMMERCIAL KANGAROO INDUSTRY: SOUTH AUSTRALIA

### *Priorities*

The 2008-2012 KMP provides that shooters' vehicles and areas where shooters have operated are to be checked 'opportunistically or when required as part of a targeted compliance investigation (e.g. following reports of noncompliance with the Code of Practice).'<sup>173</sup> The outcomes of investigations are to be input to a database that 'allows for non-compliance incidents to be identified and investigated.'

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<sup>172</sup> Department of Environment and Conservation, WA Annual Report 2010, 13.

<sup>173</sup> Department for Environment and Heritage, *The Kangaroo Conservation and Management Plan for South Australia 2008-2012* [herein 'SA KMP 2008-2012'], 30.

<sup>174</sup> Department for Environment and Heritage, SA KMP 2008-2012, 30.

The KMP provides that the quantitative goals or 'performance measures' of the inspectorial process are to:

1. Inspect each chiller at least once a year;
2. Inspect medium-high volume chillers at least twice per year;
3. Inspect each processor at least four times a year;
4. Inspect shooters' vehicles loaded with kangaroo carcasses opportunistically or when required as part of a targeted compliance investigation;
5. Inspect areas where shooters have been operating on an opportunistic basis or when required as part of a targeted compliance investigation.<sup>175</sup>

However, compliance priorities are set annually and the program is 'reactive to change'.<sup>176</sup> The priorities for 2011 were to further develop reporting relationship with the Meat Hygiene Unit, AQIS and SA kangaroo meat processors; and to determine compliance regarding carcasses with bullet wounds to the body through an audit of skin tanners to view samples of skins from SA, NSW and QLD.<sup>177</sup>

In 2011, DEWNR checked field chillers for the following:

- All kangaroos are shot in accordance with the Code;
- Sealed tags are correctly affixed;
- Sealed tags are valid for use;
- Correct colour sealed tag affixed to correct species;
- All kangaroos are presented in the correct form;
- Any meat hygiene issues are documented and reported.<sup>178</sup>

DEWNR has not prioritised inspections relating to the Code's conditions on the killing of dependent young or killing of injured kangaroos.

### **Inspections**

DEWNR's annual reports from 2008 to 2011 disclose the number of chillers and the number of inspections conducted. These results are summarised in **Table 18** below.

**Table 18: Inspections of chillers in SA (2008-2011)**

	2008	2009	2010	2011
<b>Number of chillers</b>	64	63	67	63
<b>Number of inspections</b>	45	93	92	55
<b>Mean number of inspections per chiller</b>	0.70	1.48	1.37	0.87

<sup>175</sup> Department for Environment and Heritage, SA KMP 2008-2012, 31.

<sup>176</sup> Department for Environment and Heritage, SA KMP 2008-2012, 30.

<sup>177</sup> Department of Environment and Natural Resources, SA Annual Harvest Report 2011, 10.

<sup>178</sup> Department of Environment and Natural Resources, SA Annual Harvest Report 2011, 8.

In 2011 and 2008, DEWNR fell short of its goal of inspecting each chiller at least once a year. In 2011, at least 8 chillers were not inspected and in 2010 at least 19 chillers were not inspected. Furthermore, it is difficult to see how DEWNR would have met its goal of inspecting medium-high volume chillers at least twice during these years, since this would result in additional chillers not being subject to inspections. The annual reports also disclose the number of processors and number of inspections of these sites each year.<sup>179</sup> The data on inspections is summarised in **Table 19**.

**Table 19: Inspections of processors in SA (2008-2011)**

	2008	2009	2010	2011
<b>Number of processors</b>	6	6	5	5
<b>Number of inspections</b>	19	22	23	23
<b>Mean number of inspections</b>	3.17	3.67	4.60	4.60

These statistics indicate that DEWNR met its target for processors in 2011 and 2010 by inspecting each processor at least four times a year. However, the target was not met in 2009 or 2008 when the mean number of inspections was less than 4 times annually. The total number of tanneries and inspections conducted in 2008 to 2011 are summarised in **Table 20**.<sup>180</sup>

**Table 20: Inspections of tanneries in SA (2008-2011)**

	2008	2009	2010	2011
<b>Number of tanneries</b>	4	4	3	2
<b>Number of inspections</b>	8	8	8	2
<b>Mean number of inspections</b>	2.00	2.00	2.67	1.00

There were no specific targets set in the KMP for tanneries. However, if the target for processors (at least four times each year) is adopted then the mean number of inspections of tanneries falls short across the entire reporting period. Finally, although the KMP sets vague goals for inspections of shooters' vehicles and the areas where shooters have been operating ('opportunistic'), there is no disclosure in the SA Annual Reports of the number of inspections of shooters.

<sup>179</sup> Department of Environment and Natural Resources, SA Annual Harvest Report 2011, 8; Department of Environment and Natural Resources, *2010 Commercial Harvest Report for South Australia* (February 2011) [herein 'SA Annual Harvest Report 2010'], 8; Department for Environment and Heritage, *2009 Commercial Kangaroo Harvest Report for South Australia* (February 2010) [herein 'SA Annual Harvest Report 2009'], 7; Department for Environment and Heritage, *South Australian Commercial Kangaroo Harvest Report for 2008* [herein 'SA Annual Harvest Report 2008'], 7.

<sup>180</sup> Department of Environment and Natural Resources, SA Annual Harvest Report 2011, 8; Department of Environment and Natural Resources, SA Annual Harvest Report 2010, 8; Department for Environment and Heritage, SA Annual Harvest Report 2009, 7; Department for Environment and Heritage, SA Annual Harvest Report 2008, 7.

## KEY ISSUES ARISING AROUND INSPECTIONS

### *Inspections of shooters*

No government agencies in Australia regularly inspect shooters to ensure compliance with the Code. In QLD and WA, no inspections are carried out of shooters. DEWNR (SA) claims to inspect shooters' vehicles and areas where shooters have been operating on an 'opportunistic' basis. However, there is no disclosure of any actual inspections being conducted as is the case for other licensees. Similarly, OEH (NSW) claims to inspect shooters' vehicles on an 'opportunistic' basis but makes no disclosure as to how many inspections are actually carried out. Furthermore, inspections of shooters by OEH (NSW) do not relate to compliance with the Code and instead relate to other matters, such as the carrying of a licence.

Across the states, the lack of inspections of shooters in relation to the conditions of the Code is a major weakness of the regulatory system. Without inspections, it is impossible to ensure compliance with the Code or detect violations. While inspections of carcasses at chillers can detect body shot carcasses, they cannot detect other violations of the Code. This is the case for the Code's conditions on killing of dependent young and killing of injured kangaroos. Thus, regulatory authorities need to inspect shooters both at chillers and in the field on a regular basis to ensure that the welfare conditions of the Code are being complied with and that breaches are identified and reported.

Although there is variety across the states, it is clear that in failing to regularly inspect shooters at chillers and in the field, the state authorities are unable to provide assurance that the Code is being adhered to or that it is being enforced. The state authorities do not provide regular inspections of shooters despite the fact that their level of activity is the most important of all for the purposes of the Code. This is a major concern because the RSPCA found in 2000/2002 that shooters have difficulty capturing and killing young at foot.<sup>181</sup> It is also problematic because there is a lack of data of compliance by shooters in the field, particularly with regard to dependent young and injured kangaroos.

It is recommended that governments allocate additional resources for the purpose of inspecting shooters. Further, video surveillance could be introduced such as a sealed unit on the back of shooters' vehicles and in the cab coming on in a randomised schedule. This video surveillance could be used to record the number of shots taken and carcasses delivered to the vehicle and something about their condition. There is a growing move towards the introduction of CCTV, or closed circuit television, in abattoirs.<sup>182</sup> The general lack of inspections of shooters in the commercial kangaroo industry remains a critical issue and the introduction of video surveillance could improve sampling of the industry.

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<sup>181</sup> RSPCA Report 2002, Section 5.2.

<sup>182</sup> ABC Rural, *Cameras in Abattoirs* <<http://www.abc.net.au/rural/content/2012/s3442487.htm>> accessed 6 September 2012.



### *Inspections of chillers*

There is a wide variety of inspectorial activity across the states with regard to chillers. The most comprehensive data is available for NSW, where data is provided for chillers based upon ownership and period of registration. OEH (NSW) has disclosed the total number of chillers and the total number of inspections for most years examined. In contrast, the total number of inspections of chillers conducted by DEC (WA) is only available for 2010. DEC also disclosed the minimum number of inspections conducted of chillers in particular zones for 2004 and 2006. DEWNR (SA) disclosed the total number of chillers and number of inspections. DERM (QLD) disclosed the number of dealer site inspections, which presumably amounts to the number of inspections of dealer-owned chillers. Clearly, the relative lack of data for WA is inadequate when viewed within the context of reporting by the other states. The lack of data for WA also makes it more difficult to compare inspectorial activity across the states.

However, the available statistics reveal that there are substantial differences across the states. In 2010, OEH (NSW) conducted 659 inspections of 150 chillers and DEWNR (SA) conducted 92 inspections of 67 chillers. In the same year, DEC (WA) carried out just five inspections of 574 chillers. Evidently, the rate of inspections in WA is substantially less than the other states. While chillers in NSW and SA are subject to at least one inspection each year (and in NSW substantially more), the vast majority of chillers in WA are not subject to any inspections. The lack of inspections of chillers in WA likely compounds the fact that shooters are not inspected in this state. There is a substantial risk that regulatory authorities will not detect offences. Inspections form a vital component of the detection of offences, particularly those relating to animal welfare. Therefore, this comparative analysis of the states reveals that the commercial killing of kangaroos in WA is subject to significantly less regulatory oversight than that which occurs in the other states.

### *Inspections of processors*

The states provide varying levels of information about inspections of processors. OEH (NSW) did not report conducting inspections of these premises in the period 2006 to 2011. DERM (QLD) disclosed that it had conducted 13 inspections of processors in 2010, but did not disclose how many of these premises were operating in the year. By contrast, both DEWNR (SA) and DEC (WA) disclosed the number of inspections of processors and the total number of processors.

In 2010, there were 6 processors operating in SA and DEWNR conducted 19 inspections. In the same year, there were 23 processors operating in WA but only 21 inspections were conducted. Evidently, the rate of inspections of processors in WA is substantially lower than that of SA. The relatively low rate of inspections of processors for WA must also be seen within the context of the absence of inspections of shooters and extremely low rate of inspections of chillers. Again, this indicates that the likelihood of DEC (WA) identifying offences within the commercial kangaroo industry is very low. A summary of the variation of inspections of shooters, chillers and processors by the state regulatory authorities in 2010 is provided in **Table 21** below.

**Table 21: A comparison of inspectorial activities across the states (2010)**

	NSW		QLD		SA		WA	
	Total number licensed	Total number of inspections	Total number licensed	Total number of inspections	Total number licensed	Total number of inspections	Total number licensed	Total number of inspections
<b>Shooters</b>	?	?	?	0	?	?	?	0
<b>Chillers</b>	150	659	?	74	92	67	574	5
<b>Processors</b>	?	?	?	13	6	19	23	21

### *Inspections of carcasses*

QLD is the only state to disclose to total number of carcasses inspected. However, their statistics reveal that in 2010 only 3.1% of carcasses were inspected. While this surpasses the target set by DERM (QLD), it means that 96.9% of carcasses in QLD were not inspected at all during 2010. Nonetheless, it would be useful if the other states disclosed the total number of carcasses inspected in order to aid analysis of the rates of inspection.

### *Challenges faced in inspecting the commercial kangaroo industry*

Inspections of the commercial kangaroo industry is made difficult by the fact that the killing occurs at a multitude of locations that are decentralised, widespread and continuing changing. This situation may be compared to inspections of the slaughter of livestock which is aided by the fact that the killing occurs at permanent centralised locations. Arguably, the costs involved with raising the rates of inspection in the commercial kangaroo industry may be prohibitive.<sup>183</sup>

### *Recommendations*

**Key findings: Inspections of the commercial kangaroo industry** Government agencies in Australia do not carry out regular and adequate inspections of all levels of activity in the kangaroo industry. Shooters are not regularly inspected in any of the states, making it impossible to ensure compliance with the Code. Without inspections at the point of kill it is impossible for agencies to ensure compliance with the Code's conditions on killing of dependent young and killing of injured kangaroos. Furthermore, there is a very low rate of inspections of chillers in WA. It is recommended that governments allocate increased resources to inspections of shooters and that video surveillance technology be introduced

<sup>183</sup> See Dror Ben-Ami et al, *The Ends and the Means of the Commercial Kangaroo Industry: An Ecological, Legal and Comparative Analysis* (THINKK, the think tank for kangaroos, University of Technology, Sydney, Revised December 2011).

Overall, the nature and rate of government inspections of the commercial kangaroo industry could be substantially improved. Government agencies do not carry out regular and adequate inspections of all levels of activity in the kangaroo industry. No government agencies in Australia regularly inspect shooters to ensure compliance with the Code. Without such inspections it is impossible to ensure compliance with the Code. Furthermore, there is a very low rate of inspections of chillers in WA, with the vast majority of premises not being subject to inspections at all in 2010. It is recommended that national inspection standards be developed to ensure uniformity across the states and to ensure that all levels of the kangaroo industry are subject to appropriate inspectorial activity (Table 22).

**Table 22: Recommendations for inspections of the commercial kangaroo industry**

<b>Recommendations: National Standards for Inspections of the Commercial Kangaroo Industry</b>
<p>National standards for inspections by state government agencies of the commercial kangaroo industry should be developed.</p> <p>These national standards should include:</p> <ol style="list-style-type: none"> <li>1) Prioritisation of compliance with the welfare standards contained in the Code, amongst other priorities.</li> <li>2) Inspections of shooters through:             <ol style="list-style-type: none"> <li>a) Inspections of shooters' vehicles at chillers at least four times a year;</li> <li>b) Inspections of shooters activities at the point of kill through accompaniment on shoots at least four times a year;</li> <li>c) Inspections of the land that shooters are operating in at least four times a year.</li> </ol> </li> <li>3) Mandated inspections of chillers (both shooter and dealer owned) through:             <ol style="list-style-type: none"> <li>a) Inspections of medium-high volume chillers at least twice per year;</li> <li>b) Inspections of all other chillers at least once a year.</li> </ol> </li> <li>4) Mandated inspections of processors at least 4 times a year.</li> <li>5) Mandated annual reporting of inspectorial rates, including:             <ol style="list-style-type: none"> <li>a) Total number of chillers (further classified according to ownership type, period of operation and region);</li> <li>b) Total number of processing plants;</li> <li>c) Total number of carcasses inspected;</li> <li>d) Total number of inspections (further classified according to ownership type, period of operation and region);</li> <li>e) Average number of inspections per chiller.</li> </ol> </li> <li>6) Inspection target of at least 10% of total carcasses.</li> <li>7) Uniform definition of non-brain shot offences, that being:             <p>'Non-brain shot' refers to a kangaroo, dead or alive, that has been shot anywhere apart from the brain. Animals that have been shot in the neck have not been shot in compliance with the Code.</p> </li> </ol>

**Research Questions 5**

What types of breaches are detected by government agencies? How do government agencies deal with breaches?

**PENALTY INFRINGEMENT NOTICES, WRITTEN CAUTIONS AND LICENCE SUSPENSIONS:  
QUEENSLAND**

The Management Macropod Unit of QLD issues Infringement Notices, compliance letters and warning notices. Infringement Notices are used for 'common breaches of the law where the impacts are not serious enough for court action.'<sup>184</sup> Infringement Notices are issued where it appears that an offence has been committed however the payment of a penalty does not result in the recording of a criminal conviction.<sup>185</sup> Officers have discretion as to whether to serve an Infringement Notice and 'must take into account the intention of the legislation to penalise the breaches that, in the past, might have gone unpunished'.<sup>186</sup> This form of enforcement activity is generally utilised where the breach is minor; the facts are indisputable; the breach is a one-off situation easily remedied; inspection discovers a breach that normal operating procedures should have prevented; and where the issuing of an Infringement Notice is likely to act as a deterrent.<sup>187</sup> There are a number of circumstances that should act to preclude the issuing of an Infringement Notice, including where the penalty seems inadequate for the severity of the offence and where multiple breaches have occurred, unless all are minor.<sup>188</sup>

DERM will only cancel or suspend a licence when the breach of licence conditions has had serious consequences for human health, environment or natural resources; continual minor breaches have occurred despite warning being given by DERM; and provision is made for the automatic cancellation of the licence (e.g. accumulation of demerit points).<sup>189</sup> It is not clear whether all minor breaches are recorded even where no formal enforcement action is taken. However, it would appear that such records would be required in order to identify continual minor breaches.

<sup>184</sup> Department of Environment and Resource Management, *Enforcement Guidelines* (October 2010) available at <<http://www.ehp.qld.gov.au/management/pdf/enforcement-guidelines.pdf>> accessed 1 August 2012, 9.

<sup>185</sup> Department of Environment and Resource Management, *Enforcement Guidelines* (October 2010) available at <<http://www.ehp.qld.gov.au/management/pdf/enforcement-guidelines.pdf>> accessed 1 August 2012, 9.

<sup>186</sup> Department of Environment and Resource Management, *Enforcement Guidelines* (October 2010) available at <<http://www.ehp.qld.gov.au/management/pdf/enforcement-guidelines.pdf>> accessed 1 August 2012, 9.

<sup>187</sup> Department of Environment and Resource Management, *Enforcement Guidelines* (October 2010) available at <<http://www.ehp.qld.gov.au/management/pdf/enforcement-guidelines.pdf>> accessed 1 August 2012, 9.

<sup>188</sup> Department of Environment and Resource Management, *Enforcement Guidelines* (October 2010) available at <<http://www.ehp.qld.gov.au/management/pdf/enforcement-guidelines.pdf>> accessed 1 August 2012, 9-10.

<sup>189</sup> Department of Environment and Resource Management, *Enforcement Guidelines* (October 2010) available at <<http://www.ehp.qld.gov.au/management/pdf/enforcement-guidelines.pdf>> accessed 1 August 2012, 14.

Data for infringement notices and written cautions exist for 2006 to 2011 (**Table 23**) although there was also some reporting in 2004 and 2005. In 2004, there was one ‘minor investigation’ of carcasses that were non-head shot yet the outcome of this investigation was not disclosed.<sup>190</sup> In 2005, there were no investigations of breaches of the Code.<sup>191</sup> In 2006, there were 103 warning notices issued to dealers and shooters and 22 infringement notices which ‘targeted offences involving underweight and untagged kangaroos and late returns.’<sup>192</sup> There were ‘no instances of clear breaches of the code of practice’ investigated during 2006.<sup>193</sup> In 2007, four shooters had their licences suspended or cancelled due to ‘cumulative infringements or significant infringements.’<sup>194</sup> In 2007, there were 226 warning notices and 15 infringement notices which targeted offences involving underweight and untagged carcasses, late returns, incomplete or incorrect returns, failure to carry authority or copy of authority, fail to produce return book and take protected wildlife without permit or authority.<sup>195</sup> In 2007, there were two instances of ‘clear breaches of the code of practice with regard to pouch young, investigated and dealt with by Infringement Notice’.<sup>196</sup> There were also two investigations regarding breaches by damage mitigation permit holders.<sup>197</sup> One was dealt with by Infringement Notice while the other was to be prosecuted.<sup>198</sup>

There was a peak in enforcement activities in 2009, with a total of 1654 compliance letters being issued.<sup>199</sup> However, there were only 12 Infringement Notices in 2009, four of which were issued to shooters.<sup>200</sup> In contrast, twenty-seven Infringement Notices were issued to shooters in 2010<sup>201</sup> and eighteen in 2011.<sup>202</sup>

**Table 23: Compliance summary for QLD (2008-2011)**

	Stakeholder	2006	2007	2008	2009	2010	2011
<b>Compliance letters</b>	Shooter	?	?	?	1246	2	0
	Dealer	?	?	?	408	229	177
	<b>Total</b>	?	?	11	1654	231	177
<b>Warning notices</b>	Shooter	?	?	?	69	10	30
	Dealer	?	?	?	18	11	16
	<b>Total</b>	103	226	37	87	21	46
<b>Infringement notices</b>	Shooter	?	?	?	4	27	18
	Dealer	?	?	?	8	0	3
	Corporation	?	?	?	n/a	1	n/a
	<b>Total</b>	22	15	23	12	28	21
<b>TOTAL</b>		<b>125</b>	<b>241</b>	<b>71</b>	<b>1753</b>	<b>280</b>	<b>244</b>

<sup>190</sup> Environmental Protection Agency/Queensland Parks and Wildlife Service, *Final Harvest Report for Commercially Taken Macropod in Queensland for 2004* (2004), 10.

<sup>191</sup> Department of Environment and Heritage, *Wildlife Trade Management Plan for Export – Commercially Harvested Macropods* (2005), 7-8.

<sup>192</sup> Department of Environment and Water Resources, *Wildlife Trade Management Plan for Export – Commercially Harvested Macropods* (2006) [herein ‘QLD Annual Report 2006’], 9.

<sup>193</sup> Department of Environment and Water Resources, *QLD Annual Report 2006*, 9.

<sup>194</sup> Department of Environment, Heritage and The Arts, *Wildlife Trade Management Plan for Export – Commercially Harvested Macropods* (2007) [herein ‘QLD Annual Report 2007’], 8.

<sup>195</sup> Department of Environment, Heritage and The Arts, *QLD Annual Report 2007*, 8.

<sup>196</sup> Department of Environment, Heritage and The Arts, *QLD Annual Report 2007*, 9.

<sup>197</sup> Department of Environment, Heritage and The Arts, *QLD Annual Report 2007*, 9.

<sup>198</sup> Department of Environment, Heritage and The Arts, *QLD Annual Report 2007*, 9.

<sup>199</sup> Department of Environment and Resource Management, *QLD Annual Report 2009*, 20.

<sup>200</sup> Department of Environment and Resource Management, *QLD Annual Report 2009*, 20.

<sup>201</sup> Department of Environment and Resource Management, *QLD Annual Report 2010*, 22.

<sup>202</sup> Department of Environment and Heritage Protection, *QLD Annual Report 2011*, 21.

Only a certain number of the Infringement Notices actually relate to the welfare provisions of the Code. In 2010, eight of the Infringement Notices were identified as incidents of 'body shot' carcasses.<sup>203</sup> A further three in that year were identified as 'failing to comply with licence conditions'.<sup>204</sup> However, the report did not disclose what those licence conditions were. In 2011, there were ten Infringement Notices issued for the sale of carcasses with a body shot wound.<sup>205</sup> The two Infringement Notices issued in 2007 for breaches of the Code's provisions on pouch young are unusual. In fact, this is the only report of such offences across any of the states.

In 2009, DERM did not provide a statistical breakdown of Infringement Notices. However, the Annual Report stated that the 'majority of interventions' related to failure to submit returns within a prescribed period and failure to ensure information on returns is complete, accurate and legible. Other interventions included taking, keeping and/or using lawfully taken wildlife without lawful authority, failure to show authority or identification without reasonable cause, failure to comply with licence conditions, failure to record relevant particulars within a prescribed period and obstruction of conservation officers in their duties.<sup>206</sup>

In 2008, none of the specific offences covered by the Infringement Notices directly concerned compliance with the Code.<sup>207</sup> It would appear that the Infringement Notices in 2008 did not deal with any breaches of the welfare conditions of the Code. **Table 24** provides a summary of Infringement Notices issued in QLD over these three years by type of offence.

**Table 24: Infringement Notices issued in QLD (2008-2011)**

Offence	2008	2009	2010	2011
Fail to comply with weight requirements in Harvest Period Notice	4 Penalties of \$300.00 each.	?	-	-
Fail to ensure information in return is complete and accurate/legible/completed in ink	2 Penalties of \$300.00 each.	?	-	-
Fail to give return for each period/by prescribed time	9 Penalties of \$300.00 each. Penalties of \$400.00 each.	?	-	2
Fail to keep record/return book at prescribed place for prescribed time	1 Penalties of \$300.00 each.	?	-	-
Fail to properly attach tag immediately after Macropod is dressed	3 Penalties of \$300.00 each.	?	7	4
Fail to record relevant particulars within prescribed period	2 Penalties of \$300.00 each.	?	-	-
Relevant authority or identification not available for inspection	1 Penalties of \$150.00 each.	?	-	-
Interfere with tag attached to wildlife without lawful authority	1 Penalties of \$225.00 each	?	-	-

<sup>203</sup> Department of Environment and Resource Management, QLD Annual Report 2010, 22.

<sup>204</sup> Department of Environment and Resource Management, QLD Annual Report 2010, 22.

<sup>205</sup> Department of Environment and Heritage Protection, QLD Annual Report 2011, 21.

<sup>206</sup> Department of Environment and Resource Management, QLD Annual Report 2009, 20.

<sup>207</sup> Department of Environmental and Resource Management, *Queensland Macropod Harvest Management Plan Queensland 2008 Annual Report*, 13-14.

Wrong species tag	-	?	8	1
Body shot (or Fail to comply with conditions of harvest period notice (Sale of carcass with body shot wound))	-	?	8	10
Failing to comply with licence conditions	-	?	3	-
Keep/use without lawful authority	-	?	1	1
Fail to comply with conditions of authority (incorrect harvest zone tag used)	-	?	-	2
Buy or accept macropods tagged in contravention of Act	-	?	-	1
<b>TOTAL</b>	<b>23</b>	<b>23</b>	<b>28</b>	<b>21</b>
	\$12,877.60			

In 2008, DERM also disclosed what types of offences were the subject of the compliance letters and warning notices. There were eight offences covered by the warning notices and two offences covered by the compliance letters in 2008. None of these explicitly mentioned compliance with the Code. **Table 25** sets out the categories and number of enforcement actions taken under each.

**Table 25: Compliance letters and warning notices by type of offence in WA (2008)**

Offence	Compliance letters	Warning notices
Fail to carry authority/properly endorsed authority/identification while in possession of tag	-	1
Fail to comply with weight requirements in Harvest Period Notice	-	2
Fail to ensure information in return is complete and accurate/legible/completed in ink	8	2
Fail to give return for each period/by prescribed time	3	16
Fail to keep record/return book at prescribed place for prescribed time	-	4
Fail to properly attach tag immediately after Macropod is dressed	-	2
Fail to record relevant particulars within prescribed period	-	4
Relevant authority or identification not available for inspection	-	6
<b>TOTAL</b>	<b>11</b>	<b>37</b>

Together, although this data is limited, it provides an important insight into what breaches have been detected by DERM and how they dealt with them. In 2008, all three types of enforcement actions primarily related to reporting requirements, especially giving a return for each period or by the prescribed time. A high number of offences also related to ensuring information in the return were complete and accurate/legible/completed in ink. Four of the offences subject to Infringement Notices in 2008 related to the weight requirements provided in the Harvest Period Notice. However, none of the offences detected by DERM in 2008 directly relate to the welfare conditions of the Code.



In contrast, there were a relatively high number of offences detected in 2010 that related to the welfare conditions of the Code and were subject to Infringement Notices. As discussed previously, DERM undertook a review of the operational aspects of its management program in the latter part of 2009 and as a result decided to inspect at least 1% of total carcasses. In total, DERM inspected 25,781 or 3.1% of the total carcasses and carried out a detailed inspection of 2,290 (0.28%) of the total carcasses. This increased level of inspectorial activity probably played a critical role in the rise of body shot offences detected by DERM.

**PENALTY INFRINGEMENT NOTICES, WRITTEN CAUTIONS AND LICENCE SUSPENSIONS: NSW** OEHL (NSW) issues Infringement Notices and warning notices. In some cases, it also cancels the licences held by shooters. Penalties are used for minor, one-off breaches of criminal provisions and the payment of a fine does not lead to the recording of a criminal conviction.<sup>208</sup> Non-payment of a fine is recoverable as a civil debt.<sup>209</sup> OEHL has discretion as to whether to issue a penalty and must take into account the intention of the legislation to penalise breaches.<sup>210</sup> Where there are continuing or successive offences, such matters should be dealt with through prosecution.<sup>211</sup> Cautions may be issued as an alternative to a penalty notice where an officer believes on reasonable grounds that a person has committed a penalty notice offence and it is appropriate to give a caution in the circumstances.<sup>212</sup> Penalty notices are an appropriate enforcement response where the breach is minor; the facts are apparently incontrovertible; the breach is a one-off situation that can be remedied easily; and the issue of a penalty notice is likely to be a practical and viable deterrent.<sup>213</sup>

Limited data exists from the OEHL's reporting in 2008 to 2010. There was a peak for Infringement Notices in 2009, when a total of 118 were issued.<sup>214</sup> Data on compliance letters and warning notices are not available except for in 2010 when it was disclosed that 26 warning notices were issued. In 2011, 21 written cautions were issued.

<sup>208</sup> Office of Environment and Heritage, *OEHL Prosecution Guidelines* (February 2012) available at < <http://www.environment.nsw.gov.au/resources/legislation/20120111OEHLProsGuide.pdf>> accessed 1 8/2012, 11.

<sup>209</sup> Office of Environment and Heritage, *OEHL Prosecution Guidelines* (February 2012) available at < <http://www.environment.nsw.gov.au/resources/legislation/20120111OEHLProsGuide.pdf>> accessed 1 8/2012, 11.

<sup>210</sup> Office of Environment and Heritage, *OEHL Prosecution Guidelines* (February 2012) available at < <http://www.environment.nsw.gov.au/resources/legislation/20120111OEHLProsGuide.pdf>> accessed 1 8/2012, 11.

<sup>211</sup> Office of Environment and Heritage, *OEHL Prosecution Guidelines* (February 2012) available at < <http://www.environment.nsw.gov.au/resources/legislation/20120111OEHLProsGuide.pdf>> accessed 1 8/2012, 11.

<sup>212</sup> Office of Environment and Heritage, *OEHL Prosecution Guidelines* (February 2012) available at < <http://www.environment.nsw.gov.au/resources/legislation/20120111OEHLProsGuide.pdf>> accessed 1 8/2012, 12. The officer must have regard to the factors set out in the Attorney General's *Caution Guidelines under the Fines Act 1996*.

<sup>213</sup> Office of Environment and Heritage, *OEHL Prosecution Guidelines* (February 2012) available at < <http://www.environment.nsw.gov.au/resources/legislation/20120111OEHLProsGuide.pdf>> accessed 1 August 2012, 12. It is not appropriate to issue penalty notices where: the breach is ongoing and not within the alleged offender's capacity to remedy quickly; the penalty prescribed on the notice would be clear inadequate for the severity of the offence; the impact of the breach on the environment or on our natural, cultural or built heritage cannot be assessed immediately; the evidence is controversial or insufficient such that if a Court heard the matter, it would be unlikely to succeed; negotiations to find a resolution to the problem which is the subject of the breach are being conducted already with OEHL; at least one of the motivations for issuing a penalty notice to public authorities is to avoid the consultative procedures set out in the Premier's Memorandum No. 97-26 *Litigation Involving Government Authorities*; or multiple breaches have occurred.

<sup>214</sup> Department of Environment, Climate Change and Water, *2009 Annual Report New South Wales Commercial Harvest Management Plan* [herein 'NSW Annual Report 2009'], 19.

The vast majority of the Infringement Notices over the period 2008 to 2010 related to compliance with reporting requirements, especially submission of returns (**Table 26**). A small percentage of the Infringement Notices relate to compliance with the Code. From 2008 to 2010, there were offences for 'non-head shot' carcasses. The greatest number of these offences occurred in 2009 when 13 non-head shot offences were detected. Breaches of the other conditions of the Code were not reported as possible offences by OEH. However, there were other offences detected with implications for animal welfare, including harm protected fauna and possess protected fauna.

**Table 26: Infringement Notices issued in NSW by type of offence (2008-2011)**

Offence		2008	2009	2010	2011
Fail to submit returns	Fail to submit returns (shooter)	?	86	49	19
	Fail to submit returns (chiller)	?	3	1	-
	Fail to submit returns (fauna dealer)	?	-	1	-
	<b>Sub-Total</b>	<b>65</b>	<b>89</b>	<b>51</b>	<b>19</b>
Use unregistered chiller		1	-	3	-
Exceed number authorised		-	1	3	1
Unauthorised species		-	3	3	-
<b>Non-head shot</b>		<b>7</b>	<b>13</b>	<b>4</b>	<b>10</b>
Untagged carcasses		11	2	3	1
Harvester returns not true and accurate		-	-	4	6
Submit false information		2	4	-	-
Transfer tags		1	1	4	-
Shoot outside licence period		1	-	5	2
Fail to return unused tags		-	1	-	8
Harm protected fauna		1	4	-	-
Chiller registration numbers not displayed		-	-	-	-
Underweight carcasses		1	-	-	-
Possess protected fauna		1	-	-	-
Sell protected fauna		-	-	-	2
<b>TOTAL</b>		<b>91</b>	<b>118</b>	<b>82</b>	<b>49</b>

Over this reporting period, OEH also disclosed the total number of licence cancellations made. In 2008, seven shooters' licences were cancelled.<sup>215</sup> One of these cancellations was the result of repeated failure to comply with licence conditions despite several warnings and Infringement Notices.<sup>216</sup> The other six shooters had their licences cancelled as a result of invalid or expired firearms licences.<sup>217</sup> In all of these cases, the licences were reinstated once the shooters provided proof of firearms licence currency.<sup>218</sup> The occupier's licences upon which these shooters were nominated were also cancelled.<sup>219</sup> The occupiers were provided an opportunity to make an application to nominate a different licensed shooter.<sup>220</sup>

<sup>215</sup> Department of Environment and Climate Change, *2008 Annual Report New South Wales Commercial Kangaroo Harvest Management Plan* [herein 'NSW Annual Report 2008'], 16.

<sup>216</sup> Department of Environment and Climate Change, *NSW Annual Report 2008*, 16.

<sup>217</sup> Department of Environment and Climate Change, *NSW Annual Report 2008*, 16.

<sup>218</sup> Department of Environment and Climate Change, *NSW Annual Report 2008*, 16.

<sup>219</sup> A commercial occupier's licence allows the landholder to nominate a licensed shooter to shoot the kangaroos and sell the whole dressed carcass to licensed fauna dealers. Landholders are not permitted to shoot kangaroos themselves for commercial purposes unless they hold a Commercial Fauna Harvester's Licence.

<sup>220</sup> Department of Environment and Climate Change, *NSW Annual Report 2008*, 16.

In 2009, OEH cancelled one shooters' licence due to 'repeated failure to comply with licence conditions despite two successful prosecutions and one infringement notice'.<sup>221</sup> The shooter lodged an appeal with the Minister for the Environment, who reinstated the shooter's licence (see **Section 5.C.3** for further discussion).<sup>222</sup> There were no licence cancellations in 2010 or 2011.<sup>223</sup>

OEH's annual reports disclose the number of carcasses seized as a result of licence conditions being breached. In 2008, a total of 385 carcasses were seized because they were either not tagged, or were shot on unauthorised properties.<sup>224</sup> In 2009, there were 82 carcasses seized as a result of breach of licence conditions.<sup>225</sup> In 2010, there were 25 carcasses seized.<sup>226</sup> Carcasses that meet the commercial licensing requirements are sold by OEH while those that do not meet the requirements (i.e. underweight or non-head shot) are not sold.

The data from these annual reports provides an insight into what breaches have been detected in NSW and how OEH deals with them. As with QLD, the vast majority of offences relate to reporting requirements, especially the submission of returns. From 2008 to 2010, there was a fairly steady rate of detection of non-head shot offences; peaking in 2009 with 13 non-head shot offences.

The 2010 Annual Report stated that officers investigated 'several instances of non-head shot kangaroo carcasses originating in NSW that were reported from processing works in South Australia and Queensland.'<sup>227</sup> These investigations resulted in four penalty notices. In 2009, officers investigated several instances of non-head shot kangaroo carcasses from NSW being reported from processing works in SA.<sup>228</sup> Three cautions and five penalty notices were issued for these offences. In 2008, officers investigated several instances of non-head shot kangaroo carcasses originating in NSW and being processed in SA.<sup>229</sup> These offences resulted in three cautions, five penalty notices and one prosecution in 2009. This information indicates that in NSW the non-head shot carcasses are identified through investigations from cross-border complaints rather than inspectorial activity.

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<sup>221</sup> Department of Environment, Climate Change and Water, NSW Annual Report 2009, 18.

<sup>222</sup> Department of Environment, Climate Change and Water, NSW Annual Report 2009, 18.

<sup>223</sup> Office of Environment and Heritage, NSW Annual Report 2011, 16.

<sup>224</sup> Department of Environment and Climate Change, NSW Annual Report 2008, 16.

<sup>225</sup> Department of Environment, Climate Change and Water, NSW Annual Report 2009, 18.

<sup>226</sup> Department of Environment, Climate Change and Water, NSW Annual Report 2010, 18.

<sup>227</sup> Department of Environment, Climate Change and Water, NSW Annual Report 2010, 17.

<sup>228</sup> Department of Environment, Climate Change and Water, NSW Annual Report 2009, 18.

<sup>229</sup> Department of Environment and Climate Change, NSW Annual Report 2008, 16.

## **PENALTY INFRINGEMENT NOTICES, WRITTEN CAUTIONS AND LICENCE SUSPENSIONS: WA**

Payment of an Infringement Notice does not lead to the recording of a criminal conviction.<sup>230</sup> An Infringement Notice may be issued when the offence is one that may be dealt with by issue of an Infringement Notice under the legislation; there is prima facie evidence of a legislative breach; a one-off legislative breach has occurred which is of minor impact and which can be remedied easily; a breach is the result of a failure to comply with normal operating procedures or requirements which would have prevented the breach; the facts are apparently indisputable; and it is likely to be a sufficient deterrent.<sup>231</sup> There are various circumstances where an Infringement Notice will not be issued.<sup>232</sup>

If the fine is not paid, the matter may be referred to the Fines Enforcement Registry for collection or action in accordance with the *Fines Penalties and Infringement Notices Enforcement Act 1994* (WA). Written warnings may be given when an administrative, minor or technical breach has occurred; the detrimental impact, or potential detrimental impact, is minor or trivial in nature; the matter is one which can be quickly and simply put right; a written warning would be appropriate in the circumstances.<sup>233</sup>

DEC may suspend or cancel a licence or permit if there has been a contravention of a licence condition; false or misleading information has been provided in or supporting the application to obtain a licence/permit; the person's offence history indicated that the licensee is not a fit and proper person; circumstances exist that pose a serious and unacceptable risk to biodiversity or the environment; there is evidence of a deliberate attempt to gain financial advantage from non-compliance; or the current business address of the holder of the licence or permit is unknown.<sup>234</sup> If DEC is going to suspend or cancel a licence, the alleged offender must have a reasonable opportunity to show cause in writing why the suspension or cancellation should not occur.<sup>235</sup>

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<sup>230</sup> Department of Environment and Conservation, *Enforcement and Prosecution Policy* (May 2008) < <http://www.dec.wa.gov.au/content/view/2991/2126/>> accessed 1 August 2012, 6.

<sup>231</sup> Department of Environment and Conservation, *Enforcement and Prosecution Policy* (May 2008) < <http://www.dec.wa.gov.au/content/view/2991/2126/>> accessed 1 August 2012, 6.

<sup>232</sup> An Infringement Notice will not be issued when large-scale environmental harm or serious impacts on biodiversity have occurred; the extent of the harm to the environment or the impact on biodiversity cannot be assessed immediately; the breach has had a significant impact upon other persons or property; the breach is continuing, and it is not within the alleged offender's ability to remedy quickly; multiple breaches have occurred (unless the breaches are entirely unrelated); another notice, direction or order has been issued by the department to do specific work within a time limit and the limit has not yet expired; or another government department has issued a notice for the same or similar offence in the same period. Department of Environment and Conservation, *Enforcement and Prosecution Policy* (May 2008) < <http://www.dec.wa.gov.au/content/view/2991/2126/>> accessed 1 August 2012, 6.

<sup>233</sup> Department of Environment and Conservation, *Enforcement and Prosecution Policy* (May 2008) < <http://www.dec.wa.gov.au/content/view/2991/2126/>> accessed 1 August 2012, 7. In 2003, a review was conducted of the Enforcement and Prosecution Guidelines. See Brian Robinson, *Review of the Enforcement and Prosecution Guidelines of the Department of Environmental Protection of Western Australia* (for the Minister for Environment and Heritage, 2003) < [http://portal.environment.wa.gov.au/pls/portal/docs/PAGE/DOE\\_ADMIN/PUBLICATION\\_REPOSITORY/BRREVIEW\\_FEB03.PDF](http://portal.environment.wa.gov.au/pls/portal/docs/PAGE/DOE_ADMIN/PUBLICATION_REPOSITORY/BRREVIEW_FEB03.PDF)> accessed 1 August 2012.

<sup>234</sup> Department of Environment and Conservation, *Enforcement and Prosecution Policy* (May 2008) < <http://www.dec.wa.gov.au/content/view/2991/2126/>> accessed 1 August 2012, 8.

<sup>235</sup> Department of Environment and Conservation, *Enforcement and Prosecution Policy* (May 2008) < <http://www.dec.wa.gov.au/content/view/2991/2126/>> accessed 1 August 2012, 8.

In WAaia, a dedicated database is used to record all breaches of the *Wildlife Conservation Act 1950* and *Wildlife Conservation Regulations 1970*.<sup>236</sup> Statistics are available for the period 2003 to 2006 for the total number of letters of warning or caution notices. DEH (WA) has not disclosed the total number of Infringement Notices issued. DEC has not disclosed which offences were subject of the letters of warning or caution notices for this period.

DEH reported that in the period 2003 to 2007, no incidents in relation to the *Animal Welfare Act 2002* had occurred or 'been reported anecdotally'.<sup>237</sup> DEC did not disclose whether any offences relating to the welfare provisions of the Code had been detected. Without such vital data it is impossible to assess what types of offences have been detected by DEC.

The next available enforcement data is from 2010 (**Table 27**). In 2010 DEC reported that in the total number of alleged offences for shooters was 'Not applicable'.<sup>238</sup> It is not clear whether this meant that there were no offences identified or DEC did not consider that offences were applicable to shooters. As discussed above, there were no inspections conducted of shooters during 2009 which indicates that the latter is the case. Furthermore, the earlier examination of the state regulations suggested that the Code may not be enforceable in relation to shooters (see **Section 3.B** above).

In the same year, 11 offences were identified for processors and zero for chillers.<sup>239</sup> Ten of the processor offences related to late monthly returns while one related to an untagged carcass.<sup>240</sup> In each of the 11 offences a caution notice was issued.<sup>241</sup>

**Table 27: Compliance summary for WA: Letters of warning/caution notices and Infringement notices (2003-2010)**

		2003	2004	2005	2006	2007	2008	2009	2010
<b>Letters of warning/caution notices</b>	Shooters	?	?	?	?	?	?	?	0
	Processors	?	?	?	?	?	?	?	11
	Chillers	?	?	?	?	?	?	?	0
	Skin dealers	?	?	?	?	?	?	?	0
	<b>Total</b>	<b>1</b>	<b>4</b>	<b>2</b>	<b>20</b>	<b>?</b>	<b>?</b>	<b>?</b>	<b>11</b>
<b>Infringement notices</b>	Shooter	?	?	?	?	?	?	?	0
	Dealer	?	?	?	?	?	?	?	0
	Corporation	?	?	?	?	?	?	?	0
	<b>Total</b>	<b>?</b>	<b>?</b>	<b>?</b>	<b>?</b>	<b>?</b>	<b>?</b>	<b>?</b>	<b>0</b>
<b>TOTAL</b>		<b>1</b>	<b>4</b>	<b>2</b>	<b>20</b>	<b>?</b>	<b>?</b>	<b>?</b>	<b>0</b>

<sup>236</sup> Department of Environment and Conservation, WA Compliance Report 2007, 6.

<sup>237</sup> Department of Environment and Conservation, WA Compliance Report 2007, 8.

<sup>238</sup> Department of Environment and Conservation, WA Annual Report 2010, 13.

<sup>239</sup> Department of Environment and Conservation, WA Annual Report 2010, 13.

<sup>240</sup> Department of Environment and Conservation, WA Annual Report 2010, 13.

<sup>241</sup> Department of Environment and Conservation, WA Annual Report 2010, 13.

## PENALTY INFRINGEMENT NOTICES, WRITTEN CAUTIONS AND LICENCE SUSPENSIONS: SOUTH AUSTRALIA

Enforcement statistics for SA are available for the period 2007 to 2011. Of the cautions issued during the period, there were few offences that related to animal welfare. In 2008, there were 5 cautions issued for offences relating to the Code.<sup>242</sup> In 2007, there were two offences for failing to comply with the Code.<sup>243</sup> A summary of these cautions is provided in **Table 28**.

**Table 28: Cautions issued in SA by type of offence (2007-2011)**

Offence	2007	2008	2009	2010	2011
Fail to comply with conditions of Authority	-	1	9	1	-
Permit holder to supply returns within 14 days	-	24	5	6	3
Import animal without Permit	-	-	-	-	1
Tag must not be out of date	-	-	-	-	2
Prohibition of carcass without tag	-	-	4	2	-
Tag must be that for which land on which kangaroo is taken is nominated	-	-	2	1	-
Must attach sealed tag immediately after taking kangaroo	-	1	6	2	-
May only take number permitted by permit	-	-	-	1	-
Unused sealed tag must be nominated for land	-	-	-	1	-
May only take from land to which permit applies	-	-	-	1	-
May only take species and number permitted by permit	-	-	-	1	-
Must not sell kangaroo carcass except in particular form	-	-	1	1	-
Must record Schedule 2 info in Field Record Book	-	-	-	4	-
Permit holder only to sell if kangaroo taken pursuant to Code of Practice for Humane Shooting of Kangaroos	-	5	-	-	-
Incorrect information supplied on returns	-	-	3	-	-
Must not take a kangaroo unless in possession of unused seal tag nominated for land	-	-	1	-	-
Offence	2007	2008	2009	2010	2011
Unused sealed tag must be for nominated land	-	3	-	-	-
Commercial use tag must be correct colour	-	1	-	-	-
Permit holder must not contravene National Parks and Wildlife (Wildlife) Regulations 2001	-	1	-	-	-
Failure to specify chiller location	3	-	-	-	-
Failure to comply with Code of Practice for Humane Shooting of Kangaroos	2	-	-	-	-
Failure to maintain accurate harvest records	2	-	-	-	-
<b>Total</b>	<b>7</b>	<b>35</b>	<b>31</b>	<b>21</b>	<b>6</b>

Reporting by DEWNR in the period 2007 to 2011 also reveals the number of penalties issued. In 2009, there was one penalty issued for failure to comply with the Code, with a penalty of \$170.00.<sup>244</sup> In 2008, there were five such offences with a total of \$1050.00 in penalties.<sup>245</sup> A summary of these penalties is outlined in **Table 29**.

<sup>242</sup> Department for Environment and Heritage, SA Annual Harvest Report 2008, 12.

<sup>243</sup> Department for Environment and Heritage, *2007 Annual Kangaroo Harvest Report for South Australia*, 1.

<sup>244</sup> Department for Environment and Heritage, SA Annual Harvest Report 2009, 8.

<sup>245</sup> Department for Environment and Heritage, SA Annual Harvest Report 2008, 12.

**Table 29: Penalties issued in SA by type of offence (2007-2011)**

Offence	2007	2008	2009	2010	2011
Fail to comply with conditions of Authority			11 \$2,530	3 \$720.00	8 \$2160.00
Permit holder to supply returns within 14 days	3 \$160.00 each	5 \$850.00	5 \$520.00	1 \$180.00	2 \$420.00
Prohibition of carcass without tag				2 \$360.00	
Tag must be that for which land on which kangaroo is taken is nominated	1 \$160.00		1 \$170.00		
May only take from land to which permit applies	2 \$160.00 each				
Permit holder only to sell if kangaroo taken pursuant to Code of Practice for Humane Shooting of Kangaroos		5 \$1050.00	1 \$170.00		
Incorrect information supplied on returns			1 \$170.00		
Commercial use tag must be correct colour		1 \$170.00			
Prohibition of carcass without tag			1 \$180.00		
Method of attaching sealed tags to kangaroo when taken for commercial use			1 \$170.00		
Hunt without landowner's written permission		1 \$170.00			
Sealed tags to be attached when kangaroo for personal use		1 \$170.00			
Only permit holder may sell or use skin		1 \$170.00			
Sealed tag attached incorrectly	1 \$480.00 (including 3 breaches @ \$160.00 each)				
Failure to comply with permit conditions	1 \$440.00				
Failure to maintain accurate harvest records	1 x \$160				

In 2011, DENR cancelled the permit of one shooter (field processor) due to 'serious and on-going breaches of the Act.'<sup>246</sup> The shooter subsequently undertook re-accreditation training and their permit was renewed with probationary conditions.<sup>247</sup> There were no permit cancellations in 2010.<sup>248</sup> In 2009, there were no permit cancellations, but two shooters were placed on probation because they had 'committed serious offences and were put on notice that any further offences may result in their licence being cancelled.'<sup>249</sup> In 2008, there were no permit cancellations. However, one shooter was informed that his permit would not be renewed on 1 July 2008 and had court action pending.<sup>250</sup>

<sup>246</sup> Department of Environment and Natural Resources, SA Annual Harvest Report 2011, 10.

<sup>247</sup> Department of Environment and Natural Resources, SA Annual Harvest Report 2011, 10.

<sup>248</sup> Department of Environment and Natural Resources, SA Annual Harvest Report 2010, 10.

<sup>249</sup> Department for Environment and Heritage, SA Annual Harvest Report 2009, 9.

<sup>250</sup> Department for Environment and Heritage, SA Annual Harvest Report 2008, 13.



SA also detected a number of carcasses imported from other states with bullet wounds other than to the head or that were underweight. A number of these resulted in penalty infringement notices. A summary of these offences for carcasses from NSW is provided in **Table 30** and for carcasses from QLD is provided in **Table 31**.

**Table 30: Interstate investigations involving carcasses imported from NSW to SA (2009-2011)**

	2009		2010		2011	
<b>Bullet wounds other than to head</b>	12 carcasses	4 Penalties in relation to 8 carcasses (total \$1200.00)	7 carcasses	1 Penalty (\$300.00)	26 carcasses	10 Penalty Infringement Notices (total \$3000.00)
		No further action on 2 matters		No further action on 2 carcass		No further action in relation to 12 carcasses
		Awaiting advice from NSW on 2 matters		Awaiting advice from NSW on 2 matters and 3 pending interview		4 matters pending interview
<b>Underweight kangaroo carcasses</b>	6 carcasses	1 Penalty in relation to 2 carcasses (\$300) Cautions issued for 4 carcasses				

**Table 31: Interstate investigations involving carcasses imported from QLD to SA (2009-2011)**

	2009		2010		2011	
<b>Bullet wounds other than to the head</b>	3 carcasses		5 carcasses	3 Penalties in relation to 1 carcass (\$300.00)	18 carcasses	9 Penalty Infringement Notices (total \$4500.00) 1 Caution
		No further action – 'QLD legislation not in place'		No further action in relation to 1 carcass		No further action taken in relation to 8 carcasses

## KEY ISSUES ASSOCIATED WITH INFRINGEMENT NOTICES, WRITTEN CAUTIONS AND LICENCE SUSPENSIONS

This section has highlighted a number of issues arising from the way in which government agencies detect and deal with breaches by actors in the kangaroo industry. A preliminary concern is that there is wide variety in the reporting standards adopted by the different state agencies. QLD provides statistics on compliance letters, warning notices and infringement notices issued by type of licensee (shooter, dealer or corporation). Data is also provided on infringement notices by type of offence.

In NSW, there are limited statistics available on warning notices but no data is provided on compliance letters. Data is disclosed in relation to infringement notices by type of offence. In SA, data for penalties and cautions is available. However, for WA very little data is available and 2010 is the only year when data about infringement notices was disclosed. In general, greater availability of data is required in relation to penalty infringement notices and written cautions issued across the states for the commercial kangaroo industry. However, the available data indicates that there are some trends across the states and some key differences. A limited number of infringement notices issues in QLD, NSW and SA relate to the enforcement of the Code.

- In NSW, there were 7 non-head shot carcass offences in 2008, 13 in 2009, 4 in 2010 and 10 in 2011. NSW had a steady rate of detection of non-head shot carcasses, with a moderate peak in 2009 although it is unclear why.
- In SA, there were 5 instances of failure to comply with the Code and in 2009 there was one but none in other years.
- In WA, there were no offences detected in WA for shooters ('Not applicable') or chillers and all of the offences for 2010 concerned processors.
- In QLD, body shot offences were detected with 8 in 2010 and 10 in 2011. The available data from QLD indicates that increased inspections of carcasses may lead to greater detection of offences regarding the Code.

QLD saw a large increase in the number of infringement notices relating to body shot carcasses in 2010 and 2011. The data suggests that there were no offences in 2008 or 2009 detected that related to the Code. However, after DERM introduced its target of inspecting at least 1% of total carcasses and ensuring that at least 10% of those carcasses are subject to a detailed inspection.

WA conducts a very small number of inspections at chillers operating in that state, making the detection of non-compliant carcasses very difficult. It appears that the relatively low rate of inspectorial activity by WA may have had resulted in a lower rate of detection of offences relating to the Code. On the whole, these statistics indicate that an increased level of inspectorial activity across the states would result in a greater number of offences relating to the Code being detected.

None of the states reported offences relating to conditions in the Code relating to the killing of injured kangaroos. This is an unsurprising result because the detection of such offences would require inspections in the field at the point of kill. As discussed above, none of the states conduct regular inspections of shooters.

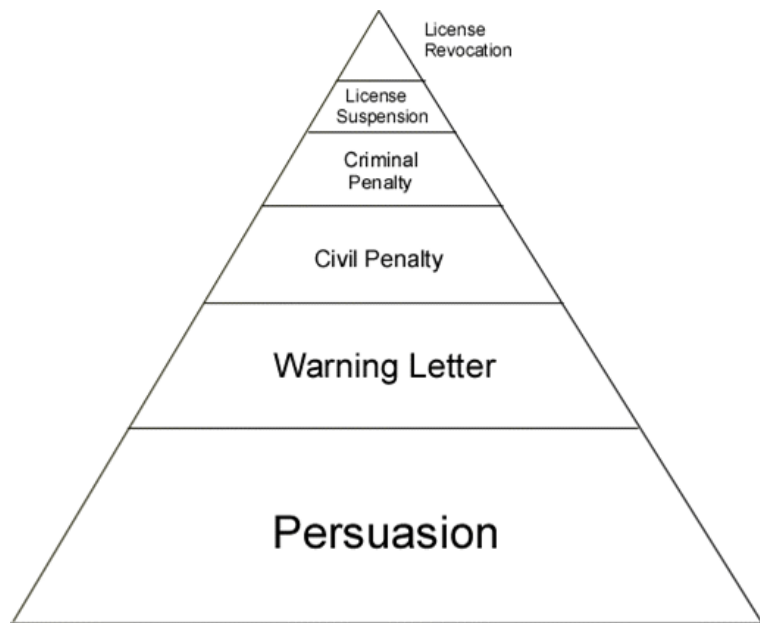
Earlier, it was identified that the maximum penalties for offences relating to the Code are low and vary across the states.<sup>251</sup> The penalties for offences dealt with by way of penalty notice are lower than for matters dealt with by courts (this is standard). As a result, the penalties issued for the offences described in this section are low. However, it is notable that in WA all of the offences identified for the 11 processors were dealt with by caution notice, meaning that no penalty was issued. There is some evidence of more stringent enforcement action being taken in NSW where the licences of shooters have been cancelled due to repeated failure to comply with licence conditions (2008 and 2009).

Finally, Ayres and Braithwaite's regulatory pyramid (**Figure 2**)<sup>252</sup> provides a useful model for assessment of the issues arising around enforcement in the commercial kangaroo industry. Licence suspensions and revocations are at the top of the regulatory pyramid, meaning that they provide the maximum sanctions and should be applied in the worst cases (i.e. where the offender has been deliberately non-compliant). The risk of losing a licence can act as an effective deterrent for wrongful behaviour. However, there have been relatively few licence suspensions against offenders in the commercial kangaroo industry. Regulators should consider strengthening licence suspensions and revocations for deliberate violations of the Code, in addition to enhancing fines and other criminal penalties.

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<sup>251</sup> See Section 4.E.

<sup>252</sup> I Ayres and J Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford University Press, 1992).



**Figure 2: Ayres and Braithwaite's Regulatory Pyramid**

**Key findings: Penalty infringement notices and written cautions**

The majority of offences detected in all states relate to breaches of reporting requirements. QLD had a large increase in the detection of body shot offences after it introduced targets for the inspection of carcasses in late 2009. In 2010, WA only detected offences for processors. It is likely that this reflects the fact that WA conducts very few inspections of chillers but does inspect processors. It appears that inspections may play a critical role in the detection of offences relating to compliance with the Code. The only state to report an offence involving pouch young is QLD. The two offences were dealt with by way of Infringement Notice in 2007. None of the states reported offences relating to conditions on the killing of injured kangaroos. This is an unsurprising result because the detection of such offences would require inspections at the point of kill. There has been relatively few licence suspensions imposed upon offenders in the commercial kangaroo industry. Regulators should consider strengthening licence suspensions and revocations for deliberate violations of the Code, in addition to enhancing fines and other criminal penalties.

### Research Question 6

What are the rates of prosecution, conviction and sentencing for breaches of law in the kangaroo industry?

### THE CONTEXT: PROSECUTIONS OF ANIMAL CRUELTY OFFENCES IN GENERAL

Rates of prosecution for animal cruelty offences are very low, but the conviction rates are relatively high.<sup>253</sup> Animal cruelty prosecutions against commercial enterprises are generally a rare occurrence.<sup>254</sup> Generally, the penalties imposed by courts for animal cruelty have been lenient.<sup>255</sup> The practical effect of such low penalties is that they provide little or no deterrent for wrongful behaviour.<sup>256</sup> Imprisonment is rarely imposed as a penalty, even for aggravated cruelty cases.<sup>257</sup> The imposition of harsh penalties will not result in the prevention of all cases of animal cruelty.<sup>258</sup> However, it is important for the maximum penalty to be imposed in the 'worst cases' in order for these penalties to act as a deterrent.<sup>259</sup> The courts should be influenced by the 'proportionality principle' which requires that the sentence be proportionate to the gravity of the offence<sup>260</sup> but are not doing this at present.

### PROSECUTIONS AND SENTENCING: QUEENSLAND

The laying of charges for breaches of the law in the commercial kangaroo industry is discretionary.<sup>261</sup> The prosecution guidelines require DERM to consider several factors in deciding whether to prosecute, including whether there is a prima facie case. Prosecutions may be the preferred option for unlawful conduct that results in clear commercial gain or where the unlawful conduct was motivated wholly or partly by commercial considerations.<sup>262</sup> Commercial interest is likely to be a factor in breaches of the law in the commercial kangaroo industry which would provide support for the initiation of prosecutions. However, other factors are likely to weigh against prosecution, such as whether the offence is of a 'technical nature'.<sup>263</sup> It is possible for DERM to consider breaches of the

<sup>253</sup> Markham, above n 102, 291-292; Cao, above n 95, 140.

<sup>254</sup> Gregory, above n 1, 186. See e.g. *Clarke v Golden Egg Farm Pty Ltd* (unreported, Hobart Magistrates Court, Case No 36539/92).

<sup>255</sup> Markham, above n 102, 292-295; Cao, above n 98, 139; Sharman, above n 1. See e.g. *Joyce v Visser* [2001] TASSC 116. A similar problem exists in other countries. See e.g. David J Wolfson, 'Beyond the Law: Agribusiness and the Systemic Abuse of Animals Raised for Food or Food Production' (1996) 2 *Animal Law* 123.

On the value of introducing mandatory minimum sentences for animal cruelty offences see Kirsten E Brimer, 'Justice for Dusty: Implementing Mandatory Minimum Sentences for Animal Abusers' (2008-2009) 113 *Penn State Law Review* 649.

<sup>256</sup> Gregory, above n 1, 188. Note that this data is from 1994.

<sup>257</sup> Sharman, above n 1, 333. In NSW from January 1996 and December 2000, only 3% of animal cruelty offenders were imprisoned. In the same period, only 5% of aggravated cruelty cases resulted in imprisonment.

<sup>258</sup> R Lockwood, 'Animal Cruelty and Violence Against Humans: Making the Connection' (1999) 5 *Animal Law* 81.

<sup>259</sup> Sharman, above n 1, 335.

<sup>260</sup> *R v Williscroft, Weston, Woodley & Robinson* [1975] VR 292, 300; *Veen v R* (1979) 143 CLR 458, 490; *Veen v R (No 2)* (1988) 164 CLR 465, 472.

<sup>261</sup> Department of Environment and Resource Management, *Enforcement Guidelines* (October 2010) available at <<http://www.ehp.qld.gov.au/management/pdf/enforcement-guidelines.pdf>> accessed 1 August 2012.

<sup>262</sup> Department of Environment and Resource Management, *Enforcement Guidelines* (October 2010) available at <<http://www.ehp.qld.gov.au/management/pdf/enforcement-guidelines.pdf>> accessed 1 August 2012, 4.

<sup>263</sup> Department of Environment and Resource Management, *Enforcement Guidelines* (October 2010) available at <<http://www.ehp.qld.gov.au/management/pdf/enforcement-guidelines.pdf>> accessed 1 August 2012, 4.

Code (e.g. non-brain shot carcasses) to be of a ‘technical’ nature, particularly since this is the language adopted in the Code.<sup>264</sup> DERM is of the view that court orders will only be sought ‘where other alternatives have failed or where the conduct is of such a serious nature that DERM considers it necessary.’<sup>265</sup> DERM states that the extension of criminal liability for environmental crimes ‘generates increased awareness and responsibility for environmental performance and natural resource management within corporate structures and throughout the community.’<sup>266</sup> DERM’s view provides an interesting example of the problematic nature of framing conduct. The goal of deterrence and public interest considerations are key factors for the decision of whether to prosecute.<sup>267</sup>

In 2006 and 2007, the Queensland Police Service’s Stock and Rural Crime Squad laid a number of charges against persons in the kangaroo industry.<sup>268</sup> The offences included failure to complete returns correctly, failure to send returns in by the required time, and restriction on taking a resource under s 62 of the *Nature Conservation Act 1992*.<sup>269</sup> There were also two instances of a licensed shooter taking macropods within a national park.<sup>270</sup> These cases were heard in 2007 however the outcomes were not reported in the 2007 Annual Report. The matters included offences for failure to complete returns correctly and failure to submit returns within the prescribed period.<sup>271</sup>

In 2009, DERM brought three prosecutions against shooters. In the same year, the Queensland Police Service (Stock and Rural Crime Investigation Squad) brought four prosecutions. DERM did not bring any prosecutions against shooters or dealers in 2010<sup>272</sup> or 2011.<sup>273</sup> The RSPCA Report 2000/2002 revealed that Queensland Parks and Wildlife Service had brought a court case concerning body shooting.<sup>274</sup> However, the case was lost as the kangaroos did not have heads on and it was impossible to determine whether the body shots were follow-up shots.<sup>275</sup> If the heads had been left on the carcasses, this would have aided the detection of neck shots and provided the court with proof of the same.

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<sup>264</sup> See page 20 above.

<sup>265</sup> Department of Environment and Resource Management, *Enforcement Guidelines* (October 2010) available at <<http://www.ehp.qld.gov.au/management/pdf/enforcement-guidelines.pdf>> accessed 1 August 2012, 11.

<sup>266</sup> Department of Environment and Resource Management, *Enforcement Guidelines* (October 2010) available at <<http://www.ehp.qld.gov.au/management/pdf/enforcement-guidelines.pdf>> accessed 1 August 2012, 12.

<sup>267</sup> Department of Environment and Resource Management, *Enforcement Guidelines* (October 2010) available at <<http://www.ehp.qld.gov.au/management/pdf/enforcement-guidelines.pdf>> accessed 1 August 2012, 12-13.

<sup>268</sup> Department of Environment and Water Resources, QLD Annual Report 2006, 8.

<sup>269</sup> Department of Environment and Water Resources, QLD Annual Report 2006, 9.

<sup>270</sup> Department of Environment and Water Resources, QLD Annual Report 2006, 9.

<sup>271</sup> Department of Environment, Heritage and The Arts, QLD Annual Report 2007, 8.

<sup>272</sup> Department of Environment and Resource Management, QLD Annual Report 2010, 22.

<sup>273</sup> Department of Environment and Heritage Protection, QLD Annual Report 2011, 21.

<sup>274</sup> RSPCA Report 2002, Section 4.4.3.1.

<sup>275</sup> RSPCA Report 2002, Section 4.

## PROSECUTIONS AND SENTENCING: NEW SOUTH WALES

In order for OEH to bring a prosecution, the available evidence must establish a prima facie case.<sup>276</sup> The laying of charges is discretionary and the dominant factor to be considered is whether the exercise of that discretion would be in the public interest.<sup>277</sup> A primary aim of the criminalisation of breaches by licence holders is deterrence.<sup>278</sup> As with QLD, factors to be considered include whether the offence is of a 'technical' nature only and the availability and efficacy of any alternatives to prosecution.<sup>279</sup>

The Department of Environment and Climate Change (DECC now OEH) successfully prosecuted a shooter for unlicensed shooting in 2006 and the shooter was fined.<sup>280</sup> In 2007, DECC successfully prosecuted four licensed shooters for offences concerning unlicensed shooting.<sup>281</sup> The penalties imposed ranged from \$400 plus \$300 costs to \$10,000 and \$500 costs.<sup>282</sup> In February 2008, a licensed shooter and chiller operator was successfully prosecuted for unlicensed importation of carcasses and non-compliance storage of carcasses in registered premises and tagging of carcasses.<sup>283</sup> The defendant entered a guilty plea and was fined \$1,280 with \$600 costs.<sup>284</sup>

In 2008, an appeal (*Morris v DECC*)<sup>285</sup> was heard in the Land and Environment Court in 2008 brought by a shooter who had been convicted in 2007. The shooter, Morris, contested the severity of the sentence for two charges associated with his work as a commercial kangaroo shooter on a property near Goodooga. At the appeal, Morris submitted that he had been pressured by landholders to shoot 128 eastern grey kangaroos even though his licence was to shoot red kangaroos only. The offences were killing protected fauna (*National Parks and Wildlife Act 1974*, s 98(2)(a)) and contravene conditions of licence (s 133(4)). Morris pleaded guilty at first instance. He was fined \$8,000 plus \$70 court costs plus \$500 professional costs for the s 98(2)(a) offence and \$2,000 plus \$70 court costs on the s 133(4) charge.

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<sup>276</sup> Office of Environment and Heritage, *OEH Prosecution Guidelines* (February 2012) available at < <http://www.environment.nsw.gov.au/resources/legislation/20120111OEHProsGuide.pdf>> accessed 1 August 2012, 3.

<sup>277</sup> Office of Environment and Heritage, *OEH Prosecution Guidelines* (February 2012) available at < <http://www.environment.nsw.gov.au/resources/legislation/20120111OEHProsGuide.pdf>> accessed 1 August 2012, 4.

<sup>278</sup> Office of Environment and Heritage, *OEH Prosecution Guidelines* (February 2012) available at < <http://www.environment.nsw.gov.au/resources/legislation/20120111OEHProsGuide.pdf>> accessed 1 August 2012, 4.

<sup>279</sup> Office of Environment and Heritage, *OEH Prosecution Guidelines* (February 2012) available at < <http://www.environment.nsw.gov.au/resources/legislation/20120111OEHProsGuide.pdf>> accessed 1 August 2012, 5.

<sup>280</sup> Department of Environment and Climate Change, *2006 Annual Report New South Wales Kangaroo Management Program 2002-2006*, 16.

<sup>281</sup> Department of Environment and Climate Change, *2007 Annual Report New South Wales Commercial Kangaroo Harvest Management Plan 2007-2011* [herein 'NSW Annual Report 2007'], 16.

<sup>282</sup> Department of Environment and Climate Change, *NSW Annual Report 2007*, 16.

<sup>283</sup> Department of Environment and Climate Change, *NSW Annual Report 2007*, 16.

<sup>284</sup> Department of Environment and Climate Change, *NSW Annual Report 2007*, 16.

<sup>285</sup> *Morris v Department of Environment and Climate Change* [2008] NSWLEC 309.

The offence of killing protected fauna had a maximum penalty of \$11,000 plus \$1,100 per kangaroo, totalling \$151,800 and/or up to six months imprisonment. The offence of breach of licence conditions had a maximum penalty of \$11,000. However, as the matter was originally heard by the Local Court, the maximum penalty that could have been imposed was \$22,000 for the two offences. The Local Court could have imposed the maximum term of imprisonment (i.e. 6 months).<sup>286</sup> In the appeal, the Sheanan J noted that the Local Court Magistrate ‘must set the fine having regard to the maximum fine in the legislation, not the jurisdictional maximum.’<sup>287</sup>

Both the Local Court and the Land and Environment Court considered a number of factors in the sentence, including the lack of financial means of the defendant, expression of remorse, an early guilty plea and cooperation with the authorities. However, the Magistrate found that Morris had shown ‘a fairly blatant disregard for the conditions of [his] licence’. The fine imposed for the s 98(2)(a) offence was about three times the potential gain obtained from the offence, but only 5% of the maximum fine. The fine imposed for the s 133(4) offence was about 20% of the maximum. Sheanan J concluded that ‘these are very lenient penalties indeed when viewed in their totality.’<sup>288</sup> Furthermore, Sheanan J observed that it was ‘a random audit/inspection by NPWS officers which uncovered these offences, which are universally regarded as almost impossible to detect’.<sup>289</sup> The Land and Environment Court upheld the orders of the Local Court, stating that a lower penalty would have been ‘manifestly inadequate’.<sup>290</sup>

In 2008, six collaborative compliance operations were conducted between DECC and NSW Police.<sup>291</sup> In two of these operations, the NSW Food Authority was also involved. As a result, four people were prosecuted for offences under NSW legislation.<sup>292</sup> These were primarily for illegal movement of kangaroos across borders and shooting on unauthorised properties.<sup>293</sup> In 2008, DECC also investigated several matters of non-head shot kangaroo carcasses originating in NSW and being processed in SA.<sup>294</sup> One of these cases resulted in a successful prosecution in 2009.

In 2008, DECC prosecuted eight licensed shooters for separate offences relating to unlicensed shooting. All of the prosecutions were successful and the shooters were fined.<sup>295</sup> Penalties ranged from \$400 plus \$300 costs to DECC, to \$5,000 fine and \$400 costs.<sup>296</sup> Two shooters were placed on 12-month good behaviour bonds in addition to the fines.<sup>297</sup>

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<sup>286</sup> See *Criminal Procedure Act 1986* (NSW), s 267.

<sup>287</sup> *Morris v Department of Environment and Climate Change* [2008] NSWLEC 309, [3] citing *R v Doan* [2000] NSWCCA 317 (2000) 50 NSWLR 115.

<sup>288</sup> *Morris v Department of Environment and Climate Change* [2008] NSWLEC 309, [20].

<sup>289</sup> *Morris v Department of Environment and Climate Change* [2008] NSWLEC 309, [12].

<sup>290</sup> *Morris v Department of Environment and Climate Change* [2008] NSWLEC 309, [26].

<sup>291</sup> Department of Environment and Climate Change, NSW Annual Report 2008, 15.

<sup>292</sup> Department of Environment and Climate Change, NSW Annual Report 2008, 15.

<sup>293</sup> Department of Environment and Climate Change, NSW Annual Report 2008, 15.

<sup>294</sup> Department of Environment and Climate Change, NSW Annual Report 2008, 16.

<sup>295</sup> Department of Environment and Climate Change, NSW Annual Report 2008, 17.

<sup>296</sup> Department of Environment and Climate Change, NSW Annual Report 2008, 17.

<sup>297</sup> Department of Environment and Climate Change, NSW Annual Report 2008, 17.



In 2009, one shooters' licence was cancelled 'following repeated failure to comply with licence conditions despite two successful prosecutions and one infringement notice'.<sup>298</sup> The shooter lodged an appeal with the Minister for the Environment, who decided to reinstate the licence.<sup>299</sup> In the same year, DECCW (now OEH) successfully prosecuted two licensed shooters for separate offences.<sup>300</sup> In the first case the offence was harm protected fauna and breach of licence conditions (shooting of kangaroos on unauthorised property). The shooter was fined \$3,500 (two) and \$500 costs to DECCW.<sup>301</sup> In the second case the offence was breach of licence conditions (sale of body-shot kangaroo carcasses). The shooter was fined \$1,200 plus \$500 costs.<sup>302</sup> In addition, NSW Police prosecuted one person in 2009 for kangaroo-related offences and the offence was proven. However, no conviction was recorded and there was no fine.<sup>303</sup>

In 2010, DECCW successfully prosecuted one licensed shooter for offences committed in 2009.<sup>304</sup> These offences were three charges of harm protected fauna and three breaches of licence conditions (failing to supply true and accurate harvester returns). The shooter was fined \$12,000 (\$2,000 for each offence) and ordered to pay \$500 in legal costs to DECCW. One unlicensed person was convicted of four counts of harming protected fauna. This person was placed on an 18-month good behaviour bond for each offence, and ordered to pay \$500 in legal costs to DECCW.

In 2011, OEH prosecuted three licensed shooters for offences committed in 2010 and 2011.<sup>305</sup> One shooter was charged with harming protected fauna and three charges of providing false or misleading information on a licence application. The shooter was found guilty on all charges, fined \$1,400, and ordered to pay \$324 court costs and \$500 professional costs to OEH.<sup>306</sup> The second shooter had three charges of contravening a licence condition (failing to provide true and accurate returns) and found guilty. The shooter was fined \$600, and ordered to pay \$81 in court costs and \$2,000 professional costs to OEH.<sup>307</sup> The third shooter was charged with failing to comply with a condition of a licence (failing to provide true and accurate returns). The shooter was found guilty, fined \$2,000, and ordered to pay \$81 in court costs and \$2,000 professional costs to OEH.<sup>308</sup> In the two latter cases the shooter receiving a penalty notice and electing to have the matter dealt with in court.

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<sup>298</sup> Department of Environment, Climate Change and Water, NSW Annual Report 2009, 18.

<sup>299</sup> Department of Environment, Climate Change and Water, NSW Annual Report 2009, 18.

<sup>300</sup> Department of Environment, Climate Change and Water, NSW Annual Report 2009, 18.

<sup>301</sup> Department of Environment, Climate Change and Water, NSW Annual Report 2009, 18.

<sup>302</sup> Department of Environment, Climate Change and Water, NSW Annual Report 2009, 18.

<sup>303</sup> Department of Environment, Climate Change and Water, NSW Annual Report 2009, 19.

<sup>304</sup> Department of Environment, Climate Change and Water, NSW Annual Report 2010, 18.

<sup>305</sup> Office of Environment and Heritage, NSW Annual Report 2011, 16.

<sup>306</sup> Office of Environment and Heritage, NSW Annual Report 2011, 16.

<sup>307</sup> Office of Environment and Heritage, NSW Annual Report 2011, 16.

<sup>308</sup> Office of Environment and Heritage, NSW Annual Report 2011, 16.

## PROSECUTIONS AND SENTENCING: WESTERN AUSTRALIA

In deciding whether or not to prosecute, DEC must consider the extent to which a prosecution will fulfil the statutory objectives and purpose of the legislation.<sup>309</sup> The 'fundamental objectives' of prosecution are to bring justice to those who commit offences; to punish those who deserve punishment for their offences; to provide expeditious compensation and restitution to victims of crime; to protect or restore the environment and protect the community.<sup>310</sup> There must be sufficient evidence to establish a prima facie case and the prosecution must be in the public interest.<sup>311</sup> There are a number of factors which will support the initiation of prosecution, including the need for punishment and deterrence.<sup>312</sup> A number of factors may weigh against prosecution, including the technical nature of the alleged offence.<sup>313</sup>

WA disclosed the total number of prosecutions for 2003 until 2006, which has ranged from 2 to 4 prosecutions each year. In 2010, there were no prosecutions.<sup>314</sup> WA has provided no further information in relation to prosecutions (see **Table 32**).

**Table 32: Prosecutions in WA (2003-2010)**

Year	2010	2009	2008	2007	2006	2005	2004	2003	Total
Prosecutions	0	?	?	?	4	5	4	2	12

<sup>309</sup> Department of Environment and Conservation, *Enforcement and Prosecution Policy* (May 2008) < <http://www.dec.wa.gov.au/content/view/2991/2126/> accessed 1 August 2012, 9.

<sup>310</sup> Department of Environment and Conservation, *Enforcement and Prosecution Policy* (May 2008) < <http://www.dec.wa.gov.au/content/view/2991/2126/> accessed 1 August 2012, 9.

<sup>311</sup> Department of Environment and Conservation, *Enforcement and Prosecution Policy* (May 2008) < <http://www.dec.wa.gov.au/content/view/2991/2126/> accessed 1 August 2012, 9.

<sup>312</sup> Other factors include the need to maintain the rule of law (i.e. the application of the law without the influence or arbitrary power; the equal accountability of all before the law; and the protection of the rights and freedoms of individuals through the courts); the need to maintain public confidence in basic constitutional institutions, including Parliament and the courts; the entitlement of the state or other person to be awarded compensation if guilt is adjudged; the need to ensure consistency in the application of the law; the circumstances in which the alleged offence was committed. Department of Environment and Conservation, *Enforcement and Prosecution Policy* (May 2008) < <http://www.dec.wa.gov.au/content/view/2991/2126/> accessed 1 August 2012, 10.

<sup>313</sup> Other factors that may weigh against prosecution include: the youth, age, physical or mental health or special infirmity of the victim, alleged offender or witness; the alleged offender's previous history; the staleness of the alleged offence, including delay in the prosecution process, which may be oppressive; the degree of culpability of the alleged offender in connection with the offence; the obsolescence or obscurity of the law; whether a prosecution would be perceived as counterproductive to the interests of justice; the availability or efficacy of any alternatives to prosecution; the lack of prevalence of the alleged offence and need for deterrence, either personal or general; whether the alleged offence is of minimal public concern; the attitude of the victim of an alleged offence to a prosecution; the likely length and expense of the trial; whether the alleged offender has co-operated in the investigation and prosecution of others or has indicated an intention to do so; the likely outcome in the event of a finding of guilt, having regard to the sentencing options available to the court; the likely effect on public order and morale; whether a sentence has already been imposed on the offender which adequately reflects the criminality of the circumstances; whether the alleged offender has already been sentenced for a series of other offences and the likelihood of the imposition of an additional penalty is remote. Department of Environment and Conservation, *Enforcement and Prosecution Policy* (May 2008) < <http://www.dec.wa.gov.au/content/view/2991/2126/> accessed 1 August 2012, 11.

<sup>314</sup> Department of Environment and Conservation, *WA Annual Report 2010*, 13.

## PROSECUTIONS AND SENTENCING: SOUTH AUSTRALIA

In 2011, one shooter (field processor) was prosecuted and convicted for contravening condition or provision of authority.<sup>315</sup> The defendant had submitted 3 carcasses containing bullet wounds other than to the head.<sup>316</sup> The court ordered a total fine/levy/costs of \$685.00.<sup>317</sup> There were no prosecutions in 2010.<sup>318</sup> In 2009, a shooter and his son (an ex-shooter) were jointly convicted for taking protected animals (forty one kangaroos), illegal possession, making false statement and having no written permission from the landholder.<sup>319</sup> In 2008, one shooter had a court action pending and an ex-shooter had a court action pending.<sup>320</sup>

## KEY ISSUES ARISING AROUND PROSECUTIONS

The rates of prosecution vary significantly across the states. QLD did not have any prosecutions in 2010 or 2011. Similarly, there were no prosecutions in WA in 2010. SA reported a case related to the Code in 2011. This case concerned a shooter who had submitted 3 carcasses with a bullet wound other than to the head. The defendant was fined just \$685. However, as was discussed in **Section 4.E**, the maximum penalty for offences in SA is only \$1000 per offence. Nonetheless, the penalties issued in this lone case concerning the Code are substantially lower than the potential \$3000 (\$1000 penalty for each offence).

NSW has had significantly more prosecutions of actors in the commercial kangaroo industry and obtained higher penalties. There has been a relatively consistent rate of prosecutions with 8 in 2008, 2 in 2009, 1 in 2010 and 3 in 2011. Fines have varied from 2007 to 2011 from as low as \$400 and up to \$12,000. The maximum penalty for individuals in NSW is \$11,000 per offence (see **Section 4.E**). However, even these higher penalties are low when compared to the maximum penalties available. Indeed, it was observed by Sheanan J that Morris' fines of \$10,000 (for two offences) were 'very lenient penalties indeed' although Sheanan kept these penalties in place.<sup>321</sup> Furthermore, while some of the offences prosecuted by OEH may have related to the Code (i.e. breach of licence conditions), the available information does not explicitly provide that this was the case.

Finally, an unsuccessful prosecution in QLD reported by the RSPCA in 2000/2002 reveals that maintaining the heads on carcasses would aid the prosecution of non-head shot offences. With the heads on, officers are more easily able to identify carcasses that are not in compliance with the law and prosecutors are more easily able to provide proof to the court of the same.

### Key Findings

Relatively few prosecutions are brought for offences in the commercial kangaroo industry, with some states conducting no prosecutions across years at a time. Furthermore, even where prosecutions have been successful, low fines are generally imposed. Such low penalties are unlikely to act as sufficient deterrent for wrongful behaviour. Prosecutions would be aided by maintaining the heads on carcasses in order to determine whether carcasses have been shot correctly.

<sup>315</sup> Department of Environment and Natural Resources, SA Annual Harvest Report 2011, 10.

<sup>316</sup> Department of Environment and Natural Resources, SA Annual Harvest Report 2011, 10.

<sup>317</sup> Department of Environment and Natural Resources, SA Annual Harvest Report 2011, 10.

<sup>318</sup> Department of Environment and Natural Resources, SA Annual Harvest Report 2010, 10.

<sup>319</sup> Department for Environment and Heritage, SA Annual Harvest Report 2009, 9.

<sup>320</sup> Department for Environment and Heritage, SA Annual Harvest Report 2008, 13.

<sup>321</sup> *Morris v Department of Environment and Climate Change* [2008] NSWLEC 309, [20].

## Section 6: Conclusions

### WHAT INFORMATION IS CURRENTLY AVAILABLE RELATING TO COMPLIANCE AND ENFORCEMENT IN THE COMMERCIAL KANGAROO INDUSTRY?

A limited number of studies have been undertaken on compliance within the commercial kangaroo industry. Most importantly, RSPCA Australia released a report on compliance in 2000/2002 that found that 95.9% of carcasses at processors were shot in the head. By contrast, a study Animal Liberation over 2005 to 2008 found that 40% of carcasses at chillers may have been neck shot based upon where the carcasses head was severed. Both of these studies are limited by the fact that there were no samples at the point of kill.

The best primary sources of information on enforcement in the kangaroo industry are the annual reports prepared by the relevant government agencies. However, there are differences between the state jurisdictions both in terms of availability of data and information provided.

There are a number of difficulties in obtaining data and relevant information about the industry. There is a lack of studies on compliance and enforcement in the industry generally and specifically in relation to practices at the point of kill, and there is limited data/detail provided in the annual reports. In some cases there is no information available (e.g. WA) but it is also difficult to access the details across the states.

### WHAT STANDARDS REGULATE THE KANGAROO INDUSTRY IN RELATION TO ANIMAL WELFARE AND WHAT OFFENCES ARE PRESCRIBED?

The kangaroo industry is regulated by the *National Code of Practice for the Humane Shooting of Kangaroos and Wallabies*. The Code provides national standards for the commercial killing of kangaroos, including adult kangaroos and dependent young. The state regulations should be amended to ensure that the Code is enforceable against all parties in the commercial kangaroo industry to the extent that it is relevant. Furthermore, harsher penalties should be made available under the state regulations to ensure that the penalties will act as a sufficient deterrent for wrongful behaviour.

### WHICH GOVERNMENT AGENCIES ARE RESPONSIBLE FOR COMPLIANCE AND ENFORCEMENT IN THE KANGAROO INDUSTRY?

State government agencies are primarily responsible for compliance and enforcement in the kangaroo industry. The relevant agencies are the Macropod Management Unit of the Department of Environment and Resource Management (QLD), Kangaroo Management Program of the Office of Environment and Heritage (NSW), the Department of Environment and Conservation (WA), and the Department for Environment, Water and Natural Resources (SA). Other entities also have a role in enforcement, including national parks, the police and food safety agencies.

Enforcement by the state environmental departments is undermined by a conflict of interest because these agencies are responsible for both promoting the welfare of kangaroos and supporting the commercial kangaroo industry. An independent department (or departments) should be given responsibility for enforcement, whether on a national or state basis.

## **DO GOVERNMENT AGENCIES CARRY OUT REGULAR AND ADEQUATE INSPECTIONS OF ALL LEVELS OF ACTIVITY IN THE KANGAROO INDUSTRY?**

Government agencies in Australia do not carry out regular and adequate inspections of all levels of activity in the kangaroo industry. Shooters are not regularly inspected in any of the states, making it impossible to ensure compliance with the Code. Without inspections at the point of kill it is impossible for agencies to ensure compliance with the Code's conditions on killing of dependent young and killing of injured kangaroos. Furthermore, there is a very low rate of inspections of chillers in WA.

## **WHAT TYPES OF BREACHES ARE DETECTED BY GOVERNMENT AGENCIES? HOW DO GOVERNMENT AGENCIES DEAL WITH BREACHES?**

The majority of offences detected in all states relate to breaches of reporting requirements. QLD had a large increase in the detection of body shot offences after it introduced targets for the inspection of carcasses in late 2009. In 2010, WA only detected offences for processors. It is likely that this reflects the fact that WA conducts very few inspections of chillers but does inspect processors. It appears that inspections may play a critical role in the detection of offences relating to compliance with the Code. The only state to report an offence involving pouch young is QLD. The two offences were dealt with by way of Infringement Notice in 2007. None of the states reported offences relating to conditions on the killing of injured kangaroos. This is an unsurprising result because the detection of such offences would require inspections at the point of kill. There has been relatively few licence suspensions imposed upon offenders in the commercial kangaroo industry. Regulators should consider strengthening licence suspensions and revocations for deliberate violations of the Code, in addition to enhancing fines and other criminal penalties.

## **WHAT ARE THE RATES OF PROSECUTION, CONVICTION AND SENTENCING FOR BREACHES OF LAW IN THE KANGAROO INDUSTRY?**

Relatively few prosecutions are brought for offences in the commercial kangaroo industry, with some states conducting no prosecutions across years at a time. Furthermore, even where prosecutions have been successful, low fines are generally imposed. Such low penalties are unlikely to act as sufficient deterrent for wrongful behaviour. Prosecutions would be aided by maintaining the heads on carcasses in order to determine whether carcasses have been shot correctly in the brain.

## **HOW DO THE STANDARDS OF COMPLIANCE AND ENFORCEMENT OF THE KANGAROO INDUSTRY COMPARE TO OTHER ANIMAL INDUSTRIES IN AUSTRALIA?**

There are a number of similar issues that arise in relation compliance and enforcement of the commercial kangaroo industry that are found in relation to other animal industries. Rates of inspection of commercial animal industries in Australia are generally low and the same is true for the commercial kangaroo industry. Similarly, there is a low rate of prosecutions for crimes committed in the commercial kangaroo industry and other animal industries in Australia. Another common theme is the issue of conflict of interest that arises for the regulatory bodies responsible for enforcement and compliance.

However, an added challenge facing regulatory authorities with the commercial kangaroo industry is that the killing occurs at a multitude of locations that are decentralised, widespread and continually changing. This situation may be compared to inspections of the slaughter of livestock which is aided by the fact that the killing occurs at permanent centralised locations.

## CAN THE STANDARDS OF COMPLIANCE AND ENFORCEMENT IN THE KANGAROO INDUSTRY BE IMPROVED AND, IF SO, HOW?

Harsher penalties should be made available under the state regulations for licensees who breach the Code. These penalties should include both higher fines and imprisonment in order to more closely reflect the criminal sanctions applicable under state animal protection legislation. While harsh penalties will not result in the prevention of all animal cruelty, higher fines and the risk of imprisonment for serious offences can act as important deterrents for wrongful behaviour. Regulators should consider strengthening licence suspensions and revocations for deliberate violations of the Code, in addition to enhancing fines and other criminal penalties.

Enforcement by the state environmental departments is undermined by a conflict of interest because these agencies are responsible for both promoting the welfare of kangaroos and supporting the commercial kangaroo industry. A federal-based independent department or state-based independent departments should be given responsibility for enforcement. In addition, heads should be maintained on carcasses to aid the detection of offences.

Finally, this report recommends the development and introduction of *National Standards for Reporting of Offences in the Commercial Kangaroo Industry* and *National Standards for Inspections of the Commercial Kangaroo Industry*. The key recommendations of this report are summarised in **Table 33**.

**Table 33: Key recommendations**

The key recommendations made in this report are:	
1.	State regulations should be amended to ensure that the Code is enforceable against all parties in the commercial kangaroo industry.
2.	National standards for the reporting of offences in the commercial kangaroo industry should be developed.
3.	National standards for inspections of the commercial kangaroo industry should be developed.
4.	Regulators should introduce harsher penalties for offences involving breaches of the Code, including higher fines, imprisonment and the strengthening of licence suspensions and revocations.
5.	A federal-based independent department or state-based independent departments should be given responsibility for enforcement as part of a wider reform of enforcement of animal cruelty laws.
6.	Enforcement agencies should regularly inspect shooters at the point of kill. Governments should allocate increased resources to inspections of shooters. Video surveillance technology should be introduced to aid these inspections.
7.	Heads should be retained on carcasses in order to aid the detection and prosecution of cases of non-head shot carcasses.

## APPENDIX: STATE REGULATIONS

### QUEENSLAND

The Commercial Wildlife Harvesting Licences are issued under s 10 of the *Nature Conservation (Wildlife Management) Regulations 2006*. There are various possible offences that are specified in the regulations, which include the *Nature Conservation (Wildlife Management) Regulation 2006* and the *Nature Conservation (Macropod Harvesting) Conservation Plan 1994*. Some of these relate generally to licensees while others relate specifically to shooters or processors. The penalties applicable to the individual offences are set by reference to penalty units. The value of one penalty unit in QLD is \$100.<sup>322</sup> The conditions applicable in QLD are presented in **Tables 34, 35 and 36**.

**Table 34: General conditions on licensees (QLD)**

	Provision	Maximum penalty
Licence holder must keep a record for the licence <sup>323</sup>	Sec 90: <i>Nature Conservation (Wildlife Management) Regulation 2006</i> Sec 117: <i>Nature Conservation (Wildlife Management) Regulation 2006</i>	120 penalty units (equivalent to \$12,000)
Licence holder must give the chief executive a return of operations for the licence <sup>324</sup>	Sec 91: <i>Nature Conservation (Wildlife Management) Regulation 2006</i> Sec 118: <i>Nature Conservation (Wildlife Management) Regulation 2006</i>	120 penalty units (equivalent to \$12,000)
Person must not remove a sex remnant from a dead macropod without the chief executive's written permission	Sec 12: <i>Nature Conservation (Macropod Harvesting) Conservation Plan 1994</i>	80 penalty units (equivalent to \$8,000)
Licence holder must keep a record book. Entries must be made before the end of the day to which the entry relates.	Sec 18: <i>Nature Conservation (Macropod Harvesting) Conservation Plan 1994</i>	

**Table 35: Conditions specific to licensed commercial shooters (QLD)**

	Provision	Maximum penalty
Licence holder may only take the animal:  - from a location that is not visible to a person other than a person also taking an animal from the location; and  - in a way that causes minimal damage or disturbance to other wildlife or the environment; and  - by using an approved method for taking the animal; and  - if the animal is to be taken by killing the animal-by killing the animal in a quick and humane way. <sup>325</sup>	Sec 115(1): <i>Nature Conservation (Wildlife Management) Regulation 2006</i> - (a)  - (b)  - (c)  - (d)	120 penalty units (equivalent to \$12,000)

<sup>322</sup> *Penalties and Sentencing Act 1992* (QLD), sec 5(1).

<sup>323</sup> This section is subject to any provision of a conservation plan about the keeping of a record for a commercial wildlife licence for an animal to which the plan relates. Sec 90(3). This section is subject to any provision of a conservation plan about the keeping of a record for a commercial wildlife harvesting licence for an animal to which the plan relates. Sec 117(3).

<sup>324</sup> This section is subject to any provision of a conservation plan about the giving of a return of operations for a commercial wildlife licence for an animal to which the plan relates. Sec 91(3). This section is subject to any provision of a conservation plan about the giving of a return of operations for a commercial wildlife harvesting licence for an animal to which the plan relates. Sec 118(3).

<sup>325</sup> Subsection (1) is subject to any provision of a conservation plan, or a harvest period notice, about the way the animal may be taken. Sec 115(2). *Nature Conservation (Wildlife Management) Regulation 2006*



Licence holder must keep the carcass of the animal in a way that ensures the animal can be easily identified. <sup>326</sup>	Sec 116: <i>Nature Conservation (Wildlife Management) Regulation 2006</i>	120 penalty units (equivalent to \$12,000)
Person who takes a macropod during a harvest period for the macropod must comply with the conditions stated in the notice declaring the harvest period	Sec 6(3): <i>Nature Conservation (Macropod Harvesting) Conservation Plan 1994</i>	120 penalty units (equivalent to \$12,000)
Licence holder must take a macropod under this plan only in the way specified in the Code. <sup>327</sup>	Sec 10: <i>Nature Conservation (Macropod Harvesting) Conservation Plan 1994</i>	165 penalty units (equivalent to \$16,500)
Licence holder must not muster or trap a macropod for the purpose of taking it.	Sec 10A: <i>Nature Conservation (Macropod Harvesting) Conservation Plan 1994</i>	165 penalty units (equivalent to \$16,500)
Licence holder who takes a macropod must tag the macropod in accordance with Section 11 of the <i>Nature Conservation (Macropod Harvesting) Conservation Plan 1994</i>	Sec 11: <i>Nature Conservation (Macropod Harvesting) Conservation Plan 1994</i>	80 penalty units (equivalent to \$8,000)
Licence holder who takes a macropod may only move the macropod:  - to the licensee's usual place of residence or a place authorised by the chief executive – for storage; or  - to premises specified in a commercial wildlife licence for dead macropods – for sale; or  - to a Queensland Rail depot for consignment to premises specified in a commercial wildlife licence for dead macropods.	Sec 15(2): <i>Nature Conservation (Macropod Harvesting) Conservation Plan 1994</i>	165 penalty units (equivalent to \$16,500)
Licence holder who takes a macropod:  - must not store tagged macropods at a place other than the licensee's usual place of residence without the chief executive's written permission; and  - must sell all skins and carcasses in sequentially tagged lots for each sex and species taken to a person who holds a commercial wildlife licence for dead macropods;  - must ensure all macropods taken for sale are sold or otherwise disposed of before the harvest period for the macropod ends.	Sec 15(3): <i>Nature Conservation (Macropod Harvesting) Conservation Plan 1994</i>	165 penalty units (equivalent to \$16,500)
Licence holder must keep the record book in the person's possession while taking or moving the macropod.	Sec 18: <i>Nature Conservation (Macropod Harvesting) Conservation Plan 1994</i>	
Licence holder must, within the return period, give the chief executive a return of operations for each month of the harvest period.	Sec 20(1): <i>Nature Conservation (Macropod Harvesting) Conservation Plan 1994</i>	120 penalty units (equivalent to \$12,000)

<sup>326</sup> Subsection (1) is subject to any provision of a conservation plan about identifying animals to which the plan relates. Sec 116(2). *Nature Conservation (Wildlife Management) Regulation 2006*

<sup>327</sup> The reference in schedule 1 of the code to 'the muzzle velocity of-975 m/sec (3200 ft/sec)' is taken to be a reference to 'the muzzle velocity of 883 m/sec (2900 ft/sec). Sec 10(3). *Nature Conservation (Macropod Harvesting) Conservation Plan 1994*

**Table 36: Conditions on licensed dealers and processors (QLD)**

Conditions	Provision	Maximum penalty
Licence holder for dead macropods must grade a macropod skin in accordance with Section 14 of the <i>Nature Conservation (Macropod Harvesting) Conservation Plan 1994</i>	Sec 14: <i>Nature Conservation (Macropod Harvesting) Conservation Plan 1994</i>	80 penalty units (equivalent to \$8,000)
Licence holder for dead macropods must not accept a dead macropod:  - taken in contravention of this plan; or  - that is not tagged; or  - that is tagged in contravention of this plan; or  - whose sex remnants have been removed in contravention of this plan.	Sec 17: <i>Nature Conservation (Macropod Harvesting) Conservation Plan 1994</i>	165 penalty units (equivalent to \$16,500)
Licensee for dead macropods must, within the return period, give the chief executive a return of operations for each week of the harvest period.	Sec 20(3): <i>Nature Conservation (Macropod Harvesting) Conservation Plan 1994</i>	120 penalty units (equivalent to \$12,000)

## NEW SOUTH WALES

Section 133(1) of the *National Parks and Wildlife Act 1974* (NSW) provides that a licence issued under Part 9 shall be subject to such conditions and restrictions (if any) as are for the time being prescribed in relation to licences of the class to which the licence belongs. However, section 133(2) provides that the Director-General may attach any conditions or restrictions to a licence upon its issue. Furthermore, section 133(3) provides that the Director-General may, by notice in writing served on the holder of a licence, attach any conditions or restrictions to the licence after its issue; vary or remove any conditions or restrictions attached to the licence; or otherwise vary the licence. The holder of a licence shall not contravene or fail to comply with any condition or restriction attached to the licence: section 133(4).

Thus, there are no specific conditions relating to the Code for licensees in the commercial kangaroo industry specified in the NSW legislation or regulations. Instead, conditions are issued and varied through notice provided to the holder of the licence. Currently, these conditions are set out in the NSW Handbook for Kangaroo Harvesters.<sup>328</sup> The legal status of these conditions is not entirely clear. However, charges that are brought are based upon the view that they are legally enforceable.

The maximum penalty for individuals who contravene s 133(4) is 100 penalty units and in the case of a continuing offence, a further penalty of 10 penalty units for each day the offence continues. In the case of a corporation the maximum is 200 penalty units and 20 penalty units for each day that a continuing offence continues. One penalty unit in NSW amounts to \$110.<sup>329</sup> Regulation 96 of the *National Parks and Wildlife Regulation 2009* provides that penalty notices may be issued with the prescribed amount specified in

<sup>328</sup> Subsection (1) is subject to any provision of a conservation plan about identifying animals to which the plan relates. Sec 116(2). *Nature Conservation (Wildlife Management) Regulation 2006*

<sup>329</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW), sec 17.

Schedule 2. Schedule 2 provides that the penalty for individuals and corporations that breach section 133(4) is \$300. The conditions applicable in NSW are summarised in **Tables 37**,<sup>330</sup> **38**<sup>331</sup> and **39**.<sup>332</sup>

**Table 37: Conditions on Commercial Fauna Harvester's Licences (NSW)**

Conditions	Provision	Maximum penalty
The licensee must carry the licence whilst in possession of any kangaroo carcass. The licensee must produce this licence to an authorised officer of OEH when requested by that officer. <sup>333</sup>	Condition 2: Current conditions on Commercial Fauna Harvester's Licences, NSW Handbook for Kangaroo Harvesters	Individual: 100 penalty units (equivalent to \$11,000) plus 10 penalty units each day if a continuing offence Corporation: 200 penalty units (equivalent to \$22,000) plus 20 penalty units each day if a continuing offence
Licensee must be the holder of a current Firearms Licence, and a current Firearms Accreditation for Kangaroo Harvesters issued by the NSW Firearms Safety and Training Council Ltd	Condition 3: Current conditions on Commercial Fauna Harvester's Licences, NSW Handbook for Kangaroo Harvesters	As above
The licensee must only harm kangaroos in accordance with the Code.	Condition 4: Current conditions on Commercial Fauna Harvester's Licences, NSW Handbook for Kangaroo Harvesters	As above
The licensee must not have in their possession or sell any live kangaroo.	Condition 5: Current conditions on Commercial Fauna Harvester's Licences, NSW Handbook for Kangaroo Harvesters	As above
Where the licensee is the nominated harvester on an Occupier's Licence, the licensee must not supply tags issued with that licence to any other person.	Condition 6: Current conditions on Commercial Fauna Harvester's Licences, NSW Handbook for Kangaroo Harvesters	As above
The licensee must only use tags supplied with an Occupier's Licence on the property to which the Occupier's Licence relates.	Condition 7: Current conditions on Commercial Fauna Harvester's Licences, NSW Handbook for Kangaroo Harvesters	As above
The licensee must only use valid tags for the period for which they have been issued.	Condition 8: Current conditions on Commercial Fauna Harvester's Licences, NSW Handbook for Kangaroo Harvesters	As above
The licensee must only harm the number and species for which the Occupier's Licence has been issued.	Condition 9: Current conditions on Commercial Fauna Harvester's Licences, NSW Handbook for Kangaroo Harvesters	As above
The licensee must permanently fix a commercial tag on any kangaroo carcass immediately the kangaroo is shot. The tag must be fixed adjacent to the rectum. The licensee must not remove the tag or cause the tag to be removed.	Condition 10: Current conditions on Commercial Fauna Harvester's Licences, NSW Handbook for Kangaroo Harvesters	As above
The licensee must not store or sell the carcass of any kangaroo at any location other than a registered premise.	Condition 11: Current conditions on Commercial Fauna Harvester's Licences, NSW Handbook for Kangaroo Harvesters	As above
The licensee must not sell any kangaroo carcass except to the holder of a current Fauna Dealer (Kangaroo) Wholesaler's Licence.	Condition 12: Current conditions on Commercial Fauna Harvester's Licences, NSW Handbook for Kangaroo Harvesters	As above
All kangaroo carcasses that are to be sold in accordance with this licence must be delivered to a registered premise by the licensee. No other person may possess or deliver the carcasses.	Condition 13: Current conditions on Commercial Fauna Harvester's Licences, NSW Handbook for Kangaroo Harvesters	As above
The licensee must not sell a kangaroo carcass that weighs less than: i) 14 kg, from which the heart, liver, lungs, tail, forearms (below elbow) and feet (below	Condition 14: Current conditions on Commercial Fauna Harvester's Licences, NSW Handbook for Kangaroo Harvesters	As above

<sup>330</sup> NSW Handbook, 42-45.

<sup>331</sup> NSW Handbook for Kangaroo Harvesters, 45-46.

<sup>332</sup> NSW Handbook for Kangaroo Harvesters, 47-48.

<sup>333</sup> Currently refers to DECCW not OEH.

tarsals/fibula joint) have been removed; or ii) 15 kg, to which any of the above listed body parts are still attached when weighed at the point of delivery to a registered premise.		
The licensee must not possess or sell any kangaroo carcass containing a bullet wound in the body. Any kangaroo that has been shot in the body must be tagged in accordance with Condition 10 and left in the field.	Condition 15: Current conditions on Commercial Fauna Harvester's Licences, NSW Handbook for Kangaroo Harvesters	As above
For each Occupier's Licence where the licensee is the nominated harvester, the licensee must provide one true and accurate Harvester's Return Form. The form must be provided to the OEH <sup>334</sup> office of issue within 10 days of the end of each month. Where no kangaroos are shot, a NIL return must be provided.	Condition 16: Current conditions on Commercial Fauna Harvester's Licences, NSW Handbook for Kangaroo Harvesters	As above
Within 10 days of the date of expiry of any Occupier's Licence under which the licensee is the nominated harvester, the licensee must return to the OEH <sup>335</sup> office of issue all tags that were issued to the licensee which remain unused and in the possession of the licensee as at that date.	Condition 17: Current conditions on Commercial Fauna Harvester's Licences, NSW Handbook for Kangaroo Harvesters	As above
If a licensee changes their residential address, they must notify the OEH in writing within 21 days of their new address.	Condition 18: Current conditions on Commercial Fauna Harvester's Licences, NSW Handbook for Kangaroo Harvesters	As above

**Table 38: Conditions Harvester Chiller Registrations (NSW)**

Conditions	Provision	Maximum penalty
Only kangaroos shot in accordance with the licensee's Commercial Fauna Harvester's Licence may be consigned to this chiller.	Condition 1: Current conditions on Harvester Chiller Registrations, NSW Handbook for Kangaroo Harvesters	Individual: 100 penalty units (equivalent to \$11,000) plus 10 penalty units each day if a continuing offence Corporation: 200 penalty units (equivalent to \$22,000) plus 20 penalty units each day if a continuing offence
The licensee must only store kangaroo carcasses at a registered premise.	Condition 2: Current conditions on Harvester Chiller Registrations, NSW Handbook for Kangaroo Harvesters	As above
No person other than the licensee may consign kangaroo carcasses to this registered premise.	Condition 3: Current conditions on Harvester Chiller Registrations, NSW Handbook for Kangaroo Harvesters	As above
The licensee must make the registered site open to inspection by an authorised officer of OEH <sup>336</sup> at all times.	Condition 4: Current conditions on Harvester Chiller Registrations, NSW Handbook for Kangaroo Harvesters	As above
The licensee must display in a prominent position at the registered premise the current Commercial Fauna Harvester (Chiller) Registration Certificate.	Condition 5: Current conditions on Harvester Chiller Registrations, NSW Handbook for Kangaroo Harvesters	As above
The licensee must display in a prominent position at the registered premise the current registration number of the premise in letters and numbers not less than 15 cm high.	Condition 6: Current conditions on Harvester Chiller Registrations, NSW Handbook for Kangaroo Harvesters	As above
In relation to record-keeping, the licensee must: <ul style="list-style-type: none"> <li>Record each transaction relating to kangaroo immediately upon completion;</li> </ul>	Condition 7: Current conditions on Harvester Chiller Registrations, NSW Handbook for Kangaroo Harvesters	As above

<sup>334</sup> The Handbook refers to DECCW.

<sup>335</sup> The Handbook refers to DECCW.

<sup>336</sup> The Handbook refers to DECCW.

<ul style="list-style-type: none"> <li>• Keep at each premise registered to the licensee true and accurate records in the form provided by OEH;</li> <li>• Make these records available for inspection by an authorised officer of OEH whenever requested; and</li> <li>• Ensure returns are completed for each week (for the period Sunday to Saturday) and forwarded to OEH. Each return must be received no later than the Friday following the end of each weekly period. If no kangaroos are received or despatched within any week, a NIL return must be lodged.</li> </ul>		
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**Table 39: Conditions on Commercial Occupier's Licences (NSW)**

Conditions	Provision	Maximum penalty
The occupier must not transfer tags from one property to another property. The tags recorded on this licence are valid only for the property specified and for the period specified in this licence.	Condition 1: Current conditions on Commercial Occupier's Licences, NSW Handbook for Kangaroo Harvesters	Individual: 100 penalty units (equivalent to \$11,000) plus 10 penalty units each day if a continuing offence Corporation: 200 penalty units (equivalent to \$22,000) plus 20 penalty units each day if a continuing offence
The occupier must ensure that the harvester receives a copy of this licence, the relevant return forms and the tags issued for this licence.	Condition 2: Current conditions on Commercial Occupier's Licences, NSW Handbook for Kangaroo Harvesters	As above
Within 10 days of the date of expiry of this licence, the occupier must return to the OEH office of issue all tags that were issued to the occupier which remain unused and in the possession of the occupier as at that date.	Condition 3: Current conditions on Commercial Occupier's Licences, NSW Handbook for Kangaroo Harvesters	As above
Only the harvester nominated by the occupier and named on this licence is authorised to harm kangaroo under this licence.	Condition 4: Current conditions on Commercial Occupier's Licences, NSW Handbook for Kangaroo Harvesters	As above
Kangaroo must only be harmed in accordance with the Code.	Condition 5: Current conditions on Commercial Occupier's Licences, NSW Handbook for Kangaroo Harvesters	As above
No more than the number of kangaroos stated on this licence may be harmed. If more than one species is authorised to be harmed, no more than the stated number of each species may be harmed.	Condition 6: Current conditions on Commercial Occupier's Licences, NSW Handbook for Kangaroo Harvesters	As above

## WESTERN AUSTRALIA

The commercial killing of a protected species requires a licence under Regulation 6 of the *Wildlife Conservation Regulations 1970*. The taking of kangaroos in WA is regulated through the licence and tag procedures detailed in the Regulations. Section 15(1) of the *Wildlife Conservation Act 1950* (WA) provides that the Minister may issue licences. Section 15(2B) provides that where the holder of a licence contravenes or fails to comply with any conditions endorsed upon or attached to the licence the Minister may, at any time and from time to time, by notice in writing given to the holder of a licence, cancel the licence or suspend it for such period as the Minister thinks fit.

Section 17A provides that a person shall not process fauna for the purposes of sale; or carry on or cause to be carried on a processing establishment, unless he is the holder of a current licence issued by the Minister under s 15 authorising him to do so; or a licence under the *Fish Resources Management Act 1994* authorising him to do so; or a certificate of exemption from the provisions of this section granted by the Minister. The Act specifies that the applicable penalty for an offence under s 17A is \$1000, and in the case of a continuing offence a further penalty of not less than \$50 or more than \$200 for each day the offence continues after the Minister serves notice of the offence on the offender. For the purposes of ss 15 and 17A, the Minister may issue licences to process the carcasses of kangaroos.<sup>337</sup>

Section 26 of the *Wildlife Conservation Act 1950* (WA) states that any person who contravenes or who fails to comply with any provisions of this Act or the regulations is guilty of an offence against this Act and is liable, if no other penalty be prescribed, to a maximum penalty of \$4000 in the case of a contravention or failure to comply with a provision of the Act and of \$2000 in the case of a contravention or failure to comply with a provision of a regulation, and any licence issued pursuant to the provisions of this Act and held by him may be cancelled.

Regulation 6(3) of the *Wildlife Conservation Regulations 1970* provides that licences to take kangaroos for sale are subject to any condition endorsed on the licence and to the succeeding provisions of this regulation. However, it is unclear what status such conditions have where they are not otherwise incorporated into the regulations. The general conditions applicable in WA are provided in **Tables 40-47**.

**Table 40: General conditions on licensees (WA)**

Conditions	Provision	Maximum penalty
The Executive Director may require holders of licences issued under these regulations to keep records in such form; and to furnish returns in such form and at such intervals as the Executive Director may determine, either generally or in relation to each case or class of case, and the holder of a licence shall comply with any requirement imposed on him.	Reg 24A(1): <i>Wildlife Conservation Regulations 1970</i> (WA)	\$2000
Where a return required to be submitted is the original of a record, the holder of the licence shall keep a duplicate of that record.	Reg 24A(2): <i>Wildlife Conservation Regulations 1970</i> (WA)	\$2000
A licence holder shall ensure that records required to be kept by him are made available for inspection by a wildlife officer on the demand of such officer.	Reg 24A(3): <i>Wildlife Conservation Regulations 1970</i> (WA)	\$2000

**Table 41: Conditions on commercial kangaroo shooter licences (WA)**

Conditions	Provision	Maximum penalty
The licensee shall carry the licence on or about his person whenever he is taking or about to take any fauna to which it relates.	Reg 6(4): <i>Wildlife Conservation Regulations 1970</i> (WA) Condition 8	\$2000
Unless otherwise endorsed as a condition on the licence, the holder shall not take any fauna by any means other than a firearm licensed pursuant to the <i>Firearms Act 1973</i> .	Reg 6(9): <i>Wildlife Conservation Regulations 1970</i> (WA)	\$2000
The licence holder shall not sell, transport or consign any fauna or any part thereof unless he has first duly affixed a tag to each specimen of the fauna or part thereof.	Reg 6(11): <i>Wildlife Conservation Regulations 1970</i> (WA)	\$2000
All shooting is to be carried out in accordance with the provisions of the Code.	Condition 1: Licence to Take Kangaroos for Sale, Management Plan for the Commercial Harvest of Kangaroos in Western	Unclear

<sup>337</sup> *Wildlife Conservation Regulations 1970* (WA), Reg 7.

	Australia 2008-2012	
Only kangaroos that have been killed by a single shot to the brain shall be delivered to a licensed kangaroo processor.	Condition 2: Licence to Take Kangaroos for Sale, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
The licensee must possess a current Firearms Licence that has been issued pursuant to the <i>Firearms Act 1973</i> for a high-powered centrefire rifle of at last .222 calibre.	Condition 3: Licence to Take Kangaroos for Sale, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
Kangaroos may only be taken in accordance with the conditions of the open seas notices published in the Government Gazette.	Condition 4: Licence to Take Kangaroos for Sale, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
The licensee is authorised to deliver kangaroo carcasses to the chiller(s) specified on this licence, registered as being located at the location also specified on this licence. No change to chiller location is to be made unless authorised by the Director General.	Condition 5: Licence to Take Kangaroos for Sale, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
The licensee has approval to shoot on the stations and/or properties specified on or attached to this licence. All written station/property approvals must be submitted to the Director General.	Condition 6: Licence to Take Kangaroos for Sale, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
Returns (Form 3) to be submitted monthly so as to reach the Department of Environment and Conservation no later than the fifteenth (15) day of the following month.	Condition 7: Licence to Take Kangaroos for Sale, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
Only year-specific royalty tags applicable to the term of this licence and of the appropriate colour for the kangaroo species taken shall be attached to each kangaroo carcass.	Condition 9: Licence to Take Kangaroos for Sale, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
Kangaroo carcasses held in a registered chiller unit or forwarded or consigned for sale shall have a royalty tag attached to each carcass. Kangaroos taken pursuant to this licence may only be consigned or sold to persons licensed as a dealer under the Wildlife Conservation Regulations.	Condition 10: Licence to Take Kangaroos for Sale, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear

**Table 42: Conditions on licensed processors (WA)**

Conditions	Provision	Maximum penalty
The holder of a processing licence shall cause the licence to be displayed in a prominent position at his place of business at the address shown on the licence.	Reg 7(3): <i>Wildlife Conservation Regulations 1970</i> (WA)	\$2000
The holder of a processing licence shall not cause or permit any fauna to be processed except at the address shown on the licence.	Reg 7(4): <i>Wildlife Conservation Regulations 1970</i> (WA)	\$2000
The licence holder shall not receive or have in his possession or allow to remain on his premises or take delivery of any fauna or part of any fauna unless it is duly marked with a tag as prescribed.	Reg 7(7): <i>Wildlife Conservation Regulations 1970</i> (WA)	\$2000
The licence holder who removes the skin from the carcass shall ensure that the skin is not taken from the processing establishment unless a tag is duly attached to the skin, or in the case of a cured or dressed skin, the skin is accompanied by the portion of the tag which shows the serial number of the tag which was affixed to the skin when received at the processing establishment.	Reg 7(8): <i>Wildlife Conservation Regulations 1970</i> (WA)	\$2000
The licence holder shall ensure, where it is required by a condition of the licence, that the tag remains attached to the skin, while it remains a whole skin, during all stages of processing.	Reg 7(8a): <i>Wildlife Conservation Regulations 1970</i> (WA)	\$2000
The licence holder: (a) shall not cause or permit a tag affixed to a skin or carcass to be removed therefrom until immediately prior to the commencement of the curing or dressing process; (b) who removes a tag from a skin for the purpose of curing or dressing the skin, shall ensure that the skin is accompanied at all times during the curing or dressing process by the portion of the tag which shows the serial number of the tag which was affixed to the skin when received at the processing establishment; and (c) shall re-affix or cause to be re-affixed to the skin any tag that becomes detached from the skin.	Reg 7(9): <i>Wildlife Conservation Regulations 1970</i> (WA)	\$2000
The licence holder shall not have in his possession or under his control any tag that is not attached to a lawfully taken skin other than: (a) a tag that has been removed from a skin while it is being cured or dressed; or (b) a tag that is being consigned to a licensed professional shooter in a separate sealed parcel.	Reg 7(9a): <i>Wildlife Conservation Regulations 1970</i> (WA)	\$2000
The licence holder shall not have on his premises or under his control any skin or carcass which has not been marked in accordance with these regulations or sell any such skin or carcass or any part of such skin or carcass of any fauna not taken, held or consigned in accordance with the regulations.	Reg 7(11): <i>Wildlife Conservation Regulations 1970</i> (WA)	\$2000
The licensee shall comply with the provisions of the Wildlife Conservation Act and Regulations and any notices in force under this Act and Regulations.	Condition 1: Licence to Process, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
The licensee shall only accept the carcasses of kangaroos that were killed by a single shot to the brain.	Condition 2: Licence to Process, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
The licensee must comply with all relevant local authority by-laws.	Condition 3: Licence to Process, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
Processor returns (Form 2) to be submitted monthly so as to reach the Department of Environment and Conservation no later than the fifteenth (15) day of the following month.	Condition 4: Licence to Process, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
Returns of carcasses received (Form 3), other than those from a registered	Condition 5: Licence to Process,	Unclear



chiller unit for which Forms 3 have already been completed, shall be submitted with the relevant Form 2.	Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	
Records of returns shall be maintained at the processing establishment and be available for inspection by officers of DEC.	Condition 6: Licence to Process, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
This licence shall be displayed in a prominent position in the premises at the property specified on this licence.	Condition 7: Licence to Process, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
Skins shall not be sold to other than licensed skin dealers.	Condition 8: Licence to Process, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear

**Table 43: Conditions on direct dealer's licences (WA)**

Conditions	Provision	Maximum penalty
The licence holder shall not have in his possession or under his control a tag that is not attached to the carcass or skin of fauna; and shall ensure that a tag that becomes detached from the carcass or skin of fauna is re-attached.	Reg 8(3): <i>Wildlife Conservation Regulations 1970</i> (WA)	\$2000
The licence holder shall not take delivery of, transport, permit to remain on his premises or otherwise possess fauna unless it is marked with a tag as prescribed.	Reg 8(4): <i>Wildlife Conservation Regulations 1970</i> (WA)	\$2000

**Table 44: Conditions on licence to deal in fauna carcasses (WA)**

Conditions	Provision	Maximum penalty
The licensee shall comply with the conditions of the Wildlife Conservation Act and Regulations and any notices under this Act and Regulations.	Condition 1: Licence to Deal in Fauna Carcasses, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
No change of chiller location is to be made unless authorised by the Director General or the local District Wildlife Officer.	Condition 2: Licence to Deal in Fauna Carcasses, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
The Director General (through the local District Wildlife Officer) shall be notified immediately of any change of person in charge of a chiller.	Condition 3: Licence to Deal in Fauna Carcasses, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
Returns (Form 3) to be submitted monthly so as to reach the Department of Environment and Conservation no later than the fifteenth (15) day of the following month.	Condition 4: Licence to Deal in Fauna Carcasses, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
This licence shall be displayed in a prominent position in the premises at the property specified on this licence.	Condition 5: Licence to Deal in Fauna Carcasses, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
The licensee must comply with all relevant local authority by-laws.	Condition 6: Licence to Deal in Fauna Carcasses, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear

**Table 45: Conditions on licence to deal in skins (WA)**

Conditions	Provision	Maximum penalty
The licensee may purchase or receive skins of the specified species from persons licensed to take or to sell such skins under the <i>Wildlife Conservation Regulations 1970</i> .	Condition 1: Licence to Deal in Skins, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
This licence shall be displayed in a prominent position in the premises at the property specified on this licence.	Condition 2, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
The licensee shall comply with the provisions of the Wildlife Conservation Act and Regulations and any relevant health and local authority by-laws.	Condition 3, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
The licensee shall only accept the skins of kangaroos that were killed by a single shot to the brain.	Condition 4, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
Skin Dealer's returns (Forms 4 & 5) are to be submitted monthly so as to reach the Department of Environment and Conservation no later than the fifteenth (15) day of the following month.	Condition 5, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
The royalty tag is to remain attached to, or in the case of the tag becoming detached, accompany the skin, until the tanning process has been completed.	Condition 6, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear

**Table 46: Conditions on licensed chillers (WA)**

Conditions	Provision	Maximum penalty
The registered number allocated to the chiller unit must be printed on it in black symbols at least 150 mm high against a yellow background and in a prominent position as directed by the Executive Director.	Reg 8A(1)(b): <i>Wildlife Conservation Regulations 1970</i> (WA)	\$2000
A person must not receive fauna into, or permit fauna to remain in, a chiller unit unless the fauna is marked with a tag as prescribed.	Reg 8A(2): <i>Wildlife Conservation Regulations 1970</i> (WA)	\$2000

**Table 47: Conditions on licence to export or import fauna (WA)**

Conditions	Provision	Maximum penalty
Every consignment of kangaroo products must be accompanied by an export or import licence issued by DEC.	Condition 1: Licence to Export or Import Fauna, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
Licences are valid only for single consignments and for the date(s) specified on the licence.	Condition 2, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
Licences to export kangaroo products will be issued only if the relevant authority in the State or Territory to which the consignment is destined approves the importation of the fauna to that State or Territory.	Condition 3, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear
The consignment specified in the licence is derived from fauna taken in accordance with an approved management program for the species specified.	Condition 4, Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012	Unclear

## SOUTH AUSTRALIA

Section 60J(4) of the *National Parks and Wildlife Act 1972* provides that permits granted are subject to limitations, restrictions or conditions as are imposed by s 60J or by the Minister under s 69 or are prescribed from time to time by regulation. Section 73 provides that a person must not contravene, or fail to comply with, any provision or condition of a proclamation or notice under this Act. The maximum penalty is \$1000 and the expiation fee is \$150.

Regulation 13 of the *National Parks and Wildlife (Kangaroo Harvesting) Regulations 2003* (SA) provides that the provisions of Part 3 of the instrument are, unless otherwise stated in a permit, conditions of a section 60J permit that authorises the taking of a kangaroo. It further provides that the Director may, by written notice given to a permit holder, waive compliance by the permit holder with a condition referred to in this Part. The applicable conditions are provided below in **Table 48**.

**Table 48: Conditions on licensees (SA)**

Conditions	Provision	Max penalty
Permits subject to a condition requiring the holder of the permit to use the methods and observe the procedures set out in the management plan for the killing, the capture and killing and the treatment after capture, of animals of the species to which the permit relates.	Sec 60J(5): <i>National Parks and Wildlife Act 1972</i> (SA)	\$1000
Permit holder may only take a kangaroo pursuant to the permit from land to which a commercial harvesting authority currently applies.	Reg 15: <i>National Parks and Wildlife (Kangaroo Harvesting) Regulations 2003</i> (SA)	\$1000 Expiation fee: \$150
Permit holder may only take kangaroos of a species and number that accord with the commercial harvesting authority applicable to the land from which they are to be taken, and, where kangaroos of a given species have already been taken in accordance with the authority from the land, must not take more than the number of that species that remain to be taken in accordance with the authority.	Reg 16: <i>National Parks and Wildlife (Kangaroo Harvesting) Regulations 2003</i> (SA)	\$1000
Permit holder must not take a kangaroo unless he or she has an unused sealed tag and be nominated to the Director before taking the kangaroo.	Reg 17: <i>National Parks and Wildlife (Kangaroo Harvesting) Regulations 2003</i> (SA)	\$1000
Permit holder must keep the field record book for the purpose of recording the information required by Schedule 2 and must not take a kangaroo unless he or she is in possession of that book.	Reg 18: <i>National Parks and Wildlife (Kangaroo Harvesting) Regulations 2003</i> (SA)	\$1000
Permit holder must, immediately after taking a kangaroo, attach to the skin or carcass an unused sealed tag in accordance with the regulations.	Reg 19: <i>National Parks and Wildlife (Kangaroo Harvesting) Regulations 2003</i> (SA)	\$1000
Permit holder must, immediately after field processing a kangaroo, record the information required by Schedule 2 in his or her field record book.	Reg 20: <i>National Parks and Wildlife (Kangaroo Harvesting) Regulations 2003</i> (SA)	\$1000
Where the permit holder attached to the carcass of a kangaroo a commercial use sealed tag that identifies a kangaroo meat processor nominated to process the carcass, the permit holder must not, without the written approval of the Director, sell or supply the carcass to any person other than that kangaroo meat processor.	Reg 21: <i>National Parks and Wildlife (Kangaroo Harvesting) Regulations 2003</i> (SA)	\$1000
Permit holder must not sell or supply the carcass of a kangaroo unless- (a) the kangaroo was taken in accordance with the Code; and (b) the kangaroo has not suffered damage from a firearm other than- (i) damage to the head; or (ii) damage to the head and such damage as results from a single shot to the heart.	Reg 22: <i>National Parks and Wildlife (Kangaroo Harvesting) Regulations 2003</i> (SA)	\$1000
Permit holder must, no more than 14 days after the last day of each month, provide the Director with a return completed and signed by the permit holder that sets out the information required by Schedule 2.	Reg 23: <i>National Parks and Wildlife (Kangaroo Harvesting) Regulations 2003</i> (SA)	\$1000
Permit holder must keep a copy of each completed return provided to the Director and keep all such copies in a safe and secure place at the permit holder's principal place of residence.	Reg 24: <i>National Parks and Wildlife (Kangaroo Harvesting) Regulations 2003</i> (SA)	\$1000
Where a field record book, return book or copy of a completed return is lost or damaged, the permit holder must notify the Director of that loss or damage before the end of the next working day after the day on which the permit holder becomes aware of it.	Reg 25: <i>National Parks and Wildlife (Kangaroo Harvesting) Regulations 2003</i> (SA)	\$1000
A permit holder who has custody or control of a field record book, return book or copy of a completed return must, if requested by a warden, produce the book or copy for inspection by the warden as soon as practicable after the request is made.	Reg 26: <i>National Parks and Wildlife (Kangaroo Harvesting) Regulations 2003</i> (SA)	\$1000
Where a permit holder who is charged with an offence against the Act or regulations made under the Act has custody or control of a field record book, return book or copy of a completed return that the Director or a warden believes is relevant to the charge, the permit holder must, when requested produce that book or copy to the court that hears the charge.	Reg 27: <i>National Parks and Wildlife (Kangaroo Harvesting) Regulations 2003</i> (SA)	\$1000
Permit holder must not contravene/fail to comply with a requirement of these regulations or the <i>National Parks and Wildlife (Wildlife) Regulations 2001</i> (SA).	Reg 28: <i>National Parks and Wildlife (Kangaroo Harvesting) Regulations 2003</i> (SA)	\$1000

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