

THE ROLE OF INSPECTIONS IN THE COMMERCIAL KANGAROO INDUSTRY

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This article provides an assessment of the enforcement of the law governing commercial kangaroo killing, focusing particularly upon inspectorial practices. Australia's kangaroo industry is the largest commercial kill of land-based wildlife in the world. Professional shooters hunt kangaroos in rural and remote locations at night. Due to the remote and decentralised nature of the killing, the industry presents unique challenges to law enforcement agencies that are responsible for the enforcement of animal welfare standards. This article focuses upon the role that inspections have in detecting offences within the commercial kangaroo industry. It provides a comparative analysis across the states, highlighting key differences in terms of inspectorial practices and the resulting outcomes. A common theme across all of the jurisdictions is that none of the agencies responsible for enforcement regularly conduct inspections of shooters, making it impossible to ensure that these parties are complying with the National Code of Practice for the Humane Shooting of Kangaroos and Wallabies. Recommendations for reform are offered, including stronger compliance policy, higher rates of inspection, increased resourcing and the introduction of alternative methods of inspection.

Think occasionally of the suffering of which you spare yourself the sight.
(Albert Schweitzer)

Introduction

The kangaroo industry is the world's largest commercial kill of land-based wildlife.¹ During the last decade, 28 million kangaroos and wallabies² were commercially killed with a 'by catch' of approximately 8 million joeys.³ The killing occurs in remote locations primarily in the states of Queensland, New South Wales, Western Australia and South Australia.⁴ The animals are wild and shot by professional shooters who generally operate on their own at night.⁵ Carcasses are brought in to a field chiller - a free-standing refrigerated building or, typically, a series of refrigerated re-furnished shipping containers - before being sold on.⁶ Professional shooters are expected to adhere to the *National Code of Practice for the Humane Shooting of Kangaroos and Wallabies* ('Code'),⁷ which is designed to provide welfare standards in kangaroo hunting both with respect to the target animal and

¹ D Lunney, 'A History of the Debate (1948-2009) on the Commercial Harvesting of Kangaroos, with Particular Reference to NSW and the Role of Gordon Grigg' (2010) *Australian Zoologist* 384.

² Information about the total number of kangaroos commercially killed is available from Department of Sustainability, Water, Population and Communities, 'Wild Harvest of Kangaroos and Wallabies' *Wildlife Trade* 8 April 2013 <<http://www.environment.gov.au/biodiversity/wildlife-trade/wild-harvest/index.html>>.

³ Based on R Hacker, S R McLeod, J P Druhan, B Tenhumberg, U Pradhan, 'Kangaroo Management Options in the Murray-Darling Basin' (Murray-Darling Basin Commission Canberra, 2004), 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.

⁴ There is also a small commercial industry in Tasmania.

⁵ D A Thomsen and J Davies. 'Rules, Norms and Strategies of Kangaroo Harvest (2007) 14(2) *Australasian Journal of Environmental Management*.

⁶ South Australian Department of Environment and Heritage, *The Kangaroo Conservation and Management Plan for South Australia 2008-2012* (appendix 2, 2008) <<http://www.environment.gov.au/biodiversity/wildlife-trade/sources/management-plans/pubs/sa-kangaroo-08.pdf>>.

⁷ NSW Department of Environment, Climate Change and Water, Handbook for Kangaroo Harvesters (DECCW [now NSW Office of Environment and Heritage], 2010) <<http://www.environment.nsw.gov.au/resources/nature/kmp/10160Hbkangharvesters.pdf>>.



dependant young.⁸ As hunting activities take place over wide and remote areas, breaches of the *Code* are difficult to police and detect. Consequently, the regime primarily relies on self-regulation and periodic inspections by government agencies. The *Code*, in common with other model codes of conduct, is considered to provide minimum, though effective, animal welfare standards.⁹ Yet, reviewers have criticised the model codes for not being up-dated in a timely manner¹⁰ and for being developed in circumstances of conflict of interest.¹¹ The latter, in particular, can foster regulatory weaknesses leading to lacklustre enforcement mechanisms.¹²

The purpose of this paper is to provide an assessment of enforcement mechanisms of the *Code*, focusing on inspections for detecting breaches by industry participants. Not surprisingly, low levels of inspectorial activity bear a correlation with low rates of detection of offences. However, even with low inspection rates, the data reveals a preponderance of breaches relating to the method by which the animals are killed. As these breaches directly link to the animal welfare objectives of the *Code*, it calls into question the extent to which the objectives of the *Code* are being met. This paper argues that low-key enforcement methods, such as warnings and inspections are not operating to a sufficiently high standard, and this gap in the regime warrants greater government intervention.

The *Code* is based on 'smart and responsive' regulatory models, including the regulatory pyramid developed by Ayres and Braithwaite.¹³ This pyramid recommends escalating penalties, commencing with low-key enforcement processes such as warnings and inspections, leaving prosecutions as a top tier, and last-resort mechanism. Although smart and responsive regulation is useful to foster compliance, failings in the operation of the commercial kangaroo industry dilute this positive influence. In particular, smart and responsive regulation has limits where a regime develops systemic failure.¹⁴ Although there is insufficient evidence to reach such a definitive conclusion with respect to animal welfare outcomes of the commercial kangaroo industry, the data discussed in this paper reveals a trend that warrants close monitoring of the industry.

The discussion commences with a brief overview of smart and responsive regulation in order to provide context for the examination of the legal and regulatory framework that follows. In examining the regulatory framework, the discussion highlights the importance of inspections, not only as an enforcement mechanism but also as a means for governments and stakeholders to appraise the operation of the *Code*. The *Code* itself is voluntary and needs to be made operational within state-based regimes. Some weaknesses in the *Code* stem from the way the *Code* is integrated into regulation at the state level; this regularly happens by incorporation into nature conservation legislation rather than animal protection legislation.¹⁵ The integration of this *Code* within the nature conservation legislation rather than animal protection legislation gives it a somewhat ambiguous status, particularly in relation to how the *Code* relates to animal cruelty offences.¹⁶

In evaluating the effectiveness of enforcement mechanisms, this paper concentrates on the inspectorial priorities of the relevant enforcement agencies. The research accesses available data on inspections to determine the number of inspections and offences detected in each state and, in particular, whether there are differences between the states. There are two steps to the methodology adopted: the first step was to locate and analyse the background material from journal

⁸ *Code*, s 2.4 and s 5.

⁹ Australian Government Department of Agriculture, Fisheries and Forestry, *Australian Animal Welfare Strategy* (DAFF, 2008) 9, 26, 27-9.

¹⁰ Bruce Gemmill, 'Review of the Australian Animal Welfare Strategy' (Australian Government Department of Agriculture, Fisheries and Forestry, 2010), 28.

¹¹ Arnja Dale, 'Animal Welfare Codes and Regulations, The Devil in Disguise' in Peter Sankoff and Steven White (eds), *Animal Law in Australasia: A New Dialogue* (Federation Press, 2009) 174 and 185.

¹² *Ibid.*

¹³ I Ayres and J Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford University Press, 1992).

¹⁴ Robert Baldwin and Julia Black, 'Really Responsive Regulation' (LSE, Law, Society and Economy Working Papers 15/2007, London School of Economics and Political Science Law Department) 11 <<http://www.lse.ac.uk/collections/law/wps/WPS15-2007BlackandBaldwin.pdf>>.

¹⁵ A limited number of studies have been undertaken on compliance within the commercial kangaroo industry. See 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) <<http://www.environment.gov.au/biodiversity/wildlife-trade/publications/kangaroo-report/index.html>> ('RSPCA Australia Report 2002'); Dror Ben-Ami, 'A Shot in the Dark: A Report on Kangaroo Harvesting' (Prepared for Animal Liberation NSW, 2009).

¹⁶ K Boom and D Ben-Ami, 'Kangaroos at a Crossroads: Environmental Law and the Kangaroo Industry' (2013) 30(pt 2) *Environmental and Planning Law Journal*.



articles and published reports; the second step was to analyse the primary materials available, including the *Code*, state legislation, regulations, annual reports of government agencies and other materials.¹⁷

Finally, the paper considers enforcement outcomes in the states, focusing upon penalty infringement notices, warning notices and compliance letters. These actions form the bulk of enforcement activity in relation to the kangaroo industry. In the context of smart and responsive regulation, these methods are regarded as low to mid-range ways of addressing compliance issues. The paper seeks to identify relationships between inspectorial practices and these mid-low level enforcement outcomes. The paper does not assess prosecutions or sentencing outcomes, which are beyond its scope. However, it assesses data collected by the regulatory agencies that indicates that compliance with the *Code* is uncertain. This calls into question whether self-regulation is succeeding and, if not, whether this warrants consideration of new approaches.

Smart regulation and responsive regulation

'Smart regulation' is a regulatory model¹⁸ that emphasises designing regulatory responses that take into account the needs, views and motivations of stakeholders against the backdrop of the 'cultural, economic, and institutional' environment of the regulatory regime.¹⁹ The smart regulatory model incorporates five principles that include using the optimum mix of instruments and institutional combinations;²⁰ the use of 'less interventionist measures';²¹ a pyramid of enforcement starting from persuasions and warnings through to sanctions such as civil and criminal penalties and loss of licence; systems that are also the essence of responsive regulation;²² and harnessing the power of other parties, such as industry associations and pressure groups.²³

'Responsive regulation' utilises a prudent mix of compliance and deterrence and differs from smart regulation because it focuses more on the conduct of the regulated parties and less on a mix of regulatory mechanisms that may be suitable to the regulated.²⁴ In accordance with responsive regulation, governments entrust stakeholders with much of the operation of regimes,²⁵ and it is incumbent on government to negotiate and settle regulatory responses with 'the regulated'.²⁶

The regulatory pyramid is an enforcement mechanism common to both systems that proffers a broad base of soft measures such as education and warning letters, middle-range measures that include inspections and higher-range measures based on penalties including suspension of licences.²⁷ Although the pyramid offers a range of measures, the recommendation is that regulators start at the base rather than the top or middle of the pyramid except in exceptional or life-threatening circumstances.²⁸ Once regulators have tried low-key approaches, the more 'coercive control comes to be seen as more legitimate'.²⁹

Although smart regulation and responsive regulation differ, they share similarities that juxtapose them against command and control systems. The latter creates regimes that comprise rules and regulations determined by government with little input from stakeholders.³⁰ Consequently, command

¹⁷ Terry Hutchinson, *Researching and Writing in Law* (Lawbook Co, 3rd edition, 2010) 35. See also P Ziegler, 'A General Theory of Law as a Paradigm for Legal Research' (1988) 51(September) *The Modern Law Review* 569.

¹⁸ Neil Gunningham, Peter Grabosky and Darren Sinclair, *Smart Regulation: Designing Environmental Policy* (Oxford University Press, 1998).

¹⁹ John S F Wright and Brian Head, 'Reconsidering Regulation and Governance Theory: A Learning Approach', (2009) 33(2) *Law and Policy* 202.

²⁰ Neil Gunningham and Darren Sinclair, 'Designing Smart Regulation', in Bridget Hutter (ed), *A Reader in Environmental Law* (Oxford University Press, 1999) 305, 309.

²¹ *Ibid* 309-10.

²² *Ibid* 311-19.

²³ *Ibid* 319-32; John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford University Press, 2002) 30.

²⁴ John S F Wright and Brian Head, 'Reconsidering Regulation and Governance Theory: A Learning Approach' (2009) 33(2) *Law and Policy* 202.

²⁵ Ayers and J Braithwaite, above n 13, 4; John S F Wright and Brian Head, 'Reconsidering Regulation and Governance Theory: A Learning Approach', (2009) 33(2) *Law and Policy*, 197 at 198.

²⁶ John S F Wright and Brian Head, 'Reconsidering Regulation and Governance Theory: A Learning Approach', (2009) 33(2) *Law and Policy* 198.

²⁷ John Braithwaite, 'The Essence of Responsive Regulation', (2011) 44 *UBC law Review* 476, 480.

²⁸ *Ibid* 482.

²⁹ *Ibid* 486.

³⁰ Wright and Head, above n 26.



and control mechanisms have been described as ‘inflexible and inefficient’.³¹ They do, however, provide uniform and consistent regulatory responses.³²

At the same time, the effectiveness of smart and responsive regulation has limits. For example, the regulatory pyramid focuses on escalation of penalties, yet, in some circumstances, different responses may be more appropriate. These can include investigating systemic issues such as the operation of an industry or exploring the possibility of tightening entry to an industry by increasing licensing requirements.³³ Other critiques of smart and responsive models focus on the fact that the models ‘come into play only after substantive policy goals have been articulated’.³⁴ Thus, the models build on existing frameworks rather than determining what those frameworks should be. If an industry or stakeholder sector is powerful or politically influential, it may obstruct development and reform of policy and regulation.³⁵ Moreover, although, as a rule, threats and deterrents should be used sparingly,³⁶ advice found in the literature also advocates using the ‘big stick’ approach. In these cases, responsive and smart regulation is reinforced by sufficient command and control measures to enhance enforcement of regimes and act as a deterrent:

‘Speak softly and carry a big stick’ is an appropriate aphorism for today’s environmental regulator, but to be effective there must be certainty that the big stick can and will be used and the how, why and where of its use. It is the anticipation of enforcement action that confers the ability to deter.³⁷

Braithwaite notes the ‘big stick’ is important in cases of ‘system capacity overload’ where offenders realise that the likelihood of their being punished is low. In these cases, the fact that the regulator can step in with serious punishments will more likely lead to offenders forming their own compliance plans, which should lead to enhanced compliance.³⁸

The enforcement mechanisms of the *Code* are consistent with the regulatory pyramid model that provides a range of processes, including inspections, penalties, loss of licence and prosecutions that are part of the regulatory framework for the commercial kangaroo industry. However, this does not automatically mean that the regime is meeting its stated objectives.

Legal and regulatory framework

The objectives of the *Code* are clearly set out in terms of animal welfare:

This Code has been produced to ensure that all persons intending to shoot free-living kangaroos or wallabies for commercial purposes undertake the shooting so that the animal is killed in a way that minimises pain and suffering.³⁹

The way that the *Code* achieves this objective is by detailing how shooters accomplish rapid death of the target animals.⁴⁰ To start with, shooters should aim for the brain of the target animal,⁴¹ as this results in a quick, and comparatively painless death. Shooters should also avoid shooting female kangaroos where it is obvious that they have pouch young or dependent young at foot except in special circumstances.⁴² In addition, if a female is shot, then her dependent young must be killed as well. Methods for killing the young vary in accordance with their age, but include decapitation and

³¹ Gunningham and Sinclair, above n 20, 308.

³² Ibid.

³³ Robert Baldwin and Julia Black, ‘Really Responsive Regulation’ (LSE, Law, Society and Economy Working Papers 15/2007, London School of Economics and Political Science Law Department) 11 <<http://www.lse.ac.uk/collections/law/wps/WPS15-2007BlackandBaldwin.pdf>>.

³⁴ Wright and Head, above n 26.

³⁵ Ibid 211.

³⁶ Braithwaite, above n 27, 505.

³⁷ Rob White and Diane Heckenberg, ‘Legislation, Regulatory Models And Approaches To Compliance and Enforcement (Briefing paper 6 (quoting Robinson) ARC Discovery Grant, School of Sociology and Social Work, University of Tasmania, July 2012) 19 <http://www.utas.edu.au/__data/assets/pdf_file/0006/278007/Briefing_Paper_6_-_Laws_Regulation_Enforcement.pdf>.

³⁸ Braithwaite, above n 27, 486.

³⁹ *Code*, s 1.1.

⁴⁰ Ibid s 2.4.

⁴¹ Ibid.

⁴² Ibid



the use of a blow to the base of the skull.⁴³ The *Code* also contains further directives that deal with the type of ammunition to be used and follow-up procedures on multiple kills.⁴⁴

The *Code* itself is not enforceable, which means that it is the responsibility of the states to make the *Code* operational. However, because the states vary in their approaches, the *Code's* enforceability and integration into each state's legal framework varies (Table 1). In particular, the *Code* does not permit the use and sale of carcasses that are not killed in accordance with its provisions, which means the states have some discretion in determining which carcasses will be regarded as *Code*-compliant and which will not be *Code*-compliant. This also means that the states can vary in their regulation across the kangaroo industry supply chain.

Table 1: Enforceability of the Code into State Legislation

State	Codes	Specification	Penalties
QLD	Section 10 of the <i>Nature Conservation (Macropod Harvesting) Conservation Plan</i> 2005 (QLD)	Licensed commercial shooters must only take a macropod in a way specified in the <i>Code</i> .	The maximum penalty for a breach of section 10 is 165 penalty units, which equates to \$16,500. Section 17 provides that licence holders (ie processors and dealers) must not accept a dead macropod taken in contravention of the <i>Plan</i> . Again, the maximum penalty is 165 penalty units. Shooters in QLD must comply with the <i>Code</i> and must not sell carcasses that have a bullet wound in the body.
	Section 11 of the <i>Nature Conservation (Macropod Harvesting) Conservation Plan</i> 2005	A harvest period notice may impose additional conditions with which the licence holder must comply.	The maximum penalty is 165 penalty units.
	Section 7 of the <i>Nature Conservation (Macropod Harvest Period Notice 2012) Notice</i> 2011 (QLD)	The carcass or skin of a macropod taken under a shooters licence during the harvest period must not be sold or given away during the period if the macropod's body has a bullet wound. ⁴⁵	
NSW	Section 133(2) of the <i>National Parks and Wildlife Act</i> 1974 (NSW)	The Director-General may attach any conditions or restrictions to a licence upon its issue.	
	Section 133(3)	The Director-General may 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.	
	Condition 4 of the Current Conditions on Commercial Fauna Harvester Licences ⁴⁶	Licence holders must only harm kangaroos in accordance with the <i>Code</i> .	
	Condition 15 of the Current Conditions on Commercial Fauna Harvester Licences ⁴⁷	The licensee must not possess or sell any kangaroo carcass containing a bullet wound in the body.	
	Section 133(4) of the <i>National Parks and Wildlife Act</i> 1974 (NSW)	A licence holder shall not contravene or fail to comply with any condition or restriction attached to the licence.	The maximum penalty for individuals is 100 penalty units which equates to \$11,000 and if the offence is a continuing one

⁴³ Ibid s 5.

⁴⁴ Ibid s 2.4.

⁴⁵ Section 7(2) provides that in this section body means a part of the macropod's body other than its head. See also *Nature Conservation (Macropod Harvest Period Notice 2010) Notice* 2009, s 8.

⁴⁶ NSW Government, NSW Handbook for Kangaroo Harvesters
<<http://www.environment.nsw.gov.au/resources/nature/kmp/10160Hbkangharvesters.pdf>>.

⁴⁷ Ibid.



State	Codes	Specification	Penalties
			a further 10 penalty units applies for each day that the offence continues. ⁴⁸
SA	Regulation 22 of the <i>National Parks and Wildlife (Kangaroo Harvesting) Regulations 2003 (SA)</i>	Permit holders must not sell or supply a kangaroo carcass unless (a) the kangaroo was taken in accordance with the <i>Code</i> ; 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 is \$1000.
WA	Regulation 6(3) of the <i>Wildlife Conservation Regulations 1970 (WA)</i>	Licences to take kangaroos for sale are subject to any condition endorsed on the licence and to the succeeding provisions of the regulation	
	Condition 1 of the Licence to Take Kangaroos for Sale ⁴⁹	All shooting is to be carried out in accordance with the <i>Code</i> .	
	Condition 2 of the Licence to Take Kangaroos for Sale	Only kangaroos that have been killed by a single shot to the brain shall be delivered to a licensed kangaroo processor.	
	Condition 2 of the Licence to Process	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	The licensee shall only accept the skins of kangaroos that were killed by a single shot to the brain.	
	Section 26 of the <i>Wildlife Conservation Act 1950 (WA)</i>	Any person who contravenes or who fails to comply with provisions of the <i>Act</i> or the regulations is guilty of an offence against the <i>Act</i> and is liable.	If no other penalty is prescribed, to a maximum penalty of \$4000 for a contravention or failure to comply with any provisions of the <i>Act</i> and \$2000 for any contravention or failure to comply with any provision of a regulation.
		Any licence issued pursuant to the provisions of the <i>Act</i> and held by the licensee may be cancelled.	

In Queensland (QLD), for example, the 2005 *Nature Conservation (Macropod Harvesting) Conservation Plan* makes the method of harvesting macropods and the use of carcasses clearly enforceable in accordance with the *Code*.⁵⁰ The position with respect to the sale of carcasses is less clear under New South Wales (NSW) laws. The NSW Director-General of National Parks can impose conditions on commercial fauna harvesting⁵¹ yet there are no conditions on processors to ensure that carcasses comply with the *Code*.⁵² Similarly, in South Australia (SA), while regulations apply to shooters,⁵³ no conditions are placed on dealers or processors to reject carcasses shot other than in accordance with the *Code*. In Western Australia (WA), legislation and regulations do not contain any specific provisions

⁴⁸ In the case of a corporation, the maximum penalty is 200 penalty units and 20 penalty units for each day that a continuing offence continues.

⁴⁹ Department of Environment and Conservation, *Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012* (October 2007).

⁵⁰ *Nature Conservation (Macropod Harvesting) Conservation Plan 2005* (QLD), sections 7 and 10. Sections 111 and 112 of the *Nature Conservation Act*, (Qld) indicates that conservation and management plans have the direct force of legislation.

⁵¹ *National Parks and Wildlife Act 1974* (NSW), sections 133(2) and (3); Conditions 4 and 15 of the Current Conditions on Commercial Fauna Harvester Licences. Latter available from NSW Government, NSW Handbook for Kangaroo Harvesters <<http://www.environment.nsw.gov.au/resources/nature/kmp/10160Hbkangharvesters.pdf>>.

⁵² Conditions are placed upon licensed chillers and occupiers, but not processors. See Condition 1 on Commercial Fauna Harvester's Licence; Condition 5 on Commercial Occupier's Licence.

⁵³ *National Parks and Wildlife (Kangaroo Harvesting) Regulations 2003* (SA), reg 22.



related to the *Code* although regulation 6(3) of the *Wildlife Conservation Regulations 1970* (WA) stipulates that licences to take kangaroos for sale are subject to any condition endorsed on the licence and to the succeeding provisions of the regulation. However, there are no specific provisions that create offences for failure to comply with the licence. At most, the licence can be cancelled in accordance with section 26 of the *Wildlife Conservation Act 1950* (WA).

As already noted, the *Code* is designed to regulate animal welfare within the kangaroo commercial industry based on smart and responsive regulation that is stakeholder-led. Accordingly, the provisions of the *Code* have been developed with input from stakeholders; the enforcement mechanisms follow the tenor of regulatory pyramid model; and the *Code* itself is voluntary, although it is integrated into state regulation by a variety of means. Given that commercial kangaroo hunting occurs in a range of locations, it is not feasible for governments to provide inspectors at the point of kill. The *Code* thus focuses on the conduct of hunters and stakeholders in the supply chain, relying on their compliance. Yet the inconsistent implementation of the *Code* at the state legislative level, as well as across the supply chain, raises issues directly related to the enforceability of the *Code* and the efficacy of the regime that oversees the commercial kangaroo industry. Two issues are particularly significant: first, identification of enforcement agencies and an understanding of their role; and, second, the extent of compliance with the provisions of the *Code*.

Enforcement and compliance

The regulatory pyramid places inspections at the mid-range level, and accepted practice is to start from a lower level, with less coercive measures, such as education and warning letters. However, inspections are an important component of the commercial kangaroo industry as they not only operate at an enforcement level, but also assist with identifying whether the regime is meeting the animal welfare objectives of the *Code*. Accordingly, if inspections are not carried out properly, or indeed not carried out at all, it means that regulators cannot say with certainty whether the *Code* is operating as intended; and, if not, whether this indicates systemic failure or other flaws warranting greater government intervention. The methodology adopted for the research of the next sections of this paper involved obtaining the annual reports of the various state regulatory bodies, some of which were already publicly available. The statistics available in these reports were compiled and analysed individually and comparatively.

Enforcement agencies

Responsibility for enforcement of the relevant laws in relation to the commercial kangaroo industry rests primarily with state government agencies, including:

- The Macropod Management Unit of the Department of Environment and Heritage Protection (DEHP) in QLD;⁵⁴
- The Kangaroo Management Program of the Office of Environment and Heritage (OEH) in NSW;⁵⁵
- The Department of Environment and Conservation (DEC) in Western Australia;⁵⁶ and
- The Department for Environment, Water and Natural Resources (DEWNR) in SA.⁵⁷
- Other bodies involved in enforcement including national parks, police and food safety agencies/departments.

These agencies/departments have multiple interests, including operating a kangaroo management program and ensuring the welfare of kangaroos. The ability and resolve of these agencies to inspect, charge and prosecute offenders may be impeded by conflicts of interest, and much of the focus is upon promoting industry compliance with the *Code*. It is generally difficult to assess the full impact of this conflict of interest, but one result is the development of a reactive regime that largely focuses

⁵⁴ Queensland Commercial Macropod Management Program, *Annual Report 2011* ('QLD Annual Report 2011'), 20.

⁵⁵ NSW Government, '2010 Annual Report' *New South Wales Commercial Kangaroo Harvest Management Plan 2007-2011* ('NSW Annual Report 2010'), 16.

⁵⁶ 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.

⁵⁷ 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>.



on the 'worst cases' without sufficient attention to smaller, more institutionalised wrongful behaviour.⁵⁸ In order for the *Code* to be implemented effectively it requires inspections to determine compliance levels, accompanied by adaptive management processes that are established in a timely manner.

Inspections

Unless otherwise stated, all references to inspection statistics in this section refer to state government annual reports. In QLD, Department of Environment and Heritage Protection (DEHP), formerly known as DERM, conducts inspections of the commercial kangaroo industry with a number of priorities, including ensuring that non-head-shot macropods are not traded and that persons comply with the *Code*.⁵⁹ Inspectorial data is available for dealer site and processing plan inspections in QLD in 2009,⁶⁰ 2010⁶¹ and 2011⁶² (see Tables 2 and 3). In the last quarter of 2009, DEHP undertook an internal review and decided to inspect at least one per cent of total carcasses in 2010.⁶³ DEHP also introduced a target to conduct a detailed inspection of at least ten per cent of the carcasses inspected.⁶⁴ The same targets were used in 2011.⁶⁵ In both 2010 and 2011 DEHP exceeded its targets for inspections (8306 and 10,133 respectively) and detailed inspections (2290 and 1793 respectively).

In NSW, between 2006 to 2011, the Office of Environment and Heritage (OEH) conducted regular inspections of chillers for a number of possible compliance breaches, including non-head shot kangaroos (Table 2).⁶⁶ Shooters' vehicles were inspected for possible compliance breaches, none of which concern the *Code* (Table 2).⁶⁷ OEH claims that inspections were carried out 'continuously' but also discloses that inspections of shooters' vehicles occur 'opportunistically'.⁶⁸ Such inspections mainly occurred when chillers were inspected in the early morning because this generally coincided with deliveries by shooters. OEH did not disclose the number of shooters' vehicles inspected.

The kangaroo management plan for SA (available records from 2008-2011) sets performance measures for inspectorial activities. These measures include inspecting each chiller at least once a year; inspecting medium-high volume chillers at least twice per year; and inspecting each processor at least four times a year (Table 2).⁶⁹ Priorities for compliance activities are set each year and the program is 'reactive to change'.⁷⁰ In 2011, the Department of Environment, Water and Natural Resources (DEWNR) priorities were to further develop its 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

⁵⁸ Ibid; See Magistrate Wallace in *Animal Welfare Authority v Keith William Simpson* (unreported, Darwin Magistrates Court, Magistrate Wallace, 4 September 2008), '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'; as cited in Deborah Cao, *Animal Law in Australia and New Zealand* (Lawbook C, 2010) para 7.470. 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.').

⁵⁹ *QLD Annual Report 2011*, 20; Queensland Commercial Macropod Management Program, *Annual Report 2010* ('*QLD Annual Report 2010*'), 22. Other priorities include: macropods are correctly tagged with 2011 harvest period tag; macropods are tagged with the correct species tag; macropods are tagged with the correct zone tag; shooters produce/carry valid written landholder consent as per licence conditions; and ensure timely, complete and accurate harvest returns from dealers.

⁶⁰ Queensland Commercial Macropod Management Program, *Annual Report 2009* ('*QLD Annual Report 2009*') 20.

⁶¹ *QLD Annual Report 2010*, above n 60, 22.

⁶² *QLD Annual Report 2011*, above n 55, 20.

⁶³ *QLD Annual Report 2010*, above n 60, 22.

⁶⁴ Ibid, 23. The phrase 'detailed inspections' is not defined.

⁶⁵ *QLD Annual Report 2011*, above n 55, 20.

⁶⁶ Office of Environment and Heritage, *New South Wales Commercial Kangaroo Harvest Management Plan 2007-2011: 2011 Annual Report* ('*NSW Annual Report 2011*') 1, 5. Inspections are also carried out to detect the following possible compliance breaches: valid tags; correctly affixed tags; untagged kangaroos; display of premise registration number and licence number for either pet food or human consumption (NSW Food Authority); and the presence of other animal carcasses.

⁶⁷ Ibid 15. OEH inspects for the following possible compliance breaches: appropriate registration through NSW Food Authority (either for human consumption or pet food); correctly set up/fitted out (as per NSW Food Authority Memorandum of Understanding); untagged carcasses; and shooter carrying s 123 licence.

⁶⁸ Ibid 14.

⁶⁹ Department for Environment and Heritage, *The Kangaroo Conservation and Management Plan for South Australia 2008-2012* ('*SA KMP 2008-2012*'), 31.

⁷⁰ Ibid 30.



QLD (Table 2).⁷¹ In 2011, DEWNR inspected chillers for a number of matters, including to ensure that kangaroos were shot in accordance with the *Code*.⁷² DEWNR inspects shooters' vehicles and areas where shooters have operated on an opportunistic basis or as part of investigations.⁷³

Table 2: Dealer site, processing plant, chiller, tannery and shooter inspections (all states, 2003-2011)

State	2003	2004	2005	2006	2007	2008	2009	2010	2011
QLD									
Dealer site inspections	-	-	-	-	-	-	150	74	103
Processing plant inspections	-	-	-	-	-	-	10	13	9
Carcass inspections	-	-	-	-	-	-	-	25,781	21,899
Detailed carcass inspections	-	-	-	-	-	-	-	2290	1793
NSW									
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 no. of chillers	-	-	-	165	260	228	246	150	-
Total no. of inspections	-	-	-	-	788	1100	-	659	490
No. of chillers inspected 5 or more times	-	-	-	-	-	-	60	54 (= ~36%)	-
SA									
No. of chillers	-	-	-	-	-	64	63	67	63
No. of inspections	-	-	-	-	-	45	93	92	55
Mean no. of inspections per chiller	-	-	-	-	-	0.70	1.48	1.37	0.87
No. of processors	-	-	-	-	-	6	6	5	5
Number of inspections	-	-	-	-	-	19	22	23	23
Mean no. of inspections	-	-	-	-	-	3.17	3.67	4.60	4.60

⁷¹ Ibid 10.

⁷² Ibid 8. Chillers were also inspected for the following: 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; and any meat hygiene issues are documented and reported.

⁷³ Ibid 30.



State	2003	2004	2005	2006	2007	2008	2009	2010	2011
No. of tanneries	-	-	-	-	-	4	4	3	2
No. of inspections	-	-	-	-	-	8	8	8	2
Mean no. of inspections	-	-	-	-	-	2.00	2.00	2.67	1.00
WA	-	-	-	-	-	-	-	-	-
Total no. of chillers	-420	-420	-420	-500	504	?	?	574	
Total no. of inspections	?*	?	?	?	?	?	?	5	
Mean no. of inspections per chiller	?	?	?	?	?	?	?	0.0088	-
Other information		Every chiller in the eastern part of the Southern Zone and every chiller in the Central and Northern Zones from Geraldton to Port Hedland was inspected once.		Every chiller in the western part of the Southern Zone and every chiller in the South West Zone were inspected once.		-	-	-	-
Total no. of processors	23	26	25	26	22	21	21	21	
Total no. of inspections	?	?	?	?	?	?	?	21	
Mean no. of inspections per processor	?	?	?	?	?	?	?	0.91	
Other information	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.	-	-	-	
Total no. of shooters	308	314	407	404	339	417	?	433	
Total no. of inspections	?	?	?	?	?	?	?	0	

* ? Data is unavailable or unclear

In 2008 and 2011, DEWNR did not meet its goal of inspecting each chiller at least once a year. In 2008, at least 19 chillers were not inspected, and in 2011 at least eight chillers were not inspected. In addition, it is difficult to conceive how DEWNR would have met its goal of inspecting medium-high volume chillers at least twice during these years because this would result in additional chillers not being inspected. The target was not met in 2008 or 2009 when the mean number of inspections was less than four times. In 2010 and 2011, DEWNR met its target for inspecting processors at least four times a year. DEWNR has not disclosed the number of inspections conducted of shooters or the areas where shooters operate.

The WA Department of Environment and Conservation (DEC) has not disclosed its priorities for inspections of the commercial kangaroo industry in WA (Table 2). Data is limited for WA, with an



Annual Report available for 2010⁷⁴ and a Compliance Report available from 2007.⁷⁵ These sources reveal that no chillers were inspected in WA during 2003, 2005 or 2007. There is no report of inspections of shooters' vehicles. No statistics are available for 2008 or 2009. In 2010, DEC conducted inspections of processors and chillers but did not appear to inspect skin dealers or shooters.⁷⁶ It is difficult to assess the data set for WA because of limited data availability and differences in reporting (the earlier data is limited to specific areas whereas the 2010 data is not). However, there is a summary of inspections conducted of chillers. The rate of inspections of processors in WA has fallen from 2003-2007 to 2010. In 2003-2007, every processor was inspected at least once; yet, in 2010, two processors were not inspected at all.

Quality of inspections

Enforcement agencies do not regularly inspect shooters to ensure compliance with the *Code*, particularly with respect to agencies in QLD and WA, which do not conduct any inspections of shooters. Although DEWNR (SA) and OEH (NSW) claim to inspect shooters on an opportunistic basis, these bodies do not report the number of inspections carried out. A further problem is that inspections of shooters in NSW do not relate to the conditions of the *Code* but instead relate to other matters.

The general lack of inspections of shooters by the enforcement agencies means that these agencies cannot ensure that shooters are complying with the *Code*. Inspections of shooters are an essential precondition to ensure compliance and the detection of offences, particularly in relation to the killing of dependent young and injured kangaroos. This is already a major problem, as the RSPCA discovered in 2002 when their research identified that shooters have difficulty capturing and killing young at foot.⁷⁷ As already discussed, the *Code* specifies the way in which young kangaroos need to be killed. In the light of the RSPCA report, it is significant that no training is required in methods for killing dependent young prior to the granting of a shooter's licence, and that such killing occurs without any direct monitoring.⁷⁸ From an animal welfare perspective, these two points raise critical matters regarding the supervision and enforcement of animal welfare perspectives in kangaroo shooting. This also gives rise to a wider issue regarding the role of monitoring, a process which is consistent with smart and responsive regulation. As Wright and Head have noted, monitoring can inform whether regulation, in this case the *Code*, is operating as intended, and whether more or less government intervention is required.⁷⁹

The available data reveals substantial variability across the states in relation to the inspection of chillers (Table 3). Inspection of chillers is important because it provides information on whether the kangaroos have been shot in accordance with the *Code*. In 2010, DEWNR (SA) conducted 92 inspections of 67 chillers and OEH (NSW) conducted 659 inspections of 150 chillers. In contrast, DEC (WA) conducted just five inspections of 574 chillers. Thus, while chillers in SA and NSW were inspected at least once in that year (and in NSW much more), the majority of chillers in WA were not inspected at all. Therefore, chillers in WA are subject to substantially less inspectorial activity than similar enterprises in other states. This situation greatly increases the risk that offences in the commercial kangaroo industry will not be detected in WA. This risk is amplified by the fact that DEC did not inspect shooters during 2010.

In 2010, DEWNR conducted 19 inspections of the six processors operating in SA (Table 3). In contrast, DEC (WA) conducted 21 inspections of 23 processors. Thus, the rate of inspections of processors was

⁷⁴ Department of Environment and Conservation, *2010 Annual Report on the Commercial Harvest of Kangaroos in Western Australia* ('WA Annual Report 2010'). (March 2011).

⁷⁵ 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* ('WA Compliance Report 2007') (March 2007).

⁷⁶ *WA Annual Report 2010*, above n 75, 13.

⁷⁷ 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' ('RSPCA Australia Report 2002') (Prepared for Environment Australia, July 2002) s 5.2 <<http://www.environment.gov.au/biodiversity/wildlife-trade/publications/kangaroo-report/index.html>>.

⁷⁸ For an analysis of the animal welfare outcomes of the *Code*, 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.

⁷⁹ Ayers and Braithwaite above n 13, 4; Wright and Head, above n 19, 198.



much lower in WA than in SA. This situation again creates a high risk of offences not being detected. The risk is further amplified by the fact that DEC did not inspect shooters and had a very low rate of inspections of chillers. A summary of the variation of inspectorial activities for shooters, chillers and processors across the states for 2010 is provided in Table 4.

Only DERM (QLD) disclosed the total number of carcasses inspected. In 2010, 3.1 per cent of carcasses were inspected in QLD. Although this result exceeds DERM's target, it also means that 96.9 per cent of carcasses were not inspected at all during that year. However, this disclosure provides an insight into the level of inspectorial activity and should be disclosed by the other states to aid analysis of enforcement.

Enforcement outcomes and regulatory models: Penalty infringement notices, warning notices and compliance letters

This part of the paper evaluates enforcement outcomes by examining infringement notices, warning notices and compliance letters in QLD, NSW, SA and WA. As already discussed, inspections which would ordinarily detect breaches of the *Code* are conducted at a low rate. Nevertheless, the data still reveals that substantial breaches stem from non-adherence to the welfare outcomes of the *Code* that focus on the method by which the animals are killed.

In QLD, DERM issues Infringement Notices, compliance letters and warning notices. These forms of enforcement actions are used for 'common breaches of the law where the impacts are not serious enough for court action'.⁸⁰ The payment of an Infringement Notice does not result in the recording of a criminal conviction.⁸¹ Officers have discretion as to whether to serve an Infringement Notice but must take into account the intention of the statute to penalise breaches.⁸² DERM may also cancel or suspend licences given the meeting of certain conditions.⁸³ DERM has issued compliance letters, warning notices and Infringement Notices to offenders in the commercial kangaroo industry Table 3.

Table 3: Compliance letters, warning notices and infringement notices in QLD (2006-2011)

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

* ? - denotes data that is unavailable or unclear

The majority of breaches detected by DERM have related to reporting requirements. However, there have been some offences detected that relate to the *Code* (Table 11). In 2004, there was one 'minor investigation' of carcasses that were non-head shot but the outcome of this investigation was not disclosed.⁸⁴ In 2007, there were two instances of 'clear breaches of the code of practice with regard

⁸⁰ Department of Environment and Resource Management, *Enforcement Guidelines* (October 2010) 9 <<http://www.ehp.qld.gov.au/management/pdf/enforcement-guidelines.pdf>>.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid 14. These conditions are: when the breach of licence conditions has had serious consequences to 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 (eg accumulation of demerit points).

⁸⁴ Environmental Protection Agency/Queensland Parks and Wildlife Service, *Final Harvest Report for Commercially Taken Macropod in Queensland for 2004* (2004), 10.



to pouch young, investigated and dealt with by Infringement Notice'.⁸⁵ This is the only report of such offences across any of the states.

In 2010 there was an increase in the number of offences detected that related to the *Code*. In 2010, eight of the Infringement Notices were incidents of 'body shot' carcasses⁸⁶ (Table 4). In 2011, there were ten Infringement Notices for the sale of carcasses with a body shot wound.⁸⁷ As was discussed above, DERM decided to inspect at least one per cent of carcasses in 2010. It appears that this increased level of inspectorial activity resulted in a higher rate of detection of body shot offences. It is also telling, that from Tables 5 and 7 - which deal with infringement notices, and tables 10 and 11 - which deal with interstate investigations, cases relating to killing, other than in accordance with the *Code*, represent numerically the biggest proportion of offences and incidents listed. It is also significant that these offences and occurrences go to the core of the animal welfare objectives of the *Code*. These objectives are predicated on the humane killing of kangaroos and their young and the data set out below provides sufficient material that justifies further investigation into the effectiveness of this aspect of the *Code*.

Table 4: Infringement notices in QLD(2008-2011)

Offence	2008	2009	2010	2011
Fail to comply with weight requirements in Harvest Period Notice	4: Penalties of \$300 each.	?	-	-
Fail to ensure information in return is complete and accurate/legible/completed in ink	2: Penalties of \$300 each.	?	-	-
Fail to give return for each period/by prescribed time	9: Penalties ranging from \$300- \$400 each.	?	-	2
Fail to keep record/return book at prescribed place for prescribed time	1: Penalties of \$300 each.	?	-	-
Fail to properly attach tag immediately after macropod is dressed	3: Penalties of \$300 each.	?	7	4
Fail to record relevant particulars within prescribed period	2: Penalties of \$300 each.	?	-	-
Relevant authority or identification not available for inspection	1: Penalties of \$150 each.	?	-	-
Interfere with tag attached to wildlife without lawful authority	1: Penalties of \$225 each	?	-	-
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
TOTAL	23 \$12,877.60	23	28	21

In 2008, DERM disclosed the types of offences detected that results in compliance letters or warning notices (Table 6). None of these directly related to the *Code*.

OEH (NSW) issues Infringement Notices for minor, one-off breaches of criminal provisions and the payment of these fines does not result in the recording of a criminal conviction.⁸⁸ The majority of offences detected in NSW relate to reporting requirements, but there are some offences that relate to the *Code* (Table 6). From 2008 to 2010 there were offences for non-head shot carcasses. Data on

⁸⁵ Department of Environment, Heritage and The Arts, *Wildlife Trade Management Plan for Export - Commercially Harvested Macropods* (2007) [herein 'QLD Annual Report 2007'], 9.

⁸⁶ *QLD Annual Report 2010*, above n 60, 22.

⁸⁷ *QLD Annual Report 2011*, above n 55, 21.

⁸⁸ Office of Environment and Heritage, *OEH Prosecution Guidelines* (February 2012) 11 <<http://www.environment.nsw.gov.au/resources/legislation/20120111OEHProsGuide.pdf>>.



warning notices and compliance letters is not available except for 2010, when 26 warning notices were issued, and 2011, with 21 written cautions issued.

Table 5: Compliance letters and warning notices by type of offence in QLD (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
TOTAL	11	37

Table 6: Infringement Notices in NSW (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	-
Sub-Total	65	89	51	19
Use unregistered chiller	1	-	3	-
Exceed number authorised	-	1	3	1
Unauthorised species	-	3	3	-
Non-head shot	7	13	4	10
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
TOTAL	91	118	82	49

* ? - denotes data that is unavailable or unclear

OEH also made a number of licence cancellations over this period. In 2008, the licences of seven shooters were cancelled.⁸⁹ One of these cancellations related to a repeated failure to comply with licence conditions.⁹⁰ In 2009, the licence of one shooter was cancelled due to repeated failure to comply with licence conditions.⁹¹ The shooter lodged an appeal with the Minister for the

⁸⁹ Department of Environment and Climate Change, *New South Wales Commercial Kangaroo Harvest Management Plan 2007-2011: 2008 Annual Report* ('NSW Annual Report 2008') 16.

⁹⁰ Ibid.

⁹¹ Department of Environment and Climate Change, *New South Wales Commercial Kangaroo Harvest Management Plan 2007-2011* ('NSW Annual Report 2009'), 18.



Environment, who decided to reinstate the licence.⁹² In 2010 and 2011 there were no licence cancellations.⁹³

Enforcement data is available for SA for the period 2007 to 2011. In 2008, there were five cautions issued for offences relating to the *Code*.⁹⁴ In 2007, there were two offences for failing to comply with the *Code*.⁹⁵ There were no similar offences in the other years (Table 7).

Table 7: Cautions in SA (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	-	-
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	-	-	-	-
TOTAL	7	35	31	21	6

In 2008, there were five offences subject to penalties that related to the *Code*.⁹⁶ In 2009, there was one such offence.⁹⁷ There were no similar offences in the other years (Table 8).

In 2008, there were no permit cancellations but one shooter was informed that his permit would not be renewed on 1 July 2008 and had court action pending.⁹⁸ In 2009, there were no permit cancellations; however, two shooters were placed on probation on the basis that they had 'committed serious offences and were put on notice that any further offences may result in their licence being cancelled'.⁹⁹ In 2010, there were no permit cancellations.¹⁰⁰ In 2011, DEWNR cancelled

⁹² Ibid.

⁹³ NSW Annual Report 2011, above n 67, 16.

⁹⁴ Department for Environment and Heritage, *South Australian Commercial Kangaroo Harvest Report for 2008: Annual Report* ('SA Annual Harvest Report 2008'), 12.

⁹⁵ Department for Environment and Heritage, *2007 Annual Kangaroo Harvest Report for South Australia* ('SA Annual Harvest Report 2007'), 1.

⁹⁶ SA Annual Harvest Report 2008, above n 95, 12.

⁹⁷ Department for Environment and Heritage, *2009 Commercial Kangaroo Harvest Report for South Australia* ('SA Annual Harvest Report 2009'), 8.

⁹⁸ SA Annual Harvest Report 2008, above n 95, 13.

⁹⁹ SA Annual Harvest Report 2009, above n 98, 9.

¹⁰⁰ Department of Environment and Natural Resources, *2010 Commercial Kangaroo Harvest Report for South Australia* ('SA Annual Harvest Report 2010'), 10.



the permit of one shooter on the basis of 'serious and on-going breaches of the Act'.¹⁰¹ The shooter subsequently undertook re-accreditation training and the permit was renewed with probationary conditions.¹⁰²

Table 8: Penalties in SA (2007-2011)

Offence	2007	2008	2009	2010	2011
Fail to comply with conditions of Authority	-	-	11 \$2,530	3 \$720	8 \$216
Permit holder to supply returns within 14 days	3 \$160 each	5 \$850	5 \$520	1 \$180	2 \$420
Prohibition of carcass without tag	-	-	-	2 \$360	-
Tag must be that for which land on which kangaroo is taken is nominated	1 \$160	-	1 \$170	-	-
May only take from land to which permit applies	2 \$160 each	-	-	-	-
Permit holder only to sell if kangaroo taken pursuant to Code of Practice for humane shooting of kangaroos	-	5 \$1050	1 \$170	-	-
Incorrect information supplied on returns	-	-	1 \$170	-	-
Commercial use tag must be correct colour	-	1 \$170	-	-	-
Prohibition of carcass without tag	-	-	1 \$180	-	-
Method of attaching sealed tags to kangaroo when taken for commercial use	-	-	1 \$170	-	-
Hunt without landowner's written permission	-	1 \$170	-	-	-
Sealed tags to be attached when kangaroo for personal use	-	1 \$170	-	-	-
Only permit holder may sell or use skin	-	1 \$170	-	-	-
Sealed tag attached incorrectly	1 \$480 (including 3 breaches @ \$160 each)	-	-	-	-
Failure to comply with permit conditions	1 \$440	-	-	-	-
Failure to maintain accurate harvest records	1 \$160	-	-	-	-

DEWNR detected a number of carcasses imported during 2009, 2010 and 2011 that had bullet wounds other than to the head or that were underweight. These carcasses came from NSW (Table 10) and QLD (Table 11).

As in the other states, Penalty Infringement Notices are issued in WA for minor breaches and their payment does not result in the recording of a criminal conviction.¹⁰³ DEC also has the power to cancel licences.¹⁰⁴ DEC has not disclosed the total number of Penalty Infringement Notices issued. In 2003 to 2007, DEC did not disclose whether any offences relating to the *Code* were detected. The lack of such disclosure makes it impossible to assess the types of offences detected in WA. DEC reported on the detection of offences in 2010 (Table 11) and reported that the total number of alleged offences for shooters was 'Not Applicable'.¹⁰⁵ It is not clear what this statement means and whether there were no offences detected or whether DEC did not consider that offences were applicable to shooters. This statement may reflect a lack of enforceability of the conditions placed upon shooter licences in WA (as was discussed earlier). In 2010, DEC did not issue any Penalty Infringement Notices. There were 11 offences detected in 2010 for processors and zero for chillers. All of these offences were dealt with

¹⁰¹ Department of Environment and Natural Resources, *2011 Commercial Kangaroo Harvest Report for South Australia* ('SA Annual Harvest Report 2011'), 10.

¹⁰² *Ibid*, 10.

¹⁰³ Department of Environment and Conservation, *Enforcement and Prosecution Policy* (May 2008) <<http://www.dec.wa.gov.au/content/view/full/2991/2126/>>.

¹⁰⁴ *Ibid*.

¹⁰⁵ *WA Annual Report 2010*, above n 75, 13.



by a caution notice.¹⁰⁶ Ten of these concerned late monthly returns and one related to an untagged carcass.¹⁰⁷

Table 9: Interstate investigations involving carcasses imported from NSW to SA (2009-2011)

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

Table 10: Interstate investigations involving carcasses imported from QLS to SA (2009-2011)

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

Table 11: Letters of warning/caution notices and Infringement Notices in WA (2003-2010)

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

QLD saw a large increase in the number of Infringement Notices relating to body shot carcasses in 2010 and 2011 when no such offences were detected in 2008 or 2009. Although one conclusion that may be drawn is that no offences actually occurred in 2008 and 2009, the increase in detection coincided with improved targets that DERM had introduced for the inspection of carcasses. This indicates that increased inspections are very likely to lead to greater detection of body shot carcass offences. In an analogous manner, there is only one report of an offence detected relating to dependent young (QLD) and no reports of offences relating to the killing of injured kangaroos. These results are not surprising given that detection of these types of offences would require inspections at the point of kill, yet no enforcement agencies regularly carry out such inspections.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.



A similar situation may be occurring in WA where no offences were detected for shooters ('Not applicable') or chillers. DEC conducts a very low rate of inspections of chillers which make the detection of offences difficult. Therefore, the statistics from WA that indicate a low level of offences, are likely to emanate from its low level of inspectorial activity that results in the detection of fewer or no offences.

Conclusion

Regulatory theory based on smart and responsive regulation advocates the use of low-key enforcement and compliance methods in preference to penalties and suspensions. This philosophy is premised on the understanding that when stakeholders are involved in the design and implementation of regimes they are more likely to comply. Accordingly, regulators should invoke top-tier regulation only when necessary. This paper shows the results of an analysis of regulatory structures and state inspection reports carried out to assess how well the various state regulatory regimes operate on the kangaroo industry.

Overall, the legal and regulatory framework governing the killing of kangaroos could be improved to support more effective enforcement of the *Code*. In particular, the *Code* could be better integrated into state regulations to ensure that its provisions are enforceable in relation to all persons participating in the commercial kangaroo industry to the extent that these provisions are relevant. Furthermore, state departments charged with regulating the *Code* have multiple interests, including operating a kangaroo management program and ensuring the welfare of kangaroos. The ability and resolve of these agencies to inspect, charge and prosecute offenders may be impeded by conflicts of interest.

In order for the *Code* to be implemented effectively, it requires inspections to determine compliance levels. It is telling that increased inspections of shooters by DEHP (QLD) resulted in greater detections of offences. In contrast, the WA regime is particularly laggard in the detection of offences. Although the shooter's licences issued in WA are subject to conditions concerning the *Code*, the enforceability of these conditions is unclear. An extremely low rate of inspections of chillers (relative to other states) further exacerbates the matter, resulting in an inability to determine whether offences have occurred. It is clear that the laws and inspectorial practices of WA need to be reformed to align better with the standards set in other states.

The lack of consistent and uniform inspections presents the most significant gap in the regulatory activity within the kangaroo industry. Ten years ago (and less) there were no regular inspections (at least not on record). Inspection implementation has improved in recent years but variability of inspections within and amongst states is high and there is a lack of regular inspections of shooters. Gunningham et al¹⁰⁸ recognise the complexity involved in implementing Codes of Practice and note that highly interventionist approaches require substantial administrative resources, are generally less flexible and rate badly in terms of political acceptability. However, the *Code* may be operating under, what Braithwaite also describes as, 'system capacity overload'.¹⁰⁹ In such situations offenders realise that the likelihood of their being punished is low. Although soft approaches, such as compliance plans, can still be effective in these instances, the regulated need to be aware that the regulator will step in with more serious punishments.¹¹⁰

Command and control measures accompanied by enhanced methods of inspection can close the gap in regulatory activity. Top-tier regulatory responses, such as licence suspensions and revocations, should be applied in the worst cases, where the offender has been deliberately non-compliant or a repeat offender. Control measures such as minimum inspection rates can be included in the *Code* to ensure regular and uniform inspection rates. The inspection capability could be further enhanced by video surveillance mounted on shooters trucks - as has been suggested as a means to monitor the welfare of animals in the live export trade in overseas abattoirs¹¹¹ - and a greater number of inspections of carcasses at chillers.

¹⁰⁸ N Gunningham, 'Assessing the role of voluntary environment management arrangements in agriculture' (2007) 6(3) *International Journal of Agricultural Resources Governance and Ecology* 296.

¹⁰⁹ Braithwaite, above n 27, 486.

¹¹⁰ *Ibid.*

¹¹¹ Labor MPs Melissa Parke and Steve Georganas have both demanded video surveillance in overseas abattoirs in relation to the live export trade. Greens MP Cate Faehrmann recently announced a Greens Bill for mandatory



Welfare outcomes may also be improved by formulating the integration of the *Code* into state laws with more focus on its objective of animal welfare. The authors suggest a number of measures such as that the granting of shooting licenses should be conditional on improved training programmes for humane killing; there should be effective selection and elimination processes in place for the granting of licences; the *Code* should be enforceable, with an emphasis on maintaining welfare standards; and, finally, the *Code's* 'soft' measures should be underpinned by sufficient penalties to foster compliance.

The current regime comprises of a mix of smart/responsive regulation but is undermined by the low inspection rate and underpinned by a weak command and control base. Consequently, the *Code* lacks the 'big stick', that is so important to the responsive regulatory pyramid. Overall, the legal and regulatory framework governing the killing of kangaroos could be better integrated into state regulations to ensure that its provisions are enforceable in a consistent and equivalent manner. This remains a pressing issue that requires serious attention to ensure better welfare outcomes for Australia's kangaroos that are killed for commercial purposes.

CCTV surveillance in NSW abattoirs to guarantee that incidents of unacceptable cruelty can be prevented or prosecuted in the future.

