



Chapter 6: Review of legislation and regulations relating to feral camel management (summary)

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List of shortened forms

DKCRC	Desert Knowledge Cooperative Research Centre
NRM	Natural Resource Management
NGO	Non-government organisation

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1. Introduction

Camel management in Australia is a complicated issue. This is not only because of a lack of available information on camels themselves including population, movements, biology, and impacts, but also due to the economic, social, cultural, and legislative/regulatory aspects of camel management.

In order to assess the legislative/regulatory aspects of camel management, in February 2007 the Desert Knowledge CRC (DKCRC) sought expressions of interest from suitably qualified and experienced individuals, firms, consortia, NGOs, and research centres to ‘review legislation and regulations about feral camel management in Australia’. The responsibilities, as outlined in the Terms of Reference for the intended work, were as follows:

1. Prepare a detailed timeline and outline of the review report, to be approved by DKCRC Camel Project Steering Committee prior to signing a contract
2. Write a review report. The report will be approximately 25–30 pages (or 10 000 to 15 000 words) in length and should include a review of the current legislation, regulations, and policies at both federal and state/territory levels relating to consumptive and non-consumptive management approaches to feral camel management.

The review will include current legislative documentation on feral animals, and will be particularly focused on feral camels, Aboriginal land management, firearm management, pet meat, game meat, international animal trading (live export, meat export), animal welfare, movement including transportation, and other related documentation.

3. The review should highlight similarities and differences between the relevant jurisdictions – Commonwealth, Queensland (Qld), New South Wales (NSW), South Australia (SA), Western Australia (WA), and the Northern Territory (NT) governments – and identify the changes that would be required for future cross-jurisdictional cooperative actions.
4. Create a database that includes the outlined information with hyperlinks to the full text of all documents reviewed.

The contract was awarded to Charles Darwin University.

2. The review

The legislative review report is in Carey et al. (2008). The analysis focused on eight areas of legislation and regulations relating to feral camel management: ownership, legal obligation to control, legal obligations for welfare, access, welfare over-riding other access restrictions, culling, processing, fencing, and transport.

3. Main points of discussion in Carey et al. (2008) in respect of issues that might impede effective cross-jurisdictional management of feral camels

3.1 Who has ownership of feral camels?

As a general proposition a feral camel is not owned by either the landowner or the government – the Crown – unless state or territory legislation provides otherwise. This occurs in two limited situations outlined in the Key Provisions for NSW and SA only. However, feral camels can become the property of someone when killed or taken, used, and/or domesticated by the person claiming title to the animal. The taking of possession of the camel can occur by capturing it, confining it, or killing it and thus

acquiring rights to the use of the animal. Relevant state and territory legislation can prescribe that feral camels cannot be taken or used without a relevant licence or permit, but only WA and Qld appear to do this.

The parliaments of Australia have the power to change the common law and regulate how feral camels can be owned, taken, and used. If the ownership of feral camels were made uniform through legislation in Australia regardless of the land title on which a camel was found, then the basis could be set for a clear line of responsibility for the management of feral camels. However, there may be strong resistance by government to suggest that feral camels become the property of the Crown in the absolute sense, because it would shift the responsibility away from private landholders under pest type legislation. While the Crown could then legislate uniform provisions to allow access to all land titles to control and manage feral camels in cooperation and partnership with landholders, and set in place a uniform licensing system for their farming and use, there would need to be an appropriate balance between the impost on tax payers and the benefits to landholders.

3.2 Who has responsibility to control feral camels? What are a landholder's legal obligations to control camels?

There is a variety of legislative provisions that provide a potential basis for a landholder's obligation to manage feral camels on his or her land.

Perhaps unsurprisingly, unless a statutory agreement has been entered into the most definite source of a landholder's obligation to manage feral animals generally is the relevant feral animal control legislation of each jurisdiction.

There is considerable variation between the jurisdictions in terms of the way in which the relevant legislation provides for feral animal control and the status attributed to feral camels under that legislation.

Occupiers of freehold land, leasehold land, and certain Aboriginal land in WA are obliged to destroy, prevent, and eradicate feral camels on or in relation to their land. In all other jurisdictions, obligations for landholders to manage feral camels will only arise where:

- a landholder has a statutory duty of care for the land, and in the circumstances it is reasonable that the duty extends to the management of feral camels
- conditions attaching to a lease of Crown land require the control or management of feral camels
- a statutory authority, such as a minister, pastoral board, or soil commissioner has issued a direction requiring the landholder to manage feral camels on his or her land
- land is required to be managed in accordance with a management plan that provides for the management of feral camels
- the landholder has entered into a statutory agreement which creates obligations for the management of feral camels.

3.3 What animal welfare obligations do land managers have on their land?

Legislation relating to the welfare of animals is reasonably consistent across the jurisdictions where feral camels are found. Feral camels are afforded the same welfare obligations as other animals inasmuch as they should not be mistreated, abused, tortured, or injured. However, apart from this and some exceptions noted above related to the notification of disease in animals 'at large' on properties, there is no general animal welfare responsibility that applies to feral camels existing on a landowner's property. A landowner is not responsible for the welfare of feral camels on their property unless there is a deliberate action taken to harm the animal (subject to the exceptions noted below) or to bring it under

control in some way. Where a feral camel is taken into the control of a person, however temporarily, welfare legislation treats that animal in the same way as if it were owned. The full responsibility of care rests with the person in charge.

Exemptions exist in all states where harm to a feral camel is seen to be done in response to feral animal control, eradication or management of a pest, and/or in response to compliance with another act that operates within that jurisdiction. A licence/permit is required where compliance with the relevant state or territory animal welfare act or other state or territory act necessitates holding of such.

Where a practice inflicts harm on a feral camel, in some states (WA and SA) defence of the harm lies in the use of an accepted code of practice and, where the harm is carried out in a humane way, in minimising pain and alleviating suffering as quickly as possible. In other states and territories, the legislation and concurrent regulations identify specifically what sorts of actions cannot be carried out on camels as well as the instances when actions of harm are sanctioned and the conditions of those sanctions. In most cases the sanction is carried out as a result of either a veterinary professional's assessment or through appeal to provisions in another act of legislation in that jurisdiction.

3.4 What regulations govern access to land where camels exist?

The access provisions of the legislation in each jurisdiction are reasonably consistent, save for variations in drafting and terminology. There are, however, some key differences, which are outlined below.

The key differences with respect to government officials accessing land for control of feral camels are that firstly, in NSW and Qld feral camels are not a declared pest and so access cannot be achieved in that manner. Secondly, in SA access for these purposes is subject to an objection by traditional owners, and the relevant Minister has the final say after such an objection is made as to whether access will be permitted. There may also be one important exception to this situation with respect to Aboriginal land in the NT and whether it can be subject to a declaration as to the control of feral camels. There is a question mark over whether the law in the Territory Parks and Wildlife Conservation Act providing for the declaration of a feral animal control area under section 48 of that Act by the relevant NT Minister is able to operate concurrently with the NT Land Rights Act and thereby authorise entry to Aboriginal land without a permit. Carey et al. (2008) offer no concluded view about this situation. It is a question of some legal complexity.

3.5 Does animal welfare legislation apply to override requirements for gaining access in certain circumstances?

Animal welfare legislation is relatively consistent across the state and territory jurisdictions in providing a means by which inspectors and police officers may legally access land. However, the legislation clearly has not been drafted with feral animals roaming at large on property in mind.

Despite this fact powers of entry under animal welfare legislation may enable access to land to address welfare concerns for feral camels in certain circumstances.

In this respect a key impediment is likely to arise where, as in the case of SA and WA, legislation conditions an inspector's or police officer's ability to legally access land on a reasonable belief that an animal welfare offence has been committed. Unless an owner/occupier of land either takes deliberate action to harm a feral camel or bring it under their control, they cannot be said to have committed an animal welfare offence merely by failing to act to protect the welfare of feral camels roaming at large on their land. On this basis, it may be that an inspector or police officer does not have power of entry for the purpose of addressing concerns over the welfare of feral camels that are not under the landowner's control.

3.6 How does welfare legislation affect the fencing of waterholes to exclude camels, the shooting of camels, and the licensing of shooters?

Most of the legislation in this area is relatively consistent, particularly the biological control legislation. Animal welfare legislation, even though there is variable legislative recognition of the recommended codes of practice, is also underpinned by the same humanitarian principles across the country. As a result it is likely that the fencing of waterholes to exclude camels as a deliberate control mechanism, however desirable, would run foul of welfare legislation. It remains to be determined whether some waterholes could be protected because of the cultural significance to Aboriginal people.

There are, however, some important differences between jurisdictions. There are also areas of legislation that will make it difficult for control operations to move smoothly across borders. These relate to the fencing and protection of waterholes, firearm registration, cross-border camel control, and licensing of interstate shooters.

The legal capacity to protect waterholes from camels is unclear where those waterholes are of Aboriginal heritage value. While, in all jurisdictions, fencing waterholes to exclude camels that otherwise have no access to water would be contrary to animal welfare legislation regardless of whether those jurisdictions recognise the relevant code of practice, it is possible that these strictures are overridden by the requirement to protect heritage values. It is more likely, however, that both sets of laws apply, meaning alternative water sources would need to be provided.

The legislation of individual states and territories makes it difficult to move firearms across borders. While it may be possible for regulatory agencies to trace firearms on a national database, each firearm must have a place of storage in a single jurisdiction. Only in SA, and possibly in Qld and WA, is it possible to use firearms registered elsewhere. In all other jurisdictions only firearms registered in that state or territory can be used. Welfare and code of practice stipulations mean that class C or D firearms have to be used to shoot feral camels. These classes of firearms have the power to kill a camel outright, whereas it is unlikely that firearms of lower calibre would kill camels easily.

There are many small inconsistencies across jurisdictional boundaries with respect to licensing, but the most serious constraint is on visiting shooters, even if they have licences. Such shooters can usually take out temporary licences for short periods. For longer periods they need to be resident, or be intending to be resident, and would have to wait 28 days for approval after application. While cross-border controls are technically feasible for licensed shooters, there are substantial administrative handicaps. This is particularly true in the NT, where notification of cross-border movement has to be given within two days of arrival.

3.7 What regulations apply to the processing of camels?

For the most part the meat industry is well coordinated across the country, but there is one difference that could make the use of camel meat more likely than it is at the moment. Only in the NT do feral camels have to be brought to an abattoir for slaughter. Given there are now so few abattoirs in the NT, this places a substantial constraint on the use of wild camels for meat fit for human consumption. Everywhere else they can be killed and used as game meat, although, in Qld, there is no post-mortem observation or disposition written.

3.8 What regulations apply to the transport/movement of live camels?

The animal welfare legislation analysed in the context of keeping and transporting camels is fairly consistent across the jurisdictions in promoting a duty of care towards the humane treatment of camels. The only discrepancy is the obligation to refer to relevant codes of practice. However national standards for the transport of livestock are applicable across all jurisdictions and take precedence over the codes. The live export of camels is regulated by Commonwealth export legislation and national transport standards, which are consistent across the country.

The disparity of camel classification between jurisdictions (from declared species to stock) may have a significant impact on the national adoption of camels in a domestic or pastoral context. In WA, with its strict quarantine provisions, explicit legislation clarifies the responsibilities of a camel owner in terms of introducing and domesticating a declared species. In NSW the legislation regards the camel as an animal of low risk to be kept in private collections or as an exhibit and passed only between licensees. Meanwhile in the NT, Qld, and SA, which have a history of working with camels as stock, either camels are already being integrated into pastoral leases, or pastoral experience and pragmatism are guiding management principles.

In terms of transporting camels domestically by rail, road, air, or sea, there are minor differences between the types of travel documents required. Most of the jurisdictions, except SA, insist on the issue of a waybill for identification and traceback purposes and a clean bill of health for disease control. This is consistent with transportation procedures for other stock species and is not considered a hindrance to their movement.

The main obstacle to transportation of camels is the high cost. The *Model Code of Practice for the Welfare of Animals: The Camel* stipulates that due to their height, camels can be transported on single deck vehicles only. In effect this doubles the cost of transporting camels as opposed to other stock which can be loaded on double-decker vehicles, or which can fit more animals per deck.

4. Recommendations of the review

Carey et al. (2008) made the following recommendations to ameliorate identified legal impediments to the cross-jurisdictional management of feral camels:

1. Ownership
 - The clear market failure that arises from the inadequacy of current legislation with respect to ownership of feral camels be corrected, potentially by identifying explicitly that ownership is vested in the Crown.
2. Legal obligations to control
 - A consistent set of requirements be developed for all arid zone tenures that spells out the circumstances under which landholders are obliged to control camels as a duty of care to public land and where that responsibility falls to the government.
3. Legal obligations for welfare
 - Although inconsistencies exist across borders, the general provisions of welfare legislation are consistent and no recommendations were made for change.
4. Access
 - In relation to the question as to whether feral animal control areas apply in the NT to Aboriginal land under the NT Land Rights Act, that negotiations take place to settle the question and possibly include camels in the definition of wildlife so that section 73(c) of the Act can apply.
5. Welfare overriding other access restrictions
 - No recommendations for change.
6. Culling
 - Identify the circumstances under which protection of water sources by fencing would be acceptable, particularly in relation to important Aboriginal cultural sites that are being damaged by camels.
 - Engage with others to adopt national registration laws so that a firearm registered under one jurisdiction retains that registration regardless of jurisdiction.

- Reform NT Firearms Act in particular to allow easier access to professional shooters from interstate. The South Australian model seems the most practical for these purposes.
 - Revise the NT Public Health (General Sanitation, Mosquito Prevention, Rat Exclusion and Prevention) Regulations to match the reality of animals dying in places where they will never be buried.
7. Processing
- Reform the NT legislation to list camels as game meat so that they can be processed in the same way as buffalo or banteng.
8. Transport
- Welfare standards of domesticated camels could be improved by ensuring universal mandatory adoption of relevant codes of practice, such as those found in the South Australian *Prevention of Cruelty to Animals Act* and the Commonwealth Australian *Standards and Guidelines for the Welfare of Animals – Land Transport of Livestock*.
 - Classification of domesticated camels as a stock animal in each jurisdiction could help to simplify the traffic of camels across borders.

5. Reference

Carey R, O'Donnell M, Ainsworth G, Garnett S, Haritos H and Williams G. 2008. *Review of legislation and regulations relating to feral camel management*, DKCRC Research Report 50. Desert Knowledge CRC, Alice Springs.