



NEW YORK
CITY BAR

**REPORT ON LEGISLATION BY THE
ANIMAL LAW COMMITTEE**

**A.7840
S.8829**

**M. of A. L. Rosenthal
Sen. Skoufis**

AN ACT to amend the agriculture and markets law, in relation to prohibiting the importing, possession, or sale of any part or product of the skin or body of a kangaroo for commercial purposes.

THIS LEGISLATION IS APPROVED

I. SUMMARY OF PROPOSED LEGISLATION

Assembly Bill No. 7840 / Senate Bill No. 8829 (“the Bill”) would add a new section 385 to the Agriculture and Markets Law to ban the importation of any part or product of the skin or body of a kangaroo, the possession of any part or product of the skin or body of a kangaroo with intent to sell, the sale of any part or product of the skin or body of a kangaroo, for commercial purposes, and any attempt to do the same. The Bill would also prohibit directing someone else to do the proscribed acts.¹

The Bill applies to the red kangaroo (*Osphranter rufus*), eastern grey kangaroo (*Macropus giganteus*), western grey kangaroo (*Macropus fuliginosus*), and the common wallaroo (*Osphranter robustus*).

The Bill would impose a \$1,000 civil fine for the first offense and \$5,000 for each subsequent offense.

¹ See https://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A7840&term=2023&Text=Y (All websites last accessed on April 19, 2024).

About the Association

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II. BACKGROUND

Kangaroo leather (also called “K-Leather”) is used for various products. One of its most popular uses is soccer cleats. Other uses include boots, wallets, and gloves. In addition, kangaroo meat is sold in the United States for human and non-human consumption.²

In the past few years, four of the five leading athletic shoes manufacturers have discontinued or are in the process of discontinuing the use of kangaroo skins for soccer cleats in response to consumer opposition.³ These cleats can be made from synthetic materials instead.⁴ adidas⁵ has not yet announced plans to stop using kangaroo skins in its footwear, and adidas kangaroo skin shoes are available for sale in New York. In addition, a few smaller athletic shoe companies and manufacturers continue to use kangaroo skins for products, which are for sale in New York.⁶

III. ABOUT KANGAROOS

There are over 65 species of macropods within the family of marsupials (pouched animals). The four species commonly referred to as kangaroos are: the red kangaroo (*Macropus rufus*), the eastern gray kangaroo (*Macropus giganteus*), the western gray kangaroo (*Macropus fuliginosus*), and the antilopine kangaroo (*Macropus antilopinus*).⁷

Kangaroos live in extended matriarchal family groups called “mobs,” which can consist of 50 or so animals. Female kangaroos have a pouch on their bellies to hold baby kangaroos, which are called “joeys.” The joey lives in the pouch for about four months and then gradually begins leaving the pouch to graze. By 10 months, the joey leaves the pouch for good.⁸ A female kangaroo has three separate vaginal canals and two uteruses; and she is almost perpetually pregnant.⁹ She can care for three children at once: one in the fetal stage, one in the pouch, and one being weaned out of the pouch.¹⁰ Because of this, female kangaroos are almost always accompanied by one or

² For example, the Exotic Meat Market is one of several purveyors of kangaroo meat in the United States for human consumption <https://www.exoticmeatmarkets.com/Ground-Kangaroo-Meat-s/678.htm>. Numerous dog food brands use kangaroo meat according to a list by Kangaroos Are Not Shoes, <https://kangaroosarenotshoes.org/taking-action>.

³ Press Release, Animal Wellness Action, New Balance Says No More to Kangaroo Skins, Joining Nike and Puma This Year in Pledging to Exit Trade in Kangaroo for Soccer Cleats (Sept. 28, 2023), <https://animalwellnessaction.org/new-balance-says-no-more-to-kangaroo-skin-soccer-cleats-joining-nike-puma>.

⁴ Soccer star David Beckham wears synthetic soccer cleats. *See, e.g.*, Associated Press, *California Bans Adidas Kangaroo Soccer Shoes*, NBC (July 4, 2007), <https://www.nbcnews.com/id/wbna19930508>.

⁵ In this report, we follow the adidas convention of not capitalizing its name.

⁶ For example, the Japanese footwear company Mizuno makes and sells kangaroo-skin soccer cleats, <https://mizunousa.com/soccer-morelia-ii-mij->.

⁷ PBS, Kangaroo Fact Sheet (July 23, 2020), <https://www.pbs.org/wnet/nature/blog/kangaroo-fact-sheet/>.

⁸ Nat’l Geographic Kids, Kangaroo, <https://kids.nationalgeographic.com/animals/mammals/facts/kangaroo>.

⁹ *E.g.*, Why Female Kangaroos Are Nearly Always Pregnant, Smithsonian Channel, <https://www.youtube.com/watch?v=lbEn6dBH0e4>.

¹⁰ *Id.*

more joeys. Males stay with their mothers for about three or four years; females stay with their mothers for life.

Kangaroos are herbivores and they typically eat young green shoots, which are high in protein.¹¹ They are most active at night, dusk, and dawn.¹²

IV. ANIMAL WELFARE CONCERNS ABOUT COMMERCIAL HUNTING OF KANGAROOS

Kangaroos are not farmed. Kangaroo leather comes from wild kangaroos that are hunted, typically at night.¹³ There is considerable controversy about the commercial hunt of kangaroos in Australia.¹⁴

Various governmental bodies in Australia have embraced the commercial hunting of kangaroos as a source of income and jobs and to limit population growth of so-called “pests” that interfere with agriculture. One estimate suggests that the export of kangaroo meat and hide provides 200 million Australian dollars in annual revenue to Australia, and exports to the U.S. are worth about 80 million Australian dollars annually.¹⁵ This is only a small fraction of Australia’s GDP.¹⁶

Agrifutures Australia (a corporation established by the Australian government), provides guidelines for shooting kangaroos and wallabies in the *National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Commercial Purposes*, 2020.¹⁷

The *National Code*’s stated objective is, “The shooting of kangaroos and wallabies for commercial purposes is conducted in a humane and effective manner that minimises animal pain, suffering and distress.”¹⁸ The code describes “humane” as “an absence of (or minimal) pain, suffering and distress; in the case of killing or euthanasia, humane methods are those which

¹¹ New South Wales Dept. of Planning & Environment, *Kangaroos, Wallabies, Pademelons, Bettongs and Potoroos*, <https://www.environment.nsw.gov.au/topics/animals-and-plants/native-animals/native-animal-facts/kangaroos-and-wallabies#:~:text=Kangaroos%20and%20wallabies%20are%20most,have%20pouches%20that%20open%20backwards.>

¹² *Id.*

¹³ *E.g.*, Catherine York & Rachel Bale, *Australians Hunt Kangaroos Commercially. Does It Make Sense?* NAT’L GEO (Nov. 12, 2007), [https://www.nationalgeographic.co.uk/animals/2017/11/australians-hunt-kangaroos-commercially-does-it-make-sense.](https://www.nationalgeographic.co.uk/animals/2017/11/australians-hunt-kangaroos-commercially-does-it-make-sense)

¹⁴ *Id.*; Damien Cave, *U.S. Activists Try to Halt an Australian Way of Life: Killing Kangaroos*, N.Y. TIMES (May 22, 2021), <https://www.nytimes.com/2021/05/22/world/australia/kangaroo-killings.html>.

¹⁵ Nassim Khadem, *Proposed US Ban on Kangaroo Products Raises Industry Fears it Could Bring out More ‘Cowboys’*, ABC NEWS (Apr. 7, 2021), <https://www.nytimes.com/2021/05/22/world/australia/kangaroo-killings.html>.

¹⁶ Australia Datasets, International Monetary Fund, <https://www.imf.org/external/datamapper/profile/AUS>.

¹⁷ NATIONAL CODE OF PRACTICE FOR THE HUMANE SHOOTING OF KANGAROOS AND WALLABIES FOR COMMERCIAL PURPOSES (2020), <https://agrifutures.com.au/wp-content/uploads/2020/11/20-126-digital.pdf>.

¹⁸ *Id.* at 8.

minimise pain, suffering and distress.” Given the prevalence of joeys who are in or near a mother kangaroo’s side and the suffering that results from a mother’s death, the *National Code* requires that joeys be euthanized immediately upon the killing of a mother.¹⁹ According to the *National Code*, the most suitable method of killing joeys varies depending on the age and stage of development, as well as the circumstances.²⁰ It can include bludgeoning baby kangaroos, shooting the young-at-foot joey in the head, and other methods, such as decapitation.²¹

Numerous animal welfare groups in Australia, Europe, and the United States believe that the commercial hunting of kangaroos is inhumane, there is no over-population problem, and that kangaroos are not pests.²² They assert that the government is doing too little to protect kangaroos and monitor compliance with the *National Code*. In addition, some Aboriginal elders object to the commercial hunting of kangaroos.²³

Several animal welfare organizations are campaigning to stop the commercial hunt arguing that the commercial hunting of kangaroos is inhumane.²⁴ According to the International Kangaroo Protection Alliance, “The main welfare issues that arise from the shooting of kangaroos includes the high wounding rates, the killing of females with dependent young, the inhumane methods used to kill young kangaroos and the damage that shooting causes kangaroo culture and society (mob).”²⁵

Kangaroos are “victims of the largest commercial slaughter of land-based wildlife in the world.”²⁶ The government bases commercial killing quotas on population estimates that show

¹⁹ *Id.*, Appendices 5 & 6.

²⁰ *Id.*

²¹ *Id.*

²² For example, in the United States, the Center for a Humane Economy, Animal Wellness Action, Their Turn, and In Defense of Animals are some of the organizations that have protested the use of kangaroos for athletic shoes. In Europe, Eurogroup for Animals, Lega Anti Vivisezione, LAV, and World Animal Protection are some organizations that have protested the use of kangaroos for athletic shoes. See citations in the footnotes below for some of the organizations within Australia that are protesting the commercial killing of kangaroos.

²³ See, e.g., *Aunty Ro Fights for An Indigenous Totem – The Kangaroo*, People Against Killing Kangaroos (Mar. 18, 2021), <https://www.peopleagainstkillingkangaroos.org.au/aunty-ro-fights-for-an-indigenous-totem-the-kangaroo/> (“[N]o Indigenous person who respects Culture & who is true to Culture supports the White Government Legislated Commercial Kangaroo Killing Industry in any way shape or form or, ever will.”). Uncle Max Dulumunmun Harrison, Yuin Elder, Yuin Declaration for Kangaroos, “Kangaroos shall not be sold or subjected to any inhumane, cruel or degrading treatment.” (Oct. 24, 2021), <https://www.kangaroosalive.org/yuin-declaration>.

²⁴ For example, the Australian Wildlife Protection Council, Australian Society for Kangaroos, People Against Killing Kangaroos, and more. Kangaroos Are Not Shoes, About Us, <https://kangaroosarenotshoes.org/about-us>.

²⁵ Int’l Kangaroo Protection Alliance, Kangaroo Shooting, <https://www.kangaroo-protection.org/pages/kangaroo-shooting>.

²⁶ U.S. Lawmakers Introduce Kangaroo Protection Act to Blunt the World’s ‘Largest Wildlife Slaughter’, *Michelson Center for Public Policy* (Feb. 9, 2021), <https://www.michelsonpolicy.org/news/us-lawmakers-introduce-kangaroo-protection-act>.

kangaroos to be abundant.²⁷ Some researchers have argued that the government’s population assessments of kangaroos are based on incorrect methods, and therefore, quotas are wrong and threaten the survival of kangaroos.²⁸ And some challenge the notion that kangaroos are pests, claiming that the harm allegedly caused by kangaroos is exaggerated.²⁹

Critics have argued that the National Code is not sufficiently enforced and that inspections are inadequate.³⁰ In 2021, a committee of the New South Wales Parliament published a report that criticized the hunting of kangaroos and subsequent sale of their skins. The Parliament’s Committee found several problems, among them:

- a lack of transparency with respect to the killing of joeys (young kangaroos) as well as “inhumane, disrespectful practices.”³¹ The report claims that there is inadequate enforcement of the *National Code*’s requirements concerning the killing of joeys.
- There are no counts of the number of joeys killed or the number of joeys who fled after their mothers were killed.³²

The response by the Government of New South Wales to these concerns was lacking. The Parliament’s Committee recommended that the Department of Planning, Industry and Environment (DPIE) collect and publicly release data on all joey deaths occurring in the commercial kangaroo industry. The DPIE responded, “Collection of additional data on dependent young will not add any value to the calculation of a sustainable harvest quota.”³³ This response completely ignores the animal welfare concern that prompted the recommendation—and the

²⁷ E.g., Victoria State Gov’t, *Kangaroo Harvesting Program Zones and Quota*, <https://www.wildlife.vic.gov.au/our-wildlife/kangaroo-harvesting-program/kangaroo-harvesting-program-zones-and-quota>.

²⁸ E.g., David Brooks, *The Number Game: Counting Kangaroos*, *Animal Studies Journal* (2022), <https://ro.uow.edu.au/cgi/viewcontent.cgi?article=1571&context=asj>; David B. Croft *et al.*, *An open letter to the public about the commercial killing of kangaroos* (Feb. 2019), https://www.researchgate.net/publication/339134081_An_open_letter_to_the_public_about_the_commercial_killing_of_kangaroos. But see R. Cooney *et al.*, *THINKK Again: Getting the Facts Straight on Kangaroo Harvesting and Conservation*, *Australian Zoologist* (2012) (challenging one criticism of an article claiming that kangaroo harvests are not environmentally sound), <https://meridian.allenpress.com/rzsnsw-other-books/book/621/chapter/12052210/THINKK-again-getting-the-facts-straight-on>.

²⁹ E.g., Kangaroo Myths & Legends, <https://www.kangaroosatrisk.net/6-kangaroo-myths--legends.html>.

³⁰ E.g., K. Boom *et al.*, *The Role of Inspections in the Commercial Kangaroo Industry*, *Int’l J. of Rural Law & Policy* (2013), <https://epress.lib.uts.edu.au/journals/index.php/ijrlp/article/view/2725>.

³¹ Legislative Council, New South Wales, *Health and Wellbeing of Kangaroos and Other Macropods in New South Wales* (Oct. 2021), <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2707/Report%20No%2011%20-%20PC7%20-%20Health%20and%20wellbeing%20of%20kangaroos%20and%20other%20macropods%20in%20NSW.pdf>.

³² *Id.* at 55.

³³ New South Wales, Government Response, *Inquiry Into the Health and Wellbeing of Kangaroos and Other Macropods in New South Wales* (Apr. 2022), <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2707/Government%20response%20-%20Health%20and%20wellbeing%20of%20kangaroos%20and%20other%20macropods%20in%20NSW.pdf>.

animal welfare concern underlying the Bill. The animal welfare concern is that the government is not sufficiently monitoring commercial killing to ensure the welfare of joeys.

V. THE STATE HAS LEGAL AUTHORITY TO BAN THE SALE OF KANGAROO SKIN AND PARTS

For over half a century, New York has prohibited the sale of skin and body parts of the Tasmanian forester kangaroo, *Macropus giganteus tasmaniensis*, (along with other animals) under N.Y. State Environmental Conservation Law (ECL) § 11-0536(1).³⁴ The Bill would expand the ban to protect other kinds of kangaroos.

It is well settled that New York State has legal authority to ban the sale of domestic and foreign wildlife, including parts of wild animals, within its borders. In 1970, manufacturers of products made with crocodile skins challenged the predecessor to ECL § 11-0536(1) (former Agriculture & Market Law 358-a, the “Mason Law”) on multiple constitutional grounds, including a claim that the law was an unconstitutional taking. The New York Court of Appeals upheld the constitutionality of the Mason Law in *A. E. Nettleton Co. v. Diamond*, 27 N.Y.2d 182 (N.Y. 1970). With respect to the plaintiff’s takings clause claim, the Court of Appeals found that it was the Legislature’s intent to allow sales of crocodile skins that were imported to the U.S. prior to the Mason Law’s effective date, and bar sales of such skins imported after the effective date.

Federal courts have likewise upheld state wildlife bans. In *Cresenzi Bird Importers v. State of New York*, 658 F. Supp. 1441 (S.D.N.Y. 1987), *aff’d*, 831 F. 2d 410 (2d Cir. 1987), bird importers challenged New York’s Wild Bird Law (ECL § 11-1728), which bans the sale of wild birds in New York, unless such birds were born and raised in captivity.³⁵ The plaintiffs claimed the Wild Bird Law violated multiple constitutional provisions, including preemption in violation of the supremacy clause, violation of the interstate commerce clause, due process, and other provisions. The Southern District found that, “The State has an interest in cleansing its markets of commerce which the Legislature finds to be unethical” and upheld the Wild Bird Law. The 2nd Circuit Court of Appeals affirmed on the grounds articulated by the Southern District.

A ban on the sale of kangaroo skins and parts survived a constitutional challenge from adidas in another state. Enacted in 1971, California Penal Code section 6530(a) prohibits the sale of kangaroo skin for commercial purposes. Despite the law, adidas sold athletic shoes made from kangaroo skin in California in the early 2000s. Viva! International Voice for Animals, an international nonprofit organization devoted to protecting animals, sued adidas for engaging in an unlawful business practice by selling kangaroo skin in violation of section 6530(a). *Viva! International Voice for Animals v. Adidas Promotional Retail Operations, Inc.*, 63 Cal.Rptr.3d 50 (July 2007). adidas took the position that it was allowed to sell its kangaroo products in California, asserting that section 6530(a) was preempted by federal law. adidas lost in California’s highest

³⁴ The Tasmanian Forester Kangaroo has been listed as an endangered species under the U.S. Endangered Species Act since June 4, 1973. For a description of the Tasmanian Forester Kangaroo, see Australian Government, Department of Climate Change, Energy, the Environment and Water, Forester Kangaroo (*Macropus giganteus tasmaniensis*), <https://www.dcceew.gov.au/environment/biodiversity/threatened/nominations/ineligible-species/macropus-giganteus-tasmaniensis>.

³⁵ N.Y. ECL § 11-1728, <https://www.nysenate.gov/legislation/laws/ENV/11-1728>.

court.³⁶ In 2007, the California Supreme Court upheld California Penal Code section 653o. In dismissing adidas’s preemption challenge, the California Supreme Court reasoned that wildlife management is within a state’s police powers and observed “the scope of this power has long been recognized as extending even to regulation of foreign species.”

VI. SUMMARY

The Animal Law Committee believes that the commercial hunting of kangaroos for athletic shoes, food for pets and humans, and other purposes is cruel and unjustified, and we are particularly troubled by claims that the killing of joeys is inadequately monitored and that there are high wound rates. We acknowledge that there is significant controversy within Australia about the commercial killing of kangaroos, with some arguing that it is no more inhumane than killing domesticated animals.

We note that New York’s bill does not (and cannot) ban the commercial slaughter of kangaroos in Australia. All the bill does is ban the sale of kangaroos and their parts in New York State, something that our elected officials have legal authority to do. Considering the significant public concern about the welfare of kangaroos who are killed to make luxury products, the Animal Law Committee supports the Bill.

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³⁶ Despite this case, according to a recent investigation, over 100 stores continue to illegally sell athletic shoes made of kangaroo skin in California. CENTER FOR A HUMANE ECONOMY, SKIN IN THE GAME: AN INVESTIGATION INTO THE ILLEGAL TRADE OF KANGAROO PARTS IN CALIFORNIA (2020), https://kangaroosarenotshoes.org/wp-content/uploads/2022/08/CHE_KangarooReport_08.20.20.pdf. In 2022, Animal Wellness Action and Center for a Humane Economy filed a lawsuit against Soccer Warehouse for illegally selling kangaroo leather shoes. *Animal Wellness Action v. Ojogho American Enterprises, Inc. d/b/a Soccer Shop USA*, Case # 22STLC05720 (Superior Court of Los Angeles, Stanley Mosk Courthouse).