

Chapter 10

Out of Eden: Wild Animals and the Law

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Introduction

Other chapters in this book have examined the widespread suffering of animals in domestic, agricultural, recreational and scientific settings – in essence wherever animals are in close contact with humans and their exploitation is facilitated by their legal status as human property. Because wild animals are, by definition, subject to no or limited direct contact with humans, one could be tempted to assume that their welfare is not as compromised as that of other categories of animals, at least from human-induced causes. One might also be reassured by the fact that the common law generally recognises no property in wild animals, thus removing one justification for exploitation.¹ In reality, the welfare of wild animals is compromised, sometimes severely, by intentional as well as incidental harm caused by a variety of human practices. Hence the unique legal status of wild animals has not been particularly helpful to protect them from exploitation and suffering. The ecological value of native animals, that is, their crucial contribution to the biodiversity of ecosystems, is no guarantee of protection either.

This chapter provides an analysis of how the legal systems of Australia and New Zealand fail to meaningfully protect wild animals.² It demonstrates how this failure to protect animals is made possible by the use of a number of legal and non-legal tools. The focus of this chapter is on the failure to protect wild animals from intentional harms including commercial exploitation, damage mitigation, recreational and traditional hunting, and ‘pest’ control. It is acknowledged that wild animals’ welfare can also be compromised in situations where they are used intentionally as pets, for conservation, entertainment and research, but the number of animals involved is small.

1 See White, S (2009) ‘Animals in the Wild – Animal Welfare and the Law’ in Sankoff, P and White, S (eds) *Animal Law in Australasia – A New Dialogue*, Federation Press, Sydney, pp 231-238 for the implications of the legal status of wild animals. In some jurisdictions, conservation legislation deems native wild animals (see, eg, *Nature Conservation Act 1992* (Qld) s 83) and introduced animals (see *Wildlife Act 1953* (NZ) s 57(3) and *Wild Animal Control Act 1977* (NZ) s 9(1)) as the property of the State.

2 The specific issues relating to fish are considered in Chapter 11 in this volume.

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