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FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ENVIRONMENT, CLIMATE CHANGE AND BIODIVERSITY
Dr Marisa Paterson MLA (Chair), Ms Jo Clay MLA (Deputy Chair), Mr Ed Cocks MLA

Submission Cover Sheet

Inquiry into Petition 17-23: Indian (Common) Myna Control

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Animal Defenders Office

Using the law to protect animals

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The Animal Defenders Office is accredited by Community Legal Centres Australia Inc.

Standing Committee on Environment, Climate Change and Biodiversity
ACT Legislative Assembly
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By email: LCommitteeECCB@parliament.act.gov.au

19 March 2024

Dear Sir/Madam

Inquiry into Petition 17-23: Indian (Common) Myna Control

The Standing Committee on Environment, Climate Change and Biodiversity is conducting an inquiry into Petition 17-23: Indian (Common) Myna Control (“the inquiry”).

The Animal Defenders Office (“ADO”) appreciates the opportunity to make submissions to the inquiry. The ADO is a nationally accredited community legal centre that specialises in animal law. The ADO is incorporated in the Australian Capital Territory (“ACT”), and is a member of Community Legal Centres Australia Inc. The ADO’s office is located in the ACT.

The ADO makes the following submissions to the inquiry.

Current status of myna birds

The inquiry focusses on the common myna bird (*Acridotheres tristis*) (“myna bird”).

Myna birds are currently subjected to lethal control measures in the ACT due to the perception of the birds as a ‘pest’. This perception of myna birds became law in the ACT when the myna bird was declared to be a ‘pest animal’ in 2021.¹

The ADO’s submissions are based on the inquiry’s terms of reference (“ToR”), with particular focus on ToR E: ‘Animal welfare issues related to the Common Myna’. The ADO’s submissions consider the myna bird’s status as a declared ‘pest animal’ in the ACT, if and how they should be managed by humans, and why their welfare matters.

Myna birds as a ‘threat’

The ADO submits that labelling myna birds as a key threat is not currently supported by evidence, even to the degree of triggering the precautionary principle. Myna birds are not listed by the Australian Government as a Key Threatening Process for any

¹ *Pest Plants and Animals (Pest Animals) Declaration 2021 (No 1)*.

native animal or ecosystem.² The only bird listed as a Key Threatening Process is the native noisy miner.³ Other listed processes focussed on animals include foxes, cane toads, rabbits, pigs, and fire ants, but not myna birds.⁴

Petition 17-23 (the subject of the inquiry) refers to ‘research by Dr Kate Grarock at Australian National University’.⁵ This appears to be research carried out over 10 years ago and focussing on the impact of myna birds on native birds in Canberra.⁶

In 2017 the Australian branch of the Royal Society for the Prevention of Cruelty to Animals (“RSPCA Australia”) noted⁷ that what studies there had been had:

found that common mynas may potentially impact local urban dwelling native bird species but were not considered to pose a threat to the overall survival of any native bird species.

In 2021 RSPCA Australia remarked that:⁸

there has been surprisingly little research on the negative impacts of common mynas on native plants and animals.

Despite, however, the relative paucity of evidence supporting the contention that myna birds are a serious threat to other animal species or native biodiversity, the ACT has a thriving community trapping and killing program in place, led by the Canberra Indian Myna Action Group (“CIMAG”).⁹ Its first suggestion as to how members of the public can help is to ‘participate in the CIMAG humane trapping program’.¹⁰

Yet, much as for the ‘pest’ status of the birds themselves, it would appear that there is a lack of evidence to support the efficacy of community trapping and killing programs as a way to manage myna bird populations.

RSPCA Australia has observed that:¹¹

Furthermore, results from an analysis of bird survey and culling data from a community myna bird trapping program in Canberra showed that a sustained annual culling rate of 25 birds per km² would be needed to offset replacement through

² Department of Climate Change, Energy, the Environment and Water (“DCCEEW”), *Listed Key Threatening Processes*, <https://www.dcceew.gov.au/environment/biodiversity/threatened/key-threatening-processes/overabundant-noisy-miners>.

³ DCCEEW, ‘Aggressive exclusion of birds from potential woodland and forest habitat by over-abundant noisy miners (*Manorina melanocephala*)’, *Ibid*.

⁴ DCCEEW, *Listed Key Threatening Processes*, *Ibid*.

⁵ Petition 17-23 ‘Indian (Common) Myna Control’, <https://epetitions.parliament.act.gov.au/details/e-pet-017-23>.

⁶ Pestsmart – Centre for Invasive Species Solutions, ‘Common myna impacts’, 2014, https://pestsmart.org.au/case_studies/common-myna-impacts/.

⁷ RSPCA Australia, *Management of common (Indian) myna birds. Information Paper*, (2017), (“RSPCA Australia (2017)”), p2, <https://kb.rspca.org.au/wp-content/uploads/2019/03/Management-of-common-Indian-myna-birds-RSPCA-Information-Paper-July-2017.pdf>.

⁸ RSPCA Australia, *What is the RSPCA’s view on the management of myna birds*, (2021) (“RSPCA Australia (2021)”), <https://kb.rspca.org.au/knowledge-base/what-is-the-rspcas-view-on-the-management-of-myna-birds/>.

⁹ <https://indianmynaaction.org.au/>.

¹⁰ ‘How You Can Help’, *Ibid*.

¹¹ RSPCA Australia (2017) p3.

reproduction, survival and/or immigration of birds to a localised area (Grarock et al 2014b). This very high culling rate would be difficult to sustain.

Even if the population could be reduced using these lethal control methods, there is reportedly little data to support the view that reducing numbers of myna birds reduces the putative adverse impact of those birds on target animals.¹² In 2010 in a discussion of lethal control measures, Christopher Tideman from the Australian National University observed that:

...whether they can impact on myna numbers – and whether this ultimately benefits amenity and native wildlife, remains to be seen.¹³

Over the next 10 years little progress on this issue appears to have been made, as in 2021 RSPCA Australia commented that:

Furthermore, since the impact of common mynas is not clearly understood, it is yet to be determined if killing mynas has any effect other than reducing local myna populations.¹⁴

RSPCA Australia maintains that merely reducing numbers should not be the aim of animal management programs and that instead they ‘must be aimed at reducing adverse impacts rather than simply reducing the number of animals.’¹⁵

The ADO submits that targeting myna birds also overlooks, and does nothing to resolve, the anthropogenic nature of the myna bird ‘problem’. As with most, if not all, actual and potential threats to our environment, human activity is a significant contributing factor to the spread of myna birds. According to RSPCA Australia:

There is agreement that invasion of common mynas is likely due to the alteration of habitat that occurs with human urbanisation. Common mynas prefer to nest in the highly modified habitats and artificial structures found in residential and commercial areas rather than in vegetation, which is the opposite of what native birds prefer.¹⁶

The national animal welfare body has also commented that:

Scientific findings indicate that common mynas do not alone constitute a major threat to native species but that other factors play a significant role in affecting local populations of native birds such as land clearing, bushfire events and weed invasion.¹⁷

The ADO submits that these problematic aspects of myna bird control and community trapping and killing programs should be investigated and resolved before

¹² RSPCA Australia (2017) p1.

¹³ Tidemann, C.R. (2010). *Investigation into the potential for broad-scale control of mynas by trapping at communal roosts. Final Report*. Report to the Hermon Slade Foundation, the Australian Rainforest Foundation and the NSW Department of Environment, Climate Change and Water. The Australian National University, Canberra, (“Tideman (2010)”), p5.

¹⁴ RSPCA Australia, (2021).

¹⁵ RSPCA Australia, *RSPCA Policy Eo2 Management of wild animals*, (2020) (“RSPCA Australia (2020)”) at 2.9.2; see also RSPCA Australia (2017) p1.

¹⁶ RSPCA Australia (2021).

¹⁷ RSPCA Australia (2017).

the programs are used to capture and kill sentient birds. In this respect, the ADO shares RSPCA Australia’s views on community trapping and killing programs:

We believe that—based on current knowledge about the impact and preferred habitat of common mynas—trapping and killing by community groups should not be encouraged.¹⁸

If management action is considered necessary, the ADO supports non-lethal measures such as those proposed by RSPCA Australia, which include:

- Restoring and improving the quality of natural habitat in urbanised areas for native birds; and
- Making urban areas less suitable for myna birds.¹⁹

In addition to these concerns about lethal control measures, the ADO submits that the animal welfare implications of trapping and killing myna birds must be considered.

Animal welfare concerns

In 2019 the ACT became the first Australian jurisdiction to recognise animal sentience in law. It amended its primary animal welfare law to recognise that:²⁰

- (a) animals are sentient beings that are able to subjectively feel and perceive the world around them; and
- (b) animals have intrinsic value and deserve to be treated with compassion and have a quality of life that reflects their intrinsic value[.]

Birds are specifically referred to in the definition of the term **animal** in the Act.²¹ The ACT’s animal welfare law therefore includes myna birds in its recognition of sentience and its stated aim that animals ‘be treated with compassion’. The Act stipulates that the duty of care it imposes on people to care for the physical and mental welfare of animals (including myna birds) is to be achieved by:

- (a) promoting and protecting the welfare of animals; and
- (b) providing for the proper and humane care, management and treatment of animals; and
- (c) deterring and preventing animal cruelty and the abuse and neglect of animals; and
- (d) enforcing laws about the matters mentioned in paragraphs (a), (b) and (c).²²

¹⁸ RSPCA Australia (2021).

¹⁹ RSPCA Australia (2021).

²⁰ *Animal Welfare Act 1992* (ACT) (“the Act”), s 4A(1).

²¹ The Act, Dictionary, par. (a)(ii) of the definition of **animal**.

²² The Act, s 4A(2).

In short, the ACT's animal welfare law requires the welfare of myna birds to be given the same level of consideration as for other animals, including native wild animals and companion animals.²³

This means that duty of care requirements in the *Animal Welfare Act 1992* (ACT) ("the Act"), and the associated offences for failure to comply, apply to participants in community trapping and killing programs, including:

Section 6B Failure to provide appropriate care

Section 6C Failure to provide animal with water or shelter

Section 6G Abandoning an animal

Section 9 Unlawful confinement of animal

The standard cruelty offences in the Act would also apply to persons trapping and killing myna birds. 'Cruelty' is defined in the Act to include:

(a) doing, or not doing, something to an animal that causes, or is likely to cause, injury, pain, stress or death to the animal that is unjustifiable, unnecessary or unreasonable in the circumstances;

(b) abusing, terrifying or tormenting the animal.²⁴

It is an offence of animal cruelty under the Act to commit an act of cruelty on an animal (s7). It is an offence of aggravated animal cruelty to commit an act of cruelty that causes the death of or serious injury to the animal if the person intends to cause, or is reckless about causing, the death of, or serious injury to, the animal (s7A).

There is no code of practice for the keeping and killing of myna birds, compliance with which would function as an exception to these duty-of-care requirements and animal-cruelty offences.²⁵

While CIMAG has its own 'animal welfare protocol', it is brief (not much more than a page) and has no legal force.²⁶ Moreover, the protocol recommends that 'acceptable euthanising methods include gassing with carbon dioxide or carbon monoxide'. No guidance is provided as to what else may be an 'acceptable' method. The method described is complex and the potential for error would be significant, resulting in harm and suffering for the birds.²⁷ Furthermore, while advocating the use of carbon monoxide from cars, the protocol does not caution against the use of cars with a catalytic converter. According to RSPCA Australia:

Inhalation of the cooled exhaust of vehicular petrol engines with a catalytic converter (i.e. from cars manufactured after 2005) is NOT considered acceptable since levels of carbon monoxide drop off very quickly (within 30 sec) after the engine has started,

²³ RSPCA Australia (2017) p1.

²⁴ The Act s6A.

²⁵ The Act s20.

²⁶ CIMAG, *Protocol on Animal Welfare*, August 2021, <https://indianmynaaction.org.au/wp-content/uploads/2021/09/Protocol-on-Animal-Welfare.pdf>. The protocol asks the person signing it to commit to the protocol.

²⁷ The protocol states that 'if it takes longer than 30-40 seconds for the birds to die peacefully there is something wrong with your technique, and you should contact CIMAG for advice'.

and the exhaust may also contain potential irritants (Tidemann and King 2009). Inhalation of the cooled exhaust of older vehicles without catalytic converters would also have welfare concerns due to the high variability in the age and condition of engines and presence of contaminants as well as human safety risks.²⁸

The ADO understands that in the past, participants in community control programs were encouraged to take myna birds they had trapped to the local RSPCA to be killed. At least this would ensure that persons with the requisite knowledge and training were killing the animals. However, the local RSPCA decided it would no longer perform this function, possibly on the basis that it was inappropriate for an animal protection charity to be using its scarce human and other resources to kill large numbers of myna birds.

Trapping – regulatory framework in the ACT

Trapping animals is usually a regulated activity in the sense that the activity is prohibited unless the person holds a licence or permit issued by a government regulatory authority.

This is the case in the ACT, where it is an offence to set a trap unless various exemptions apply.²⁹ The exemptions in s62 of the Act apply to a person holding a trapping permit or a nature conservation licence that authorises the person to set a trap (s62(3)). For the purposes of the offence the term **trap** is defined so as to exclude traps set to catch a non-domestic animal on premises by the occupier (or relative or agent), or someone else with the occupier (or relative/agent)'s written approval (s62(4)). This definition functions as a further exemption, with the effect that it is not an animal cruelty offence for occupiers or associated persons to set traps to catch non-domestic animals (including myna birds) on their premises without a permit or licence.

Animals used for research

Community trapping and killing of myna birds is not regarded as animal research. This means that the requirements under ACT's animal welfare laws for the use or breeding of animals for research or teaching³⁰ do not apply to community trapping and killing of myna birds.

Thus two of the main animal welfare regulatory frameworks under the ACT's animal welfare laws do not apply to the trapping and killing of myna birds by community groups, which means that these activities are essentially unregulated. Two significant concerns with this outcome is the lack of monitoring and accountability of these activities, and their potential for animal cruelty.

Lack of monitoring and accountability

As permits or licences are not required for community killing or trapping myna birds in the ACT, conditions cannot be placed on these activities (ie mandatory compliance with guidelines). Moreover, there is no government oversight or monitoring of the

²⁸ RSPCA Australia (2017) p3, emphasis in original.

²⁹ The Act s62.

³⁰ *Animal Welfare Act 1992* (ACT) Part 4.

activity, and no obligation on participants to report to government on their activities and outcomes.

Experts have observed that '[m]onitoring and record keeping are poorly done by most community groups involved in myna trapping',³¹ and '[t]rapping carried out on an ad-hoc basis is ... ineffective in reducing and maintaining the adverse impacts of mynas in the long-term, and does not usually allow for monitoring and assessment of the success of the control program.'³²

In short, there is general agreement that the trapping and killing of myna birds by community groups lacks transparency and accountability, and there is some suggestion that community groups are inherently unsuited to reporting.³³

Potential for cruelty

As permits or licences are not required for community trapping and killing of myna birds, and therefore there are no competency requirements for those undertaking these activities, at least some participants would presumably be unskilled or have little experience in dealing with birds, or in minimising harm in trapping or killing animals. According to RSPCA Australia, the 'humaneness of a given control method is influenced by its application and the skill of the operator'.³⁴

It is therefore reasonable to suggest that animal cruelty offences could occur in the course of trapping and killing myna birds by community groups.

Such conduct would need to be brought to the attention of enforcement agencies for any kind of enforcement action to be taken. While the ADO does not have enforcement powers under the Act, members of the public have brought to our attention reports of conduct towards myna birds by community trappers that would amount to unlawful cruelty if substantiated. These reports included trapping mynas in makeshift cages then holding them down in buckets of water until they drowned, and keeping mynas in traps in public spaces without water and allowing them to be 'pawed at' by roaming cats. We are also aware of anecdotal evidence suggesting complaints of alleged cruelty to myna birds are made to enforcement agencies under the Act, supporting the view that community trapping and killing of myna birds can result in cruel treatment of sentient animals.

³¹ Tideman (2010) p5.

³² RSPCA Australia, Control of Indian myna birds. Information sheet (2007), ("RSPCA Australia (2007)"), p2. RSPCA Australia states that this kind of trapping 'is not supported by the RSPCA'.

³³ Tideman even suggested that community groups find monitoring and record keeping 'tedious' and are not good at it because 'the activity is not rewarded with a "kill"', Tideman (2010) p5.

³⁴ RSPCA Australia (2020) 2.10.3.

Recommendations

In light of the concerns discussed in this submission, the ADO recommends that:

Lethal measures

1. Community trapping and killing of myna birds be prohibited under animal welfare laws.

Myna bird management programs

2. If management action is considered necessary, non-lethal measures with mandatory monitoring obligations and accountability measures be supported by government and researchers.
3. Community management programs are undertaken under the direct supervision of appropriate government agencies.³⁵
4. Community management programs aim to reduce adverse impacts rather than simply reducing animal numbers.³⁶
5. Community management programs are monitored and assessed to provide information on effects on myna bird impacts rather than just myna bird numbers.³⁷

Animal welfare requirements

6. Mandatory standards and guidelines on best practice humane treatment and handling of myna birds are prepared and approved under the Act.³⁸
7. Community management programs are considered animal research to which the animal welfare requirements under Part 4 of the Act apply.³⁹
8. In the alternative, trapping requirements under the ACT's animal welfare laws are amended to apply to the trapping of myna birds by participants in community management programs.⁴⁰

Thank you for the opportunity to contribute to the inquiry.

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³⁵ Supported by RSPCA Australia (2017).

³⁶ Supported by RSPCA Australia (2020) 2.9.2.

³⁷ Supported by RSPCA Australia (2021) and Tideman (2010).

³⁸ *Animal Welfare Act 1992* (ACT) s23.

³⁹ *Animal Welfare Act 1992* (ACT) Part 4.

⁴⁰ *Animal Welfare Act 1992* (ACT) Part 6.