

## The Duty to Control – Declared Pests and the Obligations of Pastoralists

In *Kachana Pastoral Co Pty Ltd v Department of Primary Industries and Regional Development* (2025), the State Administrative Tribunal confirmed that Western Australian pastoralists have a positive and ongoing legal obligation to control declared pests under the *Biosecurity and Agriculture Management Act 2007* (WA). The Tribunal upheld a Control Notice requiring the culling of feral donkeys, finding that the pastoralist's existing management practices were insufficient to reduce their number, distribution, and spread. The decision reinforces that statutory biosecurity obligations take precedence over alternative land management philosophies or perceived ecological benefits of declared pests, establishing an important precedent on the standard expected of landowners and occupiers in managing invasive species.

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### INTRODUCTION

When *Kachana Pastoral Co Pty Ltd V Department Of Primary Industries And Regional Development* (the **Kachana Case**) was decided by the State Administration Tribunal (the **Tribunal**) in October 2025, it did not receive a whole lot of attention.

However, in view of changing weather patterns and increasing pressures on fragile eco-systems, it is worth taking a moment to understand how the Tribunal sought to balance existing land management practices with the risks posed by the mounting threat of invasive species.

### THE FACTS

The applicant, Kachana Pastoral Co Pty Ltd (**Kachana**), operates a pastoral station in the Kimberley region of Western Australia, where feral donkeys, a declared pest under the Biosecurity and Agriculture Management Act 2007 (WA) (**BAM Act**), have been allowed to graze for many years.

The respondent, being the Department of Primary Industries and Regional Development (**DPIRD**), issued a Control Notice to Kachana in August 2021, requiring it to cull 72 feral donkeys, later revised to 117 donkeys, following a subsequent aerial survey in October 2023.

Kachana applied for a review of the Control Notice (**Review**), arguing that its existing management practices were sufficient to control the feral donkey population.

DPIRD argued Kachana's control measures were inadequate to reduce the number, distribution, and spread of feral donkeys, as required under the BAM Act and the Biosecurity and Agriculture Management Regulations (2013) (WA) (**BAM Regulations**).

## **THE LAW**

Regulation 27(4) of the BAM Regulations required Kachana, as the occupier, to “take such of the control measures specified in [reg 27(1)] (e.g. relocating, shooting, trapping etc), for category 3 declared pests (which includes donkeys), as are reasonable and necessary to:

- a) alleviate the harmful impact of the declared pest in the area for which it is declared; or
- b) reduce the number or distribution of the declared pest in the area for which it is declared; or
- c) prevent or contain the spread of the declared pest in the area for which it is declared.

Section 31(1) of the BAM Act allows an ‘inspector’ to give a pest Control Notice to the owner or occupier where a declared pest is found on the land for the purpose of controlling the declared pest.

## **THE RULING**

The Tribunal found that Kachana’s management practices, including the use of natural topography, salt licks, and low-stress mustering, were insufficient to control the number, distribution, and spread of feral donkeys, as required by the BAM Act and BAM Regulations.

In doing so, the Tribunal accepted the expert evidence of DPIRD’s witness, who demonstrated that the natural home range of feral donkeys extends well beyond the applicant’s designated Project Area and that the donkeys were not adequately contained.

The Tribunal determined that Kachana’s culling activities, averaging 21 donkeys per year, were insufficient to manage the population effectively, given the high reproductive rate of feral donkeys and the observed population growth.

The Tribunal concluded that the Control Notice was a ‘necessary and reasonable’ measure to address Kachana’s failure to comply with its statutory obligations under the BAM Act and BAM Regulations.

The Tribunal affirmed the Control Notice (including the reporting measures) and dismissed the Review. The parties were directed to confer and prepare orders in these terms, including addressing the manner in which the Control Notice will be carried out.

## **SIGNIFICANT FOR PASTORALISTS**

Central to the decision was the Tribunal’s interpretation of the statutory requirement to implement ‘necessary and reasonable’ control measures. The case clearly delineates that the BAM Act imposes a *positive and ongoing duty* on owners or occupiers of land to control declared pests, meaning the duty operates independently of any pest control notice issued by DPIRD.

The Tribunal emphasised that, notwithstanding Kachana’s arguments about purported benefits of feral donkeys for soil and bushfire management, their status as a declared pest under the BAM Act is determinative, triggering mandatory control obligations upon the pastoral lessee.

The decision also clarifies that subjective arguments about alternative land management philosophies or the alleged benefits of feral animals cannot displace statutory duties under the BAM Act. The Tribunal explicitly declined to consider broader debates about the ecological role of donkeys in the rangelands because it was confined to determining compliance with statutory obligations.

Thus, the Kachana Case serves as a leading precedent reinforcing the primacy of biosecurity obligations over alternative land management theories and clarifies the standard expected of pastoralists in meeting their statutory pest control duties under Western Australian law.

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