

8 March 2018

Social Policy Scrutiny Committee
GPO Box 3721
Darwin NT 0801
By Email: SPSC@nt.gov.au

Dear Secretary,

Animals Australia submission in relation to the *Animal Protection Bill 2018*

Thank you for the opportunity to provide a submission on the proposed *Animal Protection Bill 2018* ('the Bill').

As you will be aware, Animals Australia is a peak animal protection organisation in Australia. On behalf of our member societies and individual members and supporters we are pleased to be able to provide you with this submission.

1.0 Introduction

Animals Australia strongly supports the objectives of the Bill, which include *inter alia* the prevention of cruelty and ensuring that animals are treated humanely. Animals Australia commends the shift from animal 'welfare' legislation to animal 'protection' legislation contemplated by this Bill. This shift not only reflects community expectations surrounding how we ought to treat animals, but also accords with current scientific research in the animal welfare domain which indicates that we must do more to promote animal welfare than merely prevent cruelty.¹

Animals Australia **commends** the intention behind a number of aspects of the Bill, including:

- The objectives of the Bill that are broad, and include *inter alia* ensuring that animals are treated humanely, and the promotion of community awareness surrounding animal welfare obligations and responsibilities;
- The 'minimum level of care' articulated in s6(3) of the Bill which includes instances where conduct is *likely* to cause suffering that is unjustifiable, unnecessary or unreasonable, with the result that persons may be culpable where their conduct unduly risks compromising an animal's welfare;
- Section 22 on 'obligations' that clearly articulates that people have two distinct duties with respect to animals: to protect them from cruelty, *and* to actively promote their welfare;
- Section 24(7) which describes specific offences against animals
- Section 26 which requires that a person notify an authority if they injure a domesticated animal that is not under their control
- Sections 27 and 28 which provide strong prohibitions on the laying of poison

¹ See for example: David Mellor (2016) 'Updating Animal Welfare Thinking: Moving Beyond the 'Five Freedoms' towards 'A Life Worth Living' 6 *Animals* 21.

- Section 33 which explicitly prohibits live baiting in greyhound racing
- Section 34 which requires that dogs transported by motor vehicle or trailer that are not travelling inside the passenger compartment be restrained to prevent them falling from the vehicle
- Section 35 which provides veterinarians with the power to 'alleviate suffering' by euthanizing animals that are so severely ill or injured that it is cruel to keep them alive, if the veterinarian is of the opinion that the animal would not otherwise be by euthanized or would be euthanized in a way that would cause it unnecessary suffering.
- Section 42 which places increased responsibilities on individual persons conducting experiments using animals
- Section 83 which provides powers of entry to authorized officers that are broader than those under the current *Animal Welfare Act* (NT)
- Section 98 which provides that an animal seized by the CEO may be euthanized only where it is not 'reasonable or practicable' to use alternative measures
- Section 110(2) which provides that it is not a defence to a charge of cruelty that the offence was conducted in accordance with cultural or religious practices
- Section 115 which provides for an automatic ban on owning animals for persons who are found guilty of multiple animal cruelty offences within a period of 3 years

2.0 The Bill Should Be Amended

However, Animals Australia has a number of serious concerns regarding some provisions of the Bill. Animals Australia's strong view is that the Bill should be amended in accordance with the recommendations provided and described below.

2.1 Limited Definition of 'Animal'

Animals Australia is concerned about the definition of 'animal' contained within s5(1) of the Bill, because it is too narrow and fails to reflect scientific knowledge regarding the sentience of animals. Specifically, Animals Australia is concerned about:

- the exclusion of invertebrate species (such as cephalopods);
- the exclusion of mammals, reptiles and birds that are above the normal mid-point of gestation or incubation for the particular class of reptile, bird or mammal; and
- the exclusion of 'wild' fish and crustaceans.

Scientific evidence continues to demonstrate that cephalopods are sentient,² and Animals Australia believes they should therefore be afforded legislative protections. We note that the Australian Capital Territory, Queensland and Victoria include 'cephalopods' as 'animals' in some contexts, and therefore provide them with some legal protections that exceed those contemplated by the Bill.³

In addition, scientific literature suggests that mammals, reptiles and birds above the normal mid point of gestation or incubation may have the capacity to suffer,⁴ and

² See for example: Jennifer Mather and Roland Anderson, 'Ethics and Invertebrates: A Cephalopod Perspective' (2007) 75(2) *Diseases of Aquatic Organisms* 119.

³ *Animal Care and Protection Act* (Qld) s11(1)(d), *Animal Welfare Act 1992* (ACT) s2, *Prevention of Cruelty to Animals Act 1986* (Vic) s25(c).

⁴ See for example: MLH Campbell, DJ Mellor and P Sandoe, 'How Should the Welfare of Fetal and Neurologically Immature Postnatal Animals Be Protected?' (2014) 23 *Animal Welfare* 369.

Animals Australia therefore believes they should also be included within the definition of 'animal', as they are in both Victoria and Queensland.⁵

Animals Australia does not support the exclusion of 'wild' fish and crustaceans from the protective reach of the Bill, and firmly believes that all species of animal should be protected from cruelty regardless of the context in which they live or are kept. In the other four Australian jurisdictions in which fish are included within the definition of 'animal' for the purposes of the applicable animal welfare legislation, they are included regardless of whether they are wild or in captivity.⁶

Animals Australia Recommendation: the definition of 'animal' in s5(1) of the Bill should be amended to include sentient invertebrate species (such as cephalopods), mammals, reptiles and avian young that have reached more than the halfway gestation or incubation point for the relevant species, and wild fish and crustaceans.

2.2 No Definition of What Constitutes 'Suffering'

Animals Australia is concerned that the term 'suffering', which is used frequently throughout the Bill, is not defined. We are of the view that defining the term in the Bill is paramount to ensuring that it is interpreted broadly by the Courts, to include not only physical pain and suffering, but also mental pain and distress. Other jurisdictions have defined key terms in this manner. For example, in Queensland, the term 'pain' is defined as including 'distress and mental or physical suffering'.⁷ Similarly, in South Australia, the term 'harm' refers to 'any form of damage, pain, suffering or distress (including unconsciousness), whether arising from injury, disease or any other condition'.⁸ Western Australia provides a similar definition of 'harm' as including 'injury, pain and distress evidenced by severe, abnormal physiological or behavioural reactions'.⁹

Animals Australia Recommendation: s4 of the Bill should be amended to include a definition for the term 'suffering' as including both physical and mental pain and distress.

2.3 Emphasis on Pain as Opposed to Suffering

Animals Australia notes that under s24(2) a person commits an offence if they intentionally beat an animal and the beating causes the animal pain. The term 'pain' is used in this provision in preference to the term 'suffering' which appears elsewhere throughout the Bill. Similarly, under s94, an authorized officer may issue an animal welfare direction where they believe on reasonable grounds that an animal is experiencing undue pain.

Absent a definition of the term 'pain' in the Bill to the contrary, Animals Australia is concerned that the use of this term is intended to narrow the contexts in which 'beating' an animal may be a punishable offence, or in which an animal welfare notice may be issued to instances where an animal suffers demonstrable physical pain (as opposed to mental distress). If this is the intended purpose of the use of the term, it has the troubling effect of requiring a Court to look only at the physical pain experienced by a beaten animal, rather than to look more broadly at their overall suffering. For this reason, we submit that the term 'pain' inappropriately disregards the mental distress

⁵ Prevention of Cruelty to Animals Act 1986 (Vic) s3(a)(ii), Animal Care and Protection Act 2001 (Qld) s 11(b)(i), (ii).

⁶ Animal Welfare Act 1992 (ACT) s2, Animal Care and Protection Act 2001 (Qld) s11(1)(a), Animal Welfare Act 1993 (Tas) s3, Prevention of Cruelty to Animals Act 1979 (NSW) s4(1)(a)(iii).

⁷ Animal Care and Protection Act 2001 (Qld) (Dictionary)

⁸ Animal Welfare Act 1985 (SA) s3.

⁹ Animal Welfare Act 2002 (WA) s5.

suffered by a beaten animal. Moreover, we firmly believe that an officer who reasonably believes an animal is suffering undue mental distress should have grounds to issue an animal welfare notice.

Animals Australia Recommendation: s24(2)(b) and s94 should be amended to replace the word 'pain' with the word 'suffering' (as defined in accordance with recommendation 2.2).

2.4 Requirement of Proof of Intention

Animals Australia is concerned that most of the substantive cruelty offences in the Bill require proof of intention as an element of the offence. For example:

- Section 23 which creates an offence for failing to provide an animal with the minimum level of care requires that a person *intentionally* engages in conduct that results in the animal not being provided with the minimum level of care;
- Section 24 which creates an offence for cruelty to an animal requires a person *intentionally* causes suffering or harm, or *intentionally* contributes to an animal's suffering or harm
- Section 24(3) creates an offence for *intentionally* abusing, terrifying or tormenting an animal
- Section 24(4) creates an offence for *intentionally* injuring or wounding an animal
- Section 24(5) creates an offence for *intentionally* engaging in conduct that is prescribed by a regulation as constituting cruelty
- s25(6) creates an offence for *intentionally* failing to take action to alleviate an animal's suffering
- Section 24(7) creates an offence for *intentionally* docking a dogs tail, cropping a dogs ears, removing the claws of an animal, removing the voice of an animal or engaging in horse firing;
- Section 27 creates an offence for *intentionally* administering a poison substance to an animal
- Section 28 creates an offence for *intentionally* laying a poison substance with the *intent* of killing an animal, causing it suffering or contributing to its suffering.

By comparison to the current *Animal Welfare Act* (NT), the Bill contemplates a much higher threshold for establishing a cruelty offence. Under the current *Animal Welfare Act*, proof of intention is not required to establish a breach of duty of care (contained under s8). However, under the comparable provision of the Bill (s23), it is. This means that the Bill makes it more difficult to successfully prosecute acts of cruelty than the current Act.

Proof of intention as an element of a cruelty offence is also not required in any other Australian jurisdiction in comparable provisions. In South Australia, under s13 of the *Animal Welfare Act 1985* (SA), a person may be found guilty of 'ill-treating' an animal if they intentionally, *unreasonably or recklessly* cause harm to that animal. Animals Australia is of the view that such a provision is much more appropriate than those contemplated by the Bill (which mandates only proof of intention), because persons who are negligent or reckless should be equally culpable where their conduct unreasonably causes an animal to suffer.

In all other jurisdictions, no proof of intention, negligence or recklessness is required to establish basic cruelty offences.¹⁰ All that must be established in these jurisdictions is that the accused engaged in the proscribed conduct.

Animals Australia Recommendation:

The offences in the Bill requiring proof of intention should be revised and amended to either incorporate recklessness and negligence as sufficient to establish a finding of guilt with respect to an act of animal cruelty or a failure to meet a duty of care,

and/or

the Bill be amended such that it is not necessary to establish proof of intention, recklessness or negligence at all.

2.5 The Use of Qualifying Phrases

Animals Australia is concerned about the continued use of qualifying terms and phrases in the Bill, which reduce the protective effect of provisions. Specifically under s6, the minimum level of care refers to what is 'appropriate' for an animal. 'Appropriate' is further defined in s6(1) as 'appropriate...to ensure the welfare of the animal having regard to all relevant circumstances, including the animal's species and the environment in which the animal is kept or lives'. Such qualified provisions have the capacity to enable cruelty to occur, provided it can be 'justified' with respect to the 'circumstances'.

Animals Australia is of the strong view that cruelty should not be permitted by law in any context. We therefore submit that determinations as to what is 'appropriate' with respect to the minimum level of care should be made only on the basis of animal welfare matters, and should not look to broader circumstances (such as what is beneficial for the purposes of human convenience or profit). All animals of the same species should be entitled to the same minimum level of care, regardless of the context in which they are kept.

Animals Australia Recommendation

The definition of 'appropriate' in s6(2) should be amended such that something is only considered 'appropriate' for an animal if it is appropriate to ensure their welfare, *regardless* of the specific circumstances in which they are being kept, or the purpose for which they are being kept.

2.6 Formation of Animal Ethics Committees

Animals Australia is also concerned that the Bill makes inadequate provision with respect to the formation and functions of an Animal Ethics Committee ('AEC'). We note that under s51, the CEO need only be satisfied that the constitution of an AEC is 'appropriate', taking into account its terms of reference. The Bill does not define what may constitute an 'appropriately' constituted AEC.

Given that the composition of an AEC is paramount to ensuring that all views are fairly represented by persons with adequate experience and competency, we are of the view that the composition of the AEC should be mandated by the Bill by reference to the *Australian Code for the Care and Use of Animals for Scientific Purposes* ('the Code'). Other jurisdictions, such as South Australia, have such legislative requirements which

¹⁰ *Prevention of Cruelty to Animals Act 1986* (Vic) s9, *Animal Welfare Act 2002* (WA) s19, *Animal Welfare Act 1993* (Tas) s8, *Animal Welfare Act 1992* (ACT) ss6B, 7, *Prevention of Cruelty to Animals Act 1979* (NSW) ss5-23, *Animal Care and Protection Act 2001* (Qld) ss17-19.

dictate precisely how an AEC must be comprised, and what may constitute a quorum.¹¹ These provisions are essential to ensuring that an AEC is appropriately balanced at all times, and can therefore properly assess applications for project approvals.

In South Australia, the Minister may only approve a body as an animal ethics committee if satisfied that (1) the body is constituted in accordance with the membership requirements articulated by the Code; (2) the body has appropriate procedures and standards to enable them to the comply with the Code in performing their functions, and (3) the body is otherwise suitable to act as an animal ethics committee.¹² The proposed Bill should contain similar provisions to ensure that an AEC is always appropriately balanced, with representatives possessing varying forms of expertise.

Animals Australia Recommendation

s51 should be amended such that the CEO only accredit an animal ethics committee where satisfied that the constitution of the committee meets the requirements contained within the Code for the composition of AECs.

2.7 Inadequate Emphasis on Ethics and Code Compliance

Animals Australia commends the increased legal duties placed on individuals who are conducting experiments on animals by the Bill. However, we are of the firm view that similar duties should apply to Animal Ethics Committees (AECs) who have a paramount ‘oversight’ role in ensuring that research conducted on animals is conducted in accordance with the Code. At present, the Bill does not make adequate provision to ensure that an AEC approve only those projects that are considered ethically acceptable by reference to the requirements of the Code.

For example, in considering an application to use animals for the purposes of scientific research, the emphasis in the Bill appears to be on the AEC ascertaining the *competency* of the persons proposing to undertake the project, as opposed to the extent to which the proposed project purports to comply with ethical requirements detailed in the Code. Given that the Bill does not articulate the functions of an AEC, or place legal duties on them to comply with the Code, the Bill seemingly fails to ensure that AECs approve only those projects that comply with the Code.

By comparison, in South Australia, the *Animal Welfare Act 1985* (SA) articulates the functions of an AEC, and mandates that an AEC comply with the Code. It also mandates that an Animal Ethics Committee may not approve the use of an animal for the purposes of research or experimentation, or the acquisition of an animal for such purposes, unless satisfied that the animal is essential for the particular purpose; and the person who proposes to use the animal has appropriate experience and qualifications.¹³ Similar provisions apply in each of the other Australian jurisdictions.

Animals Australia Recommendation:

Section 61 should be amended to include the fact that an accredited animal ethics committee is bound by the Code, and must not grant a project approval unless satisfied that the person(s) undertaking the project have incorporated the ethical demands of the Code into their proposed project plan, and have demonstrated precisely how they will comply with all provisions of the Code for the duration of the project.

¹¹ *Animal Welfare Act 1985* (SA) ss23, 24.

¹² *Animal Welfare Act 1985* (SA) s23A.

¹³ *Animal Welfare Act 1985* (SA) s25.

2.8 Disqualifying Events

Animals Australia supports the intention behind s42(3) of the Bill, which requires the CEO, in considering an application for registration of a person to use an animal for scientific purposes, to consider whether the applicant has been involved in a 'disqualifying event'. A 'disqualifying event' is defined by s42(4) of the Bill as including 'a finding of guilt for an animal welfare offence; or the suspension or cancellation of registration under section 47 or an approval under section 65'.

Whilst Animals Australia supports the requirement that the CEO must consider such 'disqualifying events' in determining whether or not to register a person, Animals Australia is of the strong view that persons who have engaged in such 'disqualifying events' should **not** be allowed to be registered to conduct experiments on animals.

Animals Australia Recommendation

s42(3) should be amended to provide that in considering an application, the CEO must not grant registration if a person has been involved in a disqualifying event.

2.9 Conflict of Interests in Enforcement

Animals Australia has grave concerns regarding the powers provided to the CEO of the Department of Primary Industry and Resources ('DPIR') with respect to enforcement. Under the Bill, we note:

- The CEO is the only person authorized to appoint 'officers' to enforce the Act (s15);
- In appointing a person as an authorized officer, the CEO need only be 'satisfied that the person has the skills, qualifications, training and experience to properly perform the functions', and *may* require them to complete a training program prior to commencement (s15);
- All prosecutions are to be approved by the CEO, or be a person approved by the CEO (s117) unless the prosecution is initiated by the Attorney-General or the DPP;
- The Animal Welfare Advisory Committee must still be established by the Minister, but retains no powers of oversight for compliance with the Act (s19);
- The Animal Welfare Authority no longer has enforcement powers.

Animals Australia is deeply concerned about the likelihood that a conflict of interest will prevent proper enforcement of this Bill. Given that the DPIR has a mandate to ensure the continued growth and success of animal production industries, it is troubling that the Bill charges the same Department with responsibility for monitoring compliance with animal welfare provisions.

Animals Australia strongly believes that animal welfare legislation should be monitored and enforced by an independent animal welfare authority. This is the only way to ensure that enforcement of the Bill is not compromised by conflicting interests.

Animals Australia Recommendation: the Bill must be revised to establish an independent animal welfare authority that is responsible for the monitoring compliance with the Bill.

2.10 Inadequate Enforcement Powers

Although Animals Australia commends the inclusion of broadened enforcement powers in some contexts (for example, those contemplated by s83) we are concerned that there is inadequate provision made for the routine monitoring of premises in which animals are kept for commercial purposes.

Animals Australia is of the view that inspectors should be authorized to perform unannounced inspections of premises where animals are sold, presented for sale, assembled or kept for commercial purposes. In Tasmania, such inspections may be performed by an authorized officer under s16(2) of the *Animal Welfare Act 1993* (Tas), and may take place at 'any reasonable time', and without the need to obtain a warrant.

Animals Australia Recommendation: the Bill should be amended to provide broader powers for inspectors to enter and search premises in which animals are assembled, sold, kept for commercial purposes or presented for sale. Authorized inspectors should be authorized to perform unannounced checks of such premises without warrant and without the provision of notice, provided those inspections take place at a reasonable time.

2.11 Weak Penalties

Animals Australia is concerned that the penalties in the Bill are among the weakest in Australia. For example, the penalty attached to s23 of the Bill, for failing to meet the minimum level of Care for an animal, is 100 penalty units or 12 months imprisonment. Given that this provision captures conduct that dramatically compromises animal welfare, and includes

- failing to provide appropriate and sufficient food and water;
- failing to provide appropriate accommodation and living conditions;
- failing to appropriately treat an animal for disease or injury when they are suffering;
- failing to allow an animal appropriate exercise;
- handling an animal in an inappropriate way;
- confining or restraining an animal in an inappropriate way;
- working, riding or otherwise using an animal in an inappropriate way;
- abandoning an animal
- or using an animal in an organised animal fight;

it is of concern that the penalties under this section are weaker than comparable provisions in other jurisdictions.

Although it is inherently difficult to compare penalties across jurisdictions due to the fact that each state and territory has different legislation which characterises offences against animals in a slightly different fashion, it is worth noting that in Western Australia, a cruelty offence carries a maximum penalty of 5 years imprisonment or \$50,000. In South Australia, the offence of 'ill-treating' an animal carries a maximum penalty of 2 years imprisonment or \$20,000. Where that ill-treatment caused the death of, or serious harm to the animal, and the person intended to cause such harm or was reckless as to causing such harm, the maximum penalty is \$50,000 or 4 years imprisonment.

Animals Australia believes that strong penalties for animal cruelty are important because they act as a deterrent. For this reason, we are of the view that the Bill should be amended to attribute higher maximum penalties to cruelty offences.

Animals Australia Recommendation: the Bill should be amended to increase the penalties for cruelty offences.

3.0 Comment on Enforceability of Codes of Practice and Amending the Regulations

Animals Australia supports the intention behind s20 of the Bill, which provides that the regulations may adopt or prescribe Codes of Practice relating to animal welfare. Such provisions make it possible for the regulations to incorporate Codes of Practice, with the possibility of making them directly enforceable.

Whilst Animals Australia supports this intention, an even stronger and clearer provision would provide even better protections for animals. For example, in Queensland, the *Animal Care and Protection Act 2001* (Qld) provides under s15 that 'a regulation may require a person to comply with the whole or a stated part of a code of practice' (a 'compulsory code requirement'), and that 'a person to whom a compulsory code requirement applies must comply with the requirement'. Given that Codes of Practice detail the minimum standards of care required for persons who own certain classes of animal in specific contexts, Animals Australia strongly supports the inclusion of an offence for failing to comply with a compulsory Code of Practice within the Bill.

Moreover, following the passage of the amended Bill, Animals Australia strongly recommends that the regulations be promptly amended to adopt all current animal welfare Codes of Practice **and** the newer relevant Standards and Guidelines.

Animals Australia Recommendations:

- (1) The Bill should be amended to include an offence for failing to comply with a compulsory Code of Practice; and
- (2) Following the passage of the amended Bill, the regulations should also be promptly amended to make compliance with all Codes of Practice and Standards and Guidelines compulsory.

I commend the above recommendations to you. Please contact me if you require further information or explanation.

Yours sincerely,



Glenys Oogjes

Chief Executive Officer
Animals Australia