

**Submission for the Parliamentary Committee**  
**Animal Protection Bill 2018 (serial 44)**

Submitted by; Mr Jean-Remi CAMPION

**Summary**

After thorough reading and research of the proposed Animal Protection Act 2018, I believe that the following sections of the Bill are in need of reconsideration, and further discussion of points set out, as detailed below.

Thankyou for your consideration,

Kind regards,

Jean-Remi CAMPION.

Contents (*9 pages*)

**Proposed additions and/or changes**

- **Part 1 S4 Definitions**
- **Part 1 Preliminary matters**
- **Section 6 Minimum level of care for an animal**
- **Division 1 Obligations and offences**
  - a) **Section 22 Obligations**
  - b) **Section 24 Cruelty to an animal**
- **Part 6 Miscellaneous matters**
  - a) **Section 112 Immediate forfeiture in certain cases**
  - b) **Section 115 Automatic ban for multiple offences**

**Points for discussion**

- **Division 4 Codes of Practise**
  - a) **Section 20 Making codes of practise**
  - b) **Section 21 Use of codes of practise**
- **Division 3 Functions and powers of authorised officers**
  - a) **Section 80 Requirement to report suspected offences**

**Issues needing attention, not mentioned in Bill or Ministers speech**

- **Banned or known animal offenders register.**
- **Desexing of animals in Aboriginal communities**

**Note:**

Proposed changes or additions of the Bill are in *italics in red*.

After each suggested change, the *rationale* of the proposed change is detailed.

**Proposed addition**

**Part 1 Preliminary matters**

**4 Definitions;**

***Duty of care;** The obligation to take the minimal level of care for an animal, see section 6.*

**Rationale:** It is necessary to make clear that every person in charge of an animal owes a duty of care to that animal.

As there is no definition of 'duty of care' in Part 1 S4 Definitions, it is advisable to add the term '*duty of care*' in definitions.

By including this term and with a reference to section 6, may avoid any possible loophole in defence against a charge of not carrying out a duty of care to an animal (see section 22 of this Act).

**Proposed change**

**Part 1 Preliminary matters**

**6 Minimum level of care for an animal**

1 The minimum level of care for an animal is the level of care required to ensure that the animal:

*Replaced with*

(1) The minimum level of care for an animal is *the duty of care* required to ensure that the animal:

(a) has appropriate and sufficient food and water; and

- (b) has appropriate accommodation and living conditions; and
- (c) is appropriately treated for disease or an injury, or when suffering; and
- (d) is allowed appropriate exercise; and
- (e) is handled only in ways that are appropriate; and
- (f) is confined or restrained only in ways that are appropriate; and
- (g) is worked, ridden or otherwise used only in ways that are appropriate; and
- (h) is not abandoned; and
- (i) is not used in an organised animal fight.

**Rationale:** It is necessary to make clear that every person in charge of an animal that the minimal level of care is the duty of care owed to an animal. By including the term ‘duty of care’ (a term with which people are familiar), it is clear that the required minimal level of care for an animal is a duty of care for an animal.

This addition may avoid any possible loophole in defence against a charge of not carrying out a duty of care to an animal.

**Proposed change:**

**Part 3 Care and Protection of animals**

**Division 1 Obligations and offences**

**22 Obligations**

(1) A person in control of an animal owes a duty of care to the animal

*Replaced with*

(1) A person in control of an animal owes a duty of care to the animal (*see Section 6*)

**Rationale:** The addition of (*see Section 6*) reiterates the conditions of that duty of care as set out in S6

**Proposed change:**

**Part 3 Care and protection of animals**

**Division 1 Obligations and offences**

**24 Cruelty to an animal**

(1) A person commits an offence if:

- (a) the person intentionally causes suffering or harm to an animal or intentionally contributes to its suffering or harm; and
- (b) the suffering or harm is unjustifiable, unnecessary or unreasonable in the circumstances.

*Replaced with*

A persons commits an offence if;

- (a) the person intentionally causes suffering or harm to an animal or intentionally contributes to its suffering or harm; *or*
- (b) the person(s) actions, or conduct, wether intentional or as a result from an action of neglect or similar, causes or results in the causes of suffering or harm to an animal; and*
- (c) the suffering or harm is unjustifiable, unnecessary or unreasonable in the circumstances.

*Replacing ;and with ;or on subsection (a)*

*Insertion of sub section (b);*

*Former subsection (b) becomes subsection (c)*

**Rationale:** in the proposed amendment, the replacement of ;and with ;*or* at the end of subsection (a) makes both subsections a separate condition rather than both.

The addition of new subsection (b) reduces any possibility of person claiming that their action against the animal was not intentional. This inclusion will oblige that a person in charge of an animal to be aware of their subsequent actions are accountable in any treatment of animals contrary to this Act.

This includes the fundamental requirement to take every precaution in ensuring that their actions or conduct, do not risk the result of neglect, and/or suffering of an animal (whether foreseen or not), and as such, this is their responsibility to avoid.

Additionally, the insertion of '*or*' replacing '*and*' after subsection (a), will avoid a closed interpretation of the term '*and*'. (meaning that either one of the conditions apply singularly rather than both subsections (a) and (b) criteria's of having to have been met (one or both)

**Proposed change:****Part 6 Miscellaneous matters****S112 Immediate forfeiture in certain cases**

(1) An animal is forfeited to the CEO if:

- (a) a court finds a person guilty of an offence against this Act; and
- (b) the offence was committed in relation to the animal; and
- (c) the person was a person in control of the animal at the time of the offence.

Proposed insertion of an additional section and subsection;

**S112 (1A)** *If in the opinion of an authorised officer, that the conditions of treatment or keeping of an animal are contrary to section 6 or section 24 of this Act, and that to leave the animal with the person in charge of the animal will continue the animal to suffer from neglect or similar, that;*

**(a)** *the animal is forfeited immediately prior to any charge or conviction.*

**Rationale:** Section 112 of the proposed Bill only permits lawful forfeiture of an animal if the court finds a person guilty of an offence against the Animal Protection Act.

This is to counter productive towards the well-being of the animal, as the lapse of time of a person being charged, and taken to court, found guilty, can be many months, even years. During that time the animal may well continue to suffer from neglect or similar.

By temporarily forfeiting the animal, (whilst awaiting the case be investigated and eventually the person be successfully prosecuted), will protect the animal from any further neglect or cruelty.

**Proposed change:****Part 6 Miscellaneous matters****115 Automatic ban for multiple offences.**

It is proposed that this section is rewritten as follows:

**115 Automatic ban for offences**

Subsection changes to the following:

(1) This section applies to a person who is found guilty *of any single or more offence(s) against Sections 6 and 24, or any other part of this Act, will be banned for a lifetime period from being in control of an animal(s).*

*(2) subsection 2 is repealed as subsection 1 replaces the total time span (lifetime ban).*

(3) Subject to subsection (4), the person is banned from being a person in control of an animal for *a lifetime period* from the date of the finding of guilt *of any one or more offence against sections 6 and 24 or any other part of this Act.*

(4) *This subsection deleted* The court that finds the person guilty of an offence that gives rise to a ban under subsection (3) may, on application by the person, grant an exemption to the person in relation to the operation of that subsection.

(5) *This subsection deleted;* The court may, subject to such conditions as the court considers appropriate, grant an exemption that applies:

(a) as a complete exemption; or

(b) in relation to a specified animal or animals, or a specified class or classes of animals.

(6) A person commits an offence if:

(a) the person is subject to a ban under subsection (3). *(the rest of this subsection deleted as it refers to subsection 5 which should be deleted);*  
and

(b) the person intentionally engages in conduct; and

(c) the conduct results in a contravention of the ban, and the person is reckless in relation to that result. *(delete words 'or the condition as the case may be' as subsection 5 is proposed to be deleted)*

### **Rationale:**

The proposed legislation in s115 (1) and (2) is too low of a bar to be of any deterrent.

Given the little success in prosecutions (five in the past year, despite the hard work of the officers of animal welfare branch and the department), this section as proposed in the Bill is insufficient to be of any deterrent, or

guarantee protection to animals from future harm under the control of any person found guilty of these offences.

As criminal statistics show, in the cases of cruelty to animals, there is a great chance that persons found guilty of animal cruelty will re-offend. It is, therefore, necessary to impose a lifetime ban on persons having been found guilty of any offence relating to animal cruelty or neglect.

### **Points for discussion**

#### **Division 4 Codes of Practice**

##### **20 Making codes of practice**

How and when is it scheduled to make a code of practice relevant to this Act?

A code of practice referred to in section 20 to be effective should be existing at the same time of the enactment of this bill.

Is it proposed to be passed as Delegated Legislation after the bill, and if so, how long after?

##### **21 Use of codes of practice**

Subsections (1) and (2) Refer to compliance or non-compliance with a code of practice as mentioned above. It is clear in these subsections that without a code of practice there is a defence (subsection 20 to prosecution for an offence against this Act. Therefore the offender cannot be successfully charged if there is no working current code of practice at the time of the enactment of this Act.

It is therefore essential that the Minister have a code of practice at the time of the enactment of this Bill. **Question: How does the Minister intend to address this?**

#### **Division 3 Functions and powers of authorised officers**

##### **80 Requirement to report suspected offences**

If an authorised officer believes on reasonable grounds that an offence against this Act has been, is being or is likely to be committed, the

authorised officer must report the matter to the CEO as soon as practicable.

**Suggestion:** *Expediting the process of reporting for a quicker, effective action.*

### **Delegating power to enable a turn around of reports.**

Given that an authorised officer is required to report when he believes on reasonable grounds that an offence against this Act has been, is being or is likely to be committed, to the CEO, it is likely that this long chain of command may take longer than practical to have the CEO act upon such reports.

Can it be envisaged, that such reporting of offences by authorised officers, could be actioned by a designated delegated manager (or similar) under the CEO, who has for task, a priority in processing and acting upon such reports for a quicker and subsequent action?

**Rationale:** As has been seen in recent events, in between reporting an offence or suspected offence, there can be a long delay in consideration and action, due to multiple reasons (Workload of CEO or delegated person, issues with the communication system in the chain of command, lack of appreciation of reported situation due to the extrinsic position of the CEO in such a large organisation).

Therefore, a direct manager in daily contact with the animal welfare officers need to be delegated with the appropriate powers to act on reports from authorised officer. In turn, a weekly report or synopsis of all report handled will be compiled for the CEO.

### **Issues not mentioned in Bill or Ministers speech**

#### **1) Banned or known animal offenders register.**

Has the Minister considered the introduction of an electronic listing, or record, of known animal offenders to be included within the power of this proposed Act?

An electronic form of registered Animal offenders and banned animal owners needs to be set up and made available both in the department and



in the field to all authorised officers and personnel. This will facilitate the flagging of known animal offenders and alert the authorised officers of such.

Additionally, warnings and cautions given by authorised officers out in the field can be entered in real-time to update the register. This will be accessible to other authorised officers in the field (similar to alerts given by JSSEC to operational members of the NT Police and Fire Service when responding to particular address or names), and also managers of the Animal Welfare Branch and person and the CEO of the Department, when considering reports, cases.

## **2) Desexing of animals in Aboriginal communities**

It is known that in and around Aboriginal communities, both within Darwin, rural and outback, that there is a huge problem of animals (dogs and feral cats) due to no successful desexing program of animals.

This results in a neglect of animals living in inhumane conditions.

Additionally, health hazards for the Aboriginals of the community, and non-indigenous persons living/working near the Aboriginal communities.

Many of the animals suffer from illness, disease and lack of nourishment. Fights between animals, particularly dogs, result in death and injury to dogs, resulting in further disease and sickness.

Has the Minister considered in this proposed bill, for a mandatory and regular desexing program in the Aboriginal communities?

Additionally, has the Minister, called for, from the DPIR, of a program of educational awareness for Aboriginals?

Such a program would, for example, focus on education of the health and well-being issues associated with lack of control of animals in communities, for both the Aboriginals and for the animals.

This is an ongoing problem, and there needs to be an urgent program to control this issue and remedy the cause/.