



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Social Policy Scrutiny Committee

Inquiry into the Animal Protection Bill 2018

May 2018

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Chair's Preface

This report details the Committee's findings regarding its examination of the Animal Protection Bill 2018. The Bill repeals the *Animal Welfare Act* and aims to strengthen existing policies and make the governance of animal welfare more effective. Aligning with and building on the existing regulatory framework, the Bill provides clearly defined rights, roles and responsibilities for government, industry and the community with respect to animal welfare.

The Committee has recommended that the Assembly pass this significant piece of legislation with the proposed amendments as set out in the recommendations. The majority of these amendments go to ensuring that the Bill has sufficient regard to the rights and liberties of individuals and the institution of Parliament, is unambiguous and drafted in a sufficiently clear and precise manner.

In particular, the Committee is concerned that the Bill fails to have sufficient regard for Aboriginal tradition and is inconsistent with Commonwealth and Territory legislation regarding the exercise of native title rights and interests relating to hunting and fishing. The Committee is also concerned that, as drafted, the exercise of delegated legislative power is not subject to an appropriate level of parliamentary oversight and scrutiny. Consequently, the Committee has recommended amendments in relation to these matters.

The submissions to the inquiry also raised some important policy questions. Most notably in relation to the proposed definition of the 'Meaning of *animal*' and the management of companion animals. As a consequence, the Committee has proposed that the definition of an animal be amended to more closely align the Bill with current scientific knowledge on the sentience of animals and to ensure that the proposed legislation has the capacity to prosecute acts of cruelty relating to fish, irrespective of whether or not they are kept in captivity. To compliment the Bill and enhance its capacity to address animal welfare issues and improve animal welfare outcomes in remote communities, the Committee has also recommended that consideration be given to the development of companion animal management legislation.

On behalf of the Committee, I would like to thank all those who made submissions or appeared before the Committee. Their input has been extremely informative and helpful. The Committee also thanks Professor Aughterson and the Department of Primary Industry and Resources for their advice.






I would also like to thank the members of the Committee for their bipartisan commitment to the legislative review process.



Ms Ngaree Ah Kit MLA

Chair

Committee Members

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	Sessional:	Social Policy Scrutiny
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Acknowledgements

The Committee acknowledges the individuals and organisations that provided written submissions or oral evidence at public hearings.

Acronyms and Abbreviations

AAWS	Australian Animal Welfare Strategy
AEC	Animal Ethics Committee
AFANT	Amateur Fishermen’s Association of the Northern Territory
ALI	The Animal Law Institute
AMRRICC	Animal Management in Rural and Remote Indigenous Communities
AVA	Australian Veterinary Association
AWA	<i>Animal Welfare Act</i> (NT)
CDU AEC	Charles Darwin University Animal Ethics Committee
Criminal Code	<i>Criminal Code Act</i> (NT)
DPIR or Department	Department of Primary Industry and Resources
HRA	Humane Research Australia
LFA	Lawyers for Animals
NLC	Northern Land Council
NTCA	Northern Territory Cattlemen’s Association
OPC	Office of Parliamentary Counsel
RSPCA	Royal Society for the Prevention of Cruelty to Animals
Scientific Code or Code	Australian Code for the Care and Use of Animals for Scientific Purposes

Terms of Reference

Sessional Order 13

Establishment of Scrutiny Committees

- (1) Standing Order 178 is suspended.
- (2) The Assembly appoints the following scrutiny committees:
 - (a) The Social Policy Scrutiny Committee
 - (b) The Economic Policy Scrutiny Committee
- (3) The Membership of the scrutiny committees will be three Government Members and one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.
- (4) The functions of the scrutiny committees shall be to inquire and report on:
 - (a) any matter within its subject area referred to it:
 - (i) by the Assembly;
 - (ii) by a Minister; or
 - (iii) on its own motion.
 - (b) any bill referred to it by the Assembly;
 - (c) in relation to any bill referred by the Assembly:
 - (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
 - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
 - (B) is consistent with principles of natural justice; and
 - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
 - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and
 - (E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
 - (F) provides appropriate protection against self-incrimination; and
 - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

- (H) does not confer immunity from proceeding or prosecution without adequate justification; and
 - (I) provides for the compulsory acquisition of property only with fair compensation; and
 - (J) has sufficient regard to Aboriginal tradition; and
 - (K) is unambiguous and drafted in a sufficiently clear and precise way.
- (iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:
- (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
 - (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
 - (C) authorises the amendment of an Act only by another Act.
- (5) The Committee will elect a Government Member as Chair.
- (6) Each Committee will provide an annual report on its activities to the Assembly.

Adopted 24 August 2017

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Animal Protection Bill 2018 with the proposed amendments set out in recommendations 2 to 16.

Recommendation 2

The Committee recommends that to avoid any ambiguity, the Bill be amended to incorporate definitions of the terms 'harm', 'pain', and 'suffering'.

Recommendation 3

The Committee recommends that:

- (a) clause 5 be amended to provide that, as a minimum, the 'Meaning of *Animal*' include live fish, irrespective of whether or not they are kept in captivity and dependent on a person for food; and
- (b) the Animal Protection Regulations adopt or prescribe the *National Code of Practice for Recreational and Sport Fishing* pursuant to clause 20, thereby providing for recreational fishing activities undertaken in accordance with the code of practice.

Recommendation 4

The Committee recommends that clause 12 be amended to preserve an individual's right to the privilege against self-incrimination.

Recommendation 5

The Committee recommends that clause 20 be amended to require that where codes of practice, or parts thereof, are prescribed or adopted under the Animal Protection Regulations (including amendments to adopted or prescribed provisions) and are not part of, or attached to, the regulation, they must be tabled in the Legislative Assembly and subject to disallowance as provided for under s 63(9) of the *Interpretation Act* (NT).

Recommendation 6

The Committee recommends that clause 22(1) be amended by removing the words 'owes a duty of care' and replacing them with the words 'must provide a minimum level of care'.

Recommendation 7

The Committee recommends that clause 24(1) be amended to read as follows:

- (1) A person commits an offence if:
 - (a) the person intentionally engages in conduct; and
 - (b) the conduct results in suffering or harm to an animal or contributes to its suffering or harm and the person is reckless in relation to that result; and

- (c) the suffering or harm is unjustifiable, unnecessary or unreasonable in the circumstances, and the person is reckless in relation to that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

Recommendation 8

The Committee recommends that clause 24(3) be amended by removing the words 'terrifies or torments.'

Recommendation 9

The Committee recommends that clause 24(7)(c) be amended by removing the words 'other than the dew claws of a dog less than 5 days old.'

Recommendation 10

The Committee recommends that clause 29 be amended by removing subclauses 29(5)(a) and (c).

Recommendation 11

The Committee recommends that clause 32 be amended to clarify that the exemption at subclause 32(6)(b) only refers to:

- (a) the keeping and display of animals that will only eat live food; and
- (b) live food is essential for the animal's survival; and
- (c) the live feed animal is of an appropriate species.

Recommendation 12

The Committee recommends that clause 33(1)(d) be amended to clarify that the other animal in question refers to a species that 'could be used' for blooding a greyhound.

Recommendation 13

The Committee recommends that clause 61(1)(a) be amended to clarify that only the applicant who is seeking approval to conduct a research study needs to satisfy the 'fit and proper person' test.

Recommendation 14

The Committee recommends clause 75(7) be amended by removing the term of imprisonment in the penalty provisions for this offence.

Recommendation 15

The Committee recommends that clause 110 be amended to:

- (a) ensure consistency with sections 211 and 223 of the *Native Title Act 1993* (Cwlth), section 73 of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cwlth), section 52 of the *Fisheries Act* (NT), and section 122 of the *Territory Parks and Wildlife Conservation Act* (NT); and

- (b) provide for the exercise of Aboriginal tradition or native title rights and interests in a manner similar to that provided for under section 41A of the *Animal Care and Protection Act 2001* (Qld).

Recommendation 16

The Committee recommends that clause 39(b) be amended by removing the word 'welfare' and replacing it with the word 'ethics'.

Recommendation 17

The Committee recommends that the Government give consideration to the development of Companion Animal Management legislation.

1 Introduction

Introduction of the Bill

1.1 The Animal Protection Bill 2018 (the Bill) was introduced into the Legislative Assembly by the Minister for Primary Industry and Resources, the Hon Ken Vowles MLA, on 8 February 2018. The Assembly subsequently referred the Bill to the Social Policy Scrutiny Committee for inquiry and report by 1 May 2018.¹

Conduct of the Inquiry

1.2 On 9 February 2018 the Committee called for submissions by 9 March 2018. The call for submissions was advertised via media release, the Legislative Assembly website, Facebook, Twitter feed and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.

1.3 The Bill, associated *Explanatory Statement*, and *Statement of Compatibility with Human Rights* was also forwarded to Professor Ned Aughterson for review of fundamental legislative principles under Sessional Order 13(4)(c).

1.4 As noted in Appendix 2, the Committee received 34 submissions to its inquiry. The Committee held a public briefing with the Department of Primary Industry and Resources on 19 February 2018 and public hearings with 16 witnesses in Darwin on 9 April 2018.

Outcome of Committee's Consideration

1.5 Sessional order 13(4)(c) requires that the Committee after examining the Bill determine:

- (i) whether the Assembly should pass the bill;
- (ii) whether the Assembly should amend the bill;
- (iii) whether the bill has sufficient regard to the rights and liberties of individuals; and
- (iv) whether the bill has sufficient regard to the institution of Parliament.

1.6 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill with proposed amendments as set out in recommendations 2 to 16. In accordance with clauses 4(c)(iii) and 4(c)(iv) of the Committee's terms of reference, the Committee has proposed a number of amendments which seek to ensure that the Bill:

- makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review;

¹ Parliamentary Record, (Hansard) and Minutes of Proceedings, 13th Assembly, Debates, 08/02/2018, pp. 3-13, https://parliament.nt.gov.au/_data/assets/pdf_file/0008/482309/DEBATES-DAY-3-8-FEBRUARY-2018.pdf

- is consistent with principles of natural justice;
- has sufficient regard to Aboriginal tradition;
- is unambiguous and drafted in a sufficiently clear and precise way;
- allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
- sufficiently subjects the exercise of delegated legislative power to the scrutiny of the Legislative Assembly.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Animal Protection Bill 2018 with the proposed amendments set out in recommendations 2 to 16.

Report Structure

- 1.7 Chapter 2 provides an overview; of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.
- 1.8 Chapter 3 considers the main issues raised in evidence received.

2 Provisions of the Bill

Background to the Bill

- 2.1 In presenting the Bill, the Minister for Primary Industry and Resources noted that the death of over 100 cattle from starvation at Mataranka Station in 2009/10 was the catalyst for the legislative reform process of the existing *Animal Welfare Act*.

These events shocked the Territory and caused community outrage. In response, both an Ombudsman investigation and a separate parliamentary inquiry were held.²

- 2.2 In October 2011 the Council of Territory Co-Operation Animal Welfare Governance Subcommittee tabled its *Final Report* in the Legislative Assembly. The report made 21 recommendations regarding the Territory's legislation and associated procedures.³ In response, the Government of the day implemented a two stage approach:

The first stage involved the drafting of new amendments to strengthen provisions under the existing *Animal Welfare Act* with the second stage being a review of the Act.⁴

- 2.3 In December 2012, the Animal Welfare Amendment Bill was introduced and subsequently came into effect in February 2013. In September 2013 responsibility for animal welfare was moved from the then Department of Local Government to what is now the Department of Primary Industry and Resources.⁵ A review of the Act was commenced in 2014 with the public release of a discussion paper and calls for submissions, but was not completed prior to the 2016 NT General Election.

- 2.4 As noted by the Minister, the incoming Government has sought to build on the consultation processes previously undertaken:

Over the past 18 months, my department has been working with the Animal Welfare Advisory Committee and other key stakeholders in developing a new animal protection bill to replace the existing Act. Now, with the introduction of this bill, we start the final journey of legislative reform precipitated by the dark events at Mataranka Station some nine years ago.⁶

Purpose and Overview of the Bill

- 2.5 As highlighted in the Explanatory Statement, the Animal Protection Bill repeals the *Animal Welfare Act* (NT) and aims to strengthen existing polices and make the governance of animal welfare more effective. Aligning with and building on the

² Parliamentary Record, (Hansard) and Minutes of Proceedings, 13th Assembly, Debates, 08/02/2018, https://parliament.nt.gov.au/data/assets/pdf_file/0008/482309/DEBATES-DAY-3-8-FEBRUARY-2018.pdf, p.3

³ Council of Territory Co-Operation, Animal Welfare Governance Sub-Committee Final Report, Legislative Assembly of the Northern Territory, Darwin NT, October 2011, pp.vii-viii

⁴ Parliamentary Record, (Hansard) and Minutes of Proceedings, 13th Assembly, Debates, 08/02/2018, https://parliament.nt.gov.au/data/assets/pdf_file/0008/482309/DEBATES-DAY-3-8-FEBRUARY-2018.pdf, p.3

⁵ Parliamentary Record, (Hansard) and Minutes of Proceedings, 13th Assembly, Debates, 08/02/2018, https://parliament.nt.gov.au/data/assets/pdf_file/0008/482309/DEBATES-DAY-3-8-FEBRUARY-2018.pdf, p.3; see also *Animal Welfare Act* (NT)

⁶ Parliamentary Record, (Hansard) and Minutes of Proceedings, 13th Assembly, Debates, 08/02/2018, https://parliament.nt.gov.au/data/assets/pdf_file/0008/482309/DEBATES-DAY-3-8-FEBRUARY-2018.pdf, p.3;

existing regulatory framework, the Bill provides clearly defined rights, roles and responsibilities for government, industry and the community with respect to animal welfare.⁷

2.6 In addition to ensuring that the Bill complies with the principles of criminal responsibility pursuant to Part IIAA of the *Criminal Code Act* (NT), and that offence penalties are appropriate and proportionate to the relevant criminal conduct, key new initiatives in the Bill include:

- clarifying responsibility and accountability by vesting the administrative power of the Act with the Chief Executive Officer (CEO) of the regulatory agency, rather than with an Animal Welfare Authority;
- registering the actual scientific users of animals for scientific purposes, rather than the current practice of licensing premises;
- providing accredited animal ethics committees with increased oversight for research projects they approve;
- the ability to prescribe by regulation, codes of practice and standards relevant to animal welfare;
- creating a single category of authorised officers rather than the two categories under the current Act;
- an ability to issue animal welfare directions and Improvement Notices to those who provide inadequate care to animals or fail to comply with certain statutory requirements, with penalties for those who do not comply;
- under controlled circumstances, allowing authorised officers to enter land to check on the condition of animals at risk, without a warrant or the written consent of the occupier;
- under certain circumstances, allowing an authorised officer to lawfully destroy an animal to end its suffering.⁸

⁷ Explanatory Statement, Animal Protection Bill 2018 (Serial No. 44), <https://parliament.nt.gov.au/committees/spsc/44-2018>, p.1

⁸ Explanatory Statement, Animal Protection Bill 2018 (Serial No. 44), <https://parliament.nt.gov.au/committees/spsc/44-2018>, p.1

3 Examination of the Bill

Introduction

3.1 All of the submissions received were generally very supportive of the Bill and commended the Government for bringing forward the legislation. While a number of submissions sought clarification on the anticipated operation of the Bill, others provided suggestions as to how the Bill might be improved. The following discussion considers the main issues raised in the evidence received along with the advice provided by Professor Ned Aughterson regarding compliance with Sessional Order 13(4)(c), and the response to the Committee's written questions provided by the Department of Primary Industry and Resources (the Department).

Short Title

3.2 While supporting the contemporary approach of the Bill, the Northern Territory Cattlemen's Association Inc. (NTCA) raised concern regarding the proposed change to the title of the legislation:

The term 'Animal Protection' suggests *animal rights* rather than *animal welfare* is the priority of the legislation, which changes the intent of the Bill altogether. The proposed title has the connotation that in the NT animals need to be 'protected' and that 'care' of animals is not currently adequate. From an industry's perspective, the change to the title of the Bill suggests that 2.1 million head of cattle will require to be 'protected' under the Bill.

The NTCA supports the current legislative approach where the *Animal Welfare Act* administers the minimum level of care and cruelty to animals amongst other matters and the *Livestock Act* administers the Australian Animal Welfare Standards for Cattle providing clear direction for people responsible for cattle specifying 54 'Must Do' standards.⁹

3.3 The Australian Veterinary Association (AVA) was also in favour of retaining the existing *Animal Welfare* title, noting that:

in recent decades most jurisdictions have shifted from 'Prevention of Cruelty to Animals' to 'Animal Welfare', part of the reason for this is a recognition that the welfare of animals requires not just the absence of harm, but a positive consideration of the animal's welfare. This is reflected in many of our animal welfare standards (including those adopted under this legislation).¹⁰

3.4 Conversely, Animals Australia commended the shift from 'animal welfare' legislation to 'animal protection' legislation pointing out that:

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.¹¹

3.5 In contrast to other jurisdictions, the Committee notes that titling of legislation in the Northern Territory does not incorporate the year in which Acts come into effect. Thus,

⁹ Northern Territory Cattlemen's Association Inc., Submission No. 21, p.1

¹⁰ Australian Veterinary Association, Submission No. 32, p.1

¹¹ Animals Australia, Submission No. 17, p.1

as noted by the Department, “a benefit of a new title is assisting to distinguish it from the current *Animal Welfare Act* ... which came into effect in 2000.”¹²

Committee’s Comments

- 3.6 The Committee is satisfied with the Department’s response. Given the objects and provisions of the Bill, the Committee does not consider that it could be construed that *animal rights* rather than *animal welfare* is the priority of the legislation.

Recognition of Animal Sentience

- 3.7 A number of submissions to the Committee recommended that the Objects of the Bill should be amended to acknowledge that animals are sentient.¹³ As pointed out by the Australian Veterinary Association (AVA), recognition of animal sentience is consistent with contemporary scientific knowledge which acknowledges that:

animals are sentient beings that are conscious, feel pain, and experience emotions. Animals that are known to be both conscious and sentient include all vertebrates, and some classes of invertebrates such as cephalopods and probably some crustacea. Ongoing research may lead to inclusions of additional groups within this definition.¹⁴

- 3.8 Noting that the Bill provides an opportunity for the Northern Territory to take the lead in recognising animal sentience in Australia, the RSPCA advised that:

the Victorian government has flagged its intention to do so in its impending review of its animal welfare legislation this year. The European Union recognised animal sentience in 1997 with an amendment to the *Treaty Establishing the European Community*. The Treaty recognises animals as ‘sentient beings’ and provides that Member States must pay regard to the welfare requirements of animals in formulating their policies. In 2015, the New Zealand government recognised the sentience of animals with an amendment to the *Animal Welfare Act 1999* (NZ) ... This was shortly followed by the Government of Quebec.¹⁵

- 3.9 While acknowledging that the objects of an Act “are not used for the primary interpretation of the legislation”, the AVA pointed out that they do, however, “provide guidance as to the broader intent.”¹⁶ Similarly, the RSPCA noted that:

this recognition would not be expected to attach to any operative provisions of the Bill and would therefore not impact the substantive obligations and duties of animal owners. It would simply be a symbolic, yet important, recognition of the basis for why animal welfare is important and why legislation to protect animals exists.¹⁷

- 3.10 The Committee understands that recognition of sentience was considered during the development of the Bill. However, as noted by the Department:

¹² Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, p.1

¹³ see for example, The Animal Law Institute, Submission No. 25; RSPCA, Submission No. 28; Australian Veterinary Association, Submission No. 32; Lawyers for Animals, Submission No. 34.

¹⁴ Veterinary Association of Australia, Submission No. 32, p.2

¹⁵ RSPCA, Submission No. 28, p.4

¹⁶ Veterinary Association of Australia, Submission No. 32, p.2

¹⁷ RSPCA, Submission No. 28, p.4

the content of the Bill and intention would remain the same with or without that recognition. The Department considered that the adding of sentience as a specific statement did not add to the intent of the legislation or enhance compliance with the legislation.¹⁸

3.11 Mr Ian Curnow (General Manager Fisheries and Product Integrity: Department of Primary Industry and Resources) further advised that:

to us, an Act is there to provide something that is clear and enforceable so symbolism was not a necessary step and it would not enhance the provisions of the Act and how they are applied in the field. I think the other factor is that we would be keen to see where this progresses nationally too in terms of – there is a lot of work going on nationally about how to harmonise some of these things and understanding around animal welfare and a whole range of associated legislation.¹⁹

Committee's Comments

3.12 While acknowledging the views of witnesses, the Committee is satisfied with the Department's advice. As noted in the *Australian Animal Welfare Strategy*, given that "sentience is the reason that welfare matters"²⁰, the Committee is of the view that recognition of such is implicit in the Bill and does not need to be explicitly stated in the Objects of the Bill.

Definitions – Harm, Pain, Suffering

3.13 The RSPCA and Animals Australia raised concerns that while the terms 'harm', 'pain' and 'suffering' are used throughout the Bill for the purposes of the offence provisions, they are not specifically defined within the Bill. Whereas the current *Animal Welfare Act* incorporates a definition of suffering as including 'pain and distress'²¹, the only term that is defined in the Bill is 'serious harm'. Pursuant to Clause 25(3) this is defined as harm that:

- (a) endangers the animal's life; or
- (b) causes or contributes to such serious injury, serious disease or severe physical condition that it would be cruel not to destroy the animal; or
- (c) causes serious and protracted impairment of a physical or mental function of the animal.

3.14 With regards to the term 'suffering' Animals Australia noted 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.²²

¹⁸ Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, p.1

¹⁹ Mr Ian Curnow, Committee Transcript, Monday 9 April,

²⁰ Department of Agriculture and Water Resources, *Australian Animal Welfare Strategy*, <http://www.agriculture.gov.au/animal/welfare/aaws/australian-animal-welfare-strategy-aaws-and-national-implementation-plan-2010-14>

²¹ *Animal Welfare Act* (NT), s 4

²² Animals Australia, Submission No. 17, p.3

3.15 The RSPCA raised a similar point in relation to both the terms ‘harm’ and ‘suffering’:

Leaving these terms open to the Courts to interpret may lead to significant uncertainty. Courts can often impute an element of time within the noun ‘suffering’ finding that the consequence to the animal must be one of ongoing or chronic pain thereby ruling out cases of cruelty that inflict fleeting or temporary pain. ... It is essential that the definitions of these terms contain the elements of ‘mental distress’ or ‘psychological suffering’ to ensure the court can recognise states of mental pain or suffering that may be experienced by an animal.²³

3.16 Animals Australia also queried why the ‘term’ pain, rather than ‘suffering’ is used in clauses 24(2) and 92(1)(c):

Under s 24(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 s 92, an authorised officer may issue an animal welfare direction where they believe on reasonable grounds that an animal is experiencing undue pain. ...

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 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.²⁴

3.17 It is further noted that, with the exception of Tasmania and Victoria, such terms are defined in equivalent legislation elsewhere in Australia. Compare for example, in Queensland the term ‘pain’ is defined as including ‘distress and mental or physical suffering’²⁵, whereas in NSW and the ACT ‘pain’ includes ‘distress and suffering’.²⁶ In contrast, the South Australian and Western Australian legislation favour a more comprehensive definition of ‘harm’ rather than ‘pain’ or ‘suffering’. Section 3 of the *Animal Welfare Act 1985 (SA)* defines ‘harm’ as ‘any form of damage, pain, suffering or distress (including unconsciousness), whether arising from injury, disease, or any other condition.’ A similar definition of ‘harm’ is provided in section 5 of the Western Australian legislation and includes ‘injury, pain and distress evidenced by severe, abnormal physiological or behaviour reactions.’²⁷

3.18 The Committee understands that in the absence of specific definitions within the legislation, the Courts will look to the definition of the term in question as set out in the Macquarie Dictionary. Thus, ‘harm’ refers to “injury, damage, hurt – to do someone bodily harm”; ‘pain’ refers to “bodily or mental suffering or distress”; and ‘suffering’ is the act of someone who ‘suffers’, that is: “undergoes or feels pain or

²³ RSPCA, Submission No. 28, p.11

²⁴ Animals Australia, Submission No. 17, pp.3-4

²⁵ *Animal Care and Protection Act 2001 (Qld)*, Dictionary

²⁶ *Prevention of Cruelty to Animals Act 1979 (NSW)*, s 4; *Animal Welfare Act 1992 (ACT)*, Dictionary

²⁷ *Animal Welfare Act 2002 (WA)*, s 5

distress”.²⁸ Acknowledging that the Bill as currently drafted only incorporates a definition of ‘serious harm’, the Department advised the Committee that it would:

review the use of these terms, and accepts that both ‘*harm*’ and ‘*suffering*’ probably should be defined. There is a need to seek advice from the Office of the Parliamentary Counsel (OPC) to review proposed changes to minimise any unintended consequences in being able to successfully prosecute the Act.²⁹

Committee’s Comments

3.19 The Committee notes the Department’s undertaking to review the use of the terms ‘harm’, ‘pain’ and ‘suffering’. While both the RSPCA and Animals Australia recommended that consideration be given to inclusion of the all-encompassing definition of ‘harm’ as provided for in the South Australian legislation, the Committee acknowledges that this would require the re-drafting of a considerable number of provisions within the Bill. However, to avoid any ambiguity as to the intent of the Bill and the operation of offence provisions, the Committee considers that it would be beneficial if definitions of the terms ‘pain’, ‘harm’ and ‘suffering’ were included in clause 4 of the Bill.

Recommendation 2

The Committee recommends that to avoid any ambiguity, the Bill be amended to incorporate definitions of the terms ‘harm’, ‘pain’, and ‘suffering’.

Meaning of *Animal*

3.20 Clause 5 defines the ‘Meaning of *animal*’ as follows:

- (1) An ***animal*** is:
 - (a) a live member of a vertebrate species, including an amphibian, bird, mammal and reptile; and
 - (b) a live fish that is kept in captivity and dependant on a person for food; and
 - (c) a live crustacean that is kept in captivity.
- (2) Despite subsection (1)(a), an ***animal*** does not include:
 - (a) a live fish that is not kept in captivity; or
 - (b) a human being.

3.21 The majority of submissions to the Committee raised concerns that the “proposed definition of animal is unnecessarily narrow.”³⁰ As Animals Australia pointed out, the definition “fails to reflect scientific knowledge regarding the sentience of animals.”³¹ The Committee notes that the *Australian Animal Welfare Strategy* “covers all sentient

²⁸ Macquarie Dictionary Online, <https://www.macquariedictionary.com.au/>

²⁹ Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, p.2

³⁰ The Animal Law Institute, Submission No. 25, p.2; see also RSPCA, Submission No. 28, p.5; Animals Australia, Submission No. 17, pp.2-3; Australian Veterinary Association, submission No. 32, pp.2-3; and Form Submissions A and B.

³¹ Animals Australia, Submission No. 17, p.2

animals – that is, those with a capacity to experience suffering and pleasure.”³² As noted previously, the Australian Veterinary Association (AVA) advised that “animals that are known to be both conscious and sentient include all vertebrates, and some classes of invertebrates such as cephalopods and probably crustacea.”³³ The AVA therefore recommended that the Bill should use the same definition as that contained in the *Australian Code for the Care and Use of Animals for Scientific Purposes*:

Any live non-human vertebrate, that is, fish, amphibians, reptiles, birds and mammals, encompassing domestic animals, purpose-bred animals, livestock, wildlife, and also cephalopods such as octopus and squid.³⁴

- 3.22 As highlighted in Appendix 1, with the exception of South Australia and Western Australia, the definition of animal in all other jurisdictions includes live fish. However, in the Bill this is limited to live fish that are kept in captivity and dependent on a person for food. As noted by the RSPCA and the AVA, there is no rational basis for excluding wild fish.³⁵

Any perception that including fish, crustaceans, and cephalopods as animals under the Bill will limit fishing practices is unfounded as appropriate exemptions can be provided for legitimate fishing activities. This is how Victoria, Queensland and Tasmania seek to protect legitimate activities like fishing while protecting sentient animal species from cruelty. Additionally, NSW and the ACT also takes this approach with respect to fish. With the exception of the ACT, all of these jurisdictions have significant fishing industries, both commercial and recreational, and none have experienced difficulties with animal welfare legislation restricting or inhibiting these practices.³⁶

- 3.23 As the RSPCA pointed out, the proposed definition significantly limits the capacity to prosecute acts of cruelty:

Just two days ago, a group of young men in Western Australia filmed themselves dragging a live shark behind their vehicle and posted the footage online. The incident shocked the public and made national headlines. If such an incident occurred in the Northern Territory there would be no legal recourse as the shark was not “in captivity or dependent on a person for food”.³⁷

- 3.24 Noting that incidences such as this highlight the need to ensure protection is extended to aquatic environments, the AVA submission mentioned the ill treatment of a puffer fish on the Nightcliff jetty that made the front page of the NT News in April 2014.³⁸ At the time Mr Peter Phillips (Director Animal Welfare: Department of Primary Industry and Resources) was quoted as saying that while the Department

³² Department of Agriculture and Water Resources, *Australian Animal Welfare Strategy*, <http://www.agriculture.gov.au/animal/welfare/aaws/australian-animal-welfare-strategy-aaws-and-national-implementation-plan-2010-14>

³³ Australian Veterinary Association, Submission No. 32, p.2

³⁴ Australian Veterinary Association, Submission No. 32, p.3; see also National Health and Medical Research Council, *Australian Code for the Care and Use of Animals for Scientific Purposes*, 8th edition, National Health and Medical Research Council, Canberra ACT, 2013, p.3

³⁵ RSPCA, Submission No. 28, p. 5; Australian Veterinary Association, Submission No. 32, p.2

³⁶ RSPCA, Submission No. 29, p.5

³⁷ RSPCA, Submission No. 29, p.5

³⁸ Australian Veterinary Association, Submission No. 32, pp.2-3

condemned the behaviour, the incident did not “fall under the scope of the *Animal Welfare Act* and therefore no penalty can apply.”³⁹

3.25 While supporting an exemption for “legitimate fishing activities”⁴⁰, Mr David Ciaravolo (Executive Officer: Amateur Fishermen’s Association of the NT) pointed out that:

fishos who mistreated their catch were not above the law. Fishers do the right thing and they have a national code of practice which they should abide by and if people are doing activities outside of that code of practice, it makes sense for them to be held accountable.⁴¹

3.26 With regards to the proposed definition of the ‘meaning of *animal*’, Mr Ian Curnow (General Manager Fisheries and Product Integrity: Department of Primary Industry and Resources) advised the Committee that consideration was given to broadening the definition:

There was that issue that was contemplated about do we maintain the position of the old act, which we have gone with, which is quite a narrow definition of animal ... it is a continuation of what has been in place. What is important there, certainly in the context of fisheries ... is as part of those deliberations we were quite clear we have had no incidents I am aware of over the last 20 years where we have had any reports through Animal Welfare about instances involving fishing anyway. There was the element of ‘if it is not broken, do not try to think of a new solution.’

Obviously, we have seen some of the comments in the submissions that have come through now. The other point that is worth noting though, is that since we got those in I have spoken to the peak fishing stakeholder groups as well. They said they did not see the need to put in a submission and did not bother because of the approach that has been taken. They have had their chance for input.

The critical elements there, as has been pointed out in some of the submissions, is some of the other states have a broader definition of ‘animal’ that includes fish, but then goes through and excludes anything that is done lawfully under the *Fisheries Act* anyway, which takes out most of the elements in a practical application.

The real issue is the approach that is consistent with what was under the existing legislation. We have had no issues raised – certainly in the last 10 years while I have been in the Northern Territory – that has indicated that there have been any deficiencies in that existing legislation.⁴²

3.27 The Committee was further advised that while practices such as shark-finning are illegal under the *Fisheries Act*, and prohibited nationally, the Act does not cover the welfare of fish.⁴³ The Department also noted that:

³⁹ Megan Palin, *Angler taunts puffer fish before kicking it into the ocean in front of shocked tourists*, NT News, 8 April 2014, <http://www.ntnews.com.au/lifestyle/fishing/angler-taunts-puffer-fish-before-kicking-it-into-ocean-before-shocked-tourists/news-story/d41e29025680a3fa79971e647d20d190>

⁴⁰ Mr David Ciaravolo (Executive Officer: Amateur Fishermen’s Association NT) cited in: Jason Walls, *Fish feel pain and need protection: advocates*, NT News, Tuesday 17 April 2018, p.2

⁴¹ Mr David Ciaravolo (Executive Officer: Amateur Fishermen’s Association NT) cited in: Jason Walls, *Fish feel pain and need protection: advocates*, NT News, Tuesday 17 April 2018, p.2; see also Recfish Australia, *A National Code of Practice for Recreational and Sport Fishing*, <http://recfishaustralia.org.au/national-code-of-practice-2010/>

⁴² Mr Ian Curnow, Committee Transcript, 9 April 2018, pp.39-40

⁴³ Mr Ian Curnow, Committee Transcript, 9 April 2018, p.40

including fish in the meaning of animal, but then providing a blanket exemption from most provisions of the Act is not the Northern Territory Government's preferred legislative mechanism.⁴⁴

Committee's Comments

- 3.28 The Committee is concerned that, as currently drafted, the Bill lacks the capacity to prosecute cruelty to animal offences in relation to wild fish, and fails to acknowledge current scientific knowledge regarding the sentience of animals. Although it is acknowledged that recreational and commercial fishing industry practices are subject to the *Fisheries Act* (NT) and associated regulations, as noted by the Department these provisions do not cover the welfare of wild fish per se.
- 3.29 With regards to the Department's advice that providing blanket exemptions is not the Government's preferred legislative mechanism, the Committee notes that such exemptions only apply in the Tasmanian and Queensland legislation. Elsewhere, exemptions are provided through the operation of equivalent provisions to the proposed clauses 20 and 21.
- 3.30 Pursuant to clause 20 'a regulation may adopt or prescribe codes of practice relating to animal welfare' which may be about a wide range of matters including the killing, hunting, catching, trapping and netting of animals. Clause 21 then provides that 'it is a defence to a prosecution for an offence against this Act if the conduct constituting the offence, or element of the offence, was in accordance with a code of practice adopted or prescribed by regulation.'
- 3.31 Thus, adoption of the relevant codes of practice relating to the Territory's commercial fishing industries and the *National Code of Practice for Recreational and Sport Fishing* would effectively provide an exemption for any fishing activities undertaken in accordance with such codes of practice, while maintaining the Bill's capacity to prosecute cruelty to animal offences in relation to fish, irrespective of whether or not they are kept in captivity and dependent on a person for food.

Recommendation 3

The Committee recommends that:

- (a) **clause 5 be amended to provide that, as a minimum, the 'Meaning of *Animal*' include live fish, irrespective of whether or not they are kept in captivity and dependent on a person for food; and**
- (b) **the Animal Protection Regulations adopt or prescribe the *National Code of Practice for Recreational and Sport Fishing* pursuant to clause 20, thereby providing for recreational fishing activities undertaken in accordance with the code of practice.**

⁴⁴ Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, p.2

Scientific Purposes

3.32 Under clause 7(1), an animal is considered to be used for scientific purposes ‘if the animal is used in connection with an activity performed to acquire, develop or demonstrate knowledge or techniques in an area of science.’ Subclause (2) then provides that an activity includes, teaching, performing field trials, conducting environmental studies, engaging in research, testing products, and producing biological products.

3.33 The Charles Darwin University Animal Ethics Committee (CDU AEC) advised that it was concerned this clause could be misinterpreted:

The definition prescribed for Scientific Purposes at section 7, in conjunction with the requirement for registration at section 40, could be interpreted to include the general population performing research-like activities. It is suggested that there could be a clearer definition to ensure a separation between professional research and community engagement with animals.⁴⁵

3.34 Professor Keith Christian further clarified for the Committee that the reason this is a potential problem is because:

the code of practice for the scientific use of animals is very stringent in describing what research is. For example, a researcher who wants to study bird behaviour – goes out and watches birds through his binoculars for scientific purposes – requires animal ethics approval even though that is a very non-invasive kind of procedure. That person requires animal ethics approval when they go to publish that research. The journal will be expecting to see that they have had ethics approval. That one end of the continuum is fine. At the other end of the continuum is bird watchers who go out to watch birds with their binoculars and they should not need the animal ethics approval for that. At the two extremes it is fine.

It is in the middle that there are some grey areas, particularly with recent advances of citizen science where people are doing things and collecting data that may ultimately lead to a scientific publication or something like that. It starts to get a bit grey ... if a school has a pet hamster as a pet that is fine. If they have a hamster that they run in mazes and do experiments on as part of the education profile, then that fits under the category of scientific use of animals. As the Act reads now, it should go to an animal ethics committee.⁴⁶

3.35 The Department advised the Committee that:

the intent of the definition of ‘*scientific purposes*’ is to ensure that those in the community who undertake formal (professional) research involving interactions with animals seek and receive appropriate approvals to do so. Education material to be prepared on the new Act will provide clarity on what activities involving animals would and would not constitute use for a scientific purpose, and therefore require or not require registration.⁴⁷

3.36 Following further clarification from the Department, the Committee notes that clause 37 provides that ‘the CEO may treat a group of 2 or more authorities, institutions, bodies or entities as a single applicant and register them as a single registered person.’ Examples provided for this clause include ‘a group of educational institutions’. The Committee understands that this mechanism allows for the

⁴⁵ Charles Darwin University Animal Ethics Committee, Submission No. 16, p.2; see also Professor Keith Christian, Committee Transcript, 9 April 2018, p.9

⁴⁶ Professor Keith Christian, Committee Transcript, 9 April 2018, p.9

⁴⁷ Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, p.3

Department of Education to lodge a single application for registration under clause 42 to allow for the scientific use of animals undertaken in schools based on a suite of activities involving animals as part of the science curriculum. The registered person, or chief investigator acting under the authority of the registered person, would then be responsible for making an application to an Animal Ethics Committee pursuant to clause 59(1) for approval for the planned program of activities.

Committee's Comments

3.37 The Committee is satisfied with the Department's advice and considers that the Bill incorporates appropriate provisions to ensure that activities undertaken by schools that use animals for scientific purposes comply with the requirements of the scientific code while minimising the administrative burden that might otherwise occur if individual schools were required to register as scientific users of animals and apply for animal ethics approval.

CEO's Investigative Power

3.38 Professor Aughterson questioned the extent to which clause 12 has sufficient regard to the rights and liberties of individuals.⁴⁸ Given that this clause gives the CEO very broad investigative powers, including in relation to the obtaining of 'relevant' information from persons, Professor Aughterson raised the following concern:

The objects of the Act in section 3 are broad, so that potential 'relevant' information is equally broad. Relative to that, non-compliance with the request gives rise to an offence of strict liability. The privilege against self-incrimination has also been removed and there is no provision for derivative use immunity (see the 'Statement of Compatibility with Human Rights' at p.13). On top of that, the information must be provided in the manner and within the time specified in the requirement. Actions taken pursuant to provisions of this nature are difficult to challenge and can lead to instances of excessive and unreasonable demands.⁴⁹

3.39 The privilege against self-incrimination provides that a person cannot be compelled to give evidence or produce documents that may tend to, directly or indirectly, expose them to a criminal charge or the imposition of a penalty, or impede their right to a fair trial. While acknowledged as a cardinal principle of our system of justice and an integral part of international human rights law, there are, nevertheless, a range of agencies in Australia that are empowered to conduct information-gathering investigations that deny the privilege against self-incrimination. As the Australian Law Reform Commission has noted:

the justification for these encroachments will necessarily vary depending on the particular area of law. Generally, they have been justified on public interest grounds to promote the investigation of and to prevent unlawful practices.⁵⁰

⁴⁸ Professor Ned Aughterson, *Review of the Animal Protection Bill*, (unpublished), 9 March 2018, p.1; see also Social Policy Scrutiny Committee Terms of Reference, Sessional Order 13(4)(c)(iii)(A), <https://parliament.nt.gov.au/committees/spsc#ToR>

⁴⁹ Professor Ned Aughterson, *Review of the Animal Protection Bill*, (unpublished), 9 March 2018, p.1;

⁵⁰ Australian Law Reform Commission, *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws*, Commonwealth of Australia, Sydney NSW, December 2015, p.352

- 3.40 Since the removal of the privilege represents a significant loss of personal liberty, where a law excludes the privilege it is usual to include a direct use or a derivative use immunity⁵¹:

A 'direct use' immunity prevents the admission of evidence or information obtained through compulsion. This immunity alone has severe limitations because there is the possibility that the answer may involve the disclosure of a defence or lead to the discovery of other evidence, these being consequences against which a person charged with a criminal offence is usually entitled to be protected. A 'derivative use immunity' goes one step further and also protects against the use of information to uncover other evidence against the individual.⁵²

- 3.41 The *Statement of Compatibility with Human Rights* accompanying the Bill claims that abrogation of the privilege against self-incrimination, and associated absence of a derivative use immunity, is justifiable given that:

the exercise of this right could seriously undermine the effectiveness of the regulatory scheme and prevent the collection of evidence. ... This limitation serves the public interest in having information revealed for the purpose of investigating serious contraventions of the Act. ... These limitations of the right to be free from self-incrimination under Article 14(3)(g) of the ICCPR [International Covenant on Civil and Political Rights] are permissible as protections apply to ensure the exercise of these powers is reasonable and proportionate to achieving the legitimate objective, and adequate safeguards apply to prevent the risk of abuse or arbitrary exercise of discretion.⁵³

- 3.42 In response to the Committee's queries regarding Professor Aughterson's concern and the safeguards that apply to prevent the risk of abuse or arbitrary exercise of discretion, the Department advised that:

[It] agrees with Professor Aughterson that, as currently drafted, the CEO's investigative powers under clause 12 of the Bill, resulting in abrogating the privilege against self-incrimination, is difficult to justify. Further, the Department agrees that in clause 12 there should be provisions for inclusion of derivative use immunity. DPIR will consult with both OPC and the Department of the Attorney-General and Justice to seek advice on the redrafting of this clause.⁵⁴

Committee's Comments

- 3.43 As highlighted by Professor Aughterson, this clause does not have sufficient regard to the rights and liberties of individuals and fails to comply with clause (4)(c)(iii)(A) of the Committee's Terms of Reference which requires that a bill:

makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

⁵¹ Attorney-General's Department, *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, 2011, <https://www.ag.gov.au/Publications/Documents/GuidetoFramingCommonwealthOffencesInfringementNoticeandEnforcementPowers/A%20Guide%20Framing%20Cth%20Offences.pdf>, pp.95-8

⁵² Rogers, D, *Coercion in Crime Commissions and the Abrogation of the Privilege Against Self-Incrimination*, 2012, <https://www.robertsonogorman.com.au/media/2053/Coercion-in-Crime-Commissions-and-the-Abrogation-of-the-Privilege-against-Self-incrimination.pdf>

⁵³ Statement of Compatibility with Human Rights, *Animal Protection Bill 2018 (Serial No. 44)*, <https://parliament.nt.gov.au/committees/spsc/44-2018>, p.13

⁵⁴ Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, p.4

- 3.44 While acknowledging that limiting the rights of the individual to be free from self-incrimination is difficult to justify in this instance, the Committee notes that the Department did not clarify what safeguards apply to prevent the risk of abuse or the arbitrary exercise of discretion. Further it is noted that, contrary to the *Statement of Compatibility with Human Rights*, operation of this clause is not limited to ‘serious contraventions of the Act.’ Rather, it is applicable to the performance of any functions of the CEO as provided for under clause 11.
- 3.45 Given the above, the Committee is of the view that clause 12 should be amended to ensure that the Bill does not limit the right for an individual to be free from self-incrimination.

Recommendation 4

The Committee recommends that clause 12 be amended to preserve an individual’s right to the privilege against self-incrimination.

Codes of Practice

- 3.46 Clause 20 provides that ‘a regulation may adopt or prescribe codes of practice relating to animal welfare’, which may be about any of the following matters:
- (a) the production, processing, keeping, display, treatment, handling, husbandry, management or care of animals;
 - (b) the transportation, sale, killing, hunting, shooting, catching, trapping, netting, making, control or protection of animals.

Clause 21(2) then provides that ‘it is a defence to a prosecution for an offence against this Act if the conduct constituting the offence, or an element of the offence, was in accordance with a code of practice adopted or prescribed by regulation.’

- 3.47 The Animal Law Institute (ALI) raised concerns that clause 21(2) is an inappropriate delegation of legislative power and should be removed given that it effectively:

delegates authority to determine the substance and effect of the law to the Executive ... The proposed section 21 amounts to deference to the Executive to determine how the legislative scheme operates, and when changes are required, which in turn poses a challenge to the capacity of Parliament to maintain oversight of the overall legislative scheme. The effect of this deference is to allow the Executive, not the Legislature, to be the primary policy-making body allowing the Executive to change how the law operates without parliamentary approval.

Section 21 is particularly concerning because it allows the Executive to prescribe broad codes of practice that will be able to operate as defences to carefully worded offences. While the offences under the Act will be prescriptive as to what conduct is authorised and what conduct is prohibited, the proposed codes of practice are likely to include more general statements and guidance to industry participants. By allowing these codes of practice to be used as a defence to an offence under the Act, the Bill undermines the ability of offences to change behaviour and conduct.⁵⁵

⁵⁵ The Animal Law Institute, Submission No. 25, pp.5-6

3.48 Under section 63 of the *Interpretation Act* (NT), subordinate legislation including rules, by-laws and regulations are disallowable instruments. Any Member of the Legislative Assembly may give notice of a motion to disallow subordinate legislation, or provisions of it, within 12 sitting days after the subordinate legislation has been tabled in the Assembly.⁵⁶ In addition, pursuant to Sessional Order 14(2)(g), the Public Accounts Committee has a duty in relation to any instruments of a legislative or administrative character which the Assembly may disallow or disapprove to consider whether it has sufficient regard to the rights and liberties of individuals and to the institution Parliament.⁵⁷ In considering subordinate legislation, it is also noted that the Public Accounts Committee routinely seeks advice from its independent legal counsel.

3.49 However, as ALI pointed out, parliamentary oversight of this nature is of limited use where codes of practice are adopted simply by being listed in regulations, as is the case in the Western Australia *Animal Welfare Regulations* for example.⁵⁸

Parliament is the ultimate law making body and what we do not want to see happening is documents which have been generated by another party slip through into the law without adequate scrutiny by the Parliament ... what we want to see is that everything that ends up as law is scrutinised by Parliament.⁵⁹

ALI proposes that section 21 is omitted, with the Bill remaining silent on the effect of codes of practice in prosecutions for offences under the Act. This approach will allow a court to consider the usefulness of a code or other like guidance materials on a case by case basis.⁶⁰

3.50 The Department advised the Committee that:

clause 21 in the Bill is similar to section 79(1)(a) in the current Act which provides a defence if a defendant establishes that an act or omission constituting the offence, or an element of the offence, was undertaken in accordance with an adopted code of practice.

The Department is of the view that codes of practice when followed assist with improving animal welfare outcomes, and assist to provide certainty for those participating in animal-based industries. It is therefore appropriate for anyone undertaking a practice in accordance with an adopted or prescribed code to be afforded a level of protection as outlined ... in clause 21 of the Bill. Industry codes are reviewed and updated on a regular basis.⁶¹

Committee's Comments

3.51 The Committee acknowledges the importance of ensuring that the Bill provides certainty for those participating in animal-based activities or industries and notes that, with the exception of Tasmania, equivalent legislation elsewhere in Australia

⁵⁶ *Interpretation Act* (NT), s 63

⁵⁷ Legislative Assembly of the Northern Territory, *Thirteenth Assembly Sessional Orders*, as adopted 20 March 2018, https://parliament.nt.gov.au/_data/assets/pdf_file/0008/492137/13th-Assembly-Sessional-Orders-as-adopted-20-March-2018.pdf pp.12-13

⁵⁸ Dr Malcolm Caulfield, Committee Transcript, 9 April 2018, p.21; *Animal Welfare (General) Regulations 2003* (WA), Schedule 1

⁵⁹ Dr Malcolm Caulfield, Committee Transcript, 9 April 2018, p.21

⁶⁰ The Animal Law Institute, Submission No. 25, p.6

⁶¹ Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, p.4

incorporates similar defence provisions.⁶² However, pursuant to clause 4(c)(iv) of the Committee's Terms of Reference, the Committee is required to determine:

Whether the bill has sufficient regard to the institution of Parliament, including whether a bill ...

- (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
- (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.

The Committee agrees with the Animal Law Institute that, as drafted, the Bill fails to comply with these requirements.

- 3.52 In recognition of this issue, the Committee notes that Animal Welfare legislation in Queensland and Victoria incorporate specific provisions whereby codes of practice, or parts thereof, that are adopted or prescribed under associated Regulations and are not attached to the regulation must be tabled in the Assembly. These requirements also apply to any adopted or prescribed codes that may have been amended.⁶³ In the ACT, codes of practice are classified as disallowable instruments and subject to the same scrutiny as any other instrument of a legislative or administrative character which the Assembly may disallow or disapprove.⁶⁴
- 3.53 The provisions in Queensland, Victoria and the ACT ensure that the Parliament has an opportunity to scrutinise these documents and that they are made publicly available. If the Legislative Assembly is to maintain appropriate oversight of the operation of the proposed Bill, the Committee is of the view that clause 20 should be amended to incorporate a requirement that prescribed or adopted codes of practice are subject to disallowance.

Recommendation 5

The Committee recommends that clause 20 be amended to require that where codes of practice, or parts thereof, are prescribed or adopted under the Animal Protection Regulations (including amendments to adopted or prescribed provisions) and are not part of, or attached to, the regulation, they must be tabled in the Legislative Assembly and subject to disallowance as provided for under s 63(9) of the *Interpretation Act* (NT).

Obligations

- 3.54 Clause 22(1) provides that 'a person in control of an animal owes a duty of care to the animal'. However, as highlighted by the RSPCA and Professor Aughterson⁶⁵, the

⁶² *Animal Welfare Act 1985* (SA), s 43; *Animal Welfare Act 1992* (ACT), s 20; *Animal Welfare Act 2002* (WA), s 25; *Animal Care and Protection Act 2001* (Qld), s 40; *Prevention of Cruelty to Animals Act 1979* (NSW), s 24

⁶³ *Animal Welfare Act 1992* (ACT), ss 22 & 23; *Animal Care and Protection Act 2001* (Qld), s 14; *Prevention of Cruelty to Animals Act 1986* (Vic), s 7

⁶⁴ *Animal Welfare Act 1992* (ACT), ss 22 & 23; ACT Legislative Assembly, Standing Committee on Justice and Community Safety (Legislative Scrutiny Role): Role and Resolution of Appointment, <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-justice-and-community-safety-legislative-scrutiny-role>

⁶⁵ RSPCA, Submission No. 28, pp.7-8; Professor Ned Aughterson, *Review of the Animal Protection Bill*, (unpublished), 9 March 2018, pp.1-2

purpose of this provision is somewhat confusing given that the term is neither defined nor linked to any other provisions in the Bill. As Professor Aughterson pointed out:

Section 22(1) creates a 'duty of care' in relation to animals, but without any indication as to the scope of the duty, or what the consequences are where there is a breach of the duty, or whether it gives rise to any civil remedies ... Separately, s 22(2) provides that 'a person must not be cruel to an animal'... while s 23 establishes an offence where a person in control of an animal intentionally engages in conduct which results in the animal not being provided with 'at least the minimal level of care' (no reference is made to the 'duty of care'). What is meant by 'minimum level of care' is set out in s 6. Neither s 22(2) nor s 23 makes a link with the duty arising under s 22(1). That begs the question of the purpose of s 22(1). If it were removed it would have no impact on s 23 or any other provision in the Bill. Standing alone, there is no indication as to the scope of the duty and the consequence of any breach, even if it could be determined when a breach arises.

Compare the equivalent provisions under the Queensland *Animal Care and Protection Act*. Section 17 of that Act creates a duty of care, states that a person must not breach the duty of care, and then provides that a person breaches the duty only if the person does not take reasonable steps to provide for the animal's needs as specified in the section (which are analogous with the 'minimum level of care' needs specified under s 6 of the NT Bill).⁶⁶

3.55 The Committee notes that the approach taken in the current *Animal Welfare Act* (NT) is consistent with the Queensland legislation. Section 7 defines the meaning of 'minimum level of care' and s 8(1) provides that 'a person in charge of an animal owes a duty of care to it'. Section 8(2) then creates an offence 'if a person breaches the duty of care' and s 8(3) provides that a person breaches the duty of care if they fail to 'take reasonable steps to ensure the animal receives the minimum level of care'.⁶⁷

3.56 The Department advised that it agrees that:

a change is probably required to current clause 22(1). It is likely that after discussions with OPC [Office of Parliamentary Counsel] on this matter, the clause will be amended to the effect that a person in control of an animal must provide a minimum level of care to the animal.⁶⁸

Committee's Comments

3.57 The Committee notes that, as drafted, clause 22(1) fails to comply with clause 4(c)(iii)(k) of the Committee's Terms of Reference which requires that a Bill is 'unambiguous and drafted in a sufficiently clear and precise way'. The Committee notes the Department's response and agrees with the proposed amendment to delete reference to a duty of care and replace it with a requirement to provide a minimum level of care to an animal.

⁶⁶ Professor Ned Aughterson, *Review of the Animal Protection Bill*, (unpublished), 9 March 2018, pp.1-2

⁶⁷ *Animal Welfare Act* (NT), ss 7 and 8

⁶⁸ Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, p.5

Recommendation 6

The Committee recommends that clause 22(1) be amended by removing the words ‘owes a duty of care’ and replacing them with the words ‘must provide a minimum level of care’.

Offence Provisions

- 3.58 In interpreting offence provisions within the Bill it is important to acknowledge that, as provided for in clause 10, offence provisions are subject to Part IIAA of the *Criminal Code Act* (NT) (the *Criminal Code*). The note at clause 10 clarifies that ‘Part IIAA of the *Criminal Code* states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.’
- 3.59 Animals Australia and the RSPCA raised concerns that most of the substantive cruelty offences in the Bill incorporate the fault element of intention.⁶⁹ As a result, it was suggested that, compared to the existing *Animal Welfare Act* (NT) and equivalent legislation elsewhere, “the Bill contemplates a much higher threshold for establishing a cruelty offence.”⁷⁰ However, it is suggested that the rationale provided for these concerns is somewhat misleading. Rather, the issues raised by Animals Australia and the RSPCA serve to highlight jurisdictional differences in the way that offence provisions are structured, as opposed to the way in which the offence provisions necessarily operate.
- 3.60 In 2006 the Northern Territory followed the example set by the ACT and commenced the process of transitioning to the *Model Criminal Code* as found in Chapter 2 of the *Criminal Code 1995* (Cwlth). As with clause 10 of the Bill, s 4 of the *Animal Welfare Act 1992* (ACT) provides that Chapter 2 of the *Criminal Code 2002* (ACT) applies in relation to offences against this Act. Similarly, as provided for under s 43AM of the Northern Territory’s *Criminal Code*, s 22 of the ACT legislation states that:
- (1) If the law creating an offence does not provide a fault element for a physical element that consists only of conduct, intention is the fault element for the physical element.
 - (2) If the law creating an offence does not provide a fault element for a physical element that consists of a circumstance or a result, recklessness is the fault element for the physical element.
- 3.61 In relation to the concerns raised by Animals Australia and the RSPCA, the Department noted that it would appear that:
- there is a conflation of conduct and consequence or result. Whether a person engages in conduct or ‘commits an act’ intentionally is a different issue from whether they intend or are reckless about the result or consequence of their conduct ... Regarding intention as it applies to conduct, that simply means that the person meant to engage in the conduct. It does not mean that the person intended a particular consequence or result. ... The confusion arises because the

⁶⁹ Animals Australia, Submission No. 17, pp.4-5; RSPCA, Submission No. 28, pp. 8-10

⁷⁰ Animals Australia, Submission No. 17, p.4; see also, RSPCA, Submission No. 28, pp. 8-10

conduct and the result of the conduct are disaggregated and each ascribed a separate fault element. When speaking about 'acting recklessly' as a layperson the two elements are conflated.⁷¹

3.62 Thus, while fault elements are not expressly stated in offence provisions in the ACT's Animal Welfare legislation, they nevertheless apply in the same manner as those proposed in the Bill. While the offence provisions under the existing *Animal Welfare Act* (NT) were drafted prior to the adoption of the *Model Code* they are subject to s 31 of the *Criminal Code*, rather than Part IIAA, which also incorporates the elements of intention and recklessness.

3.63 It is further noted that s 31 was modelled on s 23 of the *Criminal Code Act 1899* (Qld). Similar provisions are also replicated in s 13 of the *Criminal Code Act 1924* (Tas) and s 23 of the *Criminal Code Act Compilation Act 1913* (WA). In the same way that offence provisions in the NT, the ACT and the Commonwealth are subject to provisions based on the *Model Code*, offence provisions in Queensland, Tasmania and Western Australian are subject to equivalent provisions based on what is referred to as the Griffith Code⁷², even though fault elements may not be explicitly stated in the offence provision.

3.64 In contrast, South Australia, Victoria and New South Wales are common law jurisdictions in regards to criminal law. However, determining criminal liability is still subject to the prosecution proving beyond reasonable doubt that:

a certain state of affairs has been caused by [the person's] conduct and that that conduct was accompanied by a guilty state of mind ... The necessary mental state which must accompany the *actus reus* of the crime may be one of intention, recklessness or mere negligence.⁷³

3.65 While the necessary mental state that must accompany the conduct in question is explicitly stated in offence provisions under the *Animal Welfare Act 1985* (SA), this is not the case in the New South Wales or Victorian legislation. As such, it becomes a matter of statutory interpretation as to whether the offences are treated as *mens rea* offences or offences of strict liability, where the prosecution is only required to prove the physical elements of the offence. As highlighted by witnesses to the Committee, in NSW and Victoria:

the courts appear to have construed offences of cruelty, where created without express qualification as to any necessary mental state on the part of the offender, as creating offences of strict liability.⁷⁴

3.66 Form Submissions A also queried why the Bill does not incorporate penalty rates for corporations, as is the case in equivalent legislation in New South Wales,

⁷¹ Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, p.7

⁷² Andrew Hemming, "Why the Queensland, Western Australian and Tasmanian Criminal Code are Anachronisms" in *The University of Tasmania Law Review*, Vol 31, No.2, 2012, p.1

⁷³ Philip Jamieson, "A Question of Criminal Guilt – Mens Rea Under Animal Protection Law", in *The University of Queensland Law Journal*, Vol. 15, No. 1, p. 75

⁷⁴ Philip Jamieson, "A Question of Criminal Guilt – Mens Rea Under Animal Protection Law", in *The University of Queensland Law Journal*, Vol. 15, No. 1, p. 75; see also Ms Katherine Russell, Committee Transcript, 9 April 2018, p. 17; Dr Jed Goodfellow, Committee Transcript, 9 April 2018, p.31; see also, McEwan, A, *The Concept of Violence: A Proposed Framework for the Study of Animal Protection Law and Policy*, <https://openresearch-repository.anu.edu.au/handle/1885/112649>, pp.50-9

Queensland, Victoria and the ACT.⁷⁵ While not specifically stated in relation to the offence provisions within the Bill, it is noted that s 38DB of the *Interpretations Act* (NT) provides that where a provision proscribing a fine for an offence does not expressly prescribe a fine for a body corporate, the fine is taken only to be the fine for an individual. However, 'if a body corporate is found guilty of the offence, the court may impose a fine of an amount equal to 5 times the fine for an individual.'⁷⁶

Minimum Level of Care

3.67 Clause 23(1) provides that a person commits an offence if:

- (a) the person is in control of an animal and;
- (b) the person intentionally engages in conduct; and
- (c) the conduct results in the animal not being provided with at least the minimum level of care' and the person is reckless in relation to that result.

3.68 As set out in s 43AK of the *Criminal Code* a person is considered to be reckless in relation to a result if:

- (a) the person is aware of a substantial risk that the result will happen; and
- (b) having regard to the circumstances known to the person, it is unjustifiable to take that risk.

3.69 The RSPCA raised concerns that inclusion of the fault element of recklessness will:

cause significant difficulties in prosecuting many of the basic animal welfare offences. Having the onus to prove beyond reasonable doubt that a defendant was aware of a substantial risk to the relevant animal's welfare, had knowledge of the circumstances of that risk, but proceeded with the offending act or omission anyway, will result in many cases of serious animal neglect going unpunished.⁷⁷

3.70 However, simply removing the fault element of recklessness would not, of itself, alter the operation of this clause. As noted previously, pursuant to s 43AM of the *Criminal Code*, where an offence is created that does not provide a fault element for a physical element that consists of a result or circumstance, recklessness is the default element for the physical element. The only other option is to make the offence one of strict liability. As a consequence, the prosecution would only be required to prove the physical elements of the offence beyond reasonable doubt. In accordance with s 43AX of the *Criminal Code*, the defence of honest and reasonable mistake of fact would, however, be available to the defendant.

3.71 Although the application of strict liability would undoubtedly make it easier to prosecute this offence, it also has human rights ramifications:

Article 14(2) of the ICCPR [International Covenant on Civil and Political Rights] provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law ... Strict liability is used in circumstances where there is public interest in ensuring that regulatory schemes are observed and it can reasonably be expected that the person was aware of

⁷⁵ See for example, Ms Kate Wales, Submission No. 6, p.1

⁷⁶ see also *Criminal Code Act* (NT), Part IIAA, Division 5

⁷⁷ RSPCA, Submission No. 28, p.9

their duties and obligations ... Strict and absolute liability can be considered a limitation of the presumption of innocence because the defendant can be found guilty, or an element of an offence can be proven, without the prosecution being required to prove fault. Strict and absolute liability provisions will not necessarily be inconsistent with presumption of innocence provided that the removal of the presumption of innocence pursues a legitimate objective and is reasonable, necessary and proportionate to achieving that objective.⁷⁸

Committee's Comments

3.72 Given that the offence of failing to provide a minimum level of care is not a regulatory offence, the Committee does not consider that there is sufficient justification to warrant the application of strict liability to this offence and the subsequent limitation on an individual's right to the presumption of innocence. While acknowledging the RSPCA's concerns, the Committee is also mindful of its responsibility under clause 4(c)(iii) of its Terms of Reference which requires that the Committee give due consideration to 'whether the Bill has sufficient regard to the rights and liberties of individuals.'

Cruelty to an Animal

3.73 As detailed below, a number of issues were raised regarding the intent and operation of the 'cruelty to an *animal*' offence provisions within the Bill.

Clause 24(1)

3.74 Under clause 24(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.

3.75 The RSPCA expressed concern that, as currently drafted, the fault element of intention would appear to apply to both the conduct and the result of the conduct. If this is the case, it was suggested that it "would require the prosecution to prove beyond reasonable doubt that the defendant intended to cause the animal suffering by their relevant act or omission."⁷⁹ It was further suggested that the terms 'unjustifiable and unreasonable' are superfluous:

If the harm is unnecessary, it is 'unjustifiable' and 'unreasonable'. We recommend the reference to 'unjustifiable' and 'unreasonable' be deleted and the offence simply contain the paragraph 'the suffering or harm is unnecessary in the circumstances.'⁸⁰

⁷⁸ Statement of Compatibility with Human Rights, *Animal Protection Bill 2018 (Serial No. 44)*, <https://parliament.nt.gov.au/committees/spsc/44-2018>, p.3

⁷⁹ RSPCA, Submission No. 28, p.10

⁸⁰ RSPCA, Submission No. 28, p.10

Committee's Comments

3.76 The Committee agrees with the RSPCA that this clause should be redrafted to clarify that the fault element of intention only applies to the conduct and not the result of the conduct. The Committee does not, however, consider that the terms 'unreasonable' and 'unjustifiable' are superfluous. For example, while the use of a bridle and bit may well cause an animal a degree of harm or suffering and be considered unnecessary by many people, the practice would not necessarily be considered unjustifiable or unreasonable depending on the circumstances.

Recommendation 7

The Committee recommends that clause 24(1) be amended to read as follows:

(1) A person commits an offence if:

- (a) the person intentionally engages in conduct; and**
- (b) the conduct results in suffering or harm to an animal or contributes to its suffering or harm and the person is reckless in relation to that result; and**
- (c) the suffering or harm is unjustifiable, unnecessary or unreasonable in the circumstances, and the person is reckless in relation to that circumstance.**

Maximum penalty: 200 penalty units or imprisonment for 2 years.

Clause 24(3)

3.77 The Committee is also concerned with the way in which clause 24(3) is currently worded. Under this clause, it is an offence if a 'person intentionally abuses, terrifies or torments an animal.' However, given that 'torment' is synonymous with 'abuse', the Committee questions the inclusion of both terms in this clause. Then too, while both of these terms are readily associated with conduct, the Committee notes that 'terrifies' generally refers to the result of conduct. Moreover, the Committee is of the view that determining the extent to which conduct terrifies an animal may be extremely difficult to prove.

Committee's Comments

3.78 The Committee considers that clause 24(3), as drafted, lacks clarity and incorporates subjective elements which may prove difficult to prosecute.

Recommendation 8

The Committee recommends that clause 24(3) be amended by removing the words 'terrifies or torments.'

Clause 24(7)

3.79 Clause 24(7) provides that a person commits an offence if they intentionally remove the claws of an animal 'other than the dew claws of a dog less than 5 days old.' The

CDU AEC queried the inclusion of this exemption, noting that it agreed with the RSPCA's policy on the *Surgical Modification of Companion Animals* which states that:

RSPCA Australia does not support the removal of claws or teeth in companion animals (including dogs, cats and ferrets) unless it is necessary for the welfare of the animal concerned and is undertaken by a registered veterinarian under appropriate anaesthesia.⁸¹

The Committee notes that the ACT is the only other jurisdiction that incorporates a similar provision. However, unlike the Bill, section 19A of the *Animal Welfare Act 1992* (ACT) requires that the procedure must be undertaken by a veterinary surgeon.⁸²

3.80 The Department advised the Committee that:

[it] agrees with the issue raised in the submission and will have clause 24(7)(c) amended to remove the exception for removing dew claws from a dog less than five days old. That is, under the revised clause a person will commit an offence if they remove the dew claws from a dog (irrespective of its age).

As provided for under clause 24(8), the only person to which clause 24(7) will not apply is a veterinarian who believes on reasonable grounds that the procedure (e.g. removing of dew claws) is a reasonable and necessary therapeutic measure for the treatment or welfare of the animal.⁸³

Committee's Comments

3.81 The Committee agrees with the CDU AEC and supports the RSPCA's policy on *Surgical Modification of Companion Animals*. The Committee is satisfied with the Department's response to this issue and notes that amending this clause will make the Bill more consistent with equivalent legislation elsewhere in Australia.

Recommendation 9

The Committee recommends that clause 24(7)(c) be amended by removing the words 'other than the dew claws of a dog less than 5 days old.'

Traps

3.82 Under clause 29 it is an offence of strict liability for a person to set, use, sell or possess a metal jawed trap. However, clause 29(5) provides that it is not an offence where the person is '(a) authorised by the CEO, in writing to set, use, sell or possess the trap'; or '(c) the trap is a metal trap of a type exempted by regulation.' Given the extreme pain and suffering that metal jawed traps can cause, the RSPCA noted that:

it is opposed to the use of metal jawed traps under any circumstances ... Metal jawed traps are unnecessary and not a humane method of controlling pest species. We therefore call for metal jawed traps to be prohibited outright and for the exceptions under cl.29(5)(a) & (c) to be removed from the Bill.

⁸¹ RSPCA Policy A11 *Surgical Modification of Companion Animals*, June 2014, clause 11.3
<http://kb.rspca.org.au/entry/600/>

⁸² *Animal Welfare Act 1992 (ACT)*, ss 19 & 19A

⁸³ Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018,
<https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, p.5

3.83 The Committee sought clarification from the Department as to the circumstances under which the CEO might authorise a person to set, use, sell or possess a metal jawed trap. The Department advised that:

the Bill as drafted provides a degree of flexibility to deal with emergency situations, such as an urgent biosecurity response. For example, in the event of the outbreak of a serious animal disease, particularly where there may be public health implications, there may be a need for an authority to quickly trap animals such as wild dogs as part of a range of other measures to catch and destroy such animals. While it is agreed that the likelihood of such instances is low, retaining the ability to authorise the use of such traps in exceptional circumstances should be retained as a contingency measure.⁸⁴

Committee's Comments

3.84 In considering the Department's response, the Committee notes that no evidence was provided as to any instances where the use of metal jawed traps has been deemed necessary for the control of any pest species in the Northern Territory. The current *Animal Welfare Regulations* (NT) do not incorporate any exemptions for any sort of metal traps, and no justification was provided for the use of metal jawed traps rather than the more humane, soft or padded jawed traps. The Committee also notes that metal jawed traps are prohibited in all other jurisdictions in Australia.⁸⁵

3.85 On the basis of the evidence received, the Committee is not convinced that the proposed exemptions at subclauses 29(5)(a) and (c) are justified.

Recommendation 10

The Committee recommends that clause 29 be amended by removing subclauses 29(5)(a) and (c).

Prohibited Activities

3.86 As discussed below, two issues were raised regarding the provisions in the Bill relating to prohibited activities.

Clause 32(5)

3.87 Given that offence provisions which incorporate a term of imprisonment have a greater capacity to deter people from supporting prohibited activities, Ms Sylvia Kendall (Private Citizen) queried why the offence provision at clause 32(5) is limited to a maximum penalty of a \$15,400 fine.⁸⁶

⁸⁴ Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, pp.5-6

⁸⁵ Western Trapping Supplies, *State Trapping Legislation*, <https://www.trapping.com.au/state-legislation/>; it is noted that metal jawed traps that have been bound with strychnine soaked cloth may be used for the control of wild dogs in certain circumstances in Western Australia and South Australia - see for example *Animal Welfare (General) Regulations 2003* (WA), Regulation 8

⁸⁶ Ms Sylvia Kendall, Submission No. 1, p.1

3.88 Although the penalty provisions for similar offences under the South Australian and Queensland legislation include terms of imprisonment⁸⁷, the Department advised that it was of the view that:

the organising, promoting and participating in a prohibited event are more serious contraventions than being an attendee at such an event. Imposing a term of imprisonment for attendance only is unjustified. The maximum fine stated for attending a prohibited event represents a significant penalty and therefore a strong potential deterrent.

Committee's Comment

3.89 While acknowledging Ms Kendall's concern, the Committee is satisfied with the Department's advice and agrees that the penalty provisions for attending a prohibited event are appropriate.

Clause 32(6)(b)

3.90 The RSPCA submitted that, the exemption from the prohibited activity offences in clause 32(6)(b) relating to the feeding of a live animal to a display animal is open to abuse and requires further refinement:

The exemption outlined in subclause (6)(b) simply states that the offence of releasing a confined animal for the purpose of being killed by another animal does not apply to 'the keeping and display of animals the normal diets of which include live food.' The exemption provides no further guidance or restriction. Most carnivorous display animals will have normal diets including live food. This does not mean that they will not eat dead animals that have been killed in a humane manner.⁸⁸

3.91 As drafted, the RSPCA noted that the Bill could "inadvertently exempt cruel live feeding displays that are carried out purely for sadistic forms of human entertainment."⁸⁹ To avoid any potential for abuse, it was recommended that consideration be given to amending clause 32(6)(b) along the lines of the equivalent exemption in section 43 of the *Animal Care and Protection Act 2001* (QLD), which provides that it is an exemption to an offence only where:

- (c) the fed animal will only eat the food animal if it is alive; and
- (d) feeding the food animal to the fed animal is essential for the fed animal's survival.⁹⁰

3.92 While noting that clause 32(6)(b) is based on section 21(5)(b) of the existing *Animal Welfare Act*, the Department advised that:

[it] agrees to amend the clause to clarify that the feeding of live food is only in reference to display animals who will only eat live foods, which are essential for the display animal's survival.⁹¹

⁸⁷ *Animal Care and Protection Act 2001* (QLD), s 22; *Animal Welfare Act 1985* (SA), s 14

⁸⁸ RSPCA, Submission No.28, p.11

⁸⁹ RSPCA, Submission No.28, p.12

⁹⁰ *Animal Care and Protection Act 2001* (QLD), s 43

⁹¹ Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, p.6

- 3.93 The RSPCA further suggested that the exemption should also require that the live feed animal is of an appropriate species. As drafted, the RSPCA pointed out that “one could feed a live kitten to a captive python and the exemption would still apply.”⁹²

Committee’s Comments

- 3.94 The Committee acknowledges the RSPCA’s concerns. While accepting the Department’s response regarding the need to clarify that the exemption only applies to the keeping and display of animals that will only eat live food which is essential for their survival, the Committee is also of the view that, to limit the potential for abuse, the exemption should also clarify that the live feed animal should be of an appropriate species.

Recommendation 11

The Committee recommends that clause 32 be amended to clarify that the exemption at subclause 32(6)(b) only refers to:

- (a) the keeping and display of animals that will only eat live food; and**
- (b) live food is essential for the animal’s survival; and**
- (c) the live feed animal is of an appropriate species.**

Greyhounds

- 3.95 Pursuant to subclause 33(1) (d), a person commits an offence if they keep an animal other than a greyhound on the same premises as the greyhound; and ‘the other animal is a species used for the purpose of blooding a greyhound.’ While supporting the inclusion of the offence, the RSPCA raised concerns that the wording of this subclause unduly restricts the operation of the offence:

We question how this is to be determined. Of course, there have been prominent and well publicised cases of certain species like kittens, possums, piglets, rabbits and chickens being used for blooding, but the list of species that *could* be used for blooding is much longer. We recommend that paragraph (d) be amended as follows:

‘the other animal is a species that is used, or could possibly be used, for the purpose of blooding a greyhound.’

- 3.96 The Department advised that it:

agrees with the point made in the submission and will amend clause 33(1)(d) to clarify that the other animal in question is a species that *could be* used for blooding a greyhound.

Based on consultations undertaken to date, the Department further advised that it was of the view that the proposed amendment would be amenable to key stakeholders.

⁹² RSPCA, Submission No.28, p.12

Committee's Comments

3.97 The Committee agrees with the RSPCA and notes that, in the absence of a definitive list of animals that are used for the purpose of bleeding a greyhound, this clause could give rise to uncertainty and inhibit the successful prosecution of the offence. The Committee is satisfied with the Department's advice regarding amendment of clause 33(1)(d) to clarify that the other animal in question refers to species that 'could be used' for bleeding a greyhound.

Recommendation 12

The Committee recommends that clause 33(1)(d) be amended to clarify that the other animal in question refers to a species that 'could be used' for bleeding a greyhound.

Registration of Scientific Users of Animals

3.98 Clause 42(3) provides that in considering an application for registration as a scientific user of animals, the CEO must take into consideration whether the applicant has been involved in a 'disqualifying event'. Under subclause 42(4) a disqualifying event includes 'a finding of guilt for an animal welfare offence; the suspension or cancellation of a registration under section 47 or an approval under section 65. While supporting the intent of clause 42(3), Animals Australia noted that it was "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."⁹³

3.99 The Committee sought clarification from the Department as to the circumstances under which the CEO might grant registration where an applicant had previously been involved in a disqualifying event. The Committee also sought advice as to whether instances where a person has been found guilty of an animal welfare offence, or has been issued a penalty notice for an offence, in another jurisdiction are also taken into consideration when assessing applications.

3.100 The Committee was subsequently advised that:

the Department is of the view there can be the possibility of extenuating circumstances and this clause should be retained to provide flexibility. However, should the CEO make a decision to grant an application for registration in the knowledge that a disqualifying event had taken place, then the CEO would need to justify the circumstances as to why in a formally prepared Statement of Decision as is now common-place in accountable public sector decision making.

Disqualifying events occurring in another jurisdiction can be taken into consideration under the current Bill with respect to the regulation of scientific users. Clause 42(4)(c) of the Bill states that a disqualifying event means '*... the suspension or cancellation, under a corresponding law ...*' The term '*corresponding law*' is defined under clause 4 of the Bill and means '*... a law of another jurisdiction that corresponds to this Act, and includes a law of another jurisdiction that is declared by the Regulations to be a corresponding law of the jurisdiction for this Act.*' Under Part 4- Regulation of scientific users of animals, Division 1 – Preliminary matters, clause 36 defines that an animal welfare offence

⁹³ Animals Australia, Submission No. 17, p.7

means: (b) an offence under a corresponding law that is the same as, or similar to, an offence against Part 3 (Care and protection of animals).

Committee's Comments

3.101 The Committee is satisfied that appropriate mechanisms are in place to ensure that where the CEO grants an application for registration as a scientific user of animals to a person that has been involved in a disqualifying event, the decision must be justified in a formal and transparent *Statement of Decision*.

Formation of Animal Ethics Committees

3.102 Animals Australia raised concerns that the Bill makes inadequate provision with respect to the formation and functions of an Animal Ethics Committee:

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 [Animal Ethics Committee].

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 dictate precisely how an AEC must be comprised, and what may constitute a quorum. These provisions are essential to ensuring that an AEC is appropriately balanced at all times, and can therefore properly assess applications for project approvals.⁹⁴

3.103 However, as detailed in the Department's response below, it would appear that Animals Australia may have misinterpreted the provisions of the Bill given that:

Clause 8 of the Bill defines the term '*scientific use code*' which is the *Australian Code for the Care and Use of Animals for Scientific Purposes*'. Clause 36 defines an '*animal ethics committee*' as an animal ethics committee formed under the scientific use code. Under clause 42(1)(c) of the Bill the CEO must not register an applicant unless satisfied that the applicant has the competency to comply with the scientific use code. Further, under clause 47(1)(c), the CEO may take action if satisfied that a registered person has contravened the scientific use code.

Lastly, under clause 61(1)(b), an accredited animal ethics committee must not grant a project approval unless satisfied that the person or persons undertaking the project have the competence to comply with the scientific use code; and in considering an application, under clause 61(2)(a) the committee must take into account the requirements of the scientific use code. The Department is satisfied that the composition of an animal ethics committee under the Bill needs to be in accordance with the scientific use code. The Department is of the view that there is not a requirement to specifically list the functions of an animal ethics committee in the Bill itself, as they are already detailed in the scientific use code.⁹⁵

⁹⁴ Animals Australia, Submission No. 17, pp.5-6

⁹⁵ Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, pp.8-9

Committee's Comments

3.104 The Committee is satisfied with the Department's advice and considers that the Bill incorporates appropriate provisions to ensure that Animal Ethics Committees are constituted and function in accordance with the scientific use code.

Approval of Scientific Research Projects

3.105 Clause 61(a) requires that an Animal Ethics Committee must not grant a project approval unless satisfied that 'each person involved in undertaking the project is a fit and proper person'. The Charles Darwin University Animal Ethics Committee (CDU AEC) suggested that this clause requires clarification as to who constitutes 'each person' involved in undertaking the project.

Currently assistants and volunteers can participate in research without proving they are a fit and proper person, as they are under direct supervision of a permitted fit and proper person. If assistants and volunteers are included under this definition, it may exclude a significant proportion of volunteers from participating due to the administration required to be submitted and processed prior to them participating.⁹⁶

3.106 The Committee understands that pursuant to s 45 of the *Animal Welfare Act*, the 'fit and proper person' test only applies to the applicant who is seeking approval to conduct a research study. As the CDU AEC pointed out:

that is one thing that the current Act does do pretty well, that is, it defines a volunteer as being someone who may be working with animals under direct supervision of someone who does have animal ethics approval. I think everyone is very clear what direct supervision means; they cannot do anything on their own. We often, as a matter of course of doing our deliberations, make it clear or ask questions to clarify: Is this person going to be working alone, are they going to be working under direct supervision? If they are going to be working alone then they need to go through the entire process. That is in the current Act and it works pretty well.⁹⁷

3.107 The Department acknowledged the concerns raised by CDU AEC and advised the Committee that:

further clarification is likely required. The purpose of this clause is to ensure that the person who is applying for the project approval is a 'fit and proper person' as this person will be supervising the project's activities. It is not the intent for assistants and volunteers to be subject to fit and proper provisions, as they will be under the direct supervision of the project manager. DPIR will discuss with OPC [Office of Parliamentary Counsel] how best to amend the draft Bill to effect this outcome.

3.108 Animals Australia also raised concerns that the emphasis of the Bill tends to be on ascertaining the competency of the project applicant, rather than the extent to which the project claims to comply with ethical requirements as detailed in the *Australian Code for the Care and Use of Animals for Scientific Purposes* (the Code).⁹⁸

Given that the Bill does not articulate the functions of an AEC [Animal Ethics Committee], or place legal duties on them to comply with the Code, the Bill

⁹⁶ Charles Darwin University Animal Ethics Committee, Submission No. 16, p.1

⁹⁷ Professor Keith Christian, Committee Transcript, Monday 9 April 2018, p.8

⁹⁸ Animals Australia, Submission No. 17, p.6

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.⁹⁹

3.109 Noting that similar provisions apply in equivalent legislation elsewhere in Australia, Animals Australia was of the view that the Bill 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.¹⁰⁰

3.110 However, the Department advised the Committee that it did not agree with the concerns raised by Animals Australia, noting that:

Under clause 61(1)(b) of the Bill an accredited animal ethics committee must not grant a project approval unless satisfied that the person or persons undertaking the project have the competence to comply with the scientific use code. This is an important first step towards ensuring that a project will conform to the scientific use code. The second step is the requirement under clause 61(2)(a) for an animal ethics committee, in considering an application, to also take into account the requirements of the scientific use code. In the Bill as drafted the committee has at its disposal the necessary tools to ensure that proposed projects they approve conform to the requirements of the scientific use code.¹⁰¹

Committee's Comments

3.111 With regards to the issue raised by the CDU AEC, the Committee is satisfied with the Department's advice and their undertaking to clarify that the 'fit and proper person' test is only applicable to the person or persons seeking approval to conduct the research project. The Committee is also satisfied that the Bill, as drafted, incorporates adequate provisions to ensure that an accredited animal ethics committee only approves projects that comply with the requirements of the scientific use code.

Recommendation 13

The Committee recommends that clause 61(1)(a) be amended to clarify that only the applicant who is seeking approval to conduct a research study needs to satisfy the 'fit and proper person' test.

Improvement Notices

3.112 Clause 75 provides that an authorised officer may issue an 'improvement notice' where it is reasonably believed that a person has contravened a provision of the

⁹⁹ Animals Australia, Submission No. 17, p.6

¹⁰⁰ Animals Australia, Submission No. 17, p.6

¹⁰¹ Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, pp.9-10

scientific use code, a requirement of an accredited animal ethics committee, or has performed an activity that unreasonably threatens the welfare of an animal. Under clause 75(6) a person must comply with an improvement notice and, pursuant to clause 75(7), commits an offence if they intentionally engage in conduct that results in a contravention of the notice and are reckless in relation to that result.

3.113 Professor Aughterson questioned the extent to which this clause has sufficient regard to the rights and liberties of individuals and is consistent with the principles of natural justice given that:

there is no provision allowing the person to be heard before the improvement notice is issued. The only available remedy is for the person to seek review of the decision before NTCAC [the Northern Territory Civil and Administrative Tribunal]: see s 76 and Schedule 1. In other words, there is no opportunity for the person to be heard before their legal rights are affected, including exposure to a potential penalty of imprisonment under s 75(7).¹⁰²

3.114 In response to the concerns raised by Professor Aughterson, the Department advised that it was of the view that:

an improvement notice issued under clause 75 of the Bill is to improve animal welfare for animals under the care of a registered person, or someone working for that registered person, and is intended to remediate circumstances, in some cases urgently, that are likely to lead to pain and suffering. It gives an opportunity for the registered person to rectify situations. Given the scope of Part 4 of the Act – Regulation of scientific users of animals – the Department is of the view the clause is appropriate. A similar provision to clause 75 is found in section 36G of the *Prevention of Cruelty to Animals Act 1986* (Vic).¹⁰³

Committee's Comments

3.115 While clarifying the purpose of improvement notices, the Committee notes that the Department's response fails to address Professor Aughterson's concern regarding the extent to which the operation of clause 75 has sufficient regard for the rights and liberties of individuals and is consistent with the principles of natural justice.

3.116 The Committee understands that clause 75 is modelled on Part 10, Division 1 of the *Work Health and Safety (National Uniform Legislation) Act* (NT), and, as noted by the Department, a similar provision can be found in section 36G of the Victorian *Prevention of Cruelty to Animals Act 1986*.¹⁰⁴ However, the Committee notes that, unlike the proposed clause 75, the penalties for contravening an improvement notice under these Acts do not include a term of imprisonment.¹⁰⁵

3.117 Following further discussion with the Department, it was acknowledged that the offence should probably not include a term of imprisonment. The Committee notes that removing exposure to a potential penalty of imprisonment would ameliorate the

¹⁰² Professor Ned Aughterson, *Review of the Animal Protection Bill*, (unpublished), 9 March 2018, p.2

¹⁰³ Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, p.10

¹⁰⁴ Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, p.10

¹⁰⁵ *Work Health and Safety (National Uniform Legislation) Act* (NT), s 193; *Prevention of Cruelty to Animals Act 1986* (VIC), s 36G(2).

impost on an individual's rights and liberties that may arise through the operation of this clause.

Recommendation 14

The Committee recommends clause 75(7) be amended by removing the term of imprisonment in the penalty provisions for this offence.

Power of Entry

3.118 While commending the inclusion of increased powers of enforcement for authorised officers, a number of submissions to the Committee expressed the view that provisions relating to powers of entry could be strengthened. For example, Animals Australia noted that they were concerned that there is inadequate provisions within the Bill for the routine monitoring of premises in which animals are kept for commercial purposes:

Animals Australia is of the view that inspectors should be authorised to perform unannounced inspections where animals are sold, presented for sale, assembled or kept for commercial purposes. In Tasmania, such inspections may be performed by an authorised officer under s 16(2) of the *Animal Welfare Act 1993* (Tas), and may take place at 'any reasonable time', and without the need to obtain a warrant.¹⁰⁶

The Animal Law Institute (ALI) suggested that:

as currently drafted, the enforcement powers are insufficient to deal with particular issues of animal cruelty, including puppy farms on residential properties, intensive farming involving animals being held inside buildings...¹⁰⁷

3.119 The Committee understands that where animals are kept for commercial purposes, such practices are generally subject to national standards or codes of practice. As pointed out by Mr Peter Phillips (Director Animal Welfare: Department of Primary Industry and Resources):

this Bill does take into account puppy farming. If you look at the duty of care provisions – minimum level of care is something that would be considered. If there was a commercial puppy farm, they would have to adhere to the minimum level of care. On top of that it is the Department's intention through the Animal Welfare Advisory Committee, which meets four times each year that has important stakeholders and representatives to introduce a code of practice for breeding dogs and cats. With the new Bill, if they do not adhere to the code of practice, if a puppy farm does not adhere to a code of practice – then that can be used to prove an offence under the Act.¹⁰⁸

3.120 As provided for under clause 78, the Committee also notes that the CEO may develop programs under which authorised officers may monitor compliance with a code of practice or with the scientific use code. There is nothing in the Bill that would prevent a monitoring program from incorporating inspection requirements similar to those permitted under s 16(2) of the Tasmanian legislation.

¹⁰⁶ Animals Australia, Submission No. 17, p.8

¹⁰⁷ The Animal Law Institute, Submission No. 25, p.3

¹⁰⁸ Mr Peter Phillips, Committee Transcript, 9 April 2018, p.43

3.121 The RSPCA and ALI questioned the rationale for the requirement that an authorised officer must give an occupier advance notice of their intention to enter the premises to conduct an inspection, thereby “allowing persons committing offences up to 48 hours’ notice of impending regulatory action.”¹⁰⁹ The Department advised that:

under the current Act section 62(3) – Power of entry – an authorised person must give an occupier 7 days’ notice of the authorised person’s intention to enter the occupiers’ premises for the purposes of an inspection, unless the authorised person believes on reasonable grounds that there is, in or on, the premises an animal (or thing) connected with an offence. Section 62(4) sets out the circumstances when lawful entry can take place within a shorter time period.

Under the Bill the period of notice given to an occupier of an intention to enter his/her premises has been reduced from 7 days to 48 hours as detailed in clause 83(3). The Department is of the view that 48 hours is sufficient advanced notice of a planned inspection. However, in circumstances detailed in clause 83(2)(a)-(c), an authorised officer has powers of entry into a premises within a much shorter timeframe, without the consent of the owner or a warrant, should certain conditions be met. In very specific instances where an authorised officer believes on reasonable grounds that the circumstances are so serious and urgent as to require immediate entry, this power is provided for under clause 83(2)(e).¹¹⁰

3.122 The RSPCA also raised concern that while clause 83(2)a provides that entry to a premise is justified without consent or a warrant where ‘the entry is to the surrounding area or yard of any building, or any other place that does not constitute a building, and the officer is entering to determine whether an animal is suffering’,

the requirement for an officer to ‘take reasonable steps to contact an occupier of the premises about the inspection’ in subclause (4) is likely to be interpreted broadly by the court leading to the imposition of steps that would defeat the purpose of the subclause (2)(a) entry power.¹¹¹

3.123 However, as acknowledged by the Department, in all welfare animal legislation the care and welfare of animals has to be balanced against the rights and liberties of individuals.¹¹² Professor Aughterson also pointed out that:

Part 5 of the Bill gives extensive powers to authorised officers, including in relation to the entering of premises without consent. As noted in *Plenty v Dillon* (1991) 171 CLR 635 at 639, 647, the policy of the law is to protect the possession of property and the privacy of its occupier, so that neither government officers nor private persons may enter the premises of another unless allowed by the common law or statute. See also *Kura v New South Wales* (1984) 236 CLR 1 at [37], where reference is made to “the strong principle of Australian law defensive of the quiet enjoyment by an occupier of that person’s residence.” It was added that the principle “defends an important civil right in our society.”¹¹³

3.124 ALI considered that the Bill should be amended to “allow authorised officers to carry and use overt surveillance devices when entering onto a property.” The Department acknowledged that while the use of body worn cameras had certainly been considered, advice received to date has suggested that:

¹⁰⁹ RSPCA, Submission No. 28, p.12; The Animal Law Institute, Submission No. 25, pp.3-4

¹¹⁰ Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, pp.10-11

¹¹¹ RSPCA, Submission No. 28, p.13

¹¹² Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, p.11

¹¹³ Professor Ned Aughterson, *Review of the Animal Protection Bill*, (unpublished), 9 March 2018, p.2

issues may arise under the *Surveillance Devices Act* regarding the inadvertent and incidental capture of video images not covered by the warrant issued for entry. DPIR is continuing to examine how overt surveillance devices may be used as part of future monitoring and compliance activities.¹¹⁴

Committee's Comments

3.125 As highlighted both by witnesses to the Committee and the Department, the power of entry provisions contained within the Bill are far more comprehensive than those of the current legislation. They are also comparable with equivalent legislation elsewhere in Australia. The Committee notes the Department's responses to the issues raised in submissions and considers that the Bill strikes an appropriate balance between the welfare of animals and an individual's rights to privacy.

Powers of Inspection

3.126 Clause 88(1) allows an authorised officer who enters premises pursuant to clause 83 to 'inspect the premises to the extent reasonably required for the administration, operation or enforcement' of the Act. Clause 88(2) then provides that during an inspection the officer may do any of the following:

- (a) examine any animal on the premises;
- (b) inspect anything on the premises;
- (c) take copies of, or extracts from, documents on the premises;
- (d) take photographs or make films or video recordings of the premises or animals or things on the premises;
- (e) bring onto the premises and use any equipment or other thing that is reasonably necessary to enable the officer to exercise the officer's powers under this Act;
- (f) seize animals or things that the officer believes on reasonable grounds are connected with an offence;
- (g) require a person on the premises to do any of the following:
 - (i) answer questions asked by an officer;
 - (ii) produce documents to the officer;
 - (iii) give the officer reasonable help to exercise the officer's powers under this Act.

3.127 As Professor Aughterson pointed out, it is presumed that doing any of the abovementioned things would be construed subject to the limitations of subclause (1); that is, what is reasonably required for the operation of the Act.¹¹⁵ However, since officers are empowered to enter premises without consent or a warrant, itself an impost on civil liberties, Professor Aughterson further noted that:

¹¹⁴ Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, p.11

¹¹⁵ Professor Ned Aughterson, *Review of the Animal Protection Bill*, (unpublished), 9 March 2018, p.2

because the matters listed in subsection (2) are expressed in very broad terms ... there is a risk that officers and the persons affected will construe subsection (2) in isolation. Given the invasive nature of this section and the significant interference with individual rights, it would assist to make it absolutely clear in subsection (2) itself that the inspection, taking of copies of documents and the asking of questions etc. is limited to what is necessary for the purposes of the Act.¹¹⁶

3.128 In response to Professor Aughterson's concern the Department advised that:

it is correct to construe that the activities listed in clause 88(2) of the draft Bill are explicitly limited by clause 88(1). The only authority upon which an authorised officer can use his or her powers of inspection are for the '*... administration, operation or enforcement of the Act*' and for no other reason. As the clause is restricting a person's right then it will be read narrowly. The wording of clause 88 in the Bill is more explicitly limiting than section 66 of the current Act. Authorised officers operate under strict operational guidelines developed and overseen by the DPIR's Animal Welfare Branch.

Committee's Comments

3.129 As highlighted by the Department, the Committee notes that pursuant to s 66 of the *Animal Welfare Act* authorised officers are permitted to take the same range of actions when inspecting premises as proposed in the Bill. However, the current Act does not explicitly limit the powers of authorised officers to what is 'reasonably required for the administration, operation or enforcement of the Act'. While acknowledging Professor Aughterson's concern, the Committee is satisfied with the Department's response and notes that clause 88 is a significant improvement on the existing provision.

Defences

3.130 Clause 110(2) stipulates that 'it is not a defence to a prosecution of an offence against this Act that the conduct constituting the offence, or an element of the offence, was in accordance with cultural, religious or traditional practices'. The Northern Land Council (NLC) noted that as a consequence of this clause, Aboriginal people exercising their traditional hunting and fishing rights may be open to prosecution through the operation of the cruelty to animal provisions at clauses 24 and 25.¹¹⁷ The NLC further noted that:

the Bill, in its current form, is inconsistent with the existing law as it relates to the right of Aboriginal people to hunt. This has the potential to lead to confusion in respect of the application of the law.¹¹⁸

3.131 As the NLC pointed out, hunting is expressly provided for in s 223 of the *Native Title Act 1993* (Cwlth).¹¹⁹ Furthermore, s 211 provides that native title holders are allowed to engage in certain activities, including hunting, fishing, and gathering, without the need to obtain a permit, as may otherwise be required under a law of the Commonwealth, a State or a Territory:

¹¹⁶ Professor Ned Aughterson, *Review of the Animal Protection Bill*, (unpublished), 9 March 2018, p.2

¹¹⁷ Northern Land Council, Submission 33, p.7

¹¹⁸ Northern Land Council, Submission 33, p.9

¹¹⁹ Northern Land Council, Submission No. 33, p.10

s 211 also includes a note that native title holders are subject to ‘laws of general application.’ In this regard, judicial consideration by the High Court of s 211 has yielded case law which has ultimately protected traditional hunting and fishing from restrictions in general legislation.¹²⁰

3.132 Section 73 of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cwlth) also serves to “protect the right to practice traditional hunting within Territory law”¹²¹ by providing that:

- (1) The power of the Legislative Assembly of the Northern Territory under the *Northern Territory (Self Government) Act 1978* in relation to the making of laws extends to the making of:
 - (c) laws providing for the protection or conservation of, or making other provision with respect to, wildlife in the Northern Territory, including wildlife on Aboriginal land, and, in particular, laws providing for schemes of management of wildlife on Aboriginal land, being schemes that to be formulated in consultation with the Aboriginals using the land to which the scheme applies, but so that any such laws shall provide for the right of Aboriginals to utilise wildlife resources....

According to s 73, the Bill will only validly make laws for the protection of wildlife where such laws provide for the right of Aboriginal people to utilise wildlife resources.¹²²

3.133 Moreover, as drafted, the Bill is inconsistent with the *Fisheries Act (NT)* and the *Territory Parks and Wildlife Conservation Act (NT)*, both of which incorporate provisions that protect the exercise of native title rights and interests. For example s 122 of the latter Act provides that:

- (1) Nothing in or under this Act limits the right of Aboriginals who have traditionally used an area of land or water from continuing to use that area in accordance with Aboriginal tradition for hunting, food gathering (otherwise than for the purpose of sale) and for ceremonial and religious purposes.
- (2) The operation and effect of this Act is subject to the *Native Title Act 1993* of the Commonwealth.

3.134 The NLC also pointed that, in addition to being inconsistent with existing Commonwealth and Territory legislation, the Bill fails to acknowledge Australia’s support of the *United Nations Declaration on the Rights of Indigenous People*. Article 20 declares that:

- (1) Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development and to engage freely in all their traditional and other economic activities.
- (2) Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.¹²³

¹²⁰ Northern Land Council, Submission No.33, p.9

¹²¹ Northern Land Council, Submission No. 33, p.9

¹²² Northern Land Council, Submission No. 33, pp.9-10

¹²³ Australian Human Rights Commission, *United Nations Declaration on the Rights of Indigenous Peoples*, <https://www.humanrights.gov.au/publications/un-declaration-rights-indigenous-peoples-1>

3.135 Professor Aughterson raised a related concern that, because of clauses 20 and 21, clause 110(2) could serve to indirectly discriminate against Aboriginal people:

Section 20 provides that regulations may adopt or prescribe codes of practice relating to animal welfare, which codes might relate to matters such as the killing or hunting of animals. Section 21 then provides that it is a defence to a prosecution under the Act if the conduct is in accordance with a code of practice adopted by the regulations. Accordingly, for example, codes relating to processes for the killing of animals consistent with religious or cultural practices might be adopted in regulations. In that event, any treatment of animals consistent with that code will serve as a defence. See for example, the reference to halal killings at p.14 in the 'Statement of Compatibility with Human Rights'.

That may serve to privilege cultural or religious groups that traditionally incorporate their customs into written codes of practice. There is a question of whether there is likely to be such codes of practice for the diverse Aboriginal communities across the Territory (to the extent that such practices might offend provisions in the Bill), or alternatively, whether those practices can readily be appropriately or adequately prescribed by the relevant regulation making authorities.¹²⁴

3.136 In response to the issues raised by the NLC and Professor Aughterson, the Department advised that:

Clause 110(2) of the Bill is a replication of the existing section 79(2) of the current Act, which has been in effect for the past 18 years. In this time there has been no constitutional challenges to that provision.

The intention of this provision is not to restrict or prevent traditional hunting or fishing from taking place and it is the Department's view that it does not. While recognising the cultural significance of these activities, it is important that the animal welfare legislation does not provide a blanket exemption from possible acts of cruelty and the inhumane treatment of animals ... With respect to traditional hunting practices, the intended focus of government is to be on education to promote the humane dispatching of animals caught to reduce unnecessary further suffering. ... Given the matters raised in submissions ... DPIR [Department of Primary Industry and Resources] will seek an opinion from the Solicitor General to provide guidance on the appropriate drafting of this and related provisions to ensure there are no unintended impacts on traditional hunting and fishing practices.¹²⁵

3.137 While the NLC acknowledged that it is not aware of any prosecutions against traditional hunters under the current *Animal Welfare Act*, it nevertheless noted that this "cannot be relied on as an indicator of the future enforcement of the law."¹²⁶ To avoid any uncertainty in the operation of the Act, the NLC recommended that consideration be given to incorporating provisions similar to those in the Queensland *Animal Care and Protection Act 2001*; the only other jurisdiction to include provisions relating to the relationship between animal welfare and traditional hunting.¹²⁷

3.138 In an effort to strike a reasonable balance between the exercise of native title rights and interests, and the animal welfare expectations of the broader community, in 2012 the Queensland legislation was amended to "regulate, not extinguish or prevent, the

¹²⁴ Professor Ned Aughterson, *Review of the Animal Protection Bill*, (unpublished), 9 March 2018, p.3

¹²⁵ Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, p.12

¹²⁶ Kristen Lynch, Committee Transcript, 9 April 2018, p.36

¹²⁷ Northern Land Council, Submission No.33 p.13

exercise of traditional and customary hunting rights.”¹²⁸ Firstly, s 8 *Relationship with Native Title* provides that ‘a person does not avoid liability to be prosecuted for an offence under this Act only because the act or omission that constitutes the offence happens in the exercise or enjoyment of native title rights and interests’.

- 3.139 Secondly, s 41A, *Killing an animal under Aboriginal tradition, Island custom or native title*, provides that where an animal is killed in the exercise of Aboriginal tradition or native title rights and interests (for example, hunting and killing an animal for human consumption), it is an offence exemption ‘if the act is done in a way that causes the animal as little pain as is reasonable’. However, the following acts or omissions are taken not to cause the animal as little pain as is reasonable: injuring the animal to stop it escaping after it has been caught; injuring the animal or prolonging its life to attract another animal; taking the flesh from an animal for human consumption before the animal is dead; or doing a thing or omitting to do a thing that causes the animal to die from dehydration or starvation.

Committee’s Comments

- 3.140 While noting the Department’s advice that, to date, the provisions proposed in clause 110(2) have not given rise to any constitutional challenges, the Committee is of the view that it is important to ensure that the Bill does not contravene relevant provisions of the *Native Title Act 1993* (Cwlth) or the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cwlth), and is consistent with provisions in other pieces of Territory legislation.
- 3.141 The Committee considers that inclusion of a provision similar to s 41A of the *Animal Care and Protection Act 2001* has the capacity to address the issues raised by both the Northern Land Council and Professor Aughterson and provide certainty as to the operation of the Bill. The Committee also considers that regulating the exercise of Aboriginal tradition and native title rights and interests in this manner strikes an acceptable balance between a blanket exemption, on the one hand, that may give rise to acts of cruelty or inhumane treatment, and the potential criminalisation of Aboriginal people on the other.

Recommendation 15

The Committee recommends that clause 110 be amended to:

- (a) ensure consistency with sections 211 and 223 of the *Native Title Act 1993* (Cwlth), section 73 of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cwlth), section 52 of the *Fisheries Act* (NT), and section 122 of the *Territory Parks and Wildlife Conservation Act* (NT); and**
- (b) provide for the exercise of Aboriginal tradition or native title rights and interests in a manner similar to that provided for under section 41A of the *Animal Care and Protection Act 2001* (Qld).**

¹²⁸ Northern Land Council, Submission No.33 p.13

Automatic Ban for Multiple Offences

3.142 Clause 115 provides that where a person is found guilty of 3 or more offences under Part 3: *Care and Protection of Animals* within a period of 5 years or less they may be “banned from being a person in control of an animal for a period of 5 years from the date of the finding of guilt in relation to the third offence’. A number of submissions to the Committee raised concerns regarding the leniency of this provision.

3.143 For example, the Charles Darwin University Animal Ethics Committee (CDU AEC) suggested that automatic bans for three or more offences should apply regardless of the timeframe in which they occurred.¹²⁹ Lawyers for Animals and Mr Jean-Remi Champion noted that given there is evidence to suggest that “past cruelty and neglect is a strong indicator of future behaviour”¹³⁰, the Bill should provide for indefinite banning orders depending upon the circumstances or seriousness of the offences committed.¹³¹

3.144 The RSPCA expressed similar views:

The RSPCA supports banning orders for defendants found guilty of animal welfare offences. However, we question why the proposed mandatory banning order in cl. 115 is limited to five years and only after the defendant has been found guilty of three or more separate offences within a five-year period. This may inadvertently set an unreasonably high threshold in the mind of judges for imposing banning orders on serious first or second-time offenders. And in certain extreme cases of cruelty, indefinite banning orders may be appropriate.¹³²

3.145 The Department advised that:

clause 115 is in line with other Northern Territory legislation which provides an additional penalty (e.g. the suspension or cancellation of an issued licence) for those convicted of three or more offences within a five-year time period. Clause 114 of the Bill allows for a court to make additional orders, upon finding a person guilty of an offence against the Act, with respect to the future possession of animals. The length of duration of an imposed ban from possessing an animal is at the discretion of the court.¹³³

Committee’s Comments

3.146 The Committee is satisfied that the Bill provides the Courts with the powers necessary to impose indefinite banning orders where it considers appropriate and notes that doing so is not contingent upon whether or not the person has been convicted of one or more offences or the timeframe within which they may have been committed. The Committee also acknowledges the Department’s advice that the operation of clause 115 regarding automatic bans for multiple offences is consistent with other Northern Territory legislation.

¹²⁹ Charles Darwin University Animal Ethics Committee, Submission No. 16, p.2

¹³⁰ Lawyers for Animals, Submission No. 34, p.18

¹³¹ Mr Jean-Remi Champion, Submission No. 4, pp.5-7; Lawyers for Animals, Submission No. 34, pp.18-19

¹³² RSPCA, Submission No. 28, p.14

¹³³ Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, p.13

Interaction with the *Livestock Act*

3.147 The Northern Territory Cattlemen’s Association sought clarification as to the interaction between the Bill and the *Livestock Act* (NT). A key point of concern for the NTCA related to ensuring that:

the interaction between the Animal Protection Act after it is commenced and the *Livestock Act* specifically with respect to the cattle welfare standards which are adopted under the *Livestock Act* be maintained. The NTCA does not support any change to the current education and compliance approach for the welfare of cattle in the NT, and supports regulation and compliance monitoring of the cattle industry to continue under the *Livestock Act*.¹³⁴

3.148 Clarification was also sought as to the “intent of the proposed Regulations that will implement exemptions to offences in the Bill.”¹³⁵ The NTCA raised specific concerns regarding the anticipated operation of the proposed exemptions to the offences of administering and laying poison at clauses 27 and 28, and the use of electrical devices at clause 30.¹³⁶

3.149 While the Livestock Standards permit the “judicious use of electric jiggers”¹³⁷, Mr Ryan noted that:

the act itself basically prohibits the use of electrical devices ... obviously we fully support the banning of those but it will be really important that we are allowed to use electric prodders in the regulations the same as it is currently.¹³⁸

3.150 Similarly, in relation to dog baiting, Mr Paul Burke (Chief Executive Officer: NTCA) advised the Committee that:

Currently you need to gain an accreditation, so there is quite a detailed accreditation process. It takes four days, from memory. So we believe we have got the right protections and there are certain things you can and cannot do in a dog baiting space – proximity to townships and communities – and we think that what is in play currently satisfies the needs of our industry. We would like to see that maintained.¹³⁹

3.151 Noting that the “current *Animal Welfare Act* and the *Livestock Act* have interacted very well”¹⁴⁰, Mr Ryan (Executive Officer: NTCA) told the Committee that:

the Bill is worded quite well, but we wanted it put on record that the regulations – particularly those we have outlined – will be important for us going forward.¹⁴¹

3.152 The Department advised the Committee that:

the standards and guidelines adopted under the *Livestock Act* will be consistent with the proposed legislation and associated regulations. The Bill will not commence operation until the necessary regulations are finalised. It is anticipated that the drafting of regulations will take approximately six months.¹⁴²

¹³⁴ Northern Territory Cattlemen’s Association, Submission No. 21, p.1

¹³⁵ Northern Territory Cattlemen’s Association, Submission No. 21, p.2

¹³⁶ Northern Territory Cattlemen’s Association, Submission No. 21, p.2

¹³⁷ Northern Territory Cattlemen’s Association, Submission No. 21, p.2

¹³⁸ Mr Tom Ryan, Committee Transcript, 9 April 2018, p.12

¹³⁹ Mr Paul Burke, Committee Transcript, 9 April 2018, p.12

¹⁴⁰ Mr Tom Ryan, Committee Transcript, 9 April 2018, p.11

¹⁴¹ Mr Tom Ryan, Committee Transcript, 9 April 2018, pp.11 & 13

¹⁴² Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, pp.14-15

Committee's Comments

3.153 The Committee is satisfied with the Department's advice.

Conflict of Interest

3.154 Given that the Department of Primary Industry and Resources has a mandate to ensure the continued growth and success of animal production industries, the RSPCA, Animals Australia and Lawyers for Animals raised concerns as to the potential for a conflict of interest to arise that may prevent proper enforcement of the Bill, noting that:

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.¹⁴³

3.155 Animals Australia was particularly concerned that pursuant to clause 117 proceedings for an offence against the Act must not be commenced without the approval of the CEO or a person authorised by the CEO, unless the prosecution is initiated by the Attorney-General or Director of Public Prosecutions.¹⁴⁴ As the RSPCA pointed out, the 2011 Parliamentary inquiry into the Mataranka Station incident by the Council for Territory Co-Operation Animal Welfare Governance Subcommittee revealed:

systemic failures in the administration of the legislation, including concerns about the Department's approach to enforcement. While the Department [Department of Primary Industry and Resources] did not have primary administrative responsibility for the Act at this point in time, the Department's officers were appointed as inspectors under the Act and were responsible for enforcement functions.

In response to questioning about the Department's decision not to prosecute, the then Chief Veterinary Officer stated that "the focus was the welfare of the animals, and whether to prosecute or not was a minor point." ... the Chief Veterinary Officer later raised the issue of "tensions" within the Department between working as "industry supporters" and regulating with respect to animal welfare.¹⁴⁵

3.156 Lawyers for Animals raised similar concerns noting that it was:

cautiously optimistic that the proposed powers of the CEO may be discharged to good effect ... However, were this role to be filled by an animal industry representative, the potential effectiveness of the reform would be severely undermined.¹⁴⁶

3.157 The Department advised that:

the findings within the Animal Welfare Governance Subcommittee final report in 2011 was that animal welfare should be managed within an agency, and in 2014 the Animal Welfare Branch was transferred to the Department of Primary Industry and Resources. The Department has implemented processes to minimise any conflict of interest and it is managed through the Biosecurity and Animal Welfare

¹⁴³ Animals Australia, Submission No. 17, p.7

¹⁴⁴ Animals Australia, Submission No. 17, p.7

¹⁴⁵ RSPCA, Submission No. 28, p.6

¹⁴⁶ Lawyers for Animals, Submission No. 34, p.16

Division's regulatory programs, who also investigate any reports of animal welfare breaches within the Department's livestock program on research stations.¹⁴⁷

3.158 As Mr Alister Trier (Chief Executive Officer: Department of Primary Industry and Resources) pointed out to the Committee:

in any administrative arrangement there is always strengths and weaknesses. The strength of the current arrangement is that we do get good synergies between – especially in our commercial animal area – various levels of regulation and that is a good thing. With that comes a perception of conflict of interest but in our structural alignments there is a clear separation between our research and development areas and our regulatory areas – I have always been conscious of that.

Secondly, there have been areas where there are things that we have needed to look at that might be perceived as a conflict of interest. Where those things have happened I have taken the step of having an independent oversight of any investigations or processes to remove any doubt of a perception or real conflict of interest.¹⁴⁸

3.159 Mr Ian Curnow (General Manager Fisheries and Product Integrity) further noted that:

the question is not so much that there is a fault in the Bill, it is the decision of, if it was widely perceived and the Government agreed there was a conflict of interest in the developers of industry also being the compliance managers of industry ... I see it probably as an issue for the admin order [Administrative Arrangements Order] and the Government to resolve where the administration of that Act best sits ... rather than a flaw in the Bill itself.¹⁴⁹

Committee's Comments

3.160 As highlighted by the Department, the Committee agrees that the concerns raised regarding potential conflicts of interest do not reflect an issue with the Bill itself. Rather, it is more a matter as to which Department the Government considers is best placed to administer the Act.

Rehoming Provisions

3.161 Humane Research Australia (HRA) raised concerns that the Bill does not address the issue of rehoming animals that have been used in research rather than disposing of them by a lethal dose of barbiturate.¹⁵⁰ The Committee understands that in 2013, the *Australian Code for the Care and Use of Animals for Scientific Purposes* was updated to provide that:

opportunities to rehome animals should be considered wherever possible, especially when the impact of the project or activity on the wellbeing of the animal has been minimal and their physiological condition and behavioural attributes indicate that they can be introduced to a new environment with minimal, transient impact on their wellbeing.¹⁵¹

¹⁴⁷ Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, p.14

¹⁴⁸ Mr Alister Trier, Committee Transcript, 9 April 2018, p.43

¹⁴⁹ Mr Ian Curnow, Committee Transcript, 9 April 2018, p.44

¹⁵⁰ Humane Research Australia, Submission No. 2, p.1

¹⁵¹ National Health and Medical Research Council, *Australian Code for the Care and Use of Animals for Scientific Purposes*, 8th edition, National Health and Medical Research Council, Canberra ACT, 2013, p.67

3.162 However, while Animal Ethics Committees are encouraged to consider rehoming provisions, the HRA pointed out that the Code is not legally binding. The Committee understands that in 2014 *Beagle Freedom* legislation was successfully implemented in Minnesota, New York, California, Connecticut, Nevada and Illinois to address this situation and similar Bills are currently under consideration in Massachusetts, New Jersey, Texas and Iowa.¹⁵² As noted by HRA, *Beagle Freedom* legislation requires that at the end of their ‘use’ in research:

all tax-payer funded labs must offer their dogs and cats up for adoption through animal rescue organisations instead of just summarily killing them ... It would be advantageous to introduce similar legislation within Australia however to do so under the current system would require separate legislative reforms under each state/territory jurisdiction. The *NT Animal Protection Bill 2018* is an ideal opportunity to incorporate this legislative requirement under clause 62 “Conditions of Approval”.¹⁵³

3.163 The Department advised that, given the relatively small amount of animal research undertaken in the Northern Territory, it had not specifically considered rehoming provisions for animals that have been used for scientific purposes.¹⁵⁴ It was further noted that, as provided for under clause 62, since project approval is subject to the conditions the accredited animal ethics committee considers appropriate:

there is no impediment in the Bill preventing an animal ethics committee from including rehoming opportunities in accordance with the scientific code.¹⁵⁵

3.164 The Charles Darwin University Animal Ethics Committee (CDU AEC) also raised concerns that provisions regarding seized animals under Part 5, Division 4 of the Bill may not afford sufficient opportunities for rehoming:

Often seized animals have been dealt with through a veterinary clinic, or have been in a long-term foster home. Due to the long-term care of such animals, there may be persons involved with the veterinary clinic or foster home that are familiar and known to the animals, and are both willing and suitable to take ownership. We would like to ensure the legislation does not omit the aforementioned persons as a potential method of disposal (rehoming) of the animal. The CDU AEC would like to ensure seized animals are not euthanased, nor put into long-term shelter care, when there is a suitable rehoming opportunity available.¹⁵⁶

Committee’s Comments

3.165 The Committee acknowledges the concerns regarding rehoming provisions raised by HRA and CDU AEC. However, the Committee is of the view that the Bill as drafted provides both the CEO and accredited animal ethics committees the opportunity and flexibility to ensure rehoming is considered when approving scientific research projects or dealing with seized animals.

¹⁵² Beagle Freedom Australia, *Beagle Freedom Bill – The Right to Release, Finding forever homes for research animals*, <http://www.beaglefreedomaustralia.org/wp-content/uploads/2017/09/Beagle-Freedom-Right-to-Release-Media-Release.pdf>, pp.1-2

¹⁵³ Humane Research Australia, Submission No. 2, p.1

¹⁵⁴ Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, p.9

¹⁵⁵ Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, p.9

¹⁵⁶ Charles Darwin University Animal Ethics Committee, Submission No. 16, p.2

Typographical Error

3.166 The Charles Darwin University Animal Ethics Committee (CDU AEC) noted that pursuant to clause 39(b) the CEO may publish guidelines that specify matters that are 'relevant to an application for the accreditation of an animal welfare committee under this Part.' However, given that this Part relates to Part 4 *Regulation of scientific users of animals*, the CDU AEC queried the reference to an animal *welfare* committee rather than an animal *ethics* committee.¹⁵⁷

Committee's Comments

3.167 Following clarification from the Department, the Committee notes that the reference to an animal welfare committee in clause 39(b) is a typographical error that needs to be amended to read *animal ethics committee*.

Recommendation 16

The Committee recommends that clause 39(b) be amended by removing the word 'welfare' and replacing it with the word 'ethics'.

Companion Animal Management and Welfare

3.168 Concern was raised by Mr Jean-Remi Campion (Private Citizen) and Lawyers for Animals (LFA) regarding the poor animal welfare practices in remote communities and the capacity of the proposed legislation to address this issue.¹⁵⁸ As Mr Campion told the Committee:

In the course of my work I often go to Aboriginal communities and it pains me to see how many dogs and cats are roaming around and seem to be in very poor condition. I find that is, if I could use the word, inhumane for animals to be living in such conditions and also the related health hazard it causes to the Indigenous in the community and other people who work within or nearby the community.¹⁵⁹

Many of the animals suffer from illness, disease and lack of nourishment. Fights between animals, particularly dogs, result in death and injury ... resulting in further disease and sickness.¹⁶⁰

3.169 LFA concurred with these comments and suggested that:

compulsory microchipping of dogs and greater enforcement of dog registration and desexing laws in outlying communities in the Northern Territory will likely begin to help deal with the extraordinarily poor welfare of many dogs in remote communities. Currently younger and weaker animals are regularly killed and eaten by older and stronger animals, who would otherwise lack adequate food to survive. Guidance should be sought from local Aboriginal elders and persons involved in current efforts to tackle this glaring failure in Northern Territory animal welfare. Low or no-cost de-sexing of dogs should be given priority funding, to improve the welfare of animals...¹⁶¹

¹⁵⁷ Charles Darwin University Animal Ethics Committee, Submission No. 16, p.1

¹⁵⁸ Mr Jean-Remi Campion (Private Citizen), Submission No. 4, p.9; Lawyers for Animals, Submission No. 34, p.19

¹⁵⁹ Mr Jean-Remi Campion, Committee Transcript, 9 April 2018, p. 2

¹⁶⁰ Mr Jean Remi Campion (Private Citizen), Submission No. 4, p.9

¹⁶¹ Lawyers for Animals, Submission No. 34, p.19

3.170 The Committee notes that this has been an on-going issue of concern in the Territory for a number of years:

The 2007 review of the *Animal Welfare Act* noted that there were issues that needed to be dealt with in relation to its enforcement in Indigenous communities and in relation to the education and awareness programs that should operate in communities. It was also noted that care of animals in Indigenous communities needed stronger enforcement.¹⁶²

3.171 The Council of Territory Co-Operation's Animal Welfare Governance Sub-Committee considered companion animal welfare and management issues as part of its 2011 inquiry into the effectiveness of animal welfare legislation and administration and highlighted the following issues of particular concern:

- There are significant dog control issues across the Territory, but particularly in Indigenous communities where uncontrolled, unhealthy dogs adversely affect residents and visitors' health and well-being.
- There appears to be confusion about responsibility for companion animal management versus animal welfare which must be resolved.
- Companion animal welfare, management and control is inadequately resourced and therefore makes it impossible for local governments to address alone.¹⁶³

3.172 Legal advice received by the Animal Welfare Governance Sub-Committee at the time noted that while the concepts of animal management and animal welfare are the subject of different legislative regimes:

the conventional approach involves a State Parliament enacting companion animal legislation, imposing various registration and other obligations on those owning or exercising control over companion animals. Essentially, these and other obligations concern the ownership and management of dogs and cats, and the interaction between these dogs and cats and others. Although the relevant State governments exercise a policy role, councils administer and (for the most part) enforce the legislation.

In the Territory, animal management lacks centralised regulation. Municipal and shire councils can – and do – exercise a power to make by-laws regulating many aspects of the keeping of animals. Policy, administration and enforcement of animal management is therefore heavily localised.

Occasionally, some of these by-laws intrude into the animal welfare space. Some by-laws make it an offence to abandon an animal, empower an authorised person or officer to seize an animal which is injured or diseased and enable an authorised person or officer to destroy an animal if it is necessary or humane to do so. In doing this, by-laws risk being characterised as overlapping with the AWA [*Animal Welfare Act*].¹⁶⁴

3.173 Importantly, it was further noted that:

inadequate animal management – and inadequate regulation of animal management – can be seen as a cause of animal welfare concerns. If dogs and cats breed freely; or animals are neglected or even dumped, there is an increased risk of sickness, disease, injury or starvation. So, there is an obvious link between

¹⁶² Council of Territory Co-Operation, *Animal Welfare Governance Sub-Committee Final Report*, Legislative Assembly of the Northern Territory, Darwin NT, October 2011, p. 43

¹⁶³ Council of Territory Co-Operation, *Animal Welfare Governance Sub-Committee Final Report*, Legislative Assembly of the Northern Territory, Darwin NT, October 2011, p. 42

¹⁶⁴ Council of Territory Co-Operation, *Animal Welfare Governance Sub-Committee Final Report*, Legislative Assembly of the Northern Territory, Darwin NT, October 2011, p. 62

animal management and animal welfare. By-laws made by the Territory's municipal and shire councils are, in this sense, linked to the AWA – the council's by-laws on animal management help determine whether animal welfare problems enlivening the AWA emerge.¹⁶⁵

3.174 However, while Local Government Authorities are empowered to make animal management by-laws under the *Local Government Act* (NT), the Committee notes that there is no requirement that they do so. Then too, while most Shires list companion animal welfare control as a core service provided as part of their environmental health services on their websites, a review of the Territory Legislation database indicates that very few remote communities are subject to animal management by-laws.¹⁶⁶

3.175 The Department advised the Committee that it:

Works closely with local communities, local police and Local Government animal regulators to provide education to those in remote areas. Local police have powers under the current Act (and the new Bill) and are often at the coalface when it comes to addressing animal welfare issues in remote areas. The Department's Animal Welfare Grants program (\$200,000 p.a.) is also a mechanism to promote and improve community animal management programs.¹⁶⁷

3.176 However, as Mr Peter Phillips (Director Animal Welfare: Department of Primary Industry and Resources) pointed out to the Committee:

The difficulty any act has, particularly in relation to cruelty, is to define the owner. If we are relating to an act of cruelty we need to find an owner. What we find that is a situation [in remote communities] is that there are camp dogs. They are owned by all the community. It is difficult for inspectors to pinpoint the owner when they are owned by the community. ... Going on from that – the second part of your question – there are a lot of animal management jobs that come our way because the public, unfortunately, cannot understand the difference between animal management – a dog barking or a dog escaping – and animal welfare.¹⁶⁸

3.177 With regards to community education, Mr Phillips further advised the Committee that the Animal Welfare Branch works with Animal Management in Rural and Remote Indigenous Communities (AMRRIC):

particularly in relation to community education in Indigenous communities. It is another tool under our regulatory framework in the education with those communities. ... We certainly understand the good work that AMRRIC does and we certainly appreciate that they are making inroads into dog health and animal health in Indigenous communities. Healthy Dog, Healthy Community is an extremely good project.

We also undertake community engagement programs as part of our business strategy, we endeavour to undertake at least 10 community engagement programs each year.¹⁶⁹

¹⁶⁵ Council of Territory Co-Operation, *Animal Welfare Governance Sub-Committee Final Report*, Legislative Assembly of the Northern Territory, Darwin NT, October 2011, pp.62-3

¹⁶⁶ Northern Territory Legislation, Local Government By-Laws, <https://legislation.nt.gov.au/LegislationPortal/Subordinate-Legislation/By-Type>

¹⁶⁷ Department of Primary Industry and Resources, *Response to Written Questions*, 9 April 2018, <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>, p.15

¹⁶⁸ Mr Peter Phillips, Committee Transcript, 9 April 2018, p.46

¹⁶⁹ Mr Peter Phillips, Committee Transcript, 9 April 2018, p.45

Committee's Comments

- 3.178 The Committee is concerned that the absence of companion animal management legislation that is applicable Territory wide, will limit the Bill's capacity to improve animal welfare outcomes in remote communities. From the evidence received, it is clear that the issues raised in both the 2007 review of the *Animal Welfare Act* and the 2011 inquiry of the Council of Territory Co-Operation Animal Welfare Governance Sub-Committee remain largely unaddressed.
- 3.179 Given the obvious link between animal management and animal welfare, the Committee is of the view that consideration should be given to the development of companion animal management legislation.

Recommendation 17

The Committee recommends that the Government give consideration to the development of Companion Animal Management legislation.

Appendix 1: Jurisdictional Definitions of Animal

Jurisdiction	Definition of Animal
<p style="text-align: center;">Northern Territory</p>	<p><i>Animal Welfare Act</i> <i>animal</i> means:</p> <p>(a) a live member of a vertebrate species including an amphibian, bird, mammal (other than a human being) and reptile;</p> <p>(b) a live fish in captivity or dependent on a person for food; or</p> <p>(c) a live crustacean if it is in or on premises where food is prepared for retail sale, or offered by retail sale, for human consumption.</p>
<p style="text-align: center;">Australian Capital Territory</p>	<p><i>Animal Welfare Act 1992</i> <i>animal</i> means – a</p> <p>(a) A live member of a vertebrate species, including –</p> <p style="margin-left: 20px;">(i) an amphibian; and</p> <p style="margin-left: 20px;">(ii) a bird; and</p> <p style="margin-left: 20px;">(iii) a fish; and</p> <p style="margin-left: 20px;">(iv) a mammal (other than a human being); and</p> <p style="margin-left: 20px;">(v) a reptile; or</p> <p>(b) a live cephalopod; or</p> <p>(c) a live crustacean intended for human consumption.</p>
<p style="text-align: center;">Queensland</p>	<p><i>Animal Care and Protection Act 2001</i></p> <p>(1) An <i>animal</i> is any of the following –</p> <p>(a) a live member of a vertebrate animal taxon;</p> <p><i>Examples –</i></p> <ul style="list-style-type: none"> • an amphibian • a bird • a fish • a mammal, other than a human being • a reptile • an amphibian <p>(b) a live pre-natal or pre-hatched creature as follows if it is in the last half of gestation or development –</p> <p style="margin-left: 20px;">(i) a mammalian or reptilian foetus;</p> <p style="margin-left: 20px;">(ii) an avian, mammalian or reptilian pre-hatched young;</p> <p>(c) a live marsupial young;</p> <p>(d) a live invertebrate creature of a species, or a stage of the life cycle of a species from the class Cephalopoda or Malacostraca prescribed under a regulation for this paragraph.</p> <p><i>Examples of creatures of the class Cephalopoda –</i></p> <ul style="list-style-type: none"> • octopi • squid <p><i>Examples of creatures of the class Malacostraca –</i></p> <ul style="list-style-type: none"> • crabs • crayfish • lobsters • prawns <p>(2) However, a human being or a human foetus is not an animal.</p> <p>(3) To remove any doubt, it is declared that the following are not animals –</p> <p style="margin-left: 20px;">(a) the eggs, spat or spawn of a fish;</p> <p style="margin-left: 20px;">(b) a pre-natal, larval or pre-hatched creature, other than a creature mentioned in subsection (1)(b) or (c);</p>

Jurisdiction	Definition of Animal
Queensland (cont.)	(c) another immature form of a creature, other than a creature mentioned in subsection (1)(a) to (c).
New South Wales	<p><i>Prevention of Cruelty to Animals Act 1979</i> <i>animal</i> means –</p> <ul style="list-style-type: none"> (a) a member of a vertebrate species including any: <ul style="list-style-type: none"> (i) amphibian, or (ii) bird, or (iii) fish, or (iv) mammal (other than a human being), or (v) reptile, or (b) a crustacean but only when at a building or place (such as a restaurant) where food is prepared or offered for consumption by retail sale in the building or place.
Victoria	<p><i>Prevention of Cruelty to Animals Act 1986</i> <i>animal</i> means –</p> <ul style="list-style-type: none"> (a) a live member of a vertebrate species including any – <ul style="list-style-type: none"> (i) fish or amphibian that is capable of self-feeding; or (ii) reptile, bird or mammal, other than any human being or any reptile, bird or other mammal that is below the normal mid-point of gestation or incubation for the particular class of reptile, bird or mammal; or (b) a live adult decapod crustacean, that is – <ul style="list-style-type: none"> (i) a lobster; or (ii) a crab; or (iii) a crayfish.
South Australia	<p><i>Animal Welfare Act 1985</i> <i>animal</i> means a member of any species of the sub-phylum <i>vertebrata</i> except –</p> <ul style="list-style-type: none"> (a) a human being; or (b) a fish, <p>and includes any prescribed animal.</p>
Western Australia	<p><i>Animal Welfare Act 2002</i> <i>animal</i> means –</p> <ul style="list-style-type: none"> (a) a live vertebrate; or (b) a live invertebrate of a prescribed kind, other than a human or a fish (as defined in the <i>Fish Resource Management Act 1994</i>)
Tasmania	<p><i>Animal Welfare Act 1993</i> <i>animal</i> means –</p> <ul style="list-style-type: none"> (a) any live vertebrate animal other than a human being; or (b) any other creature prescribed for the purposes of any or all of the provisions of this Act.

Jurisdiction	Definition of Animal
<p>New Zealand</p>	<p><i>Animal Welfare Act 1999</i> <i>animal</i> –</p> <p>(a) means any live member of the animal kingdom that is –</p> <ul style="list-style-type: none"> (i) a mammal; or (ii) a bird; or (iii) a reptile; or (iv) an amphibian; or (v) a fish (bony or cartilaginous); or (vi) any octopus, squid, crab, lobster or crayfish (including freshwater crayfish); or (vii) any other member of the animal kingdom which declared from time to time by the Governor-General, by Order in Council, to be an animal for the purposes of this Act; and <p>(b) includes any mammalian foetus, or any avian or reptilian pre-hatched young, that is in the last half of its period of gestation or development; and</p> <p>(c) includes any marsupial pouch young; but</p> <p>(d) does not include –</p> <ul style="list-style-type: none"> (i) a human being; or (ii) except as provided in paragraph (b) or paragraph (c), any animal in the pre-natal, pre-hatched, larval, or other such developmental stage.

Appendix 2: Submissions Received

Submissions Received

1. Ms Sylvia Kendall – Private Citizen
2. Humane Research Australia Inc.
3. Department of Tourism and Culture
4. Mr Jean-Remi Campion – Private Citizen
5. Confidential
16. Charles Darwin University Animal Ethics Committee
17. Animals Australia
21. Northern Territory Cattlemen’s Association Inc.
25. The Animal Law Institute
28. RSPCA
31. Ms Diana Thompson and Mr Paul Sedman – Private Citizens
32. Australian Veterinary Association
33. Northern Land Council
34. Lawyers for Animals

Form Submissions A

6. Ms Kate Wales – Private Citizen
7. Ms Jessica Bool – Private Citizen
8. Ms Sarah Holdsworth – Private Citizen
9. Ms Sharon Doidge – Private Citizen
10. Ms Haylee Burley – Private Citizen
11. Ms Tracy Kenworthy – Private Citizen
12. Ms Danielle Fisher – Private Citizen
13. Ms Barbara Boyns – Private Citizen
14. Mr Grant Wales – Private Citizen
15. Ms Kellie Wooldridge – Private Citizen
18. Ms Zoe Sinclair – Private Citizen
19. Ms Rebecca Egan – Private Citizen
23. Ms Sally Weir – Private Citizen
24. Ms Emma Wooldridge – Private Citizen
26. Ms Margaret Buckley – Private Citizen
27. Ms Sue Jellis – Private Citizen
29. Ms Emily Jellis – Private Citizen
30. Ms Naomi Oliver – Private Citizen

Form Submission B

20. Ms Kerri-Ann Laurence – Private Citizen
21. Mr Bardia Bodaghi – Private Citizen

Note

Copies of submissions are available at: <https://parliament.nt.gov.au/committees/spsc/44-2018>

Appendix 3: Public Briefing and Public Hearings

Public Briefing – Monday, 19 February 2018

Department of Primary Industry and Resources

- Mr Alister Trier: Chief Executive
- Ms Michelle Rodan: Director Biosecurity and Animal Welfare
- Mr Peter Zeroni: Director Policy and Legislation
- Mr Peter Phillips: Director Animal Welfare

Public Hearing – Monday, 9 April 2018

- Mr Jean-Remi Campion: Private Citizen
- Professor Keith Christian: Chair, Charles Darwin University Animal Ethics Committee
- Mr Paul Burke: Chief Executive Officer, Northern Territory Cattlemen's Association Inc.
- Mr Tom Ryan: Executive Officer, Northern Territory Cattlemen's Association Inc.
- Ms Katherine Russell: Research and Policy Officer, Animals Australia
- Dr Malcolm Caulfield: Principal Solicitor, The Animal Law Institute
- Dr Kim Smith: Territory President, Australian Veterinary Association
- Dr Alex Hesford: NT Committee Member, Australian Veterinary Association
- Mr Graham Pratt: Regional Manager – Western Region, Australian Veterinary Association
- Mr Danny Moore: Chair, RSPCA
- Dr Jed Goodfellow: Senior Policy Officer, RSPCA
- Ms Kristen Lynch: Research and Policy Officer, Northern Lands Council
- Mr Alister Trier: Chief Executive
- Mr Ian Curnow: General Manager Fisheries and Product Integrity
- Peter Zeroni: Director Policy and Legislation
- Peter Phillips: Director Animal Welfare

Note

Copies of hearing transcripts and tabled papers are available at:
<https://parliament.nt.gov.au/committees/spsc/44-2018>

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