

27 April 2018

Standing Committee on Legislation
Parliament House
4 Harvest Terrace
Perth WA 6005

By email: lc@parliament.wa.gov.au

Dear Committee,

Animals Australia submission in relation to the *Animal Welfare Amendment Bill 2017 (WA)*

Thank you for the opportunity to make a submission regarding the *Animal Welfare Amendment Bill 2017 (WA)* (**'the Bill'**).

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

1.0 Summary

Animals Australia commends the introduction of this Bill and supports the amendments to the *Animal Welfare Act 2002 (WA)* (**'the Act'**) contemplated therein. By way of summary, we support:

1. The proposed broadening of the 'content and intent' sections within the Act, and the introduction of a new Division which provides greater regulation-making powers to enable the implementation of National Standards and Guidelines (**'NSGs'**);
2. The proposed amendments to Headings within the Act;
3. The proposed new provision to clarify that it is an offence for a person in charge of an animal to commit a prescribed offence against an animal;
4. The provisions which improve clarity surrounding the purposes for which Codes of Practice are prescribed;
5. The intended prescription of Guidelines from the NSGs for the purposes of guiding the Courts when considering cruelty offences;
6. The introduction of a provision which provides the power to modify, by regulation, the application of a defence to a charge of cruelty to ensure that the enforceability of the NSGs are not undermined; and
7. The introduction of a new class of Inspectors (Designated General Inspectors).

We will now address each of these points in turn.

2.0 Expanding the ‘Content and Intent’ provisions of the Act, and introducing a new Division which provides greater regulation-making powers

Animals Australia strongly supports clauses 4 and 7 of the Bill, which serve to facilitate the implementation of NSGs under the Act. Under the current Act, the power to make regulations is limited to the making of regulations which are necessary or convenient to give effect to the purposes of the Act.¹

In its current form, the objects of the Act appear restricted *inter alia* to the prevention of cruelty, with the result that it is seemingly not possible at present to make regulations which relate more generally to the welfare, safety and health of animals (and related matters).²

Given that the NSGs relate to matters more broad than mere cruelty prevention, we commend the proposed expansion of the ‘content and intent’ provisions in the current Act, and the introduction of the provisions proposed by clause 7, which provide a lengthy list of matters in relation to which regulations may be made. Importantly, both these amendments read together serve to facilitate the full and proper implementation of the NSGs.

More generally, we are also of the view that these amendments mark an important shift away from an outdated conception of animal welfare legislation as being concerned only with the prevention of cruelty, towards a broader concept of animal welfare. Scientific literature explains that ensuring good animal welfare outcomes requires not only that we ensure animals enjoy freedom from negative mental states, but also that they actively enjoy the presence of positive ones.³ For this reason, a shift towards recognising a broader concept of animal welfare in animal welfare legislation is important. Moreover, it serves to ensure that the Court interprets the provisions of the Act in light of this broader stated purpose.⁴

3.0 Change of Headings within the Act

For similar reasons to those outlined above, Animals Australia also commends the proposed changes to various headings within the *Animal Welfare Act 2002* (WA). In particular:

- Changing the heading of Part 3 from ‘Offences against animals’, to ‘Welfare, safety and health of animals’ (proposed by clause 6 of the Bill); and
- Changing the heading of section 19 from ‘Cruelty to Animals’ to ‘Cruelty and other inhumane and improper treatment of animals’ (proposed by clause 8 of the Bill).

Statutory headings do more than merely aid in the compartmentalisation of lengthy and complex statutes; they also form part of the law itself.⁵

Headings may aid in the process of statutory interpretation since they serve to convey the intended purpose and objective of the provisions that follow.⁶ In the context of the Bill, the proposed amendments to headings within the Act serve to reflect a more scientific understanding of what constitutes good animal welfare practice, with the result that they may facilitate statutory interpretation in line with current scientific thinking in the animal welfare arena.

¹ *Animal Welfare Act 2002* (WA), s94(1).

² We note that the Act provides a broader list of ‘intents’ under s3(2), but understand that these are largely not reflected within the provisions of the Act itself.

³ See, for example: David Mellor (2016) ‘Updating Animal Welfare Thinking: Moving Beyond the “Five Freedoms” towards “A Life Worth Living”’ 6 *Animals* 21.

⁴ See *Interpretation Act 1984* (WA) s18, which provides that in interpreting a statute, a construction which promotes the Act’s purpose is to be preferred to one that would not support that purpose.

⁵ See s32 of the *Interpretation Act 1984* (WA), which states that ‘[T]he headings of the Parts, divisions and subdivisions into which a written law is divided form part of the written law’.

⁶ *Interpretation Act 1984* (WA), s18.

4.0 Additional Provision for Prescribed Acts of Cruelty

Animals Australia commends clause 9 which makes it clear that it is an offence for a person in charge of an animal to carry out a prescribed act on, or in relation to it.

We support that fact that this provision will be used to implement, by way of regulation, the mandatory components of the NSGs.

5.0 Improving Clarity Surrounding the Role and Enforceability of Codes of Practice

Animals Australia supports clauses 10 and 11 of the Bill which purport to offer greater clarity surrounding the purposes for which Codes of Practice are prescribed under the Regulations.

Animal welfare law scholars have long criticised the implementation of Codes of Practice across Australia for their lack of enforceability, and for the lack of clarity that generally surrounds both their intended purpose and operation. This lack of clarity has led to animal welfare law scholar, Associate Professor Alex Bruce, describing animal welfare Codes of Practice as ‘shadowy instruments’.⁷

On the one hand, Codes of Practice typically purport to articulate the minimum acceptable standards of animal welfare and care in a particular industry, yet, on the other hand, the extent of their implementation is often unclear or incomplete.

For this reason, Animals Australia supports clauses 10 and 11 of the Bill which propose to better clarify the operation of animal welfare Codes of Practice in the Western Australian jurisdiction, by enabling Codes of Practice to be prescribed for the purposes of the particular provision to which they are intended to operate. That is, being either as a defence to a charge of cruelty, or as a guide to the Court in making a determination with respect to whether unlawful animal cruelty has occurred.

At current, the Act does not adequately distinguish between these different purposes. The proposed amendment will therefore importantly serve to provide greater clarity in this area.

6.0 Prescribing Guidelines for the Purposes of Guiding the Courts when Considering Cruelty Offences

We further note that the Explanatory Memorandum accompanying the Bill states that ‘the guidelines in the NSGs will be prescribed for the purpose of guiding the courts when considering cruelty offences.

Animals Australia strongly supports this proposal.

Given that the Guidelines dictate practices which may ‘achieve desirable livestock welfare outcomes’,⁸ it is commendable that they will implemented to enable a Court to refer to them in assessing whether a cruelty offence has been committed.

7.0 The Introduction of a provision which provides the power to modify the application of a defence to a charge of cruelty

Animals Australia commends and supports the primary motivation behind clause 9 of the Bill, which provides the capacity for defences under the Act to be modified by Act of regulation in certain circumstances.

⁷ Alex Bruce, *Animal Law in Australia: An Integrated Approach* (LexisNexis Butterworths, 2012) 217.

⁸ Animal Health Australia, *About* (20 November 2017) Australian Animal Welfare Standards and Guidelines <<http://www.animalwelfarestandards.net.au/about-2/>>.

Whilst we acknowledge that this provision is a 'Henry VIII clause' and is thus an unusual type of provision in an animal welfare statute, we note that the clause is intended to serve a very specific and important function. Namely, to ensure that a capacity to modify defences within the Act is maintained where necessary to ensure the full enforceability of the mandatory components of NSGs as they are implemented.

Where an existing defence under the Act may have the problematic effect of undermining the enforceable components of the NSGs, this proposed amendment may operate to, as noted in the second reading speech, 'ensure that the defence provisions cannot be used to wind back the clock to permit archaic farming practices'.⁹

Thus, though it remains an unusual provision, in this particular context it is intended to serve a protective function when read from an animal welfare perspective. We commend it on this basis.

8.0 The Introduction of a New Class of Inspectors - Designated General Inspectors

Animals Australia strongly supports the inclusion of a new class of inspectors, namely, *Designated General Inspectors*, proposed by the Bill.

Animals Australia's view is that the broadening of inspectorate powers contemplated by the Bill is essential to ensuring adequate monitoring of animal welfare compliance in Western Australia.

Under the current Act, an inspector may only enter a non-residential premise without consent or notice where they reasonably believe that an offence under Part 3 either has been, or is being committed, or is likely to be, or continue to be committed, if entry is not effected.¹⁰

The current Act therefore does not provide any additional powers of entry to non-residential premises to assess compliance with the Act, or with an animal welfare notice or court order made under the Act. Our view is that the powers provided to Inspectors under the current Act are therefore inadequate. Furthermore, they are also weaker than those provided to inspectors in other Australian jurisdictions. For example:

- In South Australia, section 31(2) of the *Animal Welfare Act 1985* (SA) provides that an Inspector is not required to give notice of an intention to conduct a routine inspection of premises or a vehicle where there is no suspicion of an offence, if the inspector reasonably suspects there is an animal welfare notice or animal welfare order in force. This means that Inspectors in South Australia may lawfully enter premises or vehicles to ensure compliance with these orders or notices, without the requirement of providing the occupier of the premises with notice of the intended inspection.
- In New South Wales, an Inspector has a general power to enter land used for the purposes of a sale-yard or an 'animal trade',¹¹ or any land 'in or on which an animal is being used, or kept for use, in connection with any trade, or any business or profession (including a place used by a veterinary practitioner...)'.¹²
- In Victoria, a 'specialist inspector' may seek written authority from the Minister to enter a non-residential premise, in or on which an animal or animals are housed or grouped for any purpose.¹³

⁹ Western Australia, *Parliamentary Debates*, Legislative Council (11 October 2017) 4556-4557 (Hon. Alannah MacTiernan).

¹⁰ *Animal Welfare Act 2002* (WA), s38(1)(e).

¹¹ 'Animal trade' is defined as a 'trade, business or profession in the course of which any animal is kept or used for a purpose prescribed for the purposes of this provision': *Prevention of Cruelty to Animals Act 1979* (NSW), s4.

¹² *Prevention of Cruelty to Animals Act 1979* (NSW), s24G(2).

¹³ *Prevention of Cruelty to Animals Act 1986* (Vic), s24L.

According to animal welfare law scholar, Professor Deborah Cao, this power is only used 'sparingly'.¹⁴

- In Tasmania, the *Animal Welfare Act 1993* (Tas) authorises an Inspector who has been authorised by the Minister to 'at any reasonable time enter, search and inspect any premises where animals are sold, presented for sale, assembled or kept for commercial purposes'.¹⁵ According to the Tasmanian Government website, this power is used to conduct welfare inspections on Tasmanian intensive pig farms and commercial poultry farms 'about once every 2 years'.¹⁶

Subject to any constraints placed on a Designated General Inspector by the Minister, Animals Australia is of the view that the powers offered to this new class of Inspector by the Bill may match or even exceed the powers provided in other Australian jurisdictions. For this reason, we strongly commend these clauses of the Bill.

Whilst we acknowledge that Industry may have hesitations with respect to these proposed broader enforcement powers,¹⁷ our view is that the Bill provides ample power to the Minister to restrict the power of a Designated General Inspector where necessary and appropriate. Specifically, clause 14 provides that the Minister may restrict the authority of a Designated General Inspector by limiting all or any of the following:

- the places where a power may be exercised;
- the times when a power may be exercised; and
- the circumstances in which a power may be exercised.

Thank you again for the opportunity to comment on this important Bill. Please contact me if you require further information or explanation.

Yours faithfully,



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¹⁴ Deborah Cao, *Animal Law in Australia* (2nd ed, Thomson Reuters, 2015) 219.

¹⁵ *Animal Welfare Act 1993* (Tas), s16(2).

¹⁶ Parks Tasmanian Government Department of Primary Industries, Water and Environment, *Animal Welfare Inspections of Intensive Farms* < <http://dpiwwe.tas.gov.au/biosecurity-tasmania/animal-biosecurity/animal-welfare/animal-welfare-inspections-of-intensive-farms>>.

¹⁷ For example, we note that comments made during the hearing of the Motion to Discharge of Order and Referral to Standing Committee on Legislation in relation to this Bill: Western Australia, *Parliamentary Debates*, Legislative Council (21 March 2018) 1056 (Hon Colin De Grussa, Hon Rick Mazza).