

27 April 2018

Hon. Dr Sally Talbot MLC
Chair
Standing Committee on Legislation
Parliament House
4 Harvest Terrace
Perth WA 6005

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

Dear Dr Talbot

Submission - Animal Welfare Amendment Bill 2017

Thank you for your letter of 28 March 2018, inviting RSPCA WA to make a submission to the Standing Committee on Legislation in relation to the *Animal Welfare Amendment Bill 2017*.

Please find **enclosed** for the consideration of the Committee the submission prepared by RSPCA WA.

I note the Committee's deadline for submissions was 20 April 2018 and understand the Committee may accept submissions made after that date. Given the subject matter of the Bill relates to the work of RSPCA WA Inspectors, it would be appreciated if the Committee would accept and consider this submission.

Yours sincerely



David van Ooran
Chief Executive Officer

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**The Royal Society for the Prevention of
Cruelty to Animals, Western Australia (Incorporated)**

Submission - Animal Welfare Amendment Bill 2017

**Legislative Council
Standing Committee on Legislation**

27 April 2018

Introduction

This submission is made by The Royal Society for the Prevention of Cruelty to Animals, Western Australia (Incorporated) (RSPCA WA) in response to a letter from the Standing Committee on Legislation (Committee), dated 28 March 2018, inviting the organisation to provide a written submission on the *Animal Welfare Amendment Bill 2017* (Amendment Bill).

RSPCA WA Inspectors work daily under the *Animal Welfare Act 2002* (Act) and therefore the organisation welcomes the opportunity to comment on this proposed legislative reform.

The Committee has sought a submission on the “policy, scope, purpose and structure” of the Amendment Bill. To address these aspects, RSPCA WA presents this submission in the following parts:

- Part A - Background and Purpose of the Amendment Bill;
- Part B - Clauses of the Amendment Bill;
- Part C - Enforcement issues; and
- Part D - Review of the Act.

RSPCA WA strongly welcomes the Amendment Bill as a means to implement long overdue National Standards and Guidelines, which have already been implemented in other Australian jurisdictions.

However, as indicated in Part B of the submission, RSPCA WA queries a number of aspects of the Amendment Bill, including how the National Standards and Guidelines will be implemented in regulations. These aspects appear to notably depart from the approach in other Australian jurisdictions and consequently, RSPCA WA has concerns as to how the Standards and Guidelines will operate in practice.

RSPCA WA submits that a potential resolution of these issues would be for the Amendment Bill to focus on fixing the regulation making power so the National Standards and Guidelines can be simply and promptly regulated in the same manner as other jurisdictions.

RSPCA WA representatives are willing to assist the Committee by appearing at a hearing to further canvass the matters raised in this submission.

A. Background and Purpose of the Amendment Bill

With respect to the purpose of the Amendment Bill, the Second Reading Speech states:

“On coming into office we were advised that the Animal Welfare Act is very limited in its capacity to regulate matters relating to the health, safety and welfare of animals.

The Act in its current form is still largely based on the old concept of prohibition of cruelty to animals rather than on setting standards for health and welfare of animals.

Importantly the Act in its current form is unable to give full regulatory effect to the National Animal Welfare Standards and Guidelines for livestock, which Western Australia, along with all jurisdictions, has agreed to implement.

More national standards are in train and would meet similar obstacles to their implementation in this State.

The changes now proposed will enable the implementation of these Standards. Additional changes to the Act are also required, principally to provide capacity for inspectors to monitor compliance.

With the implementation of the Standards being the primary driver, the broad purpose of the Amendment Bill is to provide greater capacity to regulate matters relating to animal welfare in Western Australia.”

National Standards and Guidelines

The Second Reading Speech identifies the National Standards and Guidelines as the “*primary driver*” of the Amendment Bill. The Australian Animal Welfare Standards, referred to generally as “National Standards and Guidelines”, are developed through a consultative process facilitated by Animal Health Australia in order to achieve “*nationally consistent standards and guidelines for livestock.*”¹

As stated above, RSPCA WA strongly welcomes the proposal to implement current and future National Standards and Guidelines through the Amendment Bill.

RSPCA WA considers it crucial that Western Australia rapidly catches up with other Australian jurisdictions that have already implemented significant National Standards and Guidelines, such as those relating to the Land Transport of Livestock.²

The delay in Western Australia is exemplified by the fact that these Standards were first endorsed by the then Primary Industry Ministerial Council (now Standing Council on Primary Industries) in 2008 and by the Primary Industries Standing Committee in a revised form in 2012, over five years ago. Western Australia and the ACT are the only jurisdictions that have not yet implemented these National Standards and Guidelines.

The current National Standards and Guidelines that have been endorsed by State and Territory Ministers are:

- Land Transport of Livestock (2012);
- Cattle (2016); and
- Sheep (2016).

The National Standards and Guidelines being developed or reviewed currently are:

- Saleyards and depots (currently under consideration by State and Territory Ministers for endorsement);
- Poultry (currently reviewing public submissions);
- Pigs (development process has recently commenced); and
- Live export (Stage 1 - seeking public submissions has recently closed).

¹ <http://www.animalwelfarestandards.net.au/>, accessed 11 April 2018.

² Implemented in South Australia in August 2012; in Tasmania in June 2013, in Victoria in March 2013, Queensland January 2014, Northern Territory January 2013 and New South Wales in June 2013.

Given the number of endorsed and pending National Standards and Guidelines, RSPCA WA submits that Western Australia must rapidly move forward to achieve local implementation, so that this State no longer lags behind in advancing animal welfare.

Before addressing how the Amendment Bill proposes to implement National Standards and Guidelines in Western Australia, this submission will briefly address the background to the Standards, their purpose and why they are important for both animal welfare and industry.

Development and Purpose of National Standards and Guidelines

RSPCA WA refers the Committee to the Animal Health Australia website which details the replacement of Model Codes of Practice with Australian Animal Welfare Standards and Guidelines (see <http://www.animalwelfarestandards.net.au>).

The two key features of the National Standards and Guidelines, which should inform and guide the Committee's consideration of the Amendment Bill, are -

1. **Nationally consistent approach** - the Standards and Guidelines are directed to creating a nationally consistent approach to the Standards and Guidelines for the Land Transport of Livestock. The Standards have been specifically drafted to provide the basis for implementing consistent legislation and enforcement across Australia. The intention is to provide a clear guide for regulators and industry as to the standards of care to be expected for livestock.
2. **Detailed consultation** - the Standards and Guidelines are generally developed over an extensive period with wide consultation with government, industry, scientific experts and animal welfare organisations.³

These groups have participated with the understanding that a nationally harmonised approach to livestock welfare legislation will result in improved animal welfare outcomes and will also benefit industry. As the Animal Health Australia website states:

*Australian producers have always been aware of their responsibilities for livestock welfare. However, increasing awareness among consumers is placing significant pressure on our livestock industries to improve animal welfare. The development of welfare standards and guidelines underpins access to overseas markets and reinforces Australia's international leadership in livestock welfare.*⁴

Therefore, RSPCA WA submits it is essential that the National Standards and Guidelines are implemented in Western Australia in the same way as in other States and in the Territories.

³ The detailed consultation process for National Standards and Guidelines can be seen with the Land Transport Standards consultative process. This includes a Regulatory Impact Statement (RIS) that details the potential risks and benefits which is made available for comment from stakeholders and the general public. <http://www.animalwelfarestandards.net.au/land-transport/consultative-process/> (accessed 16 April 2018). The wide range of stakeholders consulted can be seen at Appendix 2 of the Public Consultation Response Action Plan 2008.

⁴ <http://www.animalwelfarestandards.net.au/>, accessed 11 April 2018.

If Western Australia departs from the national approach in terms of either:

- the requirements under the Standards; or
- the enforcement of the Standards,

then the extensive work and consensus, which was a feature in the development of the Standards, could be undermined.

RSPCA WA refers generally in this submission to the implementation of the National Standards. This is because the Standards have been prepared and agreed as requirements that must be met under law for livestock welfare purposes. The Guidelines are recommended practice, but non-compliance with one or more guidelines will not in itself constitute an offence under law.⁵

RSPCA WA also emphasises that one of the core reasons for developing the National Standards was to separate industry husbandry practices from animal cruelty offences under current legislative regimes. As stated in the 2015 Regulatory Impact Statement for Proposed Standards for Livestock at Saleyards and Depots:

“In the absence of animal welfare standards, legal action is usually confined to a cruelty offence under the relevant ‘prevention of cruelty to animals Act’ in each jurisdiction.

It is important to note that poor animal welfare includes, but is not restricted to, practices that could attract a prosecution under the cruelty provisions of existing animal welfare legislation. Where animals are in a poor state of welfare, but no overt cruelty has occurred, authorities are currently powerless to intervene. Animal welfare standards are intended to bridge this legislative gap between a cruelty investigation and no further action. (underlining added)”⁶

Purpose of the Amendment Bill

The Explanatory Memorandum states that the purpose of the Amendment Bill is to:

“increase the capacity of the Animal Welfare Act 2002 (the Act) to regulate matters relating to the health, safety and welfare of animals, as distinct from the prohibition of cruelty to animals.”

In terms of animal welfare legislation, the Act is focussed on dealing with and responding to offences of animal cruelty, rather than proactively setting standards of care. Other Australian jurisdictions, such as Queensland and New South Wales, have legislation that also imposes a duty of care approach.

Section 94 of the Act provides the power to make regulations to give effect to the “*purposes of this Act.*”

The purposes are contained in section 3 of the Act and appear quite wide. However, RSPCA WA has been advised by the Department of Primary Industries and Regional Development (the Department) that it has legal advice stating that section 94 (read with section 3) would not be wide enough to support the National Standards being made into regulations.

⁵ <http://www.animalwelfarestandards.net.au/about-2/> accessed 19 April 2018.

⁶ See Proposed Australian Animal Welfare Standards and Guidelines, Livestock at Saleyards and Depots Decision Regulation Impact Statement December 2015, page 33.

As the Minister, the Hon Alannah MacTiernan MLC stated in her Second Reading Speech:

“Importantly, the Act in its current form is unable to give full regulatory effect to the National Animal Welfare Standards and Guidelines for livestock, which Western Australia, along with all Australian jurisdictions, has agreed to implement.”

Further, as the Explanatory Memorandum states:

“The Act does not currently authorise regulations providing for the health, safety and welfare of animals and related matters.”

On the basis that the Amendment Bill is required to amend the Act to support the creation of regulations that implement current and future National Standards and Guidelines, RSPCA WA clearly supports the purpose of the Bill.

B. Clauses of the Amendment Bill

This submission addresses the clauses of the Amendment Bill, based on the five key changes identified in the Second Reading Speech.

1. New regulation making power - new section 18B

As indicated above, RSPCA WA understands section 94 of the Act does not currently support regulations that implement the National Standards and Guidelines. Therefore, the regulation making power has to be widened.

The Amendment Bill appears to effect this via amendments to:

- clause 4 - to amend and widen section 3 “Content and Intent” of the Act;
- clause 6 - to change the heading to Part 3 to reflect the wider operation of the Act with respect to welfare, safety and health and to set out the new Objects of Part 3 (new section 18A); and
- clause 7 - to importantly insert an increased regulation making power in the form of new section 18B in the revised Part 3.

Given the intention to widen the regulation making power, it is unclear why section 94 of the Act is not being amended to achieve this. Instead, the Amendment Bill revises Part 3 of the Act to give it a wider operation and also inserts a new regulation making power (new section 18B) into that Part.

In any event, RSPCA WA notes that proposed section 18B appears to create a broad regulation making power. This new section should:

- effectively overcome any deficiency in the regulation making power under section 94; and
- allow the introduction of regulations to implement the National Standards and achieve the intended purpose of the Amendment Bill.

RSPCA WA submits that the simple amendment to introduce new section 18B should be sufficient to implement the National Standards. This is because of the manner in which the National Standards have been already been regulated in other Australian jurisdictions.

Other states have generally adopted the Standards as a complete set of enforceable regulations that largely follow and mirror the agreed National Standards. As intended when the National Standards and Guidelines were developed, this creates a clear guide for regulators and industry as to the standards of care to be expected for livestock.

In those jurisdictions, a breach of the National Standards is a regulatory offence, punishable by a fine.⁷ However, in more serious cases, a failure to comply with the National Standards can instead result in a prosecution for a cruelty offence under the Act (rather than a breach of the Standards) which has higher penalties, including imprisonment.⁸

RSPCA WA recommends that, in Western Australia, the National Standards are implemented in a similar way under the proposed regulation making power in section 18B.

This approach would:

- enable these long overdue reforms to be quickly implemented, as the drafting burden should be limited due to precedents in other jurisdictions; and
- achieve a nationally harmonised legislative approach.

For examples of the implementation of National Standards in regulations see:

- **South Australia** - *Animal Welfare Regulations 2012*,
 - Part 7 - Transport of Livestock
 - Part 8 - Cattle
 - Part 9 - Sheep.
- **Queensland** - *Animal Care and Protection Regulation 2012*, Schedule 3 Code of Practice for Transport of Livestock.
- **New South Wales** - *Prevention of Cruelty to Animals (Land Transport of Livestock) Standards 2013*.
- **Tasmania** - *Animal Welfare (Land Transport of Livestock) Regulations 2013*.

Apart from widening the regulation-making power in proposed section 18B, the Amendment Bill also proposes the following new sections:

- new sub-section 19(fa) - which relates to animal cruelty offences; and
- new sub-section 19(4) and new section 25A - which relate to defences to a criminal charge of animal cruelty.

Both the Second Reading Speech and Explanatory Memorandum indicate these sections will *also* be used to implement the National Standards.

RSPCA WA queries why these amendments are necessary and why this approach is being taken. RSPCA WA submits that the effect of these amendments will be that Western Australia notably departs from the approach taken in other jurisdictions in implementing the National Standards. RSPCA WA has concerns with this approach as indicated below.

⁷ See for example, *Animal Welfare Regulations* (South Australia) Part 7 “Transport of Livestock”. This is similar to the current penalty for a breach of the *Animal Welfare (Pig Industry) Regulations 2010* (WA) which is a fine of \$2,500.

⁸ See for example, the Explanatory Note to the *Prevention of Cruelty to Animals (Land Transport of Livestock) Standards 2013* (NSW).

2. Prescribed acts which are cruelty offences - new section 19(fa)

Section 19 is the animal cruelty offence provision in the Act.

A person convicted of an animal cruelty offence may receive a fine penalty of between \$2,000 and \$50,000 and/or imprisonment for 5 years.⁹

The Amendment Bill proposes to insert into that provision a new sub-section 19(fa) which will mean that a person in charge of an animal commits an offence if they carry out a “*prescribed act*” on or in relation to that animal.

With respect to this amendment, the Second Reading speech states:

“This, together with the existing provision for prescribed acts of cruelty by a person who may or may not be in charge of an animal, will be used to implement and enforce the Standards and ensure any person who should be held responsible for the welfare of an animal is covered by the Act.”

Therefore, RSPCA WA understands new section 19(fa) will allow regulations to be made which implement specific National Standards as cruelty offences. That is, selected National Standards will become a “prescribed act” which, if carried out, will automatically constitute a cruelty offence.

In direct contrast, in other jurisdictions, a breach of National Standards is a regulatory breach, not a more serious cruelty offence. A breach of these regulations is punishable by a smaller fine penalty (for example \$2,500 in the case of South Australia) with no applicable term of imprisonment. Of course, where the breach of the National Standards is sufficiently serious, the regulator may instead prefer to proceed against the offender through a cruelty prosecution. However, this is not automatic for a breach of the Standards in other jurisdictions.

RSPCA WA understands this proposed approach goes against one of the core reasons for developing the National Standards, which was to separate out industry husbandry practices from animal cruelty offences. As indicated earlier in this submission, the Standards are intended to bridge the “*legislative gap between a cruelty investigation and no further action*”.¹⁰ Therefore, it is not clear why this approach is being proposed. RSPCA WA submits the National Standards were not intended to be implemented as cruelty offences.

At a practical level, this approach will require the regulator to dedicate resources to prosecuting a person who has breached the selected Standards with a cruelty offence, as opposed to dealing with the breach by way of a simpler fine process.

Additionally, RSPCA WA also queries which National Standards will be selected for implementation as cruelty offences (as opposed to regulatory offences) and how this will be determined. RSPCA WA is concerned the National Standards were not drafted with this categorisation and selection process in mind.

⁹ Ancillary orders may also be made under section 55 of the Act such as a prohibition order.

¹⁰ Proposed Australian Animal Welfare Standards and Guidelines, Livestock at Saleyards and Depots Decision Regulation Impact Statement December 2015, page 33.

3. Modify the application of the existing defences (new section 19(4)) and prescribing additional defences (new section 25A)

New section 19(4) - modify the application of existing defences

The Explanatory Memorandum indicates that proposed section 19(4) will allow current defences (sections 21, 22, 23, 24 and 25) in the Act to be modified by regulation.

It further states that this is:

“to ensure that the Act, as originally drafted, cannot operate to prevent or undermine the operation of the NSG Standards that will be implemented under the amended Act.”

RSPCA WA observes that clause 19(4) is a “Henry VIII” clause. RSPCA WA understands these clauses are generally only to be used in very limited circumstances in legislative drafting. This is because Parliament, ordinarily, has the direct control over the content of an Act. “Henry VIII” clauses allow for the amendment of an Act by subordinate legislation (such as regulations). As regulations are made by the Executive rather than Parliament, “Henry VIII” clauses provide the Executive with a power to override an Act that has already been approved and enacted by Parliament.

With respect to the use of the “Henry VIII” clause in the Amendment Bill, it is not entirely clear to RSPCA WA how the National Standards will be implemented, including which Standards will be nominated in the regulations as “*prescribed acts*” for the purposes of a cruelty offence. Therefore, without further information on the proposed regulations, RSPCA WA is limited in commenting on the modification of the defences through regulation and any consequential effects.

New section 25A - prescribing additional defences

Proposed section 25A will allow regulations to create new defences to animal cruelty charges. The Explanatory Memorandum states:

“this is necessary as a number of standards in the NSG will be simpler to apply as a defence rather than as a complex prescribed act of cruelty, especially where there may be some overlap with existing provisions.”

The effect appears to be that some National Standards will be:

- a prescribed act for the purposes of a cruelty offence under new section 19(fa) - as outlined above;
- a prescribed defence to a charge of animal cruelty found in regulations made pursuant to section 25A; or
- a regulated standard and not a cruelty offence or defence (this is based on information from Departmental briefings).

As with new section 19(fa), prescribing National Standards as a defence to a charge of animal cruelty departs from the approach in other Australian jurisdictions.

It is not apparent why National Standards would be selected and introduced as defences to cruelty offences, instead of being implemented as regulated standards, as has occurred in other States.

The effect appears to be that general inspectors enforcing the Standards will have to use different parts of the Act and regulations to work out the appropriate conduct. RSPCA WA is concerned that the overall consequence of this approach is that the National Standards will not be clear or readily discernible, from both the enforcement perspective of general inspectors and for those involved with the National Standards.

Summary - proposed sections 18B, 19(fa), 19(4) and 25A

RSPCA WA strongly supports the purpose of the Amendment Bill to implement National Standards and submits this can clearly be achieved through proposed new section 18B.

The amendments in proposed sections 19(fa), 19(4) and 25A depart from the national approach to implementing National Standards. It is not clear to RSPCA WA why this approach has been taken. RSPCA WA is concerned this approach could disrupt the nationally consistent approach, create a lack of regulatory clarity for regulators and industry and lead to delays in the implementation of National Standards, given the detailed regulations that will need to be drafted.

RSPCA WA recommends that consideration is given to limiting the Amendment Bill to fixing the regulation making power in the Act and then promptly regulating the National Standards in the same manner as other jurisdictions.

4. Operation of Codes of Practice - section 25 amended

Section 25 of the Act currently provides that it is a defence to a charge of animal cruelty under section 19 if the person can prove they were acting in accordance with a “relevant” code of practice.

Failure to comply with a code of practice is not sufficient on its own to prove that a person committed a cruelty offence, but must be taken into consideration by the court (section 84).

Essentially, if a person can establish that they were complying with a code of practice, it provides a defence to a charge of animal cruelty. However, if they were not complying, they are not automatically taken to have committed an offence.

The term “code of practice” is defined in section 5 of the Act to mean “*a code of practice adopted under section 94(2)(d)*”. Section 94 enables regulations to be made that adopt codes of practice.

Regulation 6 of the *Animal Welfare (General) Regulations 2013* states that:

“The codes of practice relating to the use, care, welfare, safety or health of animals set out in Schedule 1 are adopted, as they are amended from time to time, under section 94(2)(d) of the Act, and each is a ‘relevant code of practice’ that can be used as a defence under section 25 of the Act.”

Schedule 1 to the Regulations contains a list of adopted codes of practice.

It is proposed to amend section 25 to delete the word “*relevant*” and replace it with “*prescribed*”.¹¹

The Explanatory Memorandum indicates that:

“The Bill will provide for codes of practice to be prescribed for the purposes for which they are intended to operate i.e. either as a defence or as a guide to the courts. Previously these two distinct purposes of codes of practice adopted under the Act were linked and this caused confusion. The ‘guidelines’ in the NSG Guidelines will be prescribed for the purpose of guiding the courts when considering cruelty offences.”

¹¹ The same amendment is also made in other sections of the Act that refer to codes of practice.

In the absence of further information, it is not clear to RSPCA WA how this proposed amendment is connected to the purpose of the Amendment Bill. RSPCA WA has not been advised of the issues referred to in the Explanatory Memorandum and, without further detail, cannot comment on this amendment.

5. New class of general inspector - section 35A

Current powers of entry - non-residential places

The powers of entry of appointed general inspectors (in relation to a non-residential place) are contained in section 38 of the Act. Entry to a non-residential place, such as a backyard or paddock, requires the inspector to either have the consent of the owner/occupier or to have a reasonable suspicion that an offence has been, is being, or is likely to be or continue to be committed at the place, if entry is not effected.¹²

Once the National Standards¹³ are implemented, it will be essential for a regulator to have the ability to enter non-residential places to verify compliance. Without monitoring, the Standards will be ineffectual. The recent revelations concerning the live sheep export industry exemplifies the necessity for effective monitoring when standards are set for animal welfare.

Other jurisdictions have implemented monitoring powers in different ways. The proposed section 35A creates a new class of general inspector: a “designated general inspector”. The Minister will determine which general inspectors are to be designated and the ambit of their authority.

Designated general inspectors will be granted the power to enter a non-residential place to carry out a function under proposed section 37(1)(aa). These functions are to monitor compliance with:

- Part 3 of the Act (which will include the regulated National Standards);
- court orders under section 55(1); and
- directions given under section 40(1) or section 47(1).

As indicated, this first aspect is a necessary adjunct to introducing National Standards.

The latter two aspects of the proposed role of a “designated general inspector” address a material gap in the Act, which currently restricts proper enforcement work.

Section 55 court order (prohibition)

A person convicted of a section 19 offence may receive a penalty of a fine or imprisonment and, consequent upon the conviction, the court can also make ancillary orders under section 55 of the Act. These orders may include a prohibition order, which prohibits the offender from being in charge of or having contact with a specific animal, a specific animal type or an animal of any kind, for a period of time. Prohibition orders aim to preventing future re-offending and harm to animals.

Direction Notice

Direction Notices are an enforcement option for general inspectors. An example is a Direction Notice to a person to attend a veterinarian with their animal in a prescribed time frame.

¹² There is also a notice process also under section 38(3) but it has limited practical application.

¹³ There are also Western Australian Animal Welfare Standards for horses and dogs which are currently being developed. The power to check compliance will be also be important for these Standards.

Monitoring compliance

With both a Direction Notice and a prohibition order, a general inspector's powers of entry to check compliance are limited to those in section 38 of the Act. For example, a general inspector cannot enter a backyard to check a person has no animals in their care following a prohibition order, unless the person consents, there is reasonable suspicion of an offence or a warrant is obtained. This means there is no general ability for a general inspector to gain entry to check compliance with a Direction Notice or a prohibition order.¹⁴

This is an absurd result which is encountered regularly by RSPCA WA Inspectors. The proposed amendments to sections 37 and 38 of the Act (clauses 16 and 17 of the Amendment Bill) are essential to resolving this issue.

C. Enforcement Issues

RSPCA WA will briefly address a number of issues which are relevant to the potential enforcement of National Standards.

1. Biosecurity

RSPCA WA understands that the proposed monitoring role of a designated general inspector has raised concerns about potential breaches of biosecurity measures.

It will be a matter for the Minister to determine which general inspectors will be designated. If RSPCA WA Inspectors were designated, the following matters are relevant to biosecurity:

- Section 48(6) of the Act requires an inspector to take reasonable precautions to avoid the spread of disease. It also requires that they cause as little damage as is reasonably practicable to property and cause as little disruption as is reasonably practicable to any business or activity that is being carried out.
- RSPCA WA Inspectors work regularly with livestock. They have received internal training on biosecurity measures on farms (including being equipped to prevent breaches) and they adhere to a RSPCA WA Biosecurity Policy.

2. Infringement Notices

RSPCA WA understands that in other jurisdictions, where enforcement action has been warranted in relation to the National Standards, the experience is that an infringement notice is often the most appropriate enforcement tool. Infringement notices allow minor offences, which are easily proved, to be dealt with by the payment of a fine without going to Court. However, currently RSPCA WA Inspectors, who undertake the vast majority of the enforcement work under the Act, are not able to issue infringement notices. This legislative gap has been evident for a number of years, but has not been resolved.

Part 5 of the Act contemplates infringement notices being issued by general inspectors where they reasonably suspect that a person has committed a "*prescribed offence*". However, no regulations have been made to prescribe offences under the Act.

¹⁴ In some specific cases the convicted person may consent to a court order that enables the general inspector to gain entry, in the future, on agreed terms to monitor compliance. This has occurred in only a couple of prosecutions commenced by RSPCA WA Inspectors over recent years. This arrangement relies on the agreement of the convicted person.

The Department has advised this is because when regulations were to be drafted, it became apparent that RSPCA WA general inspectors could not participate in the scheme established under Part 3 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* relating to infringement notices.¹⁵

This has led to a substantial gap in the enforcement options available to RSPCA WA Inspectors, particularly where a step less serious than an animal cruelty prosecution is warranted.

The Select Committee into the Operations of RSPCA WA (May 2016) recommended this issue be immediately resolved, but RSPCA WA is not aware whether this has been progressed.

RSPCA WA submits it is essential to the implementation of National Standards for general inspectors (including RSPCA WA Inspectors) to be able to issue infringement notices. RSPCA WA seeks that the necessary legislative amendments and regulations are effected concurrently with the Amendment Bill.

3. Resourcing for enforcement

The current work under the Act is undertaken principally by RSPCA WA Inspectors and the Livestock Compliance Unit from the Department (in accordance with a Memorandum of Understanding) with limited work being undertaken by police officers, local government rangers and Department of Biodiversity, Conservation and Attractions officers.

As indicated, once the National Standards are implemented in Western Australia, it will be essential for a regulator (from the relevant organisation or agency) to have the ability to enter non-residential places to verify compliance. RSPCA WA submits that the government should ensure that designated inspectors who are to monitor compliance are adequately resourced.

D. Review of the Act

The National Standards and Guidelines will establish standards for livestock (and potentially other species in the future) which is a significant aspect of animal welfare regulation in Australia.

RSPCA WA considers that the local implementation of National Standards and Guidelines is an overdue and much welcome development in this State and, as stated, RSPCA WA strongly supports this purpose of the Amendment Bill.

Beyond these much needed reforms, RSPCA WA strongly supports the broader commitment from the Minister, the Hon. Alannah MacTiernan MLC, to the comprehensive review of the Act to modernise laws in this State. It is understood this is expected to take some 18 months.¹⁶

RSPCA WA Inspectors work under the Act on a daily basis and there are many aspects of the Act that are outdated and require an overhaul to achieve better animal welfare outcomes. RSPCA WA submits that an imminent review of the Act is required and looks forward to assisting the government with the review which, in conjunction with the adoption of National Standards and Guidelines, should see Western Australia rapidly leap ahead in legislating a framework that supports better lives for animals.

¹⁵ The detail relating to this issue is set out at pages 76-78 of the Report by the Select Committee into the Operations of the RSPCA WA May 2016.

¹⁶ Second Reading Speech, Animal Welfare Amendment Bill 2017.

Conclusion

RSPCA WA is pleased that the Amendment Bill will finally achieve the implementation of National Standards and Guidelines in Western Australia.

However, RSPCA WA has concerns with some aspects of the Amendment Bill which depart from how the National Standards and Guidelines are implemented in other jurisdictions.

RSPCA WA is particularly concerned that the departure from the national approach may create a lack of regulatory clarity for regulators and industry, lead to delays in the implementation of National Standards and undermine the purpose of nationally consistent Standards. It is not clear why this is proposed, given the extensive work and consensus that led to the endorsement of the National Standards.

RSPCA WA submits that these concerns may be resolved by the Amendment Bill focussing on addressing the regulation making power, which will enable the National Standards to be rapidly implemented through a set of regulations in the same manner as other Australian jurisdictions.

A handwritten signature in blue ink, appearing to read 'D. van Ooran', with a stylized, flowing script.

David van Ooran
RSPCA WA Chief Executive Officer

27 April 2018