

**ANIMAL WELFARE BILL 1999**

*Consideration in Detail*

Resumed from 21 September.

**Clause 19: Cruelty to animals -**

Debate was adjourned after Mr McGowan had moved the following amendment -

Page 15, lines 4 and 5 - To delete the lines and substitute the following -

Penalty: Minimum - \$2 000.

Maximum - \$50 000 and imprisonment for five years.

Mr McGOWAN: This amendment increases quite substantially the penalty applicable to someone who is cruel to animals. The amendment is basically that the penalty applicable to someone who is cruel to an animal under the provisions of clause 19 will be increased from a minimum of \$1 000 to a minimum of \$2 000, and from a maximum of \$20 000 and imprisonment for one year to a maximum of \$50 000 and imprisonment for five years. Obviously, the maximum penalty applicable in this circumstance is discretionary and in the hands of the court hearing the prosecution of such a matter; it is really a ballpark figure which is the upper limit in cases of this nature.

I moved a range of amendments in relation to the penalty provisions of the Animal Welfare Bill, and in the Notice Paper we find all sorts of amendments in relation to penalties, which basically reflect how the Opposition feels about the seriousness of cruelty to animals crimes. I do not propose to speak at length on all of those penalties, because there are probably another 20 or so on the Notice Paper that the Opposition wishes to move. Clause 19 is probably the most significant of those amendments regarding penalty because it relates to what is, in effect, the crux of this Bill. Subsection (1) of clause 19 states -

A person must not be cruel to an animal.

That is the crux of the Animal Welfare Bill and that is the provision that relates to people who deal inhumanely with other living things. The amendments to penalties that I propose to move have their greatest significance in this clause.

I moved this amendment to increase the severity of the penalty to reflect community - and my - opinion that the courts must treat incidences of animal cruelty seriously, and to give the courts the necessary discretion to impose harsh penalties for serious cases of animal cruelty. This is the most important amendment and I hope the Government will take it into account. I hope it will agree to impose substantial penalties. The public often sees penalties as the major deterrent factor in crime. It is keen for the punishments to be increased. I know the minister will say that I am going over the top and that it is unnecessary. However, I emphasise that this amendment will merely provide the courts with discretion in the harshest of circumstances.

Mr Omodei: A minimum penalty is not a discretion.

Mr McGOWAN: That is true. I am glad the minister has raised that. The legislation provides for a minimum penalty of \$1 000 and for infringement notices to be issued. If a matter is serious enough to be brought before the courts, it must be worthwhile for them to deal with it. A minimum penalty of \$2 000 is appropriate in cases of animal cruelty that are serious enough to be brought before the courts. I am sick and tired of animal cruelty, and I am angry that, historically, it has not been dealt with seriously. It is time to deal with it seriously.

Mr OMODEI: I do not intend to delay the House on this matter. I also do not want to be tediously repetitious, as I am sure that would incur the wrath of the Acting Speaker (Ms Anwyl). I have already explained that the minimum penalty contained in the Green Bill was \$1 000, with a maximum penalty of \$12 000. After it was released for public discussion, the Government was requested to increase the maximum penalty to \$20 000. I have already said that the member for Rockingham was mischievous in preparing a petition calling for penalties to be increased without telling the public that such a Bill had been in the Parliament for eight months. We all want penalties to be increased. However, the Labor Party has simply come into the Parliament and doubled every fine in the legislation. In this case, it has more than doubled the figure. In comparison with other penalties and those in the Sentencing Act, those contained within this Bill are more than appropriate.

Mr Wiese: They are way over the top and ridiculous.

Mr OMODEI: The member for Wagin has already articulated to the Parliament his concerns about the minimum penalties. He is concerned that if an animal is found to be flyblown - a situation that occurs often - an officer of the Royal Society for the Prevention of Cruelty to Animals might report it to the appropriate authorities. If it were taken to court and the farmer found guilty, he would be penalised a minimum of \$1 000. I acknowledge

that concern; however, in line with what the member for Rockingham is saying, the Government is also concerned about the number and incidence of cases of severe cruelty to animals. It is the Government's intention to crack down on animal cruelty. It has shown that intent by introducing legislation into the Parliament, and by allowing the community not just to see the legislation once or twice, but to comment on it as a Green Bill. In response, the Government received large numbers of submissions. It is time we got on with the legislation. We have now been debating it in this place for more than five hours.

Mr McGowan: You brought it on for debate today at 9.50 pm.

Mr OMODEI: It does not matter when we bring it on. The Parliament sits certain hours and members should be prepared to debate legislation during that time. That is what we are doing. The Notice Paper is full of opposition amendments that double the penalties in the Bill. I say this only once: The Government will oppose all the amendments because it considers them to be over the top. The penalties for cruelty to animals and other breaches provided for in the legislation are appropriate.

Mr McGOWAN: I do not mean to be repetitive, but I clarify one thing the minister said. He said my amendment is over the top because a farmer who carries out mulesing - the practice of cutting off the section of the sheep subject to flystrike - would be penalised \$1 000 if he were taken to court. That needs to be clarified for the sake of the member for Wagin. A range of provisions in the Bill would apply in such a case: Clause 23 provides for the defence of normal animal husbandry, clause 24 provides for the defence of a relevant code of practice and clause 30 provides for the defence of prescribed surgical or similar operations. Those clauses provide a defence to anybody engaged in that sort of practice. I do not intend to amend those clauses; in fact, those defences often need to be available. I merely propose harsher penalties in cases of cruelty under clause 19.

**Amendment put and negated.**

Mr McGOWAN: I move -

Page 15, line 18 - To insert after "transported" the words "or is permitted to be transported".

The amendment relates to the part of the Bill that deals with cruelty to animals through transportation in a way that is likely to cause unnecessary harm. I am attempting to amend the provision so that it covers not only the person in charge of the animals, but also the person who permits the animals to be transported in that manner. That amendment is based on a reasonable and well-prepared paper published by the RSPCA, in which it sets out its position on this Bill. I have not accepted all its recommendations. However, I have attempted to amend the Bill to include those that I think are of value. On the issue of transportation, the RSPCA stated -

Care in the transport of animals is not solely the responsibility of vehicle owners and drivers. There is a responsibility on animal owners and producers who procure the services of drivers to ensure that unfit animals are not loaded for transport.

Therefore, the RSPCA has suggested this amendment, which is not unreasonable in the context of this clause.

Mr OMODEI: This issue was raised with me by the Royal Society for the Prevention of Cruelty to Animals some time ago. I understand that, in discussions with the RSPCA, I explained this clause to the RSPCA's satisfaction. The RSPCA is aware that the term "person in charge" in relation to an animal includes the owner of the animal as well as the person who has custody of it. Clause 19(3) makes the person in charge of the animal, including the owner, liable if the animal is transported in a harmful manner, irrespective of who is transporting it. That appears to be precisely what the RSPCA wants. Clause 28 contains defences for the person in charge to cover special circumstances beyond his or her control. At page 4 of the Bill the following four paragraphs clarify who is the person in charge -

- (a) the owner of the animal;
- (b) a person who has actual physical custody or control of the animal;
- (c) if the person referred to in paragraph (b) is a member of staff of another person, that other person; or
- (d) the owner or occupier of the place or vehicle where the animal is or was at the relevant time;

Mr McGOWAN: Does the minister have legal advice that the situation I outlined - someone permitting an animal that he knows is unfit for transport to be transported in a cruel manner - is covered in the Bill?

Mr OMODEI: That is correct.

**Amendment put and negated.**

**Clause put and passed.**

**Extract from *Hansard***

[ASSEMBLY - Tuesday, 17 October 2000]

p2215c-2217a

Mr Mark McGowan; Mr Paul Omodei; Ms Megan Anwyl; Mr Bob Wiese

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Debate adjourned, on motion by Mr Omodei (Minister for Local Government).

*House adjourned at 10.02 pm*

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