



Submission to the Standing Committee on Legislation

Animal Welfare Amendment Bill 2017 (WA)

Commercial Egg Producers Association WA | Egg Farmers Australia

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About Commercial Egg Producers Association of Western Australia (CEPA)

CEPA is the leading representative body for West Australian commercial egg producers. CEPA members produce approximately 75 per cent of eggs in Western Australia using caged, barn and free range production methods. The objectives of the Association are:

- To proactively represent and promote the best interests of Commercial Egg Producers in dealings with Government, non-government bodies and their representatives
- To secure uniformity of action on matters affecting the common interest of Commercial Egg Producers
- To promote and uphold industry codes of practice for animal welfare, quality assurance, bio-security, environmental, labelling and transport of live poultry
- To promote the consumption of Western Australian laid eggs

About Egg Farmers of Australia (EFA)

Egg Farmers of Australia (EFA) is the peak national body representing egg farmers across Australia. The Board of Egg Farmers of Australia is comprised of representatives elected by its founding members. These founding members include: the Victorian Farmers' Federation Egg Group, the NSW Farmers' Association Egg Committee, Queensland United Egg producers, the Commercial Egg Producers' Association of Western Australia and the Commercial Egg Farmers Association of South Australia and Tasmania. This membership base, combined with a number of direct members, allows EFA to represent the vast majority of egg production in Australia (more than 80%).

1. Introduction

The Animal Welfare Amendment Bill (the Bill) proposes a reformation in welfare regulation: it recasts the intent of the Act; creates new acts of cruelty; allows the minister to limit available defences and gives unprecedented powers to a new class of inspectors. These changes are proposed to be implemented in part with no parliamentary oversight.

Egg farmers are champions of animal welfare and we welcome the opportunity to provide our perspective on any improvement in government regulation in this area. Farmers recognise that there is an important animal welfare problem to solve – that problem relates to the challenge of increasing community awareness and the need for farmers to work with the community on a transparent footing to ensure long-term trust and sustainability. It requires a purposeful regulatory approach along with industry and community leadership. The sector is working to address that through an increase in community engagement and public accountability. This Bill does not address that problem.

Farmers will always see themselves as partners with regulators in the delivery of welfare reform and the statistics on animal welfare compliance demonstrate their delivery on that promise.

In 2012-13 the RSPCA was required to rehome, reclaim or otherwise care for 162 livestock animals in WAⁱ. In the same year the RSPCA successfully prosecuted seven individuals for cruelty offencesⁱⁱ. Three years later the RSPCA's requirement for direct care was down to 87 livestock casesⁱⁱⁱ while prosecutions remain at less than 10% of the national average^{iv}.

Given these trends and noting that cruelty prosecutions against farmers generally account for less than 10% of prosecutions^v, local egg farmers question the Bill's intent. Given the size of the reforms

and the lack of evidence of an impending animal cruelty crisis, we ask the committee to consider why the bill has been proposed at all.

WA egg farmers are pro-animal welfare improvements and believe that welfare is not just something that needs to be managed; it's a lived commitment to continual improvement and anything less is unacceptable. A co-regulatory model of delivering farm animal welfare is essential for delivering welfare outcomes. The Bill departs from that approach by excluding the farmer from their current role in welfare reform and delivery and providing significant powers to inspectors and the government to create offences and seek out contraventions of offences with no meaningful oversight.

This Bill is a significant reform however the government has not identified a failure in the current laws that necessitates such a powerful response. The Bill has unintended consequences that should be scrutinised by the committee, which worryingly include a likely decrease in welfare outcomes.

Consumers are more aware of animal welfare as an issue and are more invested in better outcomes^{vi}, but that is a complex socio-cultural dynamic^{vii} that demands actual animal welfare outcomes through industry and community leadership, not hollow promises based on a misguided sense of action. The current co-regulatory approach coupled with the industry commitment to greater transparency, engagement and accountability with the public is the right answer to that challenge and this amendment appears to reject that.

2. Key changes:

Egg farmers view the amendments as falling into four categories:

- i. significant expansion of the intent and purpose of the Bill;
- ii. breadth of the power to make further regulations, including offences;
- iii. removal of defences against cruelty offences; and
- iv. significant expansion of inspection powers.

Each of these categories are troubling, and we ask the Committee to investigate these issues and concerns.

2.1 Expansion of the intent and purpose of the Bill

The amendments to Part 1 mark the most fundamental shift in the regulatory stance.

The changes to this part appear consistent with broader cultural trends^{viii} which note that community expectations are shifting on welfare and it is insufficient to focus solely on the prevention of cruelty. This change reflects that attitudinal shift by vastly expanding the scope of the Bill to include an ongoing and active regulation of people in charge of animals.

This appears uncontroversial and if it were simply a matter of reflecting community expectations, it would be of little concern for farmers – we maintain an active vigilance on welfare issues. Our approach to the setting of industry welfare standards and our farm participation in quality assurance programs now place the egg farming industry in a strong position to meet community welfare expectations. However, the expansion of the intent of the Bill has significant ramifications for the increased powers of inspectors and the creation of additional offences through regulations. These powers and offences need only be related to the manner in which animals are “treated, cared for and managed”, without clearly specifying any further limitations on the scope of regulatory power.

This expansion of the scope of the Act to deal with matters of animal welfare is troublingly broad. “Welfare” is a vague concept, without objectively ascertainable limits. This is in contrast to the concept of “cruelty” which is an established term. That the Bill proposes to expand the scope of the Act to incorporate concepts of “welfare” means that people dealing with animals may not know what legal requirements flow from the provisions with respect to “welfare”, or whether or not their conduct constitutes an offence. Such uncertainty is unacceptable in criminalising conduct.

2.2 Expansion of the power to make further regulations, including offences

The changes proposed by the Bill affecting Part 3 of the Act prescribe circumstances in which Regulations may be made to deal with various instances in which the welfare, safety and health of an animal can be regulated. This will be achieved through a rule or other instrument applying to such a situation. The amendments create a virtually unfettered power to create regulations to authorise, prescribe, require, prohibit, restrict or otherwise regulate numerous dealings with animals. The width of the dealings with animals impacted is stark and includes, among others:

- i. treatment, care and handling;
- ii. keeping;
- iii. control, including pest animals;
- iv. accommodation;
- v. sale;
- vi. transport;
- vii. husbandry;
- viii. identification;
- ix. medical and surgical treatment;
- x. farming and grazing activities; and
- xi. the qualification and experience of persons dealing with animals.

The inclusion of these provisions appears tied to the proposed changes to the objects of the Act which provide that the Act will “regulate the conduct of people in relation to animals, including the manner in which animals are treated, cared for and managed”. The coupling of those changes with the proposed Part 3 changes, has two key implications.

First, it provides a greater scope for the creation and prosecution of offences under the Act under a very general and expanded “catch all” objective to include the “management” of animals. It is noteworthy that this is a specific objective beyond prohibiting cruelty to, and the inhumane and improper treatment of, animals.

Second, it would allow the executive government to make regulations that would, without limitation, allow the government of the day to prohibit *any action or lack of action* with respect to almost any dealing with an animal and determine that it does not promote the welfare of an animal. The government could then make contravention of that regulation an offence punishable by a penalty of up to \$20,000.

Egg farmers have serious concerns with these changes. Any deterrence against acts of cruelty that is created by this change is welcome. However, the amendments clearly allow a virtually unlimited number of additional and potentially onerous regulations to be placed on farmers with minimal legislative oversight.

The extraordinary width of the proposed power to create offences in regulation concerning an unlimited range of interactions with and treatment of animals is concerning. Such offences are

properly a matter for legislation rather than regulation and should not be left at large for the government to determine.

While additional prescriptions may appear to enhance welfare outcomes, this is not necessarily true. Farmers assess welfare in context and in a dynamic environment where experience and judgement are key tools for better outcomes. For example, a farmer may act to provide shelter to stock in circumstances that risk cold or heat stress. However, it may be that in meeting a newly prescribed requirement to provide such shelter, the farmer temporarily deprives the stock of food or water in a manner which would itself constitute an offence. Any such new regulations will have consequences on-farm; they will constrain farmers from pursuing optimal animal welfare outcomes based on their expert judgement and experience.

2.3 Removal of availability of defences against cruelty

The amendments to available defences under the Act are of concern to farmers. Specifically, the Bill reduces the availability of defences that currently exist under the Act without clearly identifying what, if any, defences will be made available under the Regulations. It does this without prescribing or attempting to prescribe the way in which this might occur.

Of particular concern is the proposed amendment to s.19(4) of the Act. This provision gives the minister powers to remove the availability of a defence under Act with no parliamentary oversight or consultation. This ‘Henry VIII’ provision expands criminal liability without parliamentary oversight; this is an issue of fairness and raises significant concerns.

Six defences that are currently available to a person accused of animal cruelty are now to be excluded. Concurrently, a new section 25A will create an additional defence that allows an accused to rely on defences prescribed by the Regulations. While farmers applaud the recognition that certain defences are required to charges of animal cruelty, given the significant criminal penalties, including imprisonment, available following a conviction, the removal of existing statutory defences is deeply concerning.

The defences affected by the amendments under the Bill are worth noting and include circumstances of:

- i. self-defence, or protecting another person or animal;
- ii. acting on the instructions of a vet and in accordance with generally accepted veterinary standards;
- iii. acting in accordance with a law;
- iv. acting in accordance with “normal animal husbandry” practice;
- v. committing an offence while attempting to kill pests in a reasonable manner; and
- vi. acting pursuant to what was known as the relevant Code of Practice applicable to the animal.

Under the amendments, a person may not have these defences available to them into the future. It is possible that these defences are to be replaced by an unknown defence to be developed in the future without parliamentary oversight. It is notable that the adequacy of such a defence cannot be considered without clear terms being provided.

2.4 Significant expansion of inspection powers

The amendments proposed by the Bill relevant to Part 4 increased powers to “Inspectors” to enter and monitor the conduct of individuals with animals and the introduction of a new class of Inspector

(DGI) with increased powers. Under the Bill, search and entry powers of DGIs seemingly extend to any time and any location that is not a domestic residence and any animal, whether that animal is present or not.

DGIs may seek access at any time to an establishment or a vehicle. There need not be a suspicion of a contravention of the Act. DGIs may also enter vehicles or places that are not residences at any time, without consent, notice or a warrant, in order to, among other things:

- i. provide care to an animal;
- ii. direct a person in control of an animal to provide care to an animal;
- iii. search a vehicle;
- iv. take samples from an animal, place, vehicle or thing;
- v. take photographs, video recordings or other recordings; or
- vi. direct a person to open a container that they reasonably believe contains an animal or thing that may afford evidence of the commission of an offence.

While inspectors ordinarily require reasonable suspicion, this is not required for DGI's performing the above functions.

The breadth of the proposed powers of entry, search and seizure of DGIs is concerning and contrary to public policy. Seemingly, the only limitation on the proposed powers of the DGI's is confined to being "for the purposes of this Act". As outlined above, the proposed amendments to the purposes and intent of the Act mean this sole limitation is to become dangerously vague.

Unclear laws will have significant unintended consequences and the message of this legislation to farmers is that they may be the subject of undefined enforcement action at any time.

Additionally, it is worth noting that such vagaries have the capacity to heighten biosecurity risks entry powers are not considered against proper biosecurity protocols.

As a result, we are concerned about the reforms as a package; they turn a partnership between farmers and regulators into an adversarial relationship. That challenges the industry's sustainability and limits the progress of animal welfare developments within the industry.

3. Conclusion

Egg farmers welcome the governments early signals that welfare is a priority in WA. We want to work to respond to that call. This Bill appears to act counter to that priority by not establishing a case for reform, rejecting the co-regulatory model currently in use and framing farmers as antagonists. This significant expansion of the scope of the Act and the powers of inspectors seriously damages the relationship between farmers and regulators, and does not favour sustainable, longer-term welfare outcomes.

These reforms should not be undertaken until a clear case can be made. We submit that the Committee ought to consider the consequences of this Bill including the unfettered expansion of regulatory power and the severe damage this will place on the cooperative relationship between farmers and regulators.

As champions of welfare reform, we hope to work closely with all parliamentary members on addressing the genuine and critical moral issue of getting animal welfare right. We hope to be partners with government on that effort into the future.

ⁱ RSPCA Australia, *RSPCA Australia National Statistics 2012-2013*, 2013.

ⁱⁱ Ibid.

ⁱⁱⁱ RSPCA Australia, *RSPCA Australia National Statistics 2015-2016*, 2016.

^{iv} Ibid.

^v RSPCA Australia, *RSPCA Australia National Statistics 2011-2012*, 2012.

^{vi} Taylor, N. & Signal, T. 'Willingness to Pay: Australian Consumers and "On the Farm" Welfare', *Journal of Applied Animal Welfare Science*, vol. 12, pp. 349-359.

^{vii} Coleman, G. Rohlfe, V. Toukhatsi, S. & Blache, D. 'Public attitudes relevant to livestock animal welfare policy', *Farm Policy Journal*, vol. 12, pp. 45-57.

^{viii} Ibid.