

16 December 2019

Animal Welfare Act Review Panel
Department of Primary Industries and Regional Development

Via: AWA.reviewpanel@dpird.wa.gov.au

Dear Review Panel

Submission to the Review of the Animal Welfare Act 2002 (WA)

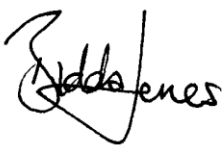
Thank you for the opportunity to provide a submission to the review of the *Animal Welfare Act 2002* (WA).

This review provides Western Australia with an opportunity to modernise its animal welfare legislation and bring it into line with contemporary best practice and community expectations.

We support the submission of RSPCA WA relating to operational and enforcement aspects of the review. Our submission is made in conjunction with RSPCA WA and focuses more on proposed policy and advisory functions under the Act. Accordingly, our comments fall mostly under terms of reference 1, 3, and 5.

We trust this information will be of assistance to your review. Please do not hesitate to contact our office should you require further information or clarification.

Yours sincerely,



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Western Australia's Animal Welfare Act is typical of late 20th century animal welfare legislation in that it reflects a reactive, offence-based regime and consists of broad open-ending defences that create confusion as to the Act's application. The legislation lacks key features of contemporary animal welfare legislation such as clarity in its objects, proactive compliance mechanisms, and policy and advisory functions.

Objects of the Act and contemporary best practice in animal welfare

The Objects section of legislation is intended to set out the intent and purpose behind the legislation for the purposes of educating the community about the legislation and for guiding those charged with applying the legislation in its interpretation. The current 'Content and intent' section of the Act provides some guidance in this regard and includes the intention of promoting and protecting the welfare of animals, ensuring their humane care and management, and reflecting community expectations.

However, the current Objects section fails to answer the fundamental question as to why animal welfare matters. The Act intends to protect the welfare of animals, and that is clear, but why? Modern animal welfare legislation answers this question by recognising the simple fact that animals are sentient. Sentience is the reason animal welfare matters.

Scientifically, sentience is simply the capacity to feel and to consciously experience negative and positive welfare states.¹ It is broadly recognised that all vertebrate animals as well as some non-vertebrates like squid, octopi, and some crustaceans are sentient. While this capacity is implied to some extent within the Act by virtue of provisions like the definition of 'harm' which includes pain and distress, such implicit recognition does not have the same effect as expressly recognising sentience in the Objects of the Act.

Expressly recognising the sentience of animals as an Object of the legislation will help to provide further clarity of purpose and promotes greater principled consistency in the interpretation of the legislation. It will help to guide magistrates and judges in the interpretation and sentencing process, particularly in cases of ambiguity, and may be persuasive to other decision-makers in the course of making complex policy decisions relating to the Act.

These benefits have led many other jurisdictions to recognise animal sentience in legislation and policy. The ACT recently recognised the sentience of animals with the passage of amendments to the *Animal Welfare Act 1992* (ACT) in September 2019. Section 4A of the Act now reads:

(1) The main objects of this Act are to recognise that -

(a) Animals are sentient beings that are able to subjectively feel and perceive the world around them

...

The Victorian Government has also foreshadowed its intention to recognise animal sentience in the impending review of the *Prevention of Cruelty to Animals Act 1986*.²

Internationally, animal sentience has been recognised in the European Union since 1997 when an amendment to the *Treaty Establishing the European Community* was passed.³ The Treaty recognises animals as 'sentient

¹ Ledger R and Mellor D (2018) Forensic Use of the Five Domains Model for Assessing Suffering in Cases of Animal Cruelty. 8 *Animals* 101.

² Animal Welfare Action Plan, Victorian Government, 2017.

³ Protocol annexed to the Treaty of the European Community - Protocol on protection and welfare of animals [1997] OJ C340.

beings' and provides that Member States must pay regard to the welfare requirements of animals in formulating their policies.⁴

In 2015, the New Zealand Government recognised the sentience of animals with an amendment to the *Animal Welfare Act 1999* (NZ), which now reads as follows:

An Act -

(a) to reform the law relating to the welfare of animals and the prevention of their ill-treatment; and, in particular, -

(i) to recognise that animals are sentient;

...

This was shortly followed by the Government of Quebec,⁵ and the OIE, which recognised animal sentience in its *Global Animal Welfare Strategy 2017*.⁶

Recognising animal sentience reflects scientific evidence, contemporary best practice in animal welfare legislation, and is increasingly a feature of animal welfare legislation around the world.

Recommendation 1

Include recognition of animal sentience in the Objects provisions.

Amendments to policies, standards and legislation to achieve contemporary best practice

Another feature of modern animal welfare legislation is its focus of proactive, duties-based provisions as opposed to simply relying on cruelty offences. The Animal Welfare Act currently groups offences of failing to provide proper and sufficient food, water, and shelter, or to alleviate harm, under the same offence section as the standard cruelty offences. From experience in other jurisdictions we have found there is educational value in clearly separating out the duties-based offences via the establishment of a 'Duty of Care' section similar to that which appears in s.17 of the Queensland *Animal Care and Protection Act 2001* or s.6B of the ACT *Animal Welfare Act 1992*.

Recommendation 2

Establish a separate Duty of Care section distinct from the standard cruelty offences.

⁴ Ibid, p 0110.

⁵ Quebec defines animals as 'sentient beings' in new legislation, *CTV News*, 4 December 2015: <https://www.ctvnews.ca/politics/quebec-defines-animals-as-sentient-beings-in-new-legislation-1.2687500>

⁶ World Organisation for Animal Health (OIE) (2017) OIE Global Animal Welfare Strategy. https://www.oie.int/fileadmin/Home/eng/Animal_Welfare/docs/pdf/Others/EN_OIE_AW_Strategy.pdf

Another key component of a proactive animal welfare legislative regime is compliance monitoring. Programs of compliance monitoring, distinct from reactive complaint-based investigations, are essential for ensuring appropriate standards of welfare are being met in animal-based industries. Compliance monitoring programs also serve to build community trust and confidence in the sector's they apply to. WA is unique in being the only jurisdiction in Australia that does not afford powers for routine compliance inspections.

Recommendation 3

Establish a compliance monitoring program under the revised Act with the necessary powers for Inspectors to conduct routine inspections.

The review of the Act also provides WA with the opportunity to address a range of other harmful practices that are currently permitted but do not reflect contemporary best practice in animal welfare. These include activities and practices like:

- calf roping and steer wrestling
- prong and electric shock collars for dogs
- bow hunting
- steel jawed traps with hessian laced with strychnine for wild dogs
- use of knives to kill feral pigs
- invasive husbandry procedures without pain relief
- whips in horse racing
- horse tongue ties; and
- the continued use of battery cages in egg production.

RSPCA Australia believes these practices should be reviewed. Further information about the welfare impacts of all of these practices can be found on the RSPCA's Knowledgebase: <https://kb.rspca.org.au/>

Recommendation 4

Review the continued authorisation of practices that cause harm to animals.

Other matters relevant to the effectiveness of the Act

To ensure governments and their ministers have a source of independent, expert advice on animal welfare issues, many animal welfare Acts in Australia and around the world establish formal Animal Welfare Advisory Committees. In Australia, the ACT, South Australia, Northern Territory, and Tasmania each have statutory animal welfare advisory committees established under their respective animal welfare Acts, while Victoria, NSW, and Queensland all have non-statutory advisory committees.

These committees provide a valuable source of independent advice to government and can play a key role in informing the development of policy, regulations and standards under the legislation. RSPCA Australia recommends that the reviewed Animal Welfare Act include the establishment of a statutory animal welfare advisory committee for WA.

Recommendation 5

Establish a statutory Animal Welfare Advisory Committee to provide independent, expert advice to Government and the responsible Minister.

It is also recommended that the long list of defences outlined in ss.20-30 be reviewed with a view to consolidating and clarifying their scope and application. Defences such as that outlined in s.23 for 'normal animal husbandry' create significant confusion and have the potential undermine carefully considered provisions within nationally-agreed industry standards and codes of conduct.

Recommendation 6

Review the available defences under the Act to consolidate and clarify their scope and application.

The definition of 'animal' should also be reviewed to include all sentient animals including fish, cephalopods, and crustaceans. Excluding these animals effectively means that people can engage in malicious cruelty towards animals of these species with impunity in WA.

Just last year 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.⁷ Incidents like these will happen again and in such cases, WA's Animal Welfare Act should apply.

Any perception that including fish, crustaceans, and cephalopods as animals under the Act will limit fishing practices is unfounded as appropriate exemptions can be provided for legitimate fishing activities. This is how Victoria, Queensland, Tasmania, NSW and Tasmania seek to protect legitimate activities like fishing while also protecting sentient animal species from cruelty. 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.

Continuing these exclusions will put WA behind other states and territories and will not be reflective of contemporary best practice animal welfare.

Recommendation 7

Review the definition of 'animal' under the Act to include fish, cephalopods and crustaceans with appropriate exemptions for legitimate fishing activities.

⁷ 'WA Fisherman captured towing dying shark behind car' 9 News, 7 March 2018: <https://www.9news.com.au/national/2018/03/07/22/10/wa-fisherman-capture-towing-dying-shark-behind-car>