



# AN ACT FOR ALL ANIMALS

## A Submission for the review of the Animal Welfare Act (Tas) 1993



*Piglet castration – no anaesthesia*



*Laboratories*



*Battery hens*



*Live exports...*



*Mulesing*



*Sow stalls*

## **Preamble**

Although I am a Campaign Co-ordinator for Against Animal Cruelty Tasmania, this submission is an independent one, and does not necessarily reflect views of AACT.

This submission contains comment on issues raised in the Issues Paper, and also addresses a number of others which were not. A summary of concerns is contained in the Introduction.

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## **INTRODUCTION**

The review of the Animal Welfare Act was announced a number of months ago, yet the Discussion Paper was only released in the last six weeks. This is a matter of concern, in part because it left contributors with only a short lead time to properly examine the issues, and also, a concern for the Government which may have indicated that this was intentional (whether or not this was the case)..

It is also not disclosed whom the Working Group which developed the Discussion Paper included. It is my understanding that the Animal Welfare Advisory Committee (AWAC) Against Animal Cruelty Tasmania (AACT) and Animals Australia were excluded, which is extraordinary, given the nature of the material being discussed.

Perhaps the most significant issues in the current animal welfare regulatory regime are that the legislation is inconsistent with the "Standards", or voluntary "Codes of Practice",

which theoretically underpin it. The legislation purports to protect all animals from cruelty and neglect, yet the "Standards", which cover a number of areas (but by no means all) including farm animals sanction both, and may arguably be used in a defence against animal cruelty charges. The other issue of major significance is the extremely poor enforcement of the Act, even in its current form.

### *Issues addressed in this paper:-*

## **1. The Discussion Paper - Overview of the Act**

### *1.1 Preliminary observations*

It is stated that the objectives of the Act are to prevent cruelty to, and neglect of, animals. and to ensure the welfare of animals.

*Part I* of the Act deals with administration and interpretation of the Act, and exempts "normal hunting and fishing practices". The Act also provides for minimum conditions for "layer hens", i.e. battery cage specifications (the only one of the "Standards" which has been adopted into Regulation, an issue of concern which will be addressed later in this paper).

I do not believe that wider community of today finds "normal hunting and fishing practices" (and we include in this duck shooting) acceptable, nor do they believe that they should be exempt from the Act. Certainly those who are aware that this is the case agree. The reality is that "normal hunting practices" are cruel, and largely unregulated and unmonitored, and at this time permit the use of both dogs and shotguns in these activities. Clearly it is almost impossible to guarantee "a clean kill" with shotguns, and I have seen wildlife victims of the practice of using dogs for hunting.

A number of Australian states, the most recent being Queensland, have now banned duck shooting, and I would urge the Tasmanian State Government to implement the same bans. The Queensland government stated that "*(duck shooting) has no place in contemporary society in (the) smart state*", and although there is a vocal minority who support this activity in Tasmania, my view is that the wider community deplores such cruel and unnecessary carnage.

I also believe that the Government should appoint a more representative section of the appropriately qualified, committed and trained community as Officers under the Act. Currently, the RSPCA has a monopoly on providing this service, for which I understand it will receive reported funding in the region of \$300,000 for the Inspectorate, plus "in kind" items such as accommodation and vehicles. The RSPCA's approach to farm animal welfare was shown on the "Four Corners" program "A Blind Eye" (Transcript of the Program forms Attachment1) in June last year, and it is currently and very publicly

deploring any other animal advocacy group across the media, having been shown to be compromised itself in this regard.

Officers, or Inspectors in Tasmania have, to the best of my knowledge no specific training in animal care or welfare. One Inspector was reportedly the subject of a number of some very serious misconduct allegations in 2005 (see Attachment 2), yet no action was taken by either the RSPCA of the State government when these were brought to their attention.

The RSPCA has been subject to a number of enquiries into its administration, and it would be a reasonable expectation for the community to expect to the government to look elsewhere the individuals and/or groups who should be monitoring the welfare of animals, should these investigations further compromise the RSPCA.

## **1.2. Duty of Care**

Part 2 of the Act deals with Duty of Care, general cruelty provisions and specific cruelty provisions. The Duty of Care provisions presently contained in the Act contain anomalies which would be best addressed as they have been in the *Animal Care and Protection Act (Qld) 2001*:<sup>1</sup>

(3)...*a person breaches the duty only if the person does not take reasonable steps to –*

*(a) provide the animal's needs for the following in a way that is appropriate –*

*(i) food and water;*

*(ii) accommodation or living conditions for the animal;*

*(iii) to display normal patterns of behavior;*

*(iv) the treatment of disease or injury; or*

*(b) ensure any handling of the animal by the person, or caused by the person, is appropriate.*

(4) *In deciding what is appropriate, regard must be had to –*

*(a) the species, environment and circumstances of the animal; and*

*(b) the steps a reasonable person in the circumstances of the person would reasonably be expected to have taken.*

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<sup>1</sup> *Animal Care and Welfare Act (Qld) 2001*

As well as describing precisely what the duty of care is, the individuals/groups who owe the duty of care must be clearly defined, identified, and recognized. For example, section 12 of the *Animal Care and Protection Act 2001 (Qld)* provides:

- (1) A person is a **person in charge** of an animal if the person –
- owns or has a lease, license or other proprietary interest in the animal; or*
  - has the custody of the animal; or*
  - is employing or has engaged someone else who has the custody of the animal and the custody is within the scope of the employment or engagement.*

(2) Despite subsection (1)(a), a person who holds a mortgage or other security interest in an animal only becomes a person in charge of the animal if the person takes a step to enforce the mortgage or other security.<sup>2</sup>

I believe that the definition “person” should be broadened to include all those who have control over the animal or animals, at any time, to enable identification and prosecution where applicable. In a recently published Issues Paper, the Tasmanian Law Reform Institute used the term ‘organization’ rather than ‘corporations’ or ‘bodies corporate’. The reason for this amendment was that it was the Institute’s belief that a range of bodies including corporations, partnerships, associations, joint ventures and government entities should all be capable of incurring liability.<sup>3</sup>

In addition to those provisions, the provision in the Western Australian Act (2002) which state “every person who was an officer of the body or establishment at the time the offence was committed also commits the offence”<sup>4</sup> should be included

In cases of organizations “holding” animals (saleyards and feedlots) and transporting them, the Duty of Care definition should be broadened to reflect the responsibility of the transporter and the person or organization which contracted the transporter, as well as the operators of saleyards and feedlots. Provision should also be made for animals agisted on property, the responsibility, or Duty of Care should rest with both the owner/s of the animal/s and the owner/s of the property/ies upon which they are agisted.

As an example of the current anomalies, I have complained repeatedly in relation to conditions under which animals are kept at the Bridgewater Saleyards, only to be told that the “saleyards operators opted not to accept Duty of Care” for animals left there by DPIWE Animal Welfare staff. I find this extraordinary.

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<sup>2</sup> *Animal Care and Protection Act (Qld) 2001*

<sup>3</sup> See Tasmanian Law Reform Institute, ‘Corporate Manslaughter’ Issues Paper. As found at <http://www.law.utas.edu.au/reform/> (Accessed 18<sup>th</sup> September 2005).

<sup>4</sup> *Animal Welfare Act (WA) 2002*

The Queensland Act (Part 1 Section 17) provides for a penalty of 300 Penalty Points for a breach of Duty of Care to an Animal.

**Q: Are the duty of care provisions sufficient for the purposes of the Act?** No, these provisions need to be better defined, clarified and strengthened.

**Q: Should the Act be amended to extend the duty of care?** Yes, the Act must be revised to encompass all those who have management or control of any animal/s at any time, and should use the term “organizations”.

**Q: Is the inclusion of deeming provisions an effective means of ensuring clarification of the duty of care?** **Unable to comment in the absence of guidelines on deeming provisions**

**Q: Is there a need to amend the Act to include provisions to state that corporate bodies and the management of those organizations are deemed responsible for the management of animals?** Yes, amendments to the Act detailing precisely all those responsible, or having a “duty of care” are required for the proper protection of all animals, especially “agricultural” animals.

### **1.3. Methods of Management**

**Section 7** of the Act deals with methods of management. Current intensive farming practices deal largely with groups, herds, flocks and similar terminology. The Act therefore should reflect the interests and well-being of the individual animals as well as those of the group/herd/flock generally, and any penalties applied should be in keeping with the numbers of animals who have suffered from this cruelty or neglect. Animals are sentient beings, and their real well-being must be regarded appropriately seriously. In addition to the current penalties being imposed being relatively insignificant for farming operations, the “punishment must reflect the crime” in these matters, *(not the means of the individual or organization, nor should it be relative to the species of animal)*. The community expects the judicial system is take these matters appropriately seriously, whether the animals be individuals or farm animals, in cases of mismanagement, neglect and cruelty, and whether the case involves individuals or organizations, including farming operators, hunters, or “anglers”.

**Q: Are the current provisions of Section 7 sufficient to meet the objectives of the Act?**

No, the descriptors in this section must be clarified to provide for the prosecution of cruelty offences against groups/herds/flocks of animals as well as individual animals

**Q: Should the penalties of Section 7 be brought into line with those applying in Section 8?** Yes. The penalties contained in Section 7 must be at least equivalent to but should in fact be more than those contained in Section 8.

## 1.4 Powers of Officers

*Section 16* relates to Power of Officers. Officers appointed under the Act should be given the power of arrest since cases of cruelty, neglect and mismanagement of animals recently reported have clearly been ongoing or are endemic within the organization or industry. Sentences currently being imposed by the courts in these cases, would have little deterrent value, and the cruelty/neglect/mismanagement continues. Infringement Notices may be a reasonable instrument in some cases, but for *minor infractions only*.

**Officers must be given, as a minimum, the power to demand information, and to inspect any premises in which animals are being kept for any purpose, without prior notice or warning, and must not have to have "probable cause" for doing so.** Individuals and organizations convicted of these offences should be prohibited from owning, controlling or managing any animals, irrespective of species, for a considerable period if not for life, and this prohibition must be monitored.

**Q: Would similar provisions as provided in the Meat Hygiene Act 1985, the Living Marine Resources Management Act 1995 and the Animal Health Act 1995 strengthen the ability to administer the Act to achieve its objectives?** Yes. Officers appointed under the Animal Welfare Act must be given powers of arrest, demand information relevant to the animal or animals and the investigation. Infringement notices may be a useful mechanism, but for minor infractions only.

## 1.5 Evidentiary Limits

The Animal Welfare Act currently does not specify evidentiary limits, and the default position is therefore six months, which is manifestly inadequate. Since the Criminal Code specifies five years and the nature of these offences is serious, the Animal Welfare Act should reflect similar provisions. There have been links established by a number of leading psychology professionals between animal cruelty and human abuse. I agree with the terminology described in the Discussion Paper from the Marine Resources Management Act, although I believe that these offences are more in line with, and appropriate to, the Criminal Code. This should not be limited to cases of aggravated cruelty; it should apply to all significant animal cruelty/neglect offences. I believe that five years is a far more appropriate evidentiary limit.

**Q: Is the current six month limitation on taking action for alleged offences under the Act limiting the enforcement of the Act? A six month limitation period** must be increased to five years. An absolute minimum would be two years.

**Q: What are the views of interested parties on the options presented?** Obviously, I cannot comment on the views of other interested parties, but I believe that the views of those who use animals for commercial or related purposes would be that the six month limitation period should remain, thus making the chances of prosecution more remote. The model in which the two elements are combined, so that there would be a general two to five year period covering all offences, with certain offences being made indictable offences and linked to the Criminal Code

**The vexed issue of exemptions is possibly the most contentious one contained in the current regulatory framework. These will be discussed in more detail later in this paper. Hunting, fishing and “pest animal control” are the matters which least reflect the spirit of any animal welfare legislation, and must be removed. Further, in the case of hunting, no definition of “usual and reasonable manner and without causing excess suffering” is provided; what is “usual” or “reasonable” in one person’s view may be totally abhorrent in that of another. In the case of “pest animals” why is it that some animals are protected from violent or cruel deaths and not others?**

All these activities cause significant suffering to the animals, as do all intensive farming practices. Hunting activities are often carried out with the presence of alcohol and with shotguns, which cannot in any circumstances be claimed to kill the animals quickly and cleanly, therefore they suffer protracted and painful deaths and with little or no monitoring or supervision.

The *Animal Welfare Act (Tas) 1993* states that it is illegal to use dogs (or any other animal) thus:

*“Fight, bait, worry, kill or injure another animal”,*

yet the use of dogs in hunting activities is common practice in the state, indeed, “hunting dogs” are frequently advertised for sale in the newspapers. And the (voluntary) *“Standard” for the Shooting of Wallabies* makes express provision for the use of dogs

I believe that the wider community finds these hunting activities no longer acceptable, and rightly so, and that the characteristics of people who engage in such activities are not ones that should be encouraged in the community. As for the *Animal Welfare Standard for the Shooting of Wallabies*, my understanding is that no-one monitors these activities, they are carried out with informal arrangements, and usually with dogs to frighten the animals from their hiding places.

Section 6 (2) (h) (v) of the Act provides for the control of prescribed animals with prescribed substances. Despite the government’s stated position of abandoning the use of 1080 poison, (Sodium Monofluoroacetate) it was reported in the *“Mercury”* on September 17 that its use has in fact increased. 1080 is an indiscriminate poison which is known to cause animals protracted and agonizing deaths, and its use should be banned immediately, as should the use of strychnine and like substances. I am also concerned by the reference in the Discussion Paper relating to *“Emergency Animal Disease”*, which would appear to suggest any means of *“disposal”* of any large groups of animals is acceptable regardless of the suffering it may cause, and I believe that there should be no provision in legislation for this unless approval rests with an authority such as the Chief Veterinary Officer, and one who has no interests in any commercial or similar animal operations. Should such control ever become necessary that proper animal welfare safeguards must be applied. Characterizing the animal/s as *“pest/s”* generally seems to provide the justification for using methods of culling/eradicating that are cruel and

inhumane and would not be tolerated on domestic animals. The determination of the “pest” status of the animal, usually for economic reasons, must not then provide justification for cruel and inhumane methods of controlling it, particularly when humane alternatives already exist.

***Q Should Section 6 (2)(h)(v) be amended as proposed or are there important reasons as to why these matters should be retained within the Regulations?*** There must be no Exemptions from the cruelty provisions of the Animal Welfare Act which allows for animals determined to be “pests” (usually for economic reasons). No substances should be used which cause agonizing and protracted deaths such as Sodium Monofluoroacetate, Strychnine and similar substances; any substances used for this purpose must be humane. The current regulatory process, inadequate as it is, is better than the one proposed, and proper safeguards to protect the animals from suffering must be applied.

***Q. What are the views of interested parties on the proposal to provide the CVO with the power to use non-registered or non-regulated noxious substances in emergency animal disease situations?*** Such a situation is more likely to allow for more inhumane substances than there are currently; control of such situations must be humane. The CVO may not always be impartial in such cases.

## ***1.6 Animal Research***

***Section 3*** deals with the definition of animal research. Animals are subjected to unnecessary and unjustifiable experiments on a routine basis, and the facts of this practice seem to be unavailable to the wider community. The details of all experiments should be available for public scrutiny. I am particularly concerned that experiments are carried out upon any animal to “validate existing knowledge”, and believe that the blame for this reprehensible practice lies partly with the fact that there is no proper national database of experiments. Institutions and states and territories can therefore subject unknown numbers of animals to the same or worse invasive, painful and cruel procedures seeking a result that has already been ascertained. There is absolutely no justification for experimenting on animals in the name of “validation of existing knowledge”, and a safeguard against this practice occurring should be incorporated into the legislation. Attachment 3 contains detail on animal experimentation and its inherent invalidity.

I would concur that persons or organizations breeding animals for teaching or research purposes must be subjected to proper licensing and regulation, and I agree with the terminology of both the Victorian and the ACT Acts. For the purposes of animal welfare, I believe that potential impacts upon those breeders are irrelevant; such persons or organizations have the same duty of care to animals as does the rest of the community.

**Q. Does the definition of “Animal Research” require amendment?** No, I believe that the definition is adequate

**Q Would the suggested amendment provide greater clarification as to what is intended to be meant by “animal research”?** Possibly.

**Q. Should the breeders of animals for research be regulated under the Act?** It is another anomaly that such breeders have escaped regulations to date. Clearly, they have the same obligations and duty of care as does the rest of the community

**Q. What potential impacts are there on individuals if they are required to be registered under the Act?** Possibly some extra work in compliance, but this is no excuse for lesser protection for these animals than any others.

## **1.7 The Standards**

**PART 8** Section 44 relates to the Animal Welfare “Standards”. My considered view is that the “Standards”, (most notably those which relate to intensive farming), as is the case with “Codes of Practice” in other states and territories, merely provide mechanisms for producers to breach the primary cruelty provisions of the Act itself, therefore I would never recommend that the “Standards” be incorporated into the legislation in any form. In fact, I am concerned that provisions for “domestic fowls” are currently amongst the Regulations.

It is my understanding of the wider community’s views that practices in intensive farming are cruel and inhumane, and therefore, enshrining the Standards which allow them into legislation would be a step that would require another review of the Act to amend.

This is a complex area, involving a number of species and activities, yet there is no Standard for the use of animals in entertainment or for hunting. Rodeos cause horrific injuries to the animals unfortunate enough to be involved with them, as does the incessant travel forced upon them, therefore they should be banned, or as a very minimum, be licenced and required to have a registered and licenced veterinarian on site at all times. The young animals’ growing bodies are frequently irreparably damaged in these activities (as indeed are those of the older animals), and this occurs not only at the events themselves, but during practice activities as well. There are no statistics available on how many animals have to be destroyed as a result of these events.

No exotic animals should be permitted in circuses; in fact, the incessant transportation as described above seriously compromises the welfare of these animals.

The Standards are approved by the Minister under the Animals Welfare Act, and my view is that they sanction and explicitly provide for clear breaches of the cruelty provisions under the Act: (Part 1 and (c)-

“A person must not do any act or omit to do any duty which causes or is likely to cause unreasonable and unjustifiable pain or suffering to an animal”,

and (c) “drives, conveys, carries, or packs an animal in a manner or in a position or in circumstances that subjects it or subject it to unreasonable and unjustified pain and suffering...”

The Five Freedoms, developed as criteria for the assessment of animal welfare, proposed by the British Farm Animal Welfare Council, and have been adopted in many countries. These Five Freedoms were developed from minimum animal welfare standards by the Brambell Committee in 1965, and their particular relevance is that they consider not only the physical health and welfare of the animal, but also its mental/psychological state. The FAWC revised the criteria to encompass more than just the spatial requirements of an animal, but provided for it to exercise its “natural behaviours”.

***The Five Freedoms are:-***

1. **Freedom from thirst, hunger and malnutrition** (by ready access to fresh water and a diet to maintain full health)
2. **Freedom from discomfort** (by being provided with an environment suitable to its comfort and shelter)
3. **Freedom from pain, injury and disease** (by prevention or rapid diagnosis and treatment)
4. **Freedom from fear and distress** (by provide conditions that do not allow mental suffering)
5. **Freedom to express normal behaviours** (by providing sufficient space, proper facilities and company of the animal’s own kind)

These Five Freedoms do not seem to be a lot to ask – yet nearly all farm animals are routinely deprived of them for commercial gain. The Standards in every case compromise both the Five Freedoms and the cruelty provisions of the Animal Welfare Act (Tas) 1993.

So clearly, the “Standards” compromise any or all of these Freedoms, particularly in intensive farming activities.

Although a review of the Standards does not form part of this review of the Act, further comment is contained in Attachment 4.