

6 June 2014

Mr Brook Hastie
Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000
By Email: lacsc@parliament.qld.gov.au

Dear Mr Hastie,

Re: Criminal Law Amendment Bill 2014

We write in response to the Committee's invitation to provide written submissions on the Criminal Law Amendment Bill 2014 ("the Bill"). We provide the following comments for the Committee's consideration.

1) Amendment to the Criminal Code – Serious Animal Cruelty

The new offence of serious animal cruelty would be a significant component within the framework of animal welfare legislation in Queensland, and the government introducing this offence should be unreservedly applauded. This legislation will place Queensland at the forefront of animal cruelty reform in Australia. **RSPCA strongly supports the introduction of this new offence of serious animal cruelty** and considers it to be a positive step towards meeting community expectations in relation to penalties and sentences for serious animal cruelty offences which are not adequately dealt with in the current legislation.

Unfortunately, the type of acts envisaged by this offence are particularly abhorrent and disturbing, and may involve offenders suffering from mental health conditions or with a proclivity to commit even more serious violent offences. It is important that such acts are dealt with as indictable offences, particularly while under the current legislation there is no express power for the Court to deal with people who have committed a summary offence and are deemed of unsound mind or unfit for trial.

The well-known established link between serious animal cruelty offences and violent offences against people further underpins community demand that serious animal cruelty offenders are dealt with in a way that ensures better safety outcomes for our community. As such it is entirely appropriate that these kinds of offences are indictable offences carrying a maximum 7 year penalty.

The Royal Society
for the Prevention of
Cruelty to Animals
Queensland Inc.

ABN 74 851 544 037

Animal Care Campus

139 Wacol Station Road
Wacol QLD 4076

Locked Bag 3000
Sumner Park BC QLD 4074

P 07 34 26 99 99
F 07 38 48 11 78
E admin@rspcaqld.org.au
W rspcaqld.org.au

Animal Care Centres

Bundaberg
Doblo Street
West Bundaberg QLD 4670
P 07 41 55 17 49

Cairns
Arnold Street
East Stratford QLD 4870
P 07 40 55 14 87

Dakabin
Goodwin Road
Dakabin QLD 4503
P 07 38 86 03 57

Gympie
Laureson Road
Gympie QLD 4570
P 07 54 82 94 07

Kingaroy
Warren Truss Drive
Kingaroy QLD 4610
P 07 41 62 55 01

Noosa
Hollett Road
Noosaville QLD 4666
P 07 54 49 13 71

Toowoomba
43 Vanity Street
Toowoomba QLD 4350
P 07 46 34 13 04

Townsville
69 Tompkins Road
The Bohle QLD 4818
P 07 47 74 51 30



2) Consequential amendments to the Animal Care and Protection Act 2001 (“the Act”), the Justices Act 1886 and the Director of Public Prosecutions Act 1984

RSPCA Qld strongly supports the associated and consequential amendments which

- a) ensure that the powers of inspectors under the Act apply to the new offence and that evidence obtained during the investigation can be used, subject to the rules of admissibility, in proceeding upon indictment;
- b) ensure RSPCA Queensland inspectors can commence proceedings for the new serious animal cruelty offence (as well as section 468 of the Criminal Code) in the Magistrates Courts;
- c) include provision for the making of interim prohibition orders at the court’s initiative or on an application by the prosecution; and
- d) allow the Director of Public Prosecutions to ask an inspector to assist with a matter that requires further investigation.

Enforcement of Animal Welfare Legislation

Throughout the history of animal welfare legislation, not only in Queensland, but in the other States of Australia, in the United States and the United Kingdom, it has long been recognised that the enforcement of animal welfare legislation is a specialised and unique field which is appropriately undertaken by animal welfare organisations.¹

Specialised Knowledge

RSPCA Qld Inspectors have been enforcing Qld’s animal welfare legislation since it was first enacted in 1925. In the 13 years that RSPCA QLD’s Inspectors have been enforcing the Animal Care and Protection Act 2001, the reputation of RSPCA Qld Inspectors as professional, ethical and reliable enforcement officers, investigators and educators has continued to grow, and is now well-established within the Department of Agriculture, Fisheries and Forestry (DAFF), with the Queensland Police Service, and with members of the legal profession and judiciary who are directly aware of their work.

Animal cruelty investigations require a particular level of expertise. This is widely acknowledged by animal welfare and investigative bodies internationally and as such there are now established accredited animal investigation and forensic veterinary courses conducted world-wide.

RSPCA Inspectors have this high level of expertise in animal cruelty investigations, and employ best practice principles and techniques in their investigations particularly with respect to the gathering of electronically recorded evidence, forensic evidence, and the use of expert veterinary witnesses.

Victims of Animal Welfare Offences

In investigations of animal cruelty there is a need for the investigator to assume a duty of care for the animal involved. This requires experience in animal handling, knowledge of and an ability to source appropriate transport, and an ability to source and provide

¹ Anderson, Jerry L., *The Origins and Efficacy of Private Enforcement of Animal Cruelty Law in Britain* (August 15, 2012). *Drake Journal of Agricultural Law*, Forthcoming; Drake University Law School Research Paper No. 12–14. Available at SSRN: <http://ssrn.com/abstract=2130132>

veterinary treatment and day to day boarding and care. It is also essential to prosecutions that this transport, treatment and care is provided by experts who are aware of their responsibilities as witnesses and who are sufficiently qualified to provide the necessary evidence. This expert evidence is particularly significant in animal welfare offences where the victims themselves are unable to provide evidence. Unlike property offences, the subject of these offences are living beings that cannot be simply placed in storage indefinitely while court proceedings are determined.

Costs of Seized Animals

The ability to hold animals for evidence gathering purposes, and to make appropriate arrangements for their care while legal ownership is determined (a process which can take several years) is unique to RSPCA Qld, and the inability to do so can present significant difficulties for other agencies. Further, the costs associated with seized animals, is an inherent issue in animal welfare investigations and prosecutions, as Investigators are required to ensure that the welfare needs of the animal victim are met. This may require the Investigator to incur expenses from RSPCA and other veterinary practices for treatment, boarding and day to day care of animals, expenses which can amount to tens of thousands of dollars. There is a specific mechanism in place pursuant to section 189 of the Act for the recovery of these costs. RSPCA Qld are not willing to incur the costs of the boarding, treatment and care of the animals that are seized or held by other agencies (where payment is not made by the agency) where conduct of the matter and recovery of those costs (e.g. through a restitution order) is outside the control of RSPCA Qld and is not able to be claimed by RSPCA Qld under s189.

Prosecutorial Excellence

We are particularly proud of the fact that the reputation of RSPCA Qld Inspectors as highly-regarded prosecutors and model litigants has flourished in the last few years, and is also now well-recognised. RSPCA Qld has an established open and transparent prosecutorial process, including the DPP Prosecution Policy, and RSPCA Qld Inspectors must comply with DAFF Operational Procedures and Guidelines and Codes of Practice.

Since 2007, RSPCA Qld Inspectors have been represented by pro-bono Counsel in all but a couple of prosecuted cases, and Magistrates regularly acknowledge this pro-bono assistance, not only for the benefit provided to RSPCA Qld, but for the invaluable assistance provided to the Court. In the last few years, Counsel representing and advising RSPCA Qld pro-bono have included Mr Walter Sofronoff QC, Mr Michael Byrne QC, Mr Graeme Page QC, Ms Kerri Mellifont QC, Mr Jeffrey Hunter QC, Mr Tony Morris QC and Mr Stephen Keim SC. In the case of highly emotive or high public interest cases (for example, cruelty at a rodeo), we have been able to obtain independent advice from Senior Counsel to ensure the matter does not become controversial and that the best outcome is reached.

The success of RSPCA Qld prosecutions is evident in the results, which show a consistent increase in penalties over the last couple of years, ensuring that appropriate penalties and sentences are now being handed down which are in line with community expectations, particularly in relation to duty of care offences. Time is taken to ensure that our legal representatives work with defendants or their representatives to ensure where possible that submissions in relation to penalties and sentences are particularly appropriate to the circumstances of the defendant and the offence. This may include for example that recommendations are made to the court that no fine or community

service is appropriate (for example, in hoarding cases); or that psychiatric or psychological care be incorporated into probation orders; or that community service options are considered in place of fine options. Requests for court orders in relation to the keeping of animals are also often incorporated into our submissions to the court with respect to penalty, as this is often the most important outcome of a prosecution.

RSPCA Qld focus on a relatively low number of prosecutions per year – and all in the specialised field of animal neglect and cruelty. For each of these prosecutions a full brief is prepared and assigned to an experienced barrister to present in court. Even in the event of guilty pleas, RSPCA prosecutors ensure that Magistrates are presented with photographs or videos, veterinary statements, and any other relevant material that may assist in determining an appropriate penalty. This has been particularly effective in assisting the Court and improving court outcomes for animal welfare offences.

Interim Prohibition Order

RSPCA Qld supports this important amendment which will ensure that offenders will not be able to continue to deal with animals throughout protracted legal proceedings.

3) Conclusion

RSPCA Qld strongly supports the amendments in the Bill introducing the new offence of serious animal cruelty, and all of the associated and consequential amendments to the Act, the Justices Act 1886 and the Director of Public Prosecutions Act 1984.

RSPCA Qld would welcome the opportunity to speak at the public hearing of the Bill on Wednesday 25 June 2014, to answer any concerns that members of the Committee may have in relation to the amendments relating to the introduction of the offence of serious animal cruelty and the associated and consequential amendments. We would also strongly encourage the Committee to invite one of the pro-bono Senior Counsel who has regularly and recently represented RSPCA Qld to also address the public hearing, and we would be happy to provide you with the appropriate contact details if needed.

Kind regards,



Mark Townend
Chief Executive Officer
RSPCA QLD