

Inquiry into the Animal Care and Protection Amendment Bill 2022

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Animal Defenders Office

Using the law to protect animals

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The Animal Defenders Office Inc. is accredited by the National Association of Community Legal Centres.

State Development and Regional Industries Committee
Queensland Parliament
Cnr George and Alice Streets
Brisbane QLD 4000

By email: SDRIC@parliament.qld.gov.au

Dear Sir/Madam

Submission to the Inquiry into the Animal Care and Protection Amendment Bill 2022

Thank you for the opportunity to provide a submission to the Inquiry into the Animal Care and Protection Amendment Bill ("the Bill") by the State Development and Regional Industries Committee ("the Inquiry").

Our comments on the Bill are set out below.

About the Animal Defenders Office

The Animal Defenders Office ("ADO") is a nationally accredited not-for-profit community legal centre that specialises in animal law. The ADO provides pro bono animal law services to the community. The ADO is a member of Community Legal Centres Australia Inc., the national peak body representing community legal centres in Australia.

Further information about the ADO can be found at www.ado.org.au.

General comments

The Bill aims to amend the *Animal Care and Protection Act 2001* ("the Act"), the main animal welfare statute in Queensland.

The ADO submits that there would be minimal benefit to animals if the Bill were to be implemented in its current form. The Bill is conservative and, in most cases, merely replicates existing laws. While there are some positive features of the Bill, in other areas it provides even less protection for animals than currently afforded under existing laws.

The ADO therefore submits that in its current form the Bill would not meet its objective to 'modernise Queensland's animal welfare laws to reflect modern scientific knowledge, community attitudes and expectations'.¹ The ADO has made recommendations to bring the Bill into line with this objective.

¹ <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=172&id=4163>.

Comments on the Bill

| Bill | Comments |
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| Part 2 Amendment of Animal Care and Protection Act 2001 | |
| <p>Clause 3</p> <p>Amendment of s 11 (What is an animal)</p> | <p>The ADO supports the inclusion of the class 'Cephalopoda' in the proposed definition of the term "animal" in the Bill.</p> <p>The ADO urges, however, that the class 'Malacostraca' also be included in s 11 in the Bill rather than be prescribed by regulation. Currently, proposed par. 11(e) in the Bill replicates the Act. The ADO notes that no species from the 'Malacostraca' class is currently prescribed by regulation.² This is out of step with developments in animal welfare laws elsewhere in Australia. For example, the draft Animal Welfare Bill in NSW includes 'decapod crustacean' in its proposed expanded definition of "animal".³ 'Decapods' are an order of crustaceans within the class Malacostraca and include crabs, lobsters, crayfish and prawns. The <i>Prevention of Cruelty to Animals Act 1986</i> (VIC) includes 'a live adult decapod crustacean' (specifically, lobsters, crabs, crayfish), in its definition of "animal" (s 3(3)(b)). These sentient species are frequently used by humans and therefore should be covered by the primary animal welfare legislation in Queensland as they are in other Australian jurisdictions. Being brought within the scope of the primary legislation provides stronger protection as it can only be changed by Parliament and gives greater prominence to the species protected.</p> <p>The ADO also suggests that the Bill include a power to prescribe other animals or forms of animals. The ability to add animals or forms of animals to the general definition by prescribing in regulations is commonplace in animal welfare legislation in other jurisdictions such as the <i>Animal Welfare Act 2006</i> (UK) s 1.⁴</p> |
| <p>Clause 4</p> <p>Amendment of s 13 (Making codes of practice)</p> | <p>The ADO supports the proposed clarification that codes of practice must promote 'good' practice and must be based on scientific knowledge. However, this view is based on the premise that 'good practice' is a higher standard than the minimum standards commonly specified in codes of practice.</p> |
| <p>Clause 5</p> <p>Amendment of s 17 (Breach of duty of care prohibited)</p> | <p>The ADO supports the proposed inclusion of a higher maximum penalty for 'aggravated' breaches of duty of care where the breach has serious consequences including death or prolonged suffering of an animal. The ADO congratulates Queensland for consistently leading the nation in its maximum penalties for animal cruelty and similar offences. The penalties are significant and reflect the community's attitude and zero tolerance towards animal cruelty.</p> |

² *Animal Care and Protection Regulation 2012* (QLD), reg 6.

³ Animal Welfare Bill 2022 (NSW), Sch 3, <https://www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/animal-welfare-reform>.

⁴ *Animal Welfare Act 2006* (UK), s1:

(3) The appropriate national authority may by regulations for all or any of the purposes of this Act—

(a) extend the definition of "animal" so as to include invertebrates of any description;

(4) The power under subsection (3)(a) ... may only be exercised if the appropriate national authority is satisfied, on the basis of scientific evidence, that animals of the kind concerned are capable of experiencing pain or suffering.

| Bill | Comments |
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| <p>Clause 6</p> <p>Amendment of s 19 (Unreasonable abandonment or release)</p> | <p>The ADO supports the clarification proposed in clause 6 and agrees that a person who abandons an animal should still be regarded as committing the offence of abandonment even if the abandoned animal may be cared for by a good Samaritan.</p> |
| <p>Clause 7</p> <p>Amendment of s 20 (Meaning of <i>prohibited event</i>)</p> | <p><i>Game parks</i></p> <p>The ADO notes the technical amendment proposed to s 20(1)(d). The ADO submits that this paragraph should, however, be substantially amended so that the kind of event covered by par. (d) such as game parks are prohibited entirely, rather than merely allowing for a period of acclimatisation. Game parks are completely prohibited under animal welfare legislation in other jurisdictions in Australia.⁵</p> <p>This could be achieved in s 20(1)(d) by omitting the words 'without an appropriate acclimatisation period between the release and the hunting to reduce stress to the animal'.</p> <p><i>Rodeos</i></p> <p>The ADO strongly disagrees with the proposal to omit s 20(2) without substituting a complete ban on rodeos. It is accepted that rodeos cause harm to the animals involved.⁶ For this reason, rodeos have been banned under animal welfare legislation since 1992 elsewhere in Australia.⁷ In light of the serious animal welfare concerns inherent in rodeos, the ADO submits that rodeos should not be exempt from the events prohibited in s 20 of the Act.</p> |
| <p>Clause 9</p> <p>Replacement of s 24 (Docking dog's tail)</p> | <p>The ADO supports this proposed amendment as bringing Queensland's prohibition on dog tail docking into line with other jurisdictions.⁸</p> |
| <p>Clause 10</p> <p>Insertion of new ss 27A and 27B</p> | <p>The ADO does not support allowing invasive procedures on sentient mammals such as cows to be undertaken by non-veterinarians due to the animal welfare risks involved. The ADO submits that clause 10 must be amended to require any technique to be carried out only by a veterinary surgeon.</p> |

⁵ Game parks are banned in NSW under s 19A of the *Prevention of Cruelty to Animals Act 1979* (NSW) ("POCTAA NSW"), in WA under s 32 of the *Animal Welfare Act 2002* (WA), and in the ACT under s 18 of the *Animal Welfare Act 1992* (ACT).

⁶ RSPCA Australia: 'RSPCA Australia is opposed to rodeos and rodeo schools because of the potential for significant injury, suffering or distress to the animals involved. The use of painful devices such as flank straps, spurs and electric prods contributes to suffering associated with this sport.' *RSPCA Policy Co8 Rodeos* (2016), <https://kb.rspca.org.au/knowledge-base/rspca-policy-c08-rodeos/>.

⁷ *Animal Welfare Act 1992* (ACT) s18(1): 'A person commits an offence if the person conducts or takes part in a rodeo.'

⁸ See for example POCTAA NSW s 12.

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| Clause 12 Replacement of ss 28 and 29 | The ADO supports the proposed amendments in clause 12 as they remove potential barriers to rehoming animals by rescue shelters. |
| Clause 13 Replacement of s 33 (Obligation to exercise closely confined dogs) | <p>The ADO does not support removing a requirement to exercise closely confined dogs. If the requirement has proved to be difficult to enforce⁹, then this issue should be addressed rather than removing the requirement altogether. For example, the requirement could be simplified by leaving it to the discretion of the authorised officer eg 'A person in charge of a dog who is closely confined for a continuous period of 24 hours must, unless the person has a reasonable excuse, ensure the dog is reasonably exercised'. The factors that must be taken into account (s33(2)) could apply to the exercise of the officer's discretion under the suggested amendment to the provision.</p> <p>The ADO recommends adding the proposed provision on transporting dogs as an additional section instead of replacing the existing s 33.</p> |
| Clause 14 Insertion of new ch 3, pt 5, divs 5 to 7. | <p><i>Prong collars</i></p> <p>The ADO supports the prohibition on prong collars proposed in s 37A(1)(a). The ADO notes these collars are opposed by RSPCA Australia¹⁰ and are banned in Victoria due to animal welfare concerns.¹¹ For these reasons, the ADO does not support the proposed exemption of a 'reasonable excuse' in s 37A(2) and submits that this exemption should be omitted. The ADO notes there is no exemption to the ban on prong collars in Victoria.</p> <p><i>Netting</i></p> <p>The ADO supports the prohibition on the use of netting that inflicts harm on wildlife. The ADO submits, however, that the 'reasonable excuse' exemption is too broad and would undermine the proposed prohibition. The ADO submits that the words 'unless the person has a reasonable excuse' be omitted from subss (1) and (2).</p> <p><i>Firing or blistering</i></p> <p>The ADO supports the prohibition on firing or blistering the legs of dogs and horses, and supports the absence of any exemption that may otherwise operate to undermine the prohibition. In addition to the prohibition as currently proposed, the ADO suggests that the proposed offence be extended to prohibit firing or blistering entirely – that is, on all parts of the body of any animal.</p> |
| Clause 16 Amendment of s 42 (Feral or pest animals) | While the ADO supports a ban on any kind of poison used to harm animals, the ADO queries why one of the most harmful poisons, 1080, has not also been banned? The ADO strongly recommends that this very harmful poison be banned under Queensland's animal welfare laws. |
| Clause 18 Amendment of s 48 (When an | The ADO notes that s 48(2) exempts bird banding or fish tagging from the definition of using an animal for scientific purposes. The ADO submits that, at the very least, fish tagging should be subject to regulation under the Act as it necessarily involves invasive |

⁹ Explanatory Notes to the Bill, p 4.

¹⁰ RSPCA Australia (2019), <https://kb.rspca.org.au/knowledge-base/are-prong-collars-harmful-to-my-dog/>.

¹¹ *Prevention of Cruelty to Animals Regulations 2019* (Vic), regulation 11.

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| animal is used for scientific purposes) | methods that pierce the skin and leave a foreign object anchored in the tissue of a fish. Fish tagging can be associated with tissue damage, injury upon removal, and impacts on swimming capacity and growth. ¹² As such, it should be subject to a higher level of regulation and not exempted. |
| Clause 20 Amendment of s 62 (Inspection of register) | The ADO suggests that consideration be given to making the register available online, to facilitate public access to the entities registered to use animals for scientific purposes. This would align with the approach taken in other parts of the Bill. For example, proposed Chapter 4A requires the chief executive to publish the register of approved cattle procedures accreditation schemes on the department's website, as per proposed s 93R. |
| Clause 22 Insertion of new chs 4A and 4B | <i>Approved cattle procedures accreditation schemes</i> As for clause 10, the ADO does not support allowing invasive procedures on sentient mammals such as cows to be undertaken by non-veterinarians due to the animal welfare risks involved. <i>Livestock slaughter facilities</i> <u>Definitions</u> The ADO submits that the proposed requirements in Part 2 of Chapter 4B should apply to the slaughter of all animals in livestock slaughter facilities. This would seem logical given the broad definition of the term "livestock" in s 93S. A more internally consistent definition of "livestock slaughter facility" would simply be "a facility used to slaughter livestock", where "livestock" is as defined in s 93S. However, the proposed definition of "livestock" in s 93S is itself not clear. The ADO notes that cattle and sheep are not listed in the definition, but note the use of the word 'includes' suggests the definition is non-exhaustive. Does that mean that it could include 'horse', 'sheep' and 'cattle'? The ADO suggests that the Bill clarify whether the definition of "livestock" is exhaustive, and whether 'horse' is included in or excluded from the definition of "livestock" for the purposes of proposed Chapter 4B. Further, the ADO does not support exempting facilities that slaughter sheep and cattle from CCTV requirements. The ADO also notes that the term "owner" is not defined in Chapter 4B. Given the significant responsibilities created by the proposed Chapter 4B for 'owners' of livestock slaughter facilities, the ADO recommends including a definition of the term "owner" in s 93S. The definition could be modelled on the proposed definition of "owner" in s 93A and encompass the person in charge of the facility and any management. <u>Time periods – erasing or destroying recordings</u> The ADO submits that the specified time in which an owner may erase or destroy a recording in proposed s 93W should be based on expert advice on the usual time between a breach of the legislation occurring and an investigation of the breach by authorities. This is particularly important if an independent monitoring regime is not put in place to monitor the CCTV footage. The ADO submits that such a regime should be established under the Bill. It is difficult to see how implementing proposed Part 2 of |

¹² See, for example: <https://animalbiotelemetry.biomedcentral.com/articles/10.1186/s40317-015-0086-z>.

| Bill | Comments |
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| | Chapter 4B could result in any improvements to animal welfare in the absence of an independent monitoring regime. |
| Clause 27 Amendment of s 122 (Power of entry) | It is not clear how the proposed s 122(1)(i) relates to the preceding paragraphs in the absence of a conjunction ('and' or 'or') at the end of paragraph (h). It is also not clear why there needs to be a horse present when an inspector enters the premises. This would mean, for example, that an inspector could not enter the premises to inspect the CCTV equipment footage (under proposed s 93W) if a horse were not present. This may risk the footage being destroyed within the proposed timeframe of 30 days (s 93W). |
| Clause 28 Amendment of s 123 (Limited entry power to provide relief to animal) | While the ADO supports in general the proposed amendment of s 123, it submits that an inspector should be able to provide relief to an animal in a vehicle as well. Entering a vehicle in case of entanglement, thirst, starvation, or extreme weather conditions does not seem to be provided for in Ch 6, Pt 2, Div 2 of the Act, which deals with vehicles. This could be achieved by omitting the words “, other than a vehicle” from s 123(1)(a)(i). |
| Clause 33 Amendment of s 178 (Offences under Act are summary) | <p>The ADO does not support this proposed limitation on who may start a prosecution. There does not appear to be any explanation or justification for this proposed amendment in the Explanatory Notes. In the absence of any policy justification for this significant change in the law, it is difficult to see why the change has been proposed. Moreover, requiring the chief executive's authorisation to bring any proceedings would undermine the perception of prosecutorial independence, given that the agency that administers the Act, and presumably would administer the Bill, is the Department of Agriculture and Fisheries¹³. There would be a strong perception of a conflict of interest, as the chief executive may be reluctant to authorise a prosecution against an entity from the sector the agency is supposed to promote and protect (agriculture and fisheries). Restricting entities that can initiate prosecutions also inhibits the prospect of test cases that develop the law.</p> <p>For these reasons the ADO submits that clause 33 be removed from the Bill.</p> <p>The ADO also submits that s 178 be amended to allow proceedings to be commenced within 3 years of the date evidence of an alleged offence first comes to the attention of an officer, to align with best practice in jurisdictions such as NSW.¹⁴</p> |

¹³ Queensland Government, *Queensland Legislation*, 'Agency' for the Act, <https://www.legislation.qld.gov.au/view/html/inforce/current/act-2001-064>.

¹⁴ POCTAA NSW s34(4).

Matters not covered in the Bill

The ADO submits that the following matters should be addressed in the Bill.

| Issue | Comments |
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| Animal sentience | <p>The Bill does not acknowledge the sentience of animals.</p> <p>Failing to acknowledge animal sentience explicitly in the Bill is out of step with contemporary animal welfare legislation in other common law jurisdictions. For example, in the UK the <i>Animal Welfare (Sentience) Act 2022</i> ("the UK Act") received Royal Assent on 28 April 2022 and is now law.¹⁵ The UK Act enshrines sentience in domestic animal welfare law and establishes an 'Animal Sentience Committee' to ensure government policy considers animal sentience.</p> <p>In Australia, the ACT's Animal Welfare Act was amended in 2019 to acknowledge animal sentience and the intrinsic value of animals as the Act's first object.¹⁶</p> <p>Victoria has committed to recognising animal sentience as part of modernising its animal welfare laws.¹⁷</p> <p>On 24 February 2022 a Private Members Bill was introduced in the NSW Legislative Council to amend NSW's primary animal welfare legislation to recognise the sentience of animals and their intrinsic value.¹⁸ This is an indication of contemporary community expectations that our animal protection laws will acknowledge what science and philosophy have long accepted – that animals are sentient beings.</p> <p>In light of legislative developments regarding animal sentience in Australia and internationally, the ADO submits that the failure to acknowledge animal sentience in the Bill is manifestly inadequate and that animal sentience must be explicitly acknowledged. The ADO also recommends acknowledgement of the intrinsic value of animals as in the <i>Animal Welfare Act 1992</i> (ACT).</p> |
| Steel jaw traps | The ADO submits that the Bill should prohibit the use of steel-jaw traps as in other jurisdictions. See, for example, s23 POCTAA NSW; s12 <i>Animal Welfare Act 1993</i> (TAS). |
| Pig-dogging | A stand-alone offence provision prohibiting the cruel and violent activity of pig-dogging should be inserted in the Bill either as a prohibited event (Ch 3, Pt 3) or an offence relating to dogs (Ch 3, Pt 5, Div 1). The offence provision could be modelled on the ACT's offence relating to 'violent animal activities' in the <i>Animal Welfare Act 1992</i> (ACT), s 17. |
| Animal cruelty offenders register | The Bill should establish an animal cruelty offenders register accessible to relevant entities including police officers, approved charitable organisations' inspectors, and relevant government agencies. |

¹⁵ <https://bills.parliament.uk/bills/2867>.

¹⁶ *Animal Welfare Act 1992* (ACT), s4A(1). The first clause of the objects clause in this Act states:

- (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;** and
 - (b) **animals have intrinsic value and deserve to be treated with compassion and have a quality of life that reflects their intrinsic value;** and
 - (c) people have a duty to care for the physical and mental welfare of animals.

¹⁷ 'Victorians In Favour Of New Animal Welfare Act', The Hon Daniel Andrews, Premier of Victoria, Press Release, 29 April 2021, <https://www.premier.vic.gov.au/victorians-favour-new-animal-welfare-act>.

¹⁸ Prevention of Cruelty to Animals Amendment (Animal Sentience) Bill 2022, introduced by Abigail Boyd MLC (NSW Greens), <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3946>.

The ADO submits that the Bill needs to be amended along the lines recommended in this submission if the Bill is to reflect contemporary animal welfare expectations by improving protections for animals in Queensland rather than perpetuating the status quo.

Thank you for taking these submissions into consideration.

Sarah Margo and Tara Ward
Solicitors
Animal Defenders Office

1 June 2022