

Inquiry into the Animal Care and Protection Amendment Bill 2022

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Secretary
State Development and Regional Industries Committee
Parliament House Queensland

Dear Secretary,

Thank you for the opportunity to make a submission on the Animal Care and Protection Amendment Bill 2022.

1. Introduction

The proposed Bill includes some important provisions for improving the protection of some animals in Queensland. These include the introduction of an ‘aggravated’ duty of care provision; the prohibition of some inhumane practices, such as the use of aversive and harmful dog training tools and of the use of some chemicals in the killing of non-domestic animals; the mandated use of CCTV in horse-slaughtering establishments; and the introduction of a means for enforcement of interstate prohibition orders.

The review of the *Animal Care and Protection Act 2001* (Qld) (ACPA) prompting this Bill has been styled by the Minister and the Government as a ‘full review of the state’s animal welfare legislation’, examining ‘all aspects of the Animal Care and Protection Act to make sure it met changing community expectations’.¹ The Department stated that the ‘review will examine all aspects of the ACPA to ensure it continues to meet evolving community expectations and modern animal welfare practices’.² In fact, the review was highly circumscribed. The most significant setting in which animals are used in Queensland, farming, was exempted from the review. The first few paras of the Introduction to the *Review Discussion Paper* stated that the ‘discussion paper does not seek comment on the codes of practice’ and that ‘Codes of Practice will also not be considered as part of this review’.³ This effectively ruled out consideration of the way in which the legislation addresses the protection of farm animals. This is despite some of the most serious concerns about animal welfare arising in a farm animal context. This is an early signal about the highly constrained focus of the review and of this Bill. Contrasting the review with current, broadly-based and comprehensive reviews in other jurisdictions, including Victoria,⁴ New South Wales⁵ and Western Australia,⁶ further reinforces the limited nature of the Queensland approach. It is disappointing that the most significant amendment proposed by the Bill in the area of farm animal welfare, the introduction of an ‘Approved Cattle Procedures Accreditation Scheme’ was not raised in the *Review Discussion Paper*, has potentially important

¹ Minister for Agricultural Industry Development and Fisheries and Minister for Rural Communities, ‘Queensland launches first review of animal welfare laws in almost two decades’ (Ministerial Media Statement, 8 December 2020) <<https://statements.qld.gov.au/statements/91120>>.

² Department of Agriculture & Fisheries Qld, *Review of the Animal Care and Protection Act 2001* <<https://daf.engagementhub.com.au/animal-welfare>>.

³ Queensland Government, *Review of the Animal Care and Protection Act 2001 – Discussion Paper* (2021) 3 (‘*Review Discussion Paper*’).

⁴ Department of Jobs, precincts and Regions, *A New Animal Welfare Act for Victoria* <<https://engage.vic.gov.au/new-animal-welfare-act-victoria>>

⁵ Department of Primary Industries, *NSW Animal Welfare Reform* <<https://www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/reform>>.

⁶ Department of Primary Industries and Regional Development, *Review of the Animal Welfare Act 2002* <<https://www.agric.wa.gov.au/animalwelfare/review-animal-welfare-act-2002>>.

implications for animal welfare, and has been the subject of extensive consultation with a vested interest group, AgForce Queensland (see Explanatory Note at page 36). It is also notable that despite the introduction of this Scheme, no new resources for enforcement have been specifically allocated. Like almost all areas in commercial farm animal use, this will be essentially industry regulated.

2. Comments on the Bill

a. Purpose of the ACPA

The *Review Discussion Paper* asked whether the purpose set out in s 3(b)(i) of the *ACPA*⁷ is ‘still suitable with increased animal welfare expectations and consumer preferences’. Given the Explanatory Note acknowledges that ‘greater awareness of animal welfare requirements has influenced community expectations which demand more humane care and use of animals, including livestock’ it is disappointing that the purposes section of the legislation will not be updated by the Bill. If we understand terms such as ‘community expectations’ and ‘more humane’ in a strong sense, this might suggest that animal welfare legislation should not be about ‘reasonably balancing’ the welfare of animals and those who make a living from them. The legislation should primarily be focussed on protecting the welfare of animals. The onus should then be on those who would wish to use animals for their livelihood to justify this use, to be transparent about any use and to be accountable for that use. Section 3(b)(i) should be updated to make clear, at a bare minimum, that the purpose of the legislation is primarily to protect the welfare of animals, and that if animals are to be used in ways that risks their welfare then this implies justification, transparency and accountability.

Section 3 could also be amended, in keeping with ‘contemporary standards’, to explicitly recognise the sentience of animals, requiring the legislation to be interpreted in a way which respects that sentience. Legislation in the ACT, New Zealand and the UK explicitly recognises sentience. Explicitly acknowledging the sentience of animals in legislation would provide a clear statement of the ethical framework underpinning application of the legislation. As noted in the *Victorian Directions Paper*, ‘[r]ecognising animal sentience would provide clarity about the purpose of the legislation and support greater consistency in the interpretation and application of animal welfare law’.⁸ It is notable that a significant majority of those responding to the *Victorian Directions Paper* supported inclusion of explicit recognition of sentience in Victorian animal protection legislation.⁹ An amendment of this nature was not proposed in the Queensland *Review Discussion Paper*. It is very likely that if it had the proposal would have achieved a high level of support, reflecting likely significant community support for such a change.

b. Prohibited Events

The Bill includes a provision to ensure that rodeos cannot be classed as a prohibited event, as they are in some other jurisdictions. There is no defensible justification on animal welfare grounds for excluding rodeos from the application of s 20(1)(e) of the *ACPA*. Given the

⁷ Section s 3(b)(i) states that a purpose is to ‘achieve a reasonable balance between the welfare needs of animals and the interests of people whose livelihood is dependent on the animals’.

⁸ Department of Jobs, precincts and Regions, *A New Animal Welfare Act for Victoria – Directions Paper* (October 2020) 17 <https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/4616/0275/7674/AW_Directions_Paper.pdf>.

⁹ Department of Jobs, Precincts and Regions, *A New Animal Welfare Act For Victoria Directions – Engagement Summary Report* (April 2021) 8 <https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/1416/1961/8270/Engagement_Summary_Report.pdf>.

significant risks to the welfare of animals used in rodeos,¹⁰ their use as a form of entertainment is not consistent with contemporary standards of animal welfare. This has been recognised in the ACT, with a legislative prohibition on this use of animals.¹¹

If the use of animals in rodeos continues to be endorsed under legislation, then the Government and Department should not avoid their responsibility for allowing this to occur, by downplaying, deflecting or ignoring the harms visited upon animals through this form of entertainment. The Minister in his Introductory Speech places reliance on a very recently introduced Code of Practice about Rodeos. Despite the introduction of this Code, the industry will remain self-regulating in practice. The Code of Practice allows for harmful activities, effectively setting some boundaries around the extent of harm allowed. If the experience of enforcement of the farm animal codes of practice is any guide, there will be few resources to strategically and proactively enforce the Code.

c. Obligation to Report Animal Harm

The *Review Discussion Paper* considered a proposal that veterinary professionals should have obligations under the *ACPA* to report suspected incidents of animal cruelty or neglect to authorities. Making such reporting mandatory may to some extent militate against the possibility that the current discretionary obligations are overborne by commercial considerations, especially for lucrative, repeat clients. The *Review Discussion Paper* acknowledges the potential unintended consequence of such an obligation – that it might discourage an owner from seeking treatment for their animal. However, the overall benefits of such a provision may outweigh this potential unintended consequence. It should be noted that there was support from the veterinary profession for the proposed new approach when the legislation was introduced in 2001. Emmerson states that at that time the Queensland Branch of the Australian Veterinary Association had ‘continued to express disappointment that there are no provisions compelling third parties to report breaches of the duty of care provisions’.¹²

d. Use of Animals for Scientific Purposes

The Bill amends the definition of ‘scientific purpose’ to bring into line with the definition used in the *Scientific Use Code*.

The *Review Discussion Paper* asked whether other provisions in the *ACPA* relating to the scientific use of animals are appropriate. This was a nebulous question, with no information/data provided on the use of animals in research in Queensland to ground an analysis. It overlooked the fact that most of the regulatory heavy lifting in this area, including standard-setting, the keeping of animals, the make-up and role of Animal Ethics Committees (AECs), etc is achieved through the *Scientific Use Code*. The reason for the question is made clear by the Bill, which waters down the requirement that only veterinary surgeons perform acts of veterinary science on animals used for scientific use purposes. This change is justified on a ‘lowest common denominator’ ground – other jurisdictions allow this, so Queensland also must or risk losing research projects to other jurisdictions. This is manifestly not a change motivated by concern about the welfare of animals used in science. It is notable that, according to the Explanatory

¹⁰ See the list outlined in Jackson Walkden-Brown, ‘Animals and Entertainment’ in Peter Sankoff, Steven White & Celeste Black (eds), *Animal Law in Australasia* (2nd ed, 2013, Federation Press) 133-5.

¹¹ *Animal Welfare Act 1992* (ACT) s 18(1).

¹² Glenda Emmerson, ‘Duty and the Beast: Animal Care and Protection Bill 2001’ (Queensland Parliamentary Library, Research Brief No 2001/23, 2001) 23, citing Australian Veterinary Association, Queensland Branch, Personal communication, 27 August 2001.

Note, the Australian Veterinary Association raised concerns with allowing lay persons to perform relevant procedures. A vaguely expressed reliance on AEC oversight is stated to address such concerns.

There is a major flaw in blithe assurances about AEC oversight. The *Review Discussion Paper* noted that one of the purposes of the *ACPA* is to ensure that any use of animals for scientific purposes is accountable, open and responsible (as per s 3). This purpose is not being given effect to in the reporting activities of the Department. There is no easily accessible, detailed, annual provision of statistics on the use of animals in research and education, the purposes they were used for, the degree of invasiveness, the outcomes for animals and so on. This is surprising, given that organisations using animals in research and education are required to submit annual reports to the Department about their use of animals. No information is provided on the compliance, inspection and enforcement activities of the Department concerning the use of animals in research and education. A useful amendment to the legislation, therefore, would be to create a statutory duty to provide this type of basic information to the public.

Another important change that could be made in this area is to prohibit the use of primates in research unless in their interests. This would accord with the approach taken in New Zealand. Section 85 of the *Animal Welfare Act 1999* (NZ) provides that the use of non-human hominids cannot be approved for research, testing or teaching unless it would be in the *best interests* of the non-human hominid or in the *interests* of the non-human hominid and the benefits of use are not outweighed by the risks of use. The Government could also consider expanding the definition of 'animal' in s 11 of the *ACPA* (through the *ACP Regulation*) to reflect current animal welfare science research on the capacities of creatures not currently included.

e. Appointment of Inspectors, Powers of Inspectors and RSPCA Investigations

The Bill makes important changes regarding the appointment and powers of inspectors, and the extent to which DAF oversees RSPCA investigations/proposed prosecutions. Some of these changes give effect to recommendations of the Queensland Audit Office. To the extent they increase public accountability in animal welfare enforcement they are defensible.

However, by focussing principally on RSPCA Queensland, an opportunity has been missed for a serious, thorough, considered review of how to best administer animal protection legislation in Queensland. The narrow focus in this Bill serves merely to distract from the much deeper limitations besetting this area in Queensland.

The *Review Discussion Paper* stated that 'the government provides funding to support the RSPCA's inspection activities'. How much? Annually or as one-off grants? What proportion of total annual spending by RSPCA Qld on enforcement activities is funded by the government? In the absence of such information, there is a risk that read in isolation such a statement creates a misleading impression about the extent of government support.

The *Review Discussion Paper* refers to an activity agreement between the Department and RSPCA Qld. Why are current and past versions of this agreement not made publicly available by the Department?

While there may be a debate to be had about the merits of RSPCA Qld having an enforcement role for the *ACPA*, the role of other key regulatory actors should not be overlooked. Certainly, the available evidence suggests that in the enforcement areas for which RSPCA Qld is responsible (principally companion animals in coastal and south-east Queensland) it has been

increasingly effective over the past decade. Although the public information provided by RSPCA Qld about enforcement activities is limited and uneven, nonetheless published statistics are available about matters such as complaints/investigations, prosecutions and, sometimes, use of Animal Welfare Directions.¹³ There is also some information made available about spending on inspectorate activities. This contrasts starkly with the Department where, until recently, no such information at all was routinely made available to the public. That which has recently been made available is threadbare.¹⁴

What budget does the Department allocate to animal welfare matters annually, including for compliance monitoring, inspection, and enforcement? How many complaints does the Department receive annually? How many are investigated? With what outcome? How many AWDs are issued on an annual basis and what follow up is there? How many prosecutions? What proportion of the time of biosecurity inspectors is spent on animal welfare matters? Does the Department have adequate resources and IT infrastructure to collect/capture data of this type, collate the data and report the data? In the absence of collated data how is the Department able to adopt a strategic approach to information collection, compliance monitoring and enforcement? Does this mean the Department operates on a purely reactionary basis, responding only on a piece-meal basis to members of the public or media highlighting animal welfare concerns? If the issue is one of resources, and the Government is sincere in stated commitments to animal welfare, why are extensive taxpayer subsidies provided to a range of animals users, especially in agriculture, with no significant investment in the Government's responsibility for animal welfare?

Some of these sorts of questions were raised by the Committee at the Public Briefing on this Bill. It is notable that when the Committee sought information about prosecutions, the Deputy Director-General, perhaps anticipating a release of data would show negligible prosecution activity by the Department, stated:

I could just make a general comment in relation to prosecutions and legislation and the way the act works. As you would be aware, we seek to provide directions, education and training to the livestock industry in particular in relation to where there may be potential breaches or animals are not being cared for as a first step in the process. Prosecutions are certainly something where there needs to be very well prescribed and described offences against the act¹⁵

Again, the Department might be engaging in the activities stated. But no information is provided to the public on what is being conducted, why and when, and how effective these approaches are.

As recently as late 2019 the Queensland Parliament's State Development, Natural Resources and Agricultural Industry Development Committee stated:

¹³ See, eg, RSPCA Australia, *Annual Statistics* <<https://www.rspca.org.au/what-we-do/our-role-caring-animals/annual-statistics>>.

¹⁴ See DAF, 'Animal welfare complaints data overview' <<https://www.daf.qld.gov.au/business-priorities/biosecurity/animal-biosecurity-welfare/welfare-ethics/animal-welfare-complaints-data-overview>>.

¹⁵ State Development and Regional Industries Committee, Public Briefing – Inquiry into the Animal Care and Protection Amendment Bill 2022 (Transcript of Proceedings, 23 May 2022) 10 <<https://documents.parliament.qld.gov.au/com/SDRIC-F506/ACPAB2022-D15B/Transcript%20-%2023%20May%202022%20-%20SDRIC%20-%20Briefing%20-%20Animal%20Care%20and%20Protection%20Amendment%20Bill%202022.pdf>>.

It is difficult for the public to obtain accurate information about animal welfare generally. Information and greater detail on animal welfare investigations will support better understanding in the community about practices and standards in Queensland's animal production industries as well as animal welfare in the community more broadly. The committee notes that DAF provides only brief information on investigations by welfare inspectors in its annual reports or elsewhere. The committee sees great value in enhancing transparency in this area.¹⁶

This statement, coming as it does in the majority/Government-controlled committee report, is damning. Perhaps equally damning is that since the report there has been little meaningful change in the Department's approach to transparency in animal welfare matters.

The Productivity Commission has highlighted the problems with the Commonwealth Department of Agriculture's role in standard-setting for farm animal protection and recommended the creation of an independent statutory agency to fulfil this and other tasks.¹⁷ The reasons for recommending this approach apply equally to the State Department (and across areas other than farm animal protection). The opportunity exists for Queensland to take a leading role in animal welfare by establishing an independent office of animal welfare, properly funded and kept at arms-length from the Department of Agriculture and Fisheries.

Yours sincerely,



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¹⁶ State Development, Natural Resources and Agricultural Industry Development Committee, *Agriculture and Other Legislation Amendment Bill 2019* (Queensland Parliament, Report No 37, October 2019) 11 <<https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2019/5619T1751.pdf>>.

¹⁷ Productivity Commission, *Regulation of Australian Agriculture* (Report No 79, 15 November 2016) ch 5.