Speech by

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ANIMAL CARE AND PROTECTION BILL

Mrs LAVARCH (Kurwongbah—ALP) (12.40 p.m.): In 1925, the Queensland parliament, with William Gillies as Premier, coming after Ted Theodore—

Mr Schwarten: Both Labor premiers.

Mrs LAVARCH: I thank the minister for filling me in on the history. The parliament at that time debated and then enacted the Animals Protection Act. That debate is instructive when considering the current bill before the House, the Animal Care and Protection Bill 2001. Looking at the second reading debate that occurred 76 years ago in relation to the act that the current bill will replace reveals some common threads. Without labouring the point, I believe it is worth while in this debate to explore those common threads in some detail.

Queensland of 1925 was, as it is now, an exciting place to be. Less than 10 years after the First World War, the state was still recovering from the enormous social and economic changes that conflict had wrought upon Australia. It was a time of economic growth, and the great agricultural industries of the state were enjoying a period of export growth into the markets of Great Britain and its empire.

The Animals Protection Act 1925 was good, even foresighted legislation for the time. It recognised that owners had some responsibilities towards certain animals they owned. Cruelty to animals, when found, should be an offence in some cases and dealt with by the law.

Responsibility for the 1925 act's passage was in the hands of the Home Secretary, Mr Stopford.

Mr Schwarten: The member for Mount Morgan.

Mrs LAVARCH: The minister is good.

Mr Schwarten: He later became a federal member for Maryborough.

Mrs LAVARCH: I thank the minister. Mr Stopford spoke of the 40-year existence of the Society for the Prevention of Cruelty to Animals in Queensland and the fact that it had been operating under a 25-year-old act that did not give the society sufficient powers to fulfil its humane functions. Specifically, he spoke of the society's lack of powers to enter private property.

The examples of animal cruelty referred to by the Home Secretary and other members in the 1925 debate related to working animals, horses and farm animals such as pigs. The treatment of homing pigeons was of great concern, but this was not surprising given the role that pigeons played in communications in the Great War. The 1925 act made it an offence to shoot or detain a homing pigeon. While the opposition spokesman, Mr Morgan, the member for Murilla, supported the bill, he foreshadowed one of the problems that is still apparent today, which is the need for state authorities to take action to enforce the law and not rely solely on the RSPCA.

The 1925 act had, in turn, replaced the 1901 Animals Protection Act. That act dealt entirely with work related uses of animals such as overriding, overdriving, overworking, overloading or conveying any animal that is unfit for any such work use. It is interesting to note that the 1901 act expressly exempted from cruel acts the extermination of rabbits, marsupials and wild pigs. Of course, the 1925 act has been amended repeatedly over the years, yet, as the minister has indicated, the regime applying to the protection of animals in Queensland is outdated and inadequate. That is why this bill is needed.

The bill now before the House has at its core the use of the five freedoms of animal welfare enunciated by the landmark report by the 1965 Brambell committee in the United Kingdom. Those five principles are: freedom from hunger and thirst by ready access to fresh water and a diet to maintain full health; secondly, freedom from discomfort by providing an appropriate environment; thirdly, freedom from pain, injury and disease; fourthly, freedom to express normal behaviour; and, fifthly, freedom from fear and distress. Those freedoms form the basis of a duty of care that a person in charge of an animal owes to that animal. Failure to meet this duty of care is an offence under this bill. In large measure, the bill explains how a duty of care is to be determined and the various exemptions that apply to allow actions that would otherwise be a breach of the duty of care and, therefore, an offence.

The notion of a duty of care is a concept that is usually associated with the law of torts and, in particular, the law of negligence. A duty of care is owed when a person can foresee that damage or injury might result from that person's conduct. A duty of care, of course, exists in a range of human relationships, for instance, the duty a parent has to a child, a professional service provider has to a client or an employer has to an employee.

To apply the notion of a legally enforceable duty of care to animals would be regarded as quite remarkable to the legislators of 1925. In fact, in 1925 duties of this type were recognised by law in cases of direct relationships, that is, between people. The modern law of negligence and obligations owed to the community more generally only became established seven years later in 1932 in the celebrated decision of the House of Lords in Donoghue v. Stevenson. The idea that animals are owed a duty of care would have been regarded as quite outlandish to say the least. Clause 17(3) of the bill outlines the basis of complying with that duty of care. Clause 17(4) applies an objective test of a reasonable person's behaviour in the circumstances in assessing if a duty has been breached.

The bill also provides that codes of practice will or may be applied to give more detailed standards of care and require that these be met in satisfying a duty of care in particular circumstances. Codes can be legally binding if so prescribed by regulation, or not legally binding. If not legally binding, the standards in the code will be indications if a duty has been breached. Compliance with the code would be a defence to a charge of a breach of duty of care.

A legally binding code will provide standards that must be complied with. Failure to match the standards in the code with the practice will be an offence. An example of a binding code is that applying to the care and use of animals for scientific purposes. Also, the Circus Federation of Australasia has a code relating to the use of animals in circuses that it has requested be made mandatory.

The ability to make specific codes for particular industries and uses for animals is a worthwhile power as it enables appropriate standards to protect animals. However, I believe that there are several points that need to be considered carefully. Firstly, it will be important that a specific industry or sectorial interest group is not able to dominate the code's development process so as to apply standards that water down, inappropriately or unjustifiably, the general duty of care based upon the five freedoms. A variety of stakeholders need to be involved to guarantee a balanced outcome. Secondly, parliament should always examine closely the powers to create criminal offences by way of regulation rather than express legislative enactment. While the system here proposes the tabling of the codes as regulation, and hence there exists a power of parliament to disallow the instrument, the use of such mechanisms is not overly desirable. I have spoken before in parliament about privatisation of the regulatory system by the use of self-regulatory codes and semi-private law making. In general terms I believe that the benefits of such practices outweigh the downsides, but vigilance is called for. In this case, I think that the balance is right, provided that the code development process is open, accountable and broadly based.

Of course, the area of animal protection has featured probably the most celebrated example of the privatisation of law enforcement. I speak here of the role of the RSPCA. In his second reading speech, the minister pointed out that the RSPCA has carried a tremendous burden in promoting and enforcing good standards in the prevention of cruelty. It is an organisation with strong credibility in the general community, although it has had some internal governance issues to confront in the recent past.

It is reasonably unusual for a private organisation to have what amounts to certain police powers and the capacity to compel private individuals to take various actions. There are, however, some similar circumstances of private bodies with enforcement powers such as the Australian Stock Exchange in relation to its listing rules applying to public companies. But as a general principle, powers of enforcement and compulsion are vested solely in public institutions.

What is particularly unsatisfactory under the 1925 act is that there is no real statutory accountability mechanism for the RSPCA in how it carries out its statutory powers. Clearly, such an absence of procedural scrutiny is unacceptable in any enforcement body. The regime established under this bill provides that persons may be appointed by the chief executive officer as inspectors. To be appointed a person must be a public servant, an employee of the RSPCA or included in a class of persons declared by regulation.

Importantly, the chief executive officer must also be satisfied that the person has the experience to be an inspector or qualified by training for the job. The law also provides comprehensive provisions regarding the right to enter property and the occasions this can take place without a warrant. In total, the new regime is much more open and accountable than that which it will replace.

While in one sense the bill will impose a more stringent regime upon the RSPCA, the society is nonetheless highly supportive of the bill. I note that Mr Mark Townsend, CEO of the society, has applauded the bill and urged its quick passage through this parliament.

Agforce is also a supporter. This is not surprising, as the original law in the area has always focused solidly on the use of working animals in agricultural pursuits. Given the increasing globalisation of good practice standards, Queensland producers might have been faced with some restrictions in access to markets if our laws protecting animals were not up to international standards.

In conclusion, Queensland has moved considerably from the debates which accompanied the 1901 and 1925 predecessors of this bill. The notion of a duty of care is innovative and timely. The introduction of accountability standards to the enforcement of the law is also welcome. The balance between public and private enforcement appears right and is, of course, consistent with the century-long role played by the RSPCA. This law will put Queensland in the forefront of this area and is deserving of this parliament's support.