

Animal Care and Protection and Other Legislation Amendment Bill 2012

Report No. 5
**Agriculture, Resources and Environment
Committee**
July 2012

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Other Legislation Amendment Bill
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Acknowledgements

The committee thanks those who briefed the committee and contributed their views at the Roundtable meeting on 27 June 2012, or otherwise contributed to the inquiry.

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Abbreviations

AREC	Agriculture, Resources and Environment Committee
DAFF	Department of Agriculture, Fisheries and Forestry
DATSIMA	Department of Aboriginal and Torres Strait Islander and Multicultural Affairs
DOGIT	Deed of Grant in Trust
RSPCA	Royal Society for the Prevention of Cruelty to Animals

Chair's foreword

This report presents a summary of the committee's examination of the Animal Care and Protection and Other Legislation Amendment Bill 2012.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

I commend the report to the House.

A handwritten signature in blue ink, appearing to read 'I. Rickuss', is positioned above the printed name.

Mr Ian Rickuss MP
Chair

July, 2012

Executive summary

This Report presents the findings of the Agriculture, Resources and Environment Committee's examination of the Animal Care and Protection and Other Legislation Amendment Bill 2012. The Legislative Assembly referred the Bill to the committee on 19 June for examination and report by 2 July 2012.

The Bill attempts to balance animal welfare with Aboriginal and Torres Strait Islander hunting rights.

The Department of Agriculture, Fisheries and Forestry and the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs assisted the committee in its work. The committee was also assisted by representatives of Aboriginal and Torres Strait Islander councils and peak bodies and the RSPCA.

After consideration of the views of participants in the examination of the Bill, and the advice provided, the committee recommends the Bill be passed. The committee has also made a recommendation about the wording of provisions in Clause 10 of the Bill.

The committee has also sought clarifications and assurances from the Minister regarding the consultation to be conducted by the department with affected stakeholders, about the provisions in clauses 3 and 8.

Recommendations

Parliamentary Committees



Recommendation 1 **8**

The committee recommends that the communication and implementation strategy for the provisions contained in the Bill, if passed, should be amended to provide a twelve month grace period for enforcement of the *Animal Care and Protection Act 2001* in respect of acts done under Aboriginal tradition or Torres Strait Islander custom.

Point for clarification **8**

The committee seeks the Minister's assurance that the consultation on the provisions in the Bill will include specific, detailed advice to all affected individuals and community groups regarding appropriate methods for killing animals that will cause the least amount of pain that is reasonable under their local circumstances.

Recommendation 2 **9**

The committee recommends that the Animal Care and Protection and Other Legislation Amendment Bill 2012 be passed.

Recommendation 3 **9**

The committee recommends that the Minister seek the support of the House for the committee to review the legislation twelve months after its commencement.

Point for clarification **10**

The committee seeks the Minister's clarification as to the rationale for the amendment proposed in clause 3(2) to section 61 (Right of Aborigines and Torres Strait Islanders to particular natural resources) of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*.

The committee also seeks assurances that this amendment is necessary, that it is not discriminatory against Aboriginal and Torres Strait Islander people who reside in certain communities to whom the Act applies, and that it does not conflict with rights under section 211 of the *Native Title Act 1993* (Cth).

Point for clarification **13**

The committee invites the Minister to provide assurances that clause 8 can be legislatively effective having regard to the *Native Title Act 1993* (Cth) and section 109 of the *Commonwealth Constitution*.

Recommendation 4 **15**

The committee notes that the wording in proposed section 41A(2) in clause 10 is consistent with the Act but has concerns, and recommends that the proposed section be amended if possible to ensure that clear wording is substituted and clear examples of permissible hunting methods are included. This would remove some of the ambiguity and give individuals and community groups a clearer understanding of their obligations under the legislation.

1 Introduction

Role of the committee

The Agriculture, Resources and Environment Committee is a portfolio committee established by a resolution of the Legislative Assembly on 18 May 2012. The committee's primary areas of responsibility are agriculture, fisheries and forestry, environment and heritage protection, and natural resources and mines.¹

In its work of Bills the committee is responsible for considering the policy to be given effect and the application of the fundamental legislative principles.²

In relation to the policy aspects of the Bill, the committee's considers the approaches of departments to consultation with stakeholders and the effectiveness of this consultation. The committee may also examine the strategies by departments to implement provisions that are enacted.

Fundamental legislative principles are defined in Section 4 of the *Legislative Standards Act 1992* as the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to the rights and liberties of individuals, and the institution of parliament.

The referral

On 19 June 2012, the Legislative Assembly referred the Animal Care and Protection and Other Legislation Amendment Bill 2012 to the committee for examination and report. The Committee of the Legislative Assembly subsequently amended the reporting date to 2 July 2012 in accordance with Standing Order 136(1).

The committee's processes

Given the short timeframe provided to examine the Bill and to prepare a report to Parliament (nine full days), and given the subject matter of the Bill and the particular difficulties of engaging effectively with Aboriginal and Torres Strait Islander stakeholders located in remote communities and across the state, the committee resolved not to attempt a public submission process for the inquiry.

In lieu of a public submission process, the committee hosted a roundtable discussion at Parliament House with a group of key stakeholders identified by the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs (DATSIMA). The meeting commenced with a summary briefing on the Bill provided by departmental officers. Stakeholders attended the meeting either in person or by phone and provided oral submissions about the Bill. Departmental officers were able to provide clarifications of a number of points raised by stakeholders during the meeting.

For its examination of the Bill the committee also:

- received a private briefing on the Bill by the Department of Agriculture, Fisheries and Forestry (DAFF) and DATSIMA
- wrote to Indigenous councils across the state advising of the committee's examination of the Bill and inviting comments to raise at the roundtable meeting on 27 June 2012, and

¹ Schedule 6 of the [Standing Rules and Orders of the Legislative Assembly of Queensland](#) as at 18 May 2012.

² Section 93 of the [Parliament of Queensland Act 2001](#).

- sought advice from DAFF about the consultation process. According to the Explanatory Notes to the Bill, this consultation was to commence after the Bill was presented to the Legislative Assembly on 19 June 2012.

Appendix A lists the participants in the committee's roundtable meeting with key stakeholders and departmental briefing officers.

As noted above, the committee did not invite written submissions on the Bill. Despite this, the committee received and accepted two submissions. These submissions are at Appendix B.

2 Animal Care and Protection and Other Legislation Amendment Bill 2012

Primary policy objectives

Hon John McVeigh MP, Minister for Agriculture, Fisheries and Forestry, noted in his introductory speech that the main objective of the Bill is to ensure that animal welfare obligations under the *Animal Care and Protection Act 2001* apply to dealings with animals under Aboriginal tradition or Torres Strait Islander custom.³

The Bill proposes amendments to several Acts to achieve this objective whilst also seeking to establish a balance between the interests of Aboriginal and Torres Strait Islander people in maintaining their traditional and customary practices, and animal welfare considerations.

The Bill seeks to amend the *Animal Care and Protection Act 2001* to:

- ensure that a person who is authorised to deal with animals in accordance with Aboriginal tradition or Islander custom under the *Nature Conservation Act 1992* is subject to the animal welfare obligations under the *Animal Care and Protection Act 2001*, and
- require that animals that are hunted under Aboriginal tradition or Islander custom are dealt with in a way that causes them as little pain as is reasonable.

In addition to amending the *Animal Care and Protection Act 2001*, the Bill seeks to amend the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* to ensure that a person who is authorised to hunt marine fauna under section 61 of that Act is subject to the animal welfare obligations contained in the *Animal Care and Protection Act 2001*.

The Bill also seeks to amend the *Aurukun and Mornington Shire Leases Act 1978* to ensure that an Aboriginal person who is authorised to capture, possess, kill and consume native fauna under section 26 of that Act is subject to the animal welfare obligations under the *Animal Care and Protection Act 2001*.

Lastly, the Bill proposes amendments to the *Nature Conservation Act 1992* to ensure that an Aboriginal or Torres Strait Islander person authorised to deal with animals under section 93 of that Act would be subject to the animal welfare obligations under the *Animal Care and Protection Act 2001*.

Context for the Bill

As explained above and in the explanatory notes to the Bill, the LNP announced during the 2012 election campaign that it would, if elected, implement policies to protect precious wildlife from cruelty in the course of traditional hunting:

The LNP will remove the current exemption for traditional hunters from the law that makes it illegal for anyone to wound, mutilate, torture or unnecessarily prolong the death of an animal – enforceable with penalties of up to two years in jail or a \$100,000 fine.

Under this exemption, Aborigines and Torres Strait Islanders undertaking traditional hunting and fishing are not liable to a penalty if they are cruel to an animal. Queensland is the only Australian

³ Queensland Parliament 2012, *Record of Proceedings*, Brisbane, 19 June, p. 744.

jurisdiction with animal welfare legislation that expressly exempts dealings with animals according to Aboriginal tradition or Islander custom.⁴

The LNP policy commitment followed the airing of a story on the *7:30 Report* on the ABC which showed graphic film footage of the killing of a turtle and a dugong by Indigenous hunters. The film, which was recorded covertly, showed a turtle being butchered whilst still alive, and a dugong being towed to its death behind a boat. The treatment of the turtle and dugong and the use of unauthorised, covert footage in the story by the ABC journalist were widely criticised by Aboriginal and Torres Strait Islander groups and others.

The LNP policy commitment is contained in the Government's *First 100 Day Action Plan* as follows:

Amend the Animal Care and Protection Act 2001 to bring Queensland in line with other states and protect Queensland's iconic dugong and turtle population.

The committee notes that the Government is of the view that the matters of concern only arise in relation to the unacceptable activities of a minority of Indigenous hunters rather than as a result of widespread cultural practices. The committee also notes the views of experts that dugong habitats managed by traditional owners are very healthy⁵, and the views of traditional owners that species such as dugong suffer due to the effects of adverse weather events, boat strikes and littering of their environment.⁶

Animal cruelty provisions in the *Animal Care and Protection Act 2001*

The *Animal Care and Protection Act 2001* (Qld) aims to promote the responsible care and use of animals and to protect animals from cruelty. Amongst other matters, the Act prohibits a person from being cruel to an animal (s 18). Section 18(2) provides a number of examples of animal cruelty. These include unjustifiably, unnecessarily or unreasonably injuring or wounding an animal, and killing an animal in a way that is inhumane, or causes it not to die quickly, or causes it to die in unreasonable pain.

According to the definition in the Schedule to the Act, pain includes distress and mental or physical suffering.

Current exemptions under the Act

The *Animal Care and Protection Act 2001* provides a number of exemptions from the cruelty offence provisions. These include cruelty associated with fishing, slaughter under religious faith and Aboriginal tradition or Islander custom. The Bill only proposes to remove the exemption under s.8(1) for Aboriginal tradition or Islander Custom.

Section 8(1) provides that the Act does not currently apply to, or affect an act done or omission made by, an Aborigine under Aboriginal tradition or a Torres Strait Islander under Island custom (s 8(1)). Thus, for example, an Aborigine or a Torres Strait Islander who is hunting or fishing as a traditional activity and is cruel to an animal is not liable to the maximum penalty of \$100,000 (1,000 penalty units) or two years imprisonment to which another person would be liable (s 18).

⁴ For a discussion of animal protection legislation in other Australian states, see the Queensland Parliamentary Library Blog post on *The Aboriginal Tradition and Torres Strait Islander Custom Exemption in the Animal Care and Protection Act 2001 (Qld)*.

⁵ Trad, J. 2012, *Roundtable Transcript*, 27 June, p.10.

⁶ Burns, D. 2012, *Roundtable Transcript*, 27 June, p.4.

Consultation by departments on the Bill

On the basis of its election and the mandate this provides to implement its announced policies, the LNP Government developed the Animal Care and Protection and Other Legislation Amendment Bill 2012 without further public consultation. Instead, as stated in the explanatory notes to the Bill, consultation was to occur on the implementation of the Bill ‘...once the Bill has been introduced into Parliament.’

From the comments by stakeholders during the roundtable meeting on 27 June, it appears there has been no consultation by departments with stakeholders since the Bill was introduced. The statements and advice provided by DAFF to the committee indicate that the consultation envisaged by departments and foreshadowed in the explanatory notes is intended to ‘...communicate the intent of the proposed legislative amendments broadly to all key stakeholders’.⁷ The committee notes that these processes are to commence after the Bill is passed.

In advice to the committee, DAFF stated:

A communication and implementation strategy, to be led by the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs and Minister Assisting the Premier, is being finalised and will be implemented during the six month grace period which will apply to enforcement of the amended Act i(f) passed by the Queensland Parliament.

In the initial information phase of the strategy, the State Government will communicate the intention of the proposed legislative amendments broadly to key stakeholders.

The Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs will lead the communication strategy and will write to indigenous councils, peak bodies, community organisations, land and sea management agencies and land-holding bodies in coastal areas and all other relevant identified parties in order to broadly communicate the intent of the amendments. The Minister intends to discuss the amendments with relevant community leaders in his forthcoming visits to the communities of Weipa, Napranum, Hopevale and Palm Island, and subsequently, in the exercise of his Ministerial responsibilities.

Phase two of the strategy will highlight communities and community leaders who practice humane hunting methods or are actively working to develop humane hunting methods and also actively engage with communities where there is evidence of community concerns in relation to the effect of the animal welfare amendments.

Communication and consultation will acknowledge the long-term work of many communities in dugong and turtle sustainability and in particular, sustainable hunting practices and will encourage community-led efforts to ensure hunting practices cause as little pain as is reasonable.⁸

The importance of consulting with Aboriginal and Islander people and representative bodies on proposed legislation was noted by the former Scrutiny of Legislation Committee.⁹ Consultation on a Bill after its introduction into Parliament is unusual, even where there may be strong public support for the policy the Bill seeks to give effect to. Any changes to the provisions identified during the consultation period and deemed necessary will necessitate further amending legislation to be brought before the House.

⁷ Thompson, J. 2012, *Roundtable Transcript*, 27 June, p.2.

⁸ Noyes, J. 2012, *Correspondence*, 28 June, pp.3-4.

⁹ Scrutiny of Legislation Committee 2001, [Alert Digest No.1](#), 15 May, p.2.

The committee acknowledges its own consultation shortcomings. The shortened timeframe set for the committee to examine the Bill has resulted in less than ideal consultation opportunities for affected stakeholders.

The committee notes that in the absence of effective consultation with stakeholders, there is the potential to alienate affected parties while also failing to acknowledge their contributions. In regard to the hunting of dugong and turtle, the committee notes that Aboriginal and Torres Strait Islander groups have been working for some time in partnership with community members, the RSPCA and scientists to devise methods that are practical and designed to address cruelty concerns.

At the roundtable meeting on 27 June, the committee heard concerns from Aboriginal and Torres Strait representatives and the LGAQ about the lack of consultation by the government:

Councillor John Abednego of the Torres Shire Council told the committee:

*There has been insufficient consultation on this important issue from the Aboriginal and Torres Strait Islander perspective. We have to be consulted properly.*¹⁰

Mr John (Toshi) Kris, Chairperson of the Torres Strait Regional Authority, told the committee:

...the Torres Strait Regional Authority does not support these amendments. We say that because there has been a lack of consultation with traditional owners about this bill and it sends a clear message to the Aboriginal and Torres Strait Islanders about the state government's view about basic rights to cultural identify and wellbeing of our livelihood.

*The government must also take into consideration and appreciate that we also have an international border. Parts of that treaty relate to traditional hunting for traditional owners who participate within the treaty.*¹¹

And

If we are going to start changing acts without consultation, we need to really look at the Commonwealth and how they adopted the United Nations Declaration on the Rights of Indigenous Peoples and their cultural practices. If the government is going to start changing legislation that spoils Indigenous practices without consultation with traditional owners, that is really bordering on discrimination.

*What the government needs to do is to take into consideration that the Torres Strait Regional Authority, with other stakeholders such as the local shire council within our region, has worked tirelessly in putting up programs within our areas to look at tackling issues such as these.*¹²

Mr Richard Ahmat, Chair of the Cape York Land Council, told the committee:

*I want it noted that Cape York, in partnership with everybody else in this room who is a traditional owner, would oppose the bill until there is a proper consultation process carried out over the next six to seven months. It has to happen because you are interfering with Aboriginal lives, culture and livelihood.*¹³

¹⁰ Johnstone, C. 2012, *Roundtable Transcript*, 27 June, p.7.

¹¹ Kris, J. 2012, *Roundtable Transcript*, 7 June, p.6.

¹² Kris, *Transcript*, p.9.

¹³ Ahmat, R. 2012, *Roundtable Transcript*, 27 June, p.9.

Ms Melissa George, Chair of the Indigenous Reef Advisory Council, told the committee:

...the reaction of the government to listen to the voices of a few people without giving proper consideration and respect to Aboriginal and Torres Strait Islander rights and interests around the species is something that is quite frustrating and is a process that should not be undertaken without proper consultation.¹⁴

Mr Craig Johnstone of the LGAQ which represents 73 local councils in Queensland, 17 of which are Aboriginal and Torres Strait Islander communities, told the committee:

We are very concerned about the lack of consultation associated with the bill and the apparent need for the state government to expedite the legislation and usurp what are usual practices. We realise that this was part of the 100-day action plan that the government is pursuing, but we also need to point out that the LNP government does have a policy of properly empowering local government and giving people a real say on the future direction of their community, just to quote an LNP document.

We do not think that expediting the parliamentary committee process in this way and this legislation honours that commitment.

We also are conscious that the LNP is committed to introducing a partners-in-government agreement, which we understand will promise to give adequate prior consultation for any legislation introduced that may affect LGAQ membership and, of course, local communities. Again, we do not think that the process that has been followed here honours that commitment.¹⁵

Committee comment

The committee notes that the failure to consult stakeholders during the development of the Bill has alienated some representatives of Aboriginal and Torres Strait Islander communities. The committee welcomes the leadership role that the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs and Minister Assisting the Premier will play in the consultation with stakeholders groups and communities about the provisions in the Bill. The committee encourages the Minister to ensure Aboriginal and Torres Strait Islander Community representatives are closely involved in the remaining stages of this work.

For its own consultation, the committee thanks the representatives from Aboriginal and Torres Strait Islander communities and peak bodies from North Queensland and South East Queensland who participated in the committee's roundtable discussions of the Bill on 27 June.

The committee notes the six month grace period the department proposes to observe in respect of its enforcement of the provisions in the Bill, if passed. The committee also notes that the scientific community and the RSPCA, as the enforcement agency, will require sufficient time to gain a full understanding of world's best practice methods for hunting protected species that causes as little pain as is reasonable. The departments that implement and administer legislation for Aboriginal and Torres Strait Islander communities will need to ensure that ample time and resources will be allocated to the implementation of the proposed provisions.

The committee also notes that the LNP took a policy to the 2012 Queensland Election that it would be illegal for anyone to wound, mutilate, torture or unnecessarily prolong the death of an animal. This issue received widespread media coverage in North Queensland from early 2012.

Given the work required, the committee believes that the grace period should be extended to twelve months.

¹⁴ George, M. 2012, *Roundtable Transcript*, 27 June, p.8.

¹⁵ Johnstone, C. 2012, *Roundtable Transcript*, 27 June, p.4.

Recommendation 1

The committee recommends that the communication and implementation strategy for the provisions contained in the Bill, if passed, should be amended to provide a twelve month grace period for enforcement of the *Animal Care and Protection Act 2001* in respect of acts done under Aboriginal tradition or Torres Strait Islander custom.

Point for clarification

The committee seeks the Minister's assurance that the consultation on the provisions in the Bill will include specific, detailed advice to all affected individuals and community groups regarding appropriate methods for killing animals that will cause the least amount of pain that is reasonable under their local circumstances.

3 Examination of the Bill

Should the Bill be passed?

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed. The committee considered the form and policy intent of the Bill. The committee notes that the Bill extends the coverage of animal cruelty protections under the *Animal Care and Protection Act 2001* to the taking, keeping and use of animals in the exercise Aboriginal tradition or Islander custom.

The committee also notes that the Bill seeks to balance the interests and rights of Aboriginal and Torres Strait Islander people in maintaining traditional and customary practices with the welfare of animals and the broad community interests in minimising animal cruelty.

After examining the Bill, the committee determined that the Bill should be passed.

Recommendation 2

The committee recommends that the Animal Care and Protection and Other Legislation Amendment Bill 2012 be passed.

Recommendation 3

The committee recommends that the Minister seeks the support of the House for the committee to review the legislation twelve months after its commencement.

From its examination of the Bill draws the House's attention to the following clauses of the Bill.

Clause 3 Amendment of s 61 (Right of Aborigines and Torres Strait Islanders to particular natural resources)

Section 61 (Right of Aborigines and Torres Strait Islanders to particular natural resources) of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* provides an immunity for hunting and consuming marine fauna in a DOGIT [Deed of Government in Trust] community and in some regional council areas.¹⁶

Clause 3 amends section 61 in two ways. Firstly, 3(1) amends the section to make 'an authorisation to deal with animals' under the section to be subject to the *Animal Care and Protection Act 2001*. This is clearly consistent with the stated policy intent of the Bill.

The clause also amends section 61 to impose a new condition on the immunity provided by the section. Essentially the immunity would not apply unless meat [from hunting] is consumed within the community [ie community government or IRC (Indigenous Regional Council) area].¹⁷

A number of Aboriginal and Torres Strait Islander representatives raised concerns about the policy intent and effects of this proposed amendment. The committee notes that the Explanatory Notes to the Bill do not explain the rationale for this amendment.

In his evidence, Mr Terry Piper of the Balkanu Cape York Development Corporation noted adverse impacts on Indigenous people's rights with no animal welfare benefits:

...under the current situation people from a community can take dugong and turtle. What this amendment means is they have to consume that dugong and turtle back within the community or the local government area. That has nothing to do with animal welfare.

¹⁶ Ybarlucea, C. 2012, *Roundtable Transcript*, 27 June, p.11

¹⁷ Ybarlucea, *Transcript*, p.11.

*It was never part of the election commitment. In our view it is a sleight of hand that has happened in the act to change Aboriginal people's rights, and it is not appropriate for that kind of thing to happen without any consultation or advice, and it has broad-ranging implications on Cape York and the Torres Strait.*¹⁸

Ms Melissa George, Chair of the Indigenous Reef Advisory Committee, described the provision as 'discriminatory' because it targets a specific group of people who live on communities, and does not deal with other people outside of those communities. (George transcript p.8) Ms George also questioned the need for the provision and flagged potential conflicts with rights under section 211 of the *Native Title Act 1993* (Cth):

...there are already provisions to essentially stop the black market trade of turtle and dugong meat. It is once again a clause being developed to place an imposition on Indigenous communities. There are already provisions within the Nature Conservation Act which hold penalties for the sale of turtle and dugong meat and if you go to Torres Strait you will notice that there are notices in every community council and every store that state this so people are aware that it is a provision under the act. I think creating another layer of legislation that will do the same thing as something else does is ludicrous and from a traditional owner perspective, your section 211 right under the national Native Title Act is for communal and non-commercial use of resources.

*Aboriginal and Torres Strait Islander people have been saying for years if there is someone out there who is doing the wrong thing we want them prosecuted, we want their boat taken off them, we want them made an example out of. For too long, because people want this thing to happen, the finger gets constantly pointed back to Aboriginal and Torres Strait Islander people who are perceived to be doing the wrong thing where there are mechanisms that already exist within the statute, both at the state and Commonwealth level, which support the business of Aboriginal and Torres Strait Islander people and these need to be considered and recognised and implemented and not sort of chucked to the side and ignored as they generally are.*¹⁹

These points were not addressed during departmental briefings on the Bill. The committee invites the Minister to provide clarifications for consideration during the Second Reading debate of the Bill.

Point for clarification

The committee seeks the Minister's clarification as to the rationale for the amendment proposed in clause 3(2) to section 61 (Right of Aborigines and Torres Strait Islanders to particular natural resources) of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*.

The committee also seeks assurances that this amendment is necessary, that it is not discriminatory against Aboriginal and Torres Strait Islander people who reside in certain communities to whom the Act applies, and that it does not conflict with rights under section 211 of the *Native Title Act 1993* (Cth).

¹⁸ Piper, T. 2012, *Roundtable Transcript*, 27 June, p.10.

¹⁹ George, M. 2012, *Roundtable Transcript*, 27 June, p.12.

Clause 8 Replacement of s 8 (Aboriginal tradition and Island custom)

Rights and liberties – Aboriginal and Torres Strait Islander custom

Section 4(3)(j) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation has sufficient regard to Aboriginal tradition and Island custom.

Animal cruelty is prohibited under section 18 of the *Animal Care and Protection Act 2001*. Section 8 of that Act provides that the Act does not apply to an act done by an Aborigine under Aboriginal tradition or a Torres Strait Islander under Island custom, exempting these groups of people from the Act. Section 8 also provides that if a regulation prescribes conditions for the doing of an act in these circumstances, the exemption only applies if the conditions are complied with. There is an acknowledgement in section 8 that a proposed regulation is likely to impose costs on the community.

The Animal Care and Protection Regulation 2002 (Qld) does not specify any conditions as permitted by section 8.

The Explanatory Notes to the 2001 Bill (which preceded the Act) stated that the proposed clause 8 acknowledged that native title rights, traditions and customs should be recognised but balanced with the welfare of animals. The Explanatory Notes went on to provide that clause 8 allowed for a focussed approach (consultation with relevant Indigenous groups) to determine which current traditional practices may involve significant pain to an animal and cause for community concern.

The Explanatory Notes noted that consultation with relevant Indigenous groups would be through a Regulatory Impact Statement under the *Statutory Instruments Act 1992* before a regulation was made, as the regulation would be likely to impose appreciable cost on the community.

Clause 8 of the current Bill replaces section 8 of the Act and removes the exemption for acts done in the exercise of native title rights or interests. The Explanatory Notes to the Bill note that the alternative to replacing clause 8 of the Act would be to make a regulation prescribing conditions for dealing with animals in accordance with Aboriginal tradition and Islander custom. The Explanatory Notes further state that where prescribed conditions are complied with, the broader animal welfare obligations under the Act would not apply to Aboriginal and Torres Strait Islander persons exercising tradition and custom.

The committee questions whether the Bill has sufficient regard to Aboriginal tradition and Island custom given its potential to adversely impact upon these rights. Although the Bill does not extinguish native title rights to hunt or otherwise deal with animals, nor prevent the exercise of those hunting rights, it does affect how these hunting rights are conducted and in doing so, directly affects the interests of Aboriginal and Torres Strait Islander people in maintaining their longstanding traditions and customary practices.

The committee notes that no consultation was conducted in respect of issues regarding Aboriginal tradition and Island custom, and that this consultation ‘...will occur once it (the Bill) has been introduced into Parliament’.²⁰

At the time of writing this report, the committee was unaware of any consultation that has taken place. In the absence of prior consultation with affected persons, the committee is unable to gauge the full impact of the proposed changes on Aboriginal tradition and Island custom, and whether this impact is justifiable in the circumstances.

²⁰ Explanatory Notes, Animal Care and Protection and Other Legislation Amendment Bill 2012, p.5.

The committee's request for advice

The committee sought assurances from the department that consultation with Aboriginal and Torres Strait Islanders, flagged in the Explanatory Notes, will occur prior to the Bill being debated in the House, to address the specific impacts of the Bill on the rights of affected people to maintain longstanding traditional and customary practices. The committee also requested that the department explains how it will ameliorate any concerns raised by Aboriginal and Torres Strait Islanders when the department consults them.

DAFF advice

The State Government committed to amend the *Animal Care and Protection Act 2001* within 100 days of forming government. The amendments are not intended to extinguish or remove the current rights to hunt, including native title rights, possessed by Aboriginal and Torres Strait Islander people.

The Government is committed to addressing unnecessary cruelty and ensuring that unreasonable pain is not inflicted in the hunting of turtles and dugongs or other animals. The proposed legislation will instead regulate those rights but only to the extent necessary to ensure compliance with animal welfare responsibilities.

Furthermore the Government is of the view that the matters of concern only arise in relation to the unacceptable activities of a minority of hunters rather than as a result of widespread cultural practices.

Committee comments

The committee notes the department's advice. The committee has commented more generally on consultation issues on pages 11-15 of this report.

Rights and liberties - Native title rights

The concept of native title is a narrower concept than Aboriginal tradition and Island custom. It has been recognised as part of the common law of Australia²¹ and also given statutory recognition in the *Native Title Act* (Cth) 1993. The rights to hunt and fish are recognised as a native title rights.²²

The explanatory notes state that the Bill will regulate, (not extinguish nor prevent) the exercise of traditional and customary hunting rights. When introducing the Bill, Minister McVeigh stated:

The government recognises the entitlement of traditional owners to hunt dugongs and turtles for non-commercial use under the Native Title Act 1993.

*The bill will not extinguish native title rights to hunt nor will it rescind any other hunting rights.*²³

Although the Bill does not extinguish native title rights to hunt or otherwise deal with animals, nor prevent the exercise of those hunting rights, it places constraints on the capacity of Aboriginal and Torres Strait Islander people to exercise their native title right to hunt and to maintain their longstanding traditional and customary practices.

²¹ *Mabo v. State of Queensland (No. 2)* (1992) 175 CLR 1

²² *S 223 Native Title Act Cth 199, Yanner v. Eaton* (1999) 201 CLR 351

²³ Queensland Parliament 2012, *Record of Proceedings*, 19 June, p.744.

Regard must be had to the *Commonwealth Constitution*, section 109, which provides that a Commonwealth law prevails over a state law to the extent of the inconsistency. There is also the provision in the *Acts Interpretation Act 1954*, s13A, that provides that Acts are not to affect native title except by express provision.

On the authority of the High Court's decision in *Yanner v. Eaton*²⁴, it is unclear whether it is possible to prosecute under a state law a native title holder exercising his or her right to hunt. The prosecution in *Yanner*, under the *Fauna Conservation Act 1974*, the predecessor of the *Nature Conservation Act 1992*, failed. As at 26 June 2012, the decision in *Yanner* has not been overruled.

Point for clarification

The committee invites the Minister to provide assurances that clause 8 can be legislatively effective having regard to the *Native Title Act 1993* (Cth) and section 109 of the *Commonwealth Constitution*.

Clause 10 Insertion of new s 41A

The provision of the Bill that attracted the most comment from Aboriginal and Torres Strait Islander representatives is clause 10. This clause inserts the new section 41A (Killing an animal under Aboriginal tradition, Island custom or native title) in the *Animal Care and Protection Act 2001*.

It provides an offence exemption to a person who kills an animal in the exercise of native title rights or interests or under the authority of a Queensland or Commonwealth law to take²⁵ the animal under Aboriginal tradition or Island custom, under section 61 of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* or under section 26 of the *Arukun and Mornington Shire Council Leases Act 1978*.

New section 41A(2) establishes an offence exemption for the killing of an animal under Aboriginal tradition, Island custom or native title. The proposed new section provides that a person such as a traditional hunter, who takes an animal does not commit an offence under the *Animal Care and Protection Act 2001* provided:

the taking is done in a way that causes the animal as little pain as is reasonable.

The department explained that the currently available methods of killing turtles and dugongs that are humane and cause quick death may not be practicable in the circumstances in which hunting sometimes occurs, and the provisions in section 41 are to balance the welfare needs of turtles and dugongs and the hunting rights and interests of Aboriginal and Torres Strait Islander people.²⁶

Clear Meaning

The wording 'as little pain as is reasonable' is currently used in section 42 of the Act which relates to feral or pest animals. Section 42 creates an exemption from an offence in respect of an act by a person to control feral or pest animals, by killing, which doesn't involve the use of a prohibited trap or spur. It is an exemption for the offence if the act is done in a way that causes the animal "as little pain as is reasonable" and complies with any prescribed conditions.

Despite the existing usage of the wording in the Act, the committee is concerned that the wording 'as little pain as is reasonable' appears vague and capable of varying interpretations, and may not provide legislative certainty nor clear meaning.

²⁴ (1999) 201 CLR 351

²⁵ 'take' includes 'taking', 'keeping' and 'using' within the meaning of the *Nature Conservation Act 1992*.

²⁶ Clarke, M. 2012, *Roundtable Transcript*, 27 June, p.2.

The committee also questions whether this wording is an appropriate way to define reasonable pain and suffering that may be inflicted in the context in which it applies. As noted above, the existing section 42 on which the wording in the proposed section 41A is modelled applies to the killing of feral or pest animals. The committee questions whether it is appropriate to use this same wording to define acceptable pain and suffering inflicted in the killing of protected species such as dugong or turtle.

The committee further questions whether persons hunting these species should be subject to more clearly defined requirements given the need for special management of these protected species.

The committee also notes that new section 41A(2) proposed in the Bill would appear to require individuals who are subject to the provisions to possess specialist veterinary knowledge of animal pain and suffering, so as to be capable of assessing whether pain and suffering is "...as little pain as is reasonable". The committee suggests that it may be difficult to assess pain in animals and to weigh up whether one method of killing might be less painful to a particular animal or species than another in a particular circumstance. Such matters are subjective, and entirely dependent on an individual's understanding. The committee is concerned that the proposed wording could potentially lead to interpretative difficulties should the section be tested in court.

The committee's request for advice

The committee sought advice from the Department of Agriculture, Fisheries and Forestry on each of these points noted about clause 10, specifically:

1. the rationale for including the vague and ambiguous wording, 'as little pain as is reasonable', in the Bill;
2. the rationale for using wording to define acceptable pain and suffering inflicted on feral or pest animals (section 42) in the Bill to define acceptable pain and suffering that may be inflicted on protected species;
3. how it is intended that individuals with no specialist knowledge nor veterinary expertise are expected to gauge an animal's level of pain, and to weigh up whether one method of hunting might be less painful than another.

DAFF advice on Rationale for including the wording 'as little pain as is reasonable'

The *Animal Care and Protection Act 2001*, like animal welfare legislation interstate, generally does not impose prescriptive animal welfare obligations. This enables the legislation to be responsive to evolving scientific knowledge and community views on what behaviour is acceptable. Consistent with this approach, the amendments contained in the Bill will require that traditional and customary hunting rights are exercised in a way that causes animals 'as little pain as is reasonable'.

Hunting practices for sea turtles and dugong are likely to vary from one community to another. The intention is not to impose particular practices on communities, but to encourage communities to work with scientists, animal welfare groups and others to agree on acceptable hunting practices based on science and practicality, while recognising tradition and custom.

'Reasonable' is an established term used in legal contexts to describe an objective standard based on a person exercising average care, skill and judgement. It is used as a comparative standard to determine liability.

Committee comment

In relation to the wording, the committee notes the advice from DAFF but remains concerned that, in its current form, the wording contained in clause 10 section 41A(2) may lead to interpretation difficulties when applied in court. The committee recommends that proposed section 41A(2) be amended to provide clearer wording together with examples of permissible hunting methods. The

purpose of this amendment is to remove ambiguity and to ensure that all affected individuals and community groups are well aware of their obligations under the legislation.

Recommendation 4

The committee notes that the wording in proposed section 41A(2) in clause 10 is consistent with the Act but has concerns, and recommends that the proposed section be amended if possible to ensure that clear wording is substituted and clear examples of permissible hunting methods are included. This would remove some of the ambiguity and give individuals and community groups a clearer understanding of their obligations under the legislation.

DAFF advice on the use of the same test for cruelty towards protected species as for feral and pest animals

Obligations and offences under the *Animal Care and Protection Act 2001* are directed at animal welfare rather than conservation of a species. The Act does not differentiate between species based on their conservation status - a protected animal is generally given the same protection from cruelty as any other. The *Nature Conservation Act 1992* places restrictions on taking protected animals that are directed at conservation.

The 'reasonableness' test gives the courts discretion to take relevant factors into account. When applied to pest or feral animals, factors such as the practicality of using an alternative method to kill very large numbers of pest or feral animals present on a property might be relevant to determining whether the method used caused as little pain as is reasonable. In reference to the offence exemption, the Explanatory Notes for the *Animal Care and Protection Act 2001* state that 'persons engaged in these types of activities should adopt the most humane methods available consistent with effective control.'

Committee comment

The committee is satisfied with the response provided by DAFF on this point.

DAFF advice on how those without expertise can weigh up what methods cause 'as little pain as is reasonable'

Unless a person holds themselves out as having expertise above that of a layperson, the courts determine whether they have acted with reasonable care (in the context of negligence law) by reference to a reasonable person exercising average care, skill and judgment not by reference to a person with special skill or knowledge.

In a similar way, a court could be expected to determine whether a hunting method causes as little pain as is reasonable by reference to what a reasonable person exercising average care, skill and judgement would do, not by reference to what a person with specialist knowledge or veterinary expertise would do. Whether a particular method caused as little pain as is reasonable would depend on whether a reasonable person exercising average care, skill and judgement who was in the hunter's position and who was in possession of all the information the hunter either had, or ought reasonably have had, could reasonably have been expected to use a method that caused less pain. If it was available, the existence of guidance about acceptable hunting methods would be relevant.

Committee comment

The committee believes that the amendment to the proposed section 41A(2) in clause 10 recommended above will address these concerns.

Appendix A - Participants in the inquiry

Participants in the roundtable meeting – 27 June 2012
Cr. John Abednego, Torres Shire Council
Mr Richard Ahmatt, Chair, Cape York Land Council
Uncle Robert Anderson (Bob), Quandamooka Yoolooburrabee People
Ms Annabel Buchanan, Chief Inspector - Prosecutions, RSPCA
Mr Darren Burns, Joint Management Coordinator, Quandamooka Yoolooburrabee Aboriginal Corporation
Mr Seith Fourmile, Gimuy Walubarra Yidinji People
Ms Melissa George, Chair, Indigenous Reef Advisory Committee
Mr Mark Jones, Quandamooka Yoolooburrabee Aboriginal Corporation
Mr Craig Johnstone, Media Executive, Local Government Association for Queensland
Mr John (Toshie) Kris, Chairperson, Torres Strait Regional Authority
Mr Horace Nona, Traditional Owner, Cape York Land Council/Torres Strait Regional Authority
Dr Mandy Paterson, Scientific Research Officer, RSPCA
Mr Terry Piper, Chief Operating Officer, Balkanu Cape York Development Corporation
Department briefing officers
- Department of Agriculture, Fisheries and Forestry
Ms Kareena Arthy, Managing Director, Biosecurity Queensland
Ms Marguerite Clarke, Manager, Policy, Strategic Policy, Biosecurity Queensland
Dr Tim Thompson, Chief Biosecurity Officer, Biosecurity Queensland
Mr Aaron Walker, Principal Policy Officer, Strategic Policy, Biosecurity Queensland
Department of Aboriginal and Torres Strait Islander and Multicultural Affairs
Ms Carmel Ybarlucea, Acting Executive Director, Indigenous Policy and Performance

Appendix B Written Submissions

Local Government Association of Queensland
Mr John Kris, Chairperson, Torres Strait Regional Authority
Mr Kym Elston, Director of Legal Services, Research & Policy, North Queensland Land Council



Submission to the Agriculture, Resources and Environment Committee

**Animal Care and Protection and Other
Legislation Amendment Bill 2012**

**Local Government Association of Queensland Ltd
27 June 2012**

The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. It is a not-for-profit association setup solely to serve councils and their individuals' needs. The LGAQ has been advising, supporting and representing local councils since 1896, allowing them to improve their operations and strengthen relationships with their communities. The LGAQ does this by connecting councils to people and places that count; supporting their drive to innovate and improve service delivery through smart services and sustainable solutions; and delivering them the means to achieve community, professional and political excellence.

1. Introduction

The LGAQ understands that on 19 June 2012 the Honourable John McVeigh, Minister for Agriculture, Fisheries and Forestry introduced the Animal Care and Protection and Other Legislation Amendment Bill 2012 (the Bill). The Bill has now been provided to the Agriculture, Resources and Environment Committee for examination with a reporting deadline of 2 July 2012.

2. Consultation

This submission has been prepared in response to the process taken for the Bill to reach the relevant parliamentary committee. Specifically, the LGAQ is very concerned with the lack of consultation associated with the Bill and the apparent need for the State Government to expedite these legislative amendments.

The LNP policy statement identifies the State Government will “properly empower local government . . . and give local people a real say on the future direction of their community.” The Association suggests that expediting the parliamentary committee and reporting timeframe for the Bill is not in-line with this commitment. Further, the establishment of a *Partners in Government* agreement with the LGAQ was expected to ensure the interest of local communities were represented through maintaining “adequate prior consultation on impacts of State legislative changes”. However, in this instance, no consultation has occurred let alone prior consultation with sufficient opportunity to comment.

3. Detailed Comments on the Bill

Animal welfare is not normally identified as a core business of local government. As such, comments in regard to the proposed legislation and State Government policy position itself have not been included by the LGAQ in this submission. However, Queensland's Aboriginal and Torres Strait Island local governments are responsible for a wide range of public administration functions and community leadership roles, which are unique to Aboriginal and Torres Strait Island cultures and outside of the standard operations of other local governments. It is the understanding of the Association that through the establishment of a *Partners in Government* agreement identified above, provision would be made for these unique functions. The Association supports early, open discussion and consultation with the Aboriginal and Torres Strait Island representatives themselves, identified as key stakeholders and the most appropriate stakeholders to comment on the impact the Bill may have.

4. Conclusion

Thank you for the opportunity to outline the LGAQ perspective relevant to the Animal Care and Protection and Other Legislation Amendment Bill 2012. The LGAQ anticipates that adequate prior consultation about the impacts of future State legislative changes will occur.

Should you have any questions or concerns in relation to the comments provided in this response, please feel free to contact Tracy Haynes, Principal Advisor Planning & Development via telephone on (07) 3000 2291 or email at tracy_haynes@lgaq.asn.au.



Australian Government



TSRA
www.tsra.gov.au

26 June 2012

Ian Rickuss MP
Member for Lockyer
Chair of the Agriculture, Resources and Environment Committee
Parliament House
George Street
BRISBANE QLD 4000

Animal Care and Protection and Other Legislation Amendment Bill 2012

Dear Mr Rickuss,

I would like to thank you for providing the Torres Strait Regional Authority with the opportunity to provide this submission to the committee for consideration in their examination of the proposed *Animal Care and Protection and Other Legislation Amendment Bill 2012*.

As you are aware, the proposed Bill will amend the *Animal Care and Protection Act 2001* to “ensure animal welfare obligations apply to acts done under Aboriginal tradition or Torres Strait Islander custom”. The traditional hunting of turtle and dugong is a practice carried out by Traditional Owners of the Torres Strait under Torres Strait Islander custom. These practices have been carried out by our ancestors for thousands of years and are vital for our cultural identity, cultural wellbeing and for our livelihoods. For this reason it is critical that we are meaningfully consulted and that our views and recommendations are considered in a meaningful way as part of this process.

The TSRA is of the view that meaningful consultation has not been undertaken in the development of this proposed Bill. In addition, the timeframes that have been set for the Inquiry into the proposed Bill, including the submission of comments, are not adequate to engage in meaningful consultation with the Traditional Owners – people who are potentially directly affected if the Bill results in requirements to change our traditional practices – and organisations that represent these groups.

The TSRA understands that the purpose of making a submission to the Committee is to put forward our views and recommendations relating to the expected impact of the proposed legislation and make suggestions for alternatives and/or changes. However, given the limited time available and the lack of consultation with Traditional Owners on what this piece of legislation will mean for us we are not in a position to provide the level of feedback that we think is necessary. We would welcome a decision to extend the timeframe for the provision of submissions or a decision to engage in more meaningful consultation with Traditional Owners potentially affected by this Bill to ensure the implications are rightfully considered, before the Bill is legislated.

Despite this, we have prepared the attached submission that we hope you will consider in full.

Yours Sincerely,



John T Kris

Chairperson
Torres Strait Regional Authority

Issues and views of TSRA:

The Queensland Government has failed to carry out an acceptable level of consultation with Traditional Owners and representatives of Traditional Owners, such as the Torres Strait Regional Authority, throughout the development of the proposed amendments.

- The Queensland Government has made no attempt to consult with Traditional Owners in the Torres Strait or the TSRA regarding the implications of the proposed amendments, specifically those implications for traditional hunting practices that are currently recognised under the *Torres Strait Fisheries Act 1984* and the *Torres Strait Treaty 1985*.
- It is not clear to the TSRA or Traditional Owners if, or how, the proposed amendments will impact on the cultural practices of Traditional Owners in the Torres Strait.
- The Queensland Government has not carried out any consultation with Traditional Owners in the Torres Strait to ascertain what traditional hunting methods are currently employed in the Torres Strait and whether there are animal welfare issues associated with these methods. It is the TSRA's view that this information is critical in the development of the proposed amendments.
- The TSRA is of the view that, without further consultation with experts, scientists and communities about what is already being done to address concerns of animal welfare issues, the proposed amendments could unintentionally or unnecessarily have negative effects on the cultural identity and wellbeing of Aboriginal and Torres Strait Islander peoples, including further damaging our reputation and undermining our traditional rights.

The TSRA is of the view that the Queensland Government is un-justly responding to recent media attention that has not accurately depicted traditional hunting practices conducted by Traditional Owners in the Torres Strait.

- It is the TSRA's view that recent media attention has not accurately depicted traditional hunting practices in the Torres Strait.
- This media attention has had significant negative impacts on the reputation of Torres Strait Islander communities and the traditional hunting practices they employ.
- It is the TSRA's view that the proposed amendments reinforce the unsubstantiated claims made in recent media and send a misleading message to the Australian public about the issue of animal welfare and traditional hunting practices in the Torres Strait.

Maintaining legal rights to carry out traditional hunting practices is vital to the cultural identity, cultural wellbeing and livelihoods of Traditional Owners in the Torres Strait.

- Traditional hunting by Aboriginal and Torres Strait Islander peoples has been practiced before colonisation and has been passed down through the generations. People have to appreciate, as in other seafaring cultures; meat has been processed this way for thousands of years. These hunting practices are therefore vital to the cultural identity and wellbeing and to the livelihoods of Traditional Owners in the Torres Strait.

Maintaining legal rights to carry out traditional practices, including the consumption and transporting of Traditional Owners living away from the Torres Strait is vital to the cultural identity, cultural wellbeing and livelihoods of Traditional Owners in the Torres Strait.

- The Bill proposes to restrict Traditional Owners from consuming traditional foods outside of community government of Indigenous Regional Council Areas.
- This will deny Traditional Owners of the Torres Strait currently living on the Australian mainland access to a resource that is vital to their cultural identity, cultural wellbeing and livelihoods.

- This amendment was not part of the commitments taken to the 2012 Queensland Elections and is a proposal that is not supported by the TSRA.

The intent of the proposed amendments and the outcomes the Queensland Government seeks to achieve through these amendments are not clear to the TSRA. Further to this, the public statements made by the Queensland Government on the intent of the amendments are inconsistent with expert advice. The TSRA does not support the proposed amendments.

- The traditional methods used to hunt dugong in the Torres Strait are supported by experts as the most humane, safe and effective way to hunt this species. Recent public statements by the Queensland Government about the intent of the proposed amendments, to bring a halt to these practices, are not consistent with this advice.
- The amendments make reference to it being an offence if traditional hunting is conducted in a manner that causes pain that is 'unreasonable'. Is there a legal position on what constitutes reasonable, taking into consideration cultural and practical outcomes?

The proposed Bill undermines the significant investments made by Aboriginal and Torres Strait Islander peoples and the subsequent improvements to turtle and dugong management, including improvements to animal welfare issues.

- In the Torres Strait, TSRA has worked with communities to actively support and encourage Traditional Owners to develop community-based management plans. These plans assist Traditional Owners to sustainably manage the turtle and dugong fishery, supported by western science and education.
- The process of developing these plans has had whole of government involvement and has involved consultation with Papua New Guinea and has also received the support of various research institutions.
- Traditional Owners in the Torres Strait and the TSRA have consulted with the animal welfare organisation, RSPCA, and other conservation agencies to assess whether the methods employed by Traditional Owners in the Torres Strait are considered humane and if not, what options are available to address these concerns while maintaining traditional practices.
- In some communities, Traditional Owners have implemented specific management actions that prohibit the keeping of turtles without proper care. TSRA Rangers set turtles free if such rules are breached or if they deem the turtle to be in distress for an unreasonable period of time. The TSRA is working with Traditional Owners, and with other stakeholders on further improving animal welfare relating to the hunting methods employed for the Green Turtle. These practices are currently being discussed for inclusion in the management plans.
- The effort and dedication put into these community-based management plans has led to significant conservation results and improvements to animal welfare, alongside the maintenance of a very important cultural practice. This approach demonstrates the effectiveness of a joint approach to community management of turtle and dugong and the commitment of Traditional Owners to addressing the concerns raised by animal welfare representatives.

- In addition, the TSRA is leading a project with other stakeholders on designing a prototype device, as an alternative option, that could humanely euthanize green turtles. The TSRA will be working with a number of stakeholders, including RSPCA on the matter.

Recommendations:

- That the proposed Bill is not legislated without further consultation with Aboriginal and Torres Strait Islander peoples who will potentially be affected by the amendments and subsequent policies.
- That the committee recognise that Aboriginal and Torres Strait Islander peoples, together with the Queensland Government, Australian Government, Papua New Guinean Government and animal welfare and conservation organisations are currently implementing effecting measures to manage turtle and dugong populations in the Torres Strait, including hunting methods.
- That the committee note it is our view that the proposed Bill is not a reasonable or effective response to the alleged animal cruelty issues associated with traditional hunting practices.



North Queensland Land Council

Native Title Representative Body Aboriginal Corporation

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2 July 2012

Agriculture, Resources and Environment Committee
Parliament House
George Street
BRISBANE QLD 4000

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

Attention: Mr Ian Rickuss MP, Chair of Agriculture, Resources and Environment Committee

CC Minister for Agriculture, Fisheries and Forestry
daff@ministerial.qld.gov.au

Robert Hansen, Research Director
Robert.Hansen@parliament.qld.gov.au

Dear Sirs,

Re: *Animal Care and Protection and Other Legislation Amendment Bill 2012*

We write in relation to the *Animal Care and Protection and Other Legislation Amendment Bill 2012*, tabled in Parliament on 19 June 2012.

We are a Native Title Representative Body in the North Queensland area. On Thursday 28 and Friday 29 June, we hosted the third annual Sea Country Management Forum, funded by the Commonwealth Government. Approximately 120 people, representing seven Indigenous groups in the North Queensland area, attended the forum, and raised significant concerns about the Bill. The groups represented were Wanyurr Majay, Djiru, Mandingalbay Yidinji, Gunggandji, Yirrigandji and Gimuy Malubarra Yidinji.

Request for further consultation with NQLC

We request, noting the short timeframe available before the Committee reports to the Assembly, that the Committee include in its report statements that the North Queensland Land Council (NQLC), on behalf of the groups represented at the Sea Country Management Forum:

1. has significant concerns with the Bill in its current form, in relation to both its premise and the specific language used;
2. seeks an opportunity to meet with the Minister and/or the Committee to discuss our concerns, and proposed amendments, before the Bill returns to the floor of the Assembly.
3. is disappointed that the Committee has not sought public submissions in the course of its inquiry into the Bill;
4. intends to provide a written submission, for the Minister's consideration, in the coming days, which details our concerns and the resolutions passed at the Sea Country Management Forum supporting amendments to the Bill.

Outline of substantive concerns

Noting that we seek the opportunity to make more complete submissions, we flag here some of our particular concerns with the Bill in its current form.

Generally, participants in the Forum believed that the Bill misunderstands and disrespects traditional laws and custom. It is the wrong means by which to prevent the rare cases of animal cruelty that have been reported (sometimes misleadingly) in the media in recent months, because it threatens the legality of all traditional hunting. The Forum resolved that an exemption in the *Animal Care and Protection Act 2001* for hunting conducted in accordance with traditional laws and customs should be preserved.

We are of the belief (which was shared by participants at the Forum) that the Bill significantly impairs native title hunting rights. Despite assurances that the Bill does not extinguish these rights, we submit that it may do so in substance. If native title holders cannot hunt in ways that accord with their traditional law and custom, their rights to hunt may be rendered meaningless.

Moreover, the language and standards applied in the Bill are very subjective, and therefore susceptible to misapplication. For example, Clause 10, regarding the proposed s 41A, includes the following words:

(2) it is an offence exemption for the offence if the act is done in a way that causes the animal as little pain as is reasonable.

Participants in the Forum doubted whether non-Indigenous people who lack knowledge and experience in hunting animals such as turtles or dugongs can have any appreciation of what levels of pain might be 'reasonable' under s 41A(2). It was also doubted whether there is any adequate method to determine how much pain an animal is suffering.

The Forum further said that it is inappropriate that a person charged with an offence should have the onus to prove that an animal has been killed in a way that causes as little pain as possible. It was resolved that the Bill should be amended to state that it is presumed that a person fishing in accordance with traditional law or custom falls within the scope of the exemption in s 41A(2). This would put the onus on the State of Queensland to prove that the hunting method was not reasonable.

We would appreciate if a representative of the Committee or the Minister could contact Cameron Winnett at NQLC on (07) 4042 7000 or CWinnett@nqlc.com.au to provide a copy of the Committee Report and to discuss our request for further consultation.

Yours faithfully,

Kym Elston
Director of Legal Service, Research & Policy
North Queensland Land Council

Dissenting Report and Statement of Reservation

Agriculture, Resources and Environment Committee

Dissenting report from Deputy Chair, Jackie Trad MP on the *Animal Care and Protection and Other Legislation Amendment Bill 2012*.

Introduction

1. The *Animal Care and Protection and Other Legislation Amendment Bill 2012* (the Bill) was introduced into the Parliament on Tuesday, 19th June 2012. It was then resolved by the Parliament that the Agriculture, Resources and Environment Parliamentary Committee report back to the Parliament on Monday, 2nd July 2012, some fourteen days later.
2. The Bill seeks to amend a further three Acts, namely the *Nature Conservation Act 1992*, the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* and the *Aurukun and Mornington Shire Leases Act 1978*.
3. Section 8 of the current *Animal Care and Protection Act 2001* expressly excludes Aboriginal traditions and Island customs from restrictions and penalties under the Act. The specific purpose of the Bill is to now make Aboriginal and Torres Strait Islander hunting customs and practices subject to animal welfare laws under the *Animal Care and Protection Act 2001*.
4. This legislative change, introduced by the new Queensland Liberal National Party Government, is an election commitment developed in response to negative media coverage of the *7.30 Report* in March of this year depicting Aboriginal and Torres Strait Islander people hunting dugong and slaughtering a green turtle.
5. On the 27th of June, the Agriculture, Resources and Environment Committee (AREC) held a two-hour long public hearing and took submissions from a number of affected organisations and individuals regarding the Bill.

Consultation

6. Attendees at the AREC public hearing and subsequent submissions have raised as a principle concern the lack of consultation preceding the drafting and introduction of the Bill.
7. Affected parties were advised with less than a week's notice that the Bill had been introduced and submissions could be proffered for an AREC final report to be tabled in Parliament for 2nd July.
8. This ridiculously short timeframe reflects a disingenuous attempt to include the voices of affected Aboriginal and Torres Strait Islanders in the consideration of the Bill.

9. The fact that this legislative change was an election commitment is not in itself justification for inadequate consultation or lack thereof. This election commitment was announced as one of the LNP Government's 100 day action plan items on 19 March 2012 and some three months later on the 19th of June, without any discussion with affected Aboriginal and Torres Strait Islander custodians, the Bill is presented and referred to the AERC for urgent consideration.
10. This contrasts to the approach taken by the LNP Government to progress their repealing of Wild Rivers protection laws in Queensland. A scoping paper has been released for consideration during a yearlong consultation process before final changes are made.
11. The complicated and unique issues affecting Aboriginal and Torres Strait communities in relation to environmental protection and land use arrangements are not dissimilar to the complicated, unique and varying issues surrounding the exercise of native title rights and customary authority in the traditional hunting of native fauna.
12. The North Queensland Land Council (NQLC), the Torres Strait Regional Authority (TSRA), various other Aboriginal and Torres Strait Islander representatives, the Local Government Association of Queensland (LGAQ) and the Royal Society for the Prevention of Cruelty to Animals (RSPCA) have all registered their concern regarding the lack of consultation and have requested more meaningful consultation prior to the final Bill being debated in Parliament.
13. The fact that this Bill seeks to introduce laws to significantly alter the way in which traditional owners exercise their native title rights and does so in the absence of meaningful and proper consultation is the first basis for my dissent.

Current Exemptions

14. As noted in the Committee's Report, there are currently three exemptions to the cruelty offence provisions, including fishing, slaughter practices under religious faith and Aboriginal and Torres Strait Islander customs.
15. On the basis that this Bill seeks to address only one of the three areas of exemption under the current Act has been raised by stakeholders as discriminatory and is the second basis for this dissenting report.

Other Legislation Amendments

16. As stated above, this Bill also seeks to amend section 61 of the *Aboriginal and Torres Strait Islander communities (Justice, Land and Other Matters) Act 1984* to stipulate that marine animals hunted must be consumed in the

community government or Indigenous Regional council area and by members of that community.

17. Significant concerns were raised by Aboriginal and Torres Strait Islander representatives in relation to this amendment. As stated by Terry Piper from Balkanu:

I would just like to raise a couple of things with what the departmental officers have said in their presentations, and I need to point out that people need to talk straight on what this bill does. The statement was that the bill will not rescind any other hunting rights, but within this bill there is the requirement that wildlife taken now has to be consumed within the community. So the provisions that used to apply under the Aboriginal and Torres Strait Islander communities act are now being amended. It has nothing to do with animal welfare and it was not part of any election commitment, but that is within this bill. The officers of the department told nobody in their presentation that that is part of this bill.

18. The amendment to section 61 of the *Aboriginal and Torres Strait Islander communities (Justice, Land and Other Matters) Act 1984* would appear inconsistent with section 211 of the *Native Title Act 1993* and, as asserted above, rescinds a right to practise a cultural activity of sharing the harvest of a hunt with community and family members outside the community government or Regional Authority area.
19. Further, this amendment was not an election commitment; it has not been the subject of consultation and has significant legal and cultural consequences that can easily be tested.
20. The intent of this amendment as described during the Public Roundtable Briefing on 27th of June was as follows;

Ms Ybarlucea: I just thought I would give a bit of background about section 61. Section 61 provides an immunity for hunting and consuming marine fauna in basically a DOGIT community and in some regional council areas. The amendment will mean that that immunity from the provision of any other act will not apply unless the meat is consumed in the community and it only relates to marine animals. That is just a point of clarification. I just wanted to make that clear. That is the effect of the amendment.

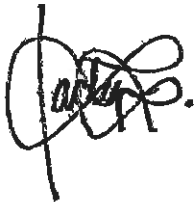
CHAIR: *Is there any particular reason why that has been introduced?*

Ms Ybarlucea: I understand it is in response to concerns that there may be the selling of turtle and dugong from the communities—so transporting and sale.

21. Given that provisions already exist within the *Nature Conservation Act 1992* and the *Native Title Act 1993* to prohibit the commercial sale of protected wildlife, these amendments create unnecessary duplication. Furthermore, the section may have unintended consequences on issues surrounding native title and customary authority, which could be seen as discriminatory and unfair.

Conclusion

22. As outlined above, this dissenting report is based on three serious concerns:
- a. The lack of substantial consultation;
 - b. The targeting of Aboriginal and Torres Strait Islander customs, and;
 - c. The duplication of existing legislation regarding the consumption of marine animals.



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Agriculture Resources and Environment Committee

2 July 2012

Animal Care and Protection and Other Legislation Amendment Bill 2012

Report No. 5 Agriculture, Resources and Environment Committee
July 2012

Recommendation 2

Statement of Reservation

The recommendation that the *Animal Care and Protection and Other Legislation Amendment Bill 2012* be passed trivialises the objections raised by a significant proportion of indigenous community leaders who are dismayed at the lack of consultation by the Government in preparing this bill.

Although the report acknowledges the lack of consultation and departure from normal legislative procedures to rush this bill through, the committee's recommendation fails to recognise: (a) violation of Government policy; (b) neglect to observe basic democratic principles; and (c) disregard of UN conventions on the treatment of indigenous cultural practices.

(a) Violation of Government policy

The media storm that surrounds this issue is similar to the live export fiasco last year in which the Federal Government nearly crippled the live export trade. The Federal Government live export ban was imposed on the basis of a sensationalised media event motivated by an organisation opposed to the practice of live-exports.

As noted by LGAQ, failure to allow meaningful input from communities most affected by this bill contradicts Government policy to empower local government and give people a real say on the future direction of their community. The LNP's pre-election commitment to review animal cruelty was a knee-jerk reaction to a sensationalised media event. The mandate given to the LNP more accurately lies in policies relating to community autonomy and self determination rather than legislation in response to sensationalist media. There is no justification for expediting this legislation without appropriate community engagement.

(b) Neglect of basic democratic principles

Those most affected by this legislation (i.e. indigenous communities) have not been given the democratic right of input to the bill and therefore the implications on those communities is unknown and unaddressed. The Government has imposed the outcome of public opinion motivated by a single media report and based on cultural assumptions about indigenous communities. Democratic principle demands that communities be given an appropriate hearing

and have input into legislation. The recommendation to pass this bill fails to hold the Government accountable for its infringement on the democratic entitlements of indigenous communities.

(c) disregard of UN conventions on the treatment of indigenous cultural practices.

The Government intends to consult with the community after the legislation has been passed. This implies that 'consultation' will be in the form of educating indigenous communities of how they are now able to practice culturally significant customs regardless of how this legislation impairs the relevance of those customs. In other words cultural practices that have significant spiritual, communal and inherited meaning will be made redundant by the inability to conduct those practices in culturally appropriate ways.

I have worked with indigenous people in Queensland Rail for over 20 years and have been a participant in many ceremonial meals of turtle and dugong at indigenous leader's homes during that time. These meals have nearly always required the transportation of this meat. The cultural significance of sharing these sea-animals with family cannot be underestimated and has received no attention by this committee or by the Government. This is just one of the cultural implications of this bill and only raised because of my personal experience. I am sure the experience and tradition of indigenous communities contain many other areas that this bill will be culturally inappropriate and contribute to the further decline of cultural health amongst the aboriginal population of Far North Queensland.

UN conventions on the treatment of indigenous peoples and cultural affects of legislation has received little attention in the preparation and construction of this bill. The Government should not assume that its mandate provides the authority to circumvent the human rights of indigenous peoples to practice cultural significant traditions.

Conclusion

This legislation denies indigenous owners the opportunity to practice cultural traditions that have been in place since time memorial. I believe deep down there has not been appropriate engagement or meaningful consultation and that any future engagement will simply be this Government imposing rushed conditions on ceremonial practices.



Shane Knuth MP
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