

ANIMAL WELFARE AMENDMENT BILL - EXPOSURE DRAFT 2019

Submission from the Animal Justice Party (ACT)

Thank you for the opportunity to comment on the ACT's Animal Welfare Amendment Bill Exposure Draft 2019.

Overall, the AJP is pleased with the exposure draft which improves the simplicity and clarity of many provisions of the Act. We especially applaud the well overdue addition of Section 4A: Objects of the Act, and its recognition that animals are sentient beings with intrinsic value.

With one very serious exception, viz. *Violent Animal Activities*, and some other matters mentioned below, we support the proposed new sections of the Act.

1. Violent animal activities

The changes proposed in this section appears to remove from the Act entirely, the offence of releasing a trapped or captive animal for the purpose of hunting, shooting, killing or otherwise abusing it.

It is proposed that Sections 16 and 17 (paragraph 25, pages 17-19) of the Amendment Bill replace in their entirety the current Sections 16 and 17 of the Act. This would mean replacing a section which prohibits a wide range of violent activities against animals, by both humans and by the use of one animal against another animal, with a section prohibiting **only** violent activities by the use of one animal against another animal.

The Act currently states the following:

Matches, competitions etc

(1) A person commits an offence if the person promotes, conducts, take other activity in which **an animal is released from captivity for the purpose of being—**

(a) hunted, caught, confined, injured or killed by a person (by the use of a firearm or otherwise) or another animal; s part in or attends as a spectator at a match, competition or any

(2) A person commits an offence if the person—

(a) owns, keeps, uses or manages premises used for—

(i) fights between animals; or

(ii) **the baiting or maltreating of animals; or**

(iii) a match, competition or any other activity in which **an animal is released from captivity for the purpose of being hunted, caught, confined, injured or killed by a person (by the use of a firearm or otherwise)** or another animal;

We might hope that the crime of releasing an animal from captivity for the purpose of killing or harming it is already covered by Section 7 A and B (aggravated cruelty), but

we are strongly of the view that this type of bloodsport should continue to be prohibited explicitly (as are so many other clauses in the Act and the Amendment Bill which might or might not be considered to be considered aggravated cruelty by a court of law).

We would also suggest adding an additional subsection to the *Definition of violent animal activity*: 'to distress or terrify another animal'.

Section 18 Rodeos and game parks

An additional amendment seems to be needed here. The Act currently states: 'A person commits an offence if the person promotes or conducts a game park.'

This section should be amended to read: "A person commits an offence if the person promotes or conducts a game park **or takes part in any activity offered by a game park.**" This is especially necessary if neither Section 17 nor any other part of the Act, prohibits the releasing of animals for the purpose of hunting or shooting them, a bloodsport which is routinely practised at game parks.

2. Codes of practice

Our second concern with the Amendment Bill is not a change suggested in the Bill but a section (Section 20) in the original Act that remains unchanged, even though it certainly needs to be changed. The matter of Section 20 is one which AJP has mentioned in several previous submissions to the ACT government.

Section 20 has the effect of removing the vast majority of animals in the ACT from the general protections provided under then Act. Effectively, all the Act's prohibitions on cruelty, aggravated cruelty, confinement, abandonment, hitting and kicking, and all the various provisions relating to neglect (including failure to alleviate pain) apply only to animals whose use, treatment and management is **not** covered by a code of practice.

While codes of practice for companion animals in the ACT generally set a standard of humaneness which is consistent with the spirit of an Act which recognises animals as sentient beings, the codes of practice for farm animals, native wild animals and naturalised wild animals allow a level and scale of cruelty that would horrify and sicken the enlightened authors of these amendments (see the attachment for ACT examples).

In 2016, the Productivity Commission confirmed that the purpose and the primary use of codes of practice across Australia is to permit cruelty (Australian Government Productivity Commission: *Regulation of Australian Agriculture Productivity Commission, Inquiry Report No. 79*, 15 November 2016 pp208-210.)

In our view, failing to address the underlying problem of Section 20, is a major flaw in the Amendment Bill.

3. Other minor concerns and suggestions

7C – Hitting or kicking an animal

We assume that a defence of self-defence, or protecting another person or animal, or of protecting the animal itself from worse harm, would be available to a person who hits, kicks or throws something at an animal. Should this defence be explicit?

Section 10 (2) – Alleviation of pain

There is no apparent reason why this section should be changed to exclude non-mammals.

Why has the imprisonment penalty been removed for the offence of failing to alleviate pain, and the penalty units halved?

Section 11 (1) Unlawful release of animal

Why has the imprisonment penalty for the offence of releasing an animal been removed, and the penalty units halved?

Section 11 (2) Unlawful release of animal

This section prohibits an owner from leaving the gate open on premises so that an animal (other than a cat) escapes. What about leaving a car door or window open?

Section 12 A Laying poison

Why has the imprisonment penalty for the offence of laying poison been removed, and the penalty units more than halved?

Part 3A, Division 3A.1 Definitions

If a pet shop is defined as *a business that buys or sells animals to be kept as pets*, the term 'pet shop' must necessarily include all licenced breeders, and all backyard breeders, who sell animals of any species as pets. Would it not be less confusing to use the term 'pet seller' rather than 'pet shop'?

Section 62 - Trapping General

Why has the imprisonment penalty for the offence of setting a trap with the intention of catching an animal been removed?

Sections 86 C and 100A (2A) – Temporary prohibition on animal ownership

Given the other considerations that the authority or the court must consider in deciding whether to prohibit ownership, it is not clear why the question of whether the person uses an animal for assistance with a disability should be considered in making this determination. A person with a disability who has abused an animal badly enough for either the authority or court to be considering prohibiting the person

from owning an animal, should probably be considered to have lost the privilege of using an assistance animal.

Dictionary

We note that in the current Act there is a circular definition of welfare:

welfare, in relation to animals, means the health, safety and **welfare** of—

- (a) animals in general; or
- (b) 1 or more animals in particular

Thank you again for the opportunity to provide comments on this Exposure Draft. We urge you to please look carefully at our concern regarding the changes to Section 17 (*Violent Animal Activities*). We think it unlikely that this backward step of essentially decriminalising a particularly cruel bloodsport, was the authors' intention.

Please also consider the further detail in the attachment, in relation to the issue of codes of practice.

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On behalf of the Animal Justice Party (ACT)

Known and/or documented failures of ACT Animal Welfare Codes of Practice

Layer hens - overcrowding

While the current provisions of the ACT's Animal Welfare Act no longer permit layer hens to be kept in cages, they do not prevent the overcrowding of commercial layer hens in other housing systems. The Animal Welfare Act (S9A) refers to Schedule 1 items 2-4 for the definition of 'appropriate accommodation'. But these Schedule items do not specify stocking densities, referring, instead, to the relevant Code of Practice for these. The relevant code of practice permits ten or more adult layer hens per square metre. If a dog or cat were subjected to this scale of life-long crowding, it would certainly be regarded as an offence under the Act.

Furthermore, with this level of overcrowding of perhaps as many as 100,000 birds at any one facility:

- there is almost no possibility of maintaining hygienic conditions; and
- it is likely that many individuals are unable to fight their way through the crowd to reach the food or water provided.

In such a crowd, it would be impossible for those employees charged with the care of these birds to observe that any individual bird is sick, starving, dehydrated or in pain. Therefore pain alleviation is unlikely to ever be provided.

Layer hens – destocking and transportation

There is also nothing in the Act or the proposed Amendments to address the well-documented routine cruelty that occurs during and after destocking at 'end-of-lay'. The Code of Practice allows for poultry to be deprived of food and water for up to 24 hours, and transported for up to 24 hours while packed, at 20-40 (depending on weight) birds per square metre, in crates stacked in layers, with minimal ventilation between them.

These are all *prima facie* breaches of the general provisions of the Act but, even though the animals suffer just as much as companion animal would in the same conditions, they are denied, in their entirety, the protection of these provisions because of the code or practice

Kangaroos

The relevant Code of Practice for kangaroos allows:

- killing of mothers with dependent young, and the consequential orphaning of joeys at-foot which escape too quickly to be slaughtered;
- bashing to death of pouch joeys; and
- keeping mobs in a more or less permanent state of distress, terror and social disruption for months at a time.

Again, these are all prima face breaches of the general provisions of the Act. If a family dog or cat was subjected to any of this cruelty, it would clearly be an offence under the Act. Yet, even though the animals suffer just as much as companion animals would in the same conditions, they are denied in their entirety the protection of these provisions because of the code of practice

What is more, there appears to be no net public interest benefit to be gained from excusing such cruelty in the case of kangaroos; it is now clear there are no environmental benefits to be gained from the mass slaughter of kangaroos in the ACT (see the executive summary of CSIRO, 2014, *Final report for ACT Environment and Sustainable Development Directorate: Relationships between vegetation condition and kangaroo density in lowland grassy ecosystem of the northern Australian capital territory: Analysis of data 2009, 2012 and 2013*: http://www.cmd.act.gov.au/_data/assets/pdf_file/0019/1115452/17_11169-DOCUMENTS-1-4.pdf).

Naturalised animals

The Animal Welfare Act specifically excludes naturalised animals (ie introduced animals that have established wild populations) from its prohibitions on the laying and administering of poisons.

This omission permits the use of excruciatingly painful poisons such as 1080 and Pindone against animals of exactly the same species as the animals who are protected from this cruelty under the Act because they have human carers. It is inconsistent with the Amendment Bill's recognition that all animals (as defined by the Act) are sentient beings. Indeed, it would seem to imply that companion animals (such as dogs, cats, rabbits, rats and mice) are only sentient where they are legally some human's property.

The only listed code of practice for a naturalised animal in the ACT is for foxes. This code, as one would expect, denies foxes all the protections of the Act's prohibitions on cruelty and aggravated cruelty.

One verses many

Another fundamental problem with the Act's delegation of duty to codes of practice is a difference in the meaning of 'welfare' between legislation and industry. The Act considers good welfare to mean that animals as individuals are protected from excessive suffering. By contrast, animal-using industries (and therefore the codes of practice that relate to the commercial use of animals) consider that good welfare means that most of their animals are protected from excessive suffering most of the time. Under the Act, an offence is an offence if it harms a single individual animal. However any code of practice for animals kept for commercial purposes reflects an inherent view that there will always be 'acceptable losses' and acceptable mortality rates.

For example the poultry code requires a thorough inspection of all animals in a flock to be conducted once a day. In a flock of, say, 100,000 layer hens packed in at ten per square metres, there will always be some sick or injured hens, and almost no

chance that a daily inspection will spot them before they die (or even after, much of the time). Every one of these missed hens suffers considerable physical pain and emotional distress before she dies. This would be a strict liability offence under the Act if it were allowed to happen to a dog. or even to a cow. But there is nothing in the Animal Welfare Act with the power to protect an individual layer hen from this suffering because a mortality rate of under 5% is considered low in this industry, and therefore acceptable under the Code of Practice which, in turn, negates the power of the Act to protect this individual animal.

Enforcing codes

Yet another problem with the Act's reliance on codes of practice is that there is virtually no mechanism for enforcing codes. Independent inspections by the government vet or RSPCA are never conducted without notice or without the operator's permission. This allows the facility's staff to do a major clean-up of the sick and the dead before an inspection.

The police, when called to investigate an animal emergency in a commercial animal production establishment, always pass the buck to the RSPCA (which is understandable, at present, since the police have no training in either animal welfare or animal welfare law). However, the police in the ACT have also, on at least one documented occasion, refused to recognise the RSPCA inspectors' power to enter a commercial facility to investigate a reported animal welfare emergency in an egg production facility.

Further, the ACT RSPCA's staff have, on at least one occasion, shown themselves to be dangerously misinformed in relation to the function of codes of practice. In one documented case, upon receiving reports from several members of the public that an animal welfare emergency which breached both the Animal Welfare Act and the relevant code of practice was occurring during a kangaroo slaughter in the ACT, an RSPCA staff member responded by saying that the RSPCA had no power to act because the matter was covered by a code of practice.

Even when read the text of Section 20, she remained unshakable in the view, that it was the existence of a code, rather than conduct in accordance with the relevant code, which negated to relevance of the Animal Welfare Act, and the power of the RSPCA to use its emergency powers.