

National Animal Welfare Bill 2005

Introduction

1.1 The National Animal Welfare Bill 2005 (the bill) was introduced into the Senate on 20 June 2005. On 22 June 2005, the Senate referred the provisions of the bill to the Senate Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by the last sitting date in June 2006, on the recommendation of the Senate Selection of Bills Committee.

1.2 The Selection of Bills Committee gave the following reasons for referral:

To assess the adequacy of the legislation and whether a more consistent and enforceable national framework for animal welfare issues is needed.¹

National Animal Welfare Bill 2003

1.3 A similar bill entitled the National Animal Welfare Bill 2003 had been introduced into the previous Parliament in August 2003. The Senate referred the bill to the Rural and Regional Affairs and Transport Legislation Committee on 8 August 2004, for inquiry and report by 30 November 2004.

1.4 The committee advertised the inquiry in *The Australian* on 25 August 2004, and wrote to a number of relevant organisations inviting submissions. The committee received two submissions (see Appendix 1).

1.5 On 29 August 2004, the Prime Minister advised that a general election would be held on 9 October 2004. The committee was unable to complete its inquiry. It indicated that if the bill was reintroduced in the next Parliament and referred to the committee, the committee would recommence its inquiry and treat the two submissions received as submissions to any new inquiry.

1.6 The National Animal Welfare Bill 2005 contained most of the provisions of the 2003 bill but it had been updated to take into account the views expressed by animal welfare organisations, industry groups and other interested parties.

Conduct of the inquiry

1.7 The committee advertised its inquiry in *The Australian* on 17 August 2005 and received 204 submissions from interested individuals and organisations. They are listed at Appendix 1 and the committee has agreed to their publication. They can be accessed at: http://www.aph.gov.au/Senate/committee/rrat_ctte/index.htm

1 Selection of Bills Committee, Report No. 6 of 2005

Acknowledgments

1.8 The Committee appreciates the time and work of all those who provided submissions to the inquiry. Their work has assisted the Committee considerably in its inquiry and the Committee thanks them for their efforts.

Background to the bill

1.9 The current situation in Australia is that each state and territory has its own animal welfare legislation, generally enforced by RSPCA Australia (Royal Society for the Prevention of Cruelty to Animals, Australia). The federal government, through the Department of Agriculture, Fisheries and Forestry, coordinates the Australian Animal Welfare Strategy (AAWS) and through the National Consultative Committee on Animal Welfare provides leadership for the development of Codes of Practice for animal welfare in the livestock industries and for the use of animals in scientific research.

1.10 The aim of the National Animal Welfare Bill 2005² is to ensure animal welfare issues are given adequate priority at a national level. A private members' bill introduced by Senator Andrew Bartlett, it seeks to regulate the use of animals for all private, commercial, institutional, educational and government research and experimentation to ensure the use of animals for such purposes are accountable, open ethical, humane and responsible.

1.11 The bill aims to promote the care and protection of domestic animals, livestock, wildlife and animals kept for scientific purposes in a way that is responsible and accountable, and to ensure that enforceable standards are in place to achieve this end. It is proposed that the bill provide the means by which the care, protection and use of animals can be coordinated, monitored and reviewed nationally via the establishment of a National Animal Welfare Authority.

1.12 The National Animal Welfare Authority (the Authority) would have the power to achieve a reasonable balance between the welfare needs of animals and the interests of people who use animals for a livelihood; to reflect human community attitudes and expectations as to how animals should be treated; and to track advances in the scientific knowledge of animal biology, psychology and behaviour in respect to their needs and care.

Purpose of the Act

1.13 The purposes of this Act are to do the following:

- (a) promote the responsible care and use of animals;
- (b) provide standards for the care and use of animals that:

2 Information contained in this section is based on Senator Andrew Bartlett's second reading speech, *Senate Hansard*, 20 June 2005, p. 51

-
- (i) where it is deemed necessary to capture and kill wildlife, only those devices and techniques should be used which do not inflict unnecessary cruelty, harm non-target animals or damage natural habitat;
 - (ii) prohibit the capture and killing of wild animals for the purpose of entertainment or sport;
 - (iii) ensure that, in the implementation of the matters contained in paragraphs (i) and (ii), all necessary measures shall be taken to protect habitat and ecosystems;
- (c) protect animals from unjustifiable, unnecessary or unreasonable pain;
 - (d) ensure the use of animals for scientific purposes is accountable, open and responsible.³

1.14 The bill aims to achieve this primarily by:

- (a) providing for regulations about codes of practice for animal welfare;
- (b) allowing regulations to require compliance with codes of practice;
- (c) imposing a duty of care on persons in charge of animals;
- (d) prohibiting certain conduct in relation to animals;
- (e) regulating certain conduct in relation to animals;
- (f) requiring a person using an animal for scientific purposes to comply with any scientific use code of practice and a duty of care;
- (g) providing for the registration of certain users of animals for scientific purposes;
- (h) providing for the appointment of authorised officers to monitor compliance with compulsory code of practice requirements and any scientific use code of practice;
- (i) providing for the appointment of inspectors to investigate and enforce this Act;
- (j) providing for the establishment of the National Animal Welfare Authority to advise the Minister on animal welfare issues and implement this Act.⁴

The current regulatory scheme

1.15 Animal Welfare legislation in Australia is currently administered by each state and territory under the following state legislation:

3 *National Animal Welfare Bill 2005, 2004-2005, p. 2*

4 *National Animal Welfare Bill 2005, 2004-2005, p. 3*

- ACT *ACT Animal Welfare Act 1992*
- NT *Animal Welfare Act 1999*
- NSW *Prevention of Cruelty to Animals Act 1979*
- QLD *Animal Care and Protection Act 2001*
- SA *Prevention of Cruelty to Animals Act 1985*
- TAS *Animal Welfare Act 1993*
- VIC *Prevention of Cruelty to Animals Act 1986*
- WA *Animal Welfare Act 2002*

1.16 Whilst individual state and territory legislation has a considerable criminal component, it is not overseen by state or territory police forces. Animal welfare legislation is largely enforced by the RSPCA Inspectorate (approximately 75 full-time and 75 honorary or part-time inspectors across Australia). Some states and territories also grant special constable status to officers with a state Department of Primary Industries (or equivalent authority).⁵

1.17 The bill aims to provide a uniform, national approach to animal welfare, with a National Animal Welfare Authority to ensure that the provisions of the law are properly enforced.

Provisions of the bill

1.18 There are 11 parts to the bill.

Part 1 – Preliminary (clauses 1-7)

1.19 Clauses in Part 1 set out the purpose and application of the proposed act. Clause 6 allows for the act to operate concurrently with existing state and territory legislation. Where state or territory provisions are deemed more stringent by the Commonwealth Minister, those state provisions will apply.

Part 2 – National Animal Welfare Authority (clauses 8-14)

1.20 Clauses in Part 2 relate to the establishment of a National Animal Welfare Authority. Clause 13 outlines the functions and powers of the Authority as follows:

- (a) the coordination, monitoring and review of Commonwealth responsibilities for animal welfare;
- (b) functions and powers conferred on it by or under this Act (other than this section);
- (c) functions and powers conferred on it by or under other laws of the Commonwealth; and
- (d) functions and powers that are, with the consent of the Ministerial Council, conferred on the Authority by writing signed by the Minister.

5 Second Reading Speech, Senator Andrew Bartlett, *Senate Hansard*, 20 June 2005, p. 53

1.21 Clause 13 also states that:

- (2) The Authority has power to do whatever is necessary for or in connection with, or reasonably incidental to, the performance of its functions.
- (3) The Authority is to perform its functions and exercise its powers in accordance with the Agreement (so far as applicable) and is to comply in all respects with the provisions of the Agreement that are applicable to it.

Part 3 – Inspection (clauses 15-62)

1.22 This part covers the area of inspection, and includes clauses in relation to subjects such as:

- appointment of inspectors
- qualifications of inspectors
- powers of entry; and
- the issuing of warrants.

1.23 Clause 17 sets out the powers of appointed Inspectors as follows:

- (1) Inspectors may exercise any of the following powers in order to fulfil the purposes of this Act.
- (2) Within reason, inspectors may undertake random inspections of animals.
- (3) A person with an animal in his or her care must permit inspection of the animal as well as of housing, foodstuffs and equipment intended for use in relation to the animal.

Maximum penalty: 20 penalty units.

- (4) A person must not refuse or fail to comply with subsection (3).
- (5) The animal keeper must be advised of the inspection before or on the occasion of the visit.
- (6) An inspector may:
 - (a) inform an animal keeper that he or she has 12 hours in which to take action or his or her animal or animals will be seized; or
 - (b) humanely kill an animal, or take any other necessary steps to relieve an animal from suffering; or
 - (c) administer analgesics to an animal.

1.24 Clause 60 sets out the penalty for failing to comply, which is a maximum penalty of 100 points or imprisonment for one year.

Part 4 – Animal welfare offences (clauses 63-87)

1.25 Part 4 includes lists of cruelty offences (such as beating to cause pain or using an electrical device on an animal) and prohibited conduct (which includes unreasonable abandonment and cropping of dogs' ears). It also includes the penalties incurred by each offence.

1.26 Clause 63 provides that a person in charge of an animal owes to it a duty of care, and that a breach of that duty will amount to an offence. This clause states that a person would breach the duty if the person failed to take reasonable steps to provide the animal with food and water, suitable accommodation, and treatment for disease or injury, or the person failed in the appropriate handling of the animal.

Part 5 – Live exports (clauses 88-91)

1.27 This part establishes that a person must not transport a live animal from Australia for commercial purposes without first obtaining a permit from the National Animal Welfare Authority. This part also sets out the duties of veterinary surgeons accompanying a transportation of animals.

1.28 Clause 88 outlines the conditions under which a permit to transport live animals from Australia (for commercial purposes) will be granted. This Clause also stipulates that export permits will not be granted to an applicant unless the Authority is satisfied that the laws and codes of practice relating to animal welfare that operate in the country to which the animals are to be exported, are comparable to those of Australia.

Part 6 – Imports of animal products (clauses 92-94)

1.29 Part 6 specifies that a permit is required from the National Animal Welfare Authority before animal products can be imported, and sets out the conditions of import permits.

1.30 Clause 93 stipulates that the Authority will not issue an import permit to an applicant unless the Authority is satisfied that the laws and codes of practice relating to animal welfare that operate in the country of origin of the animal products to be imported, are comparable to those of Australia.

1.31 Clause 94 specifies that the Governor-General may not make regulations which reduce the restrictions on the importation of cat fur, dog fur or a cat or dog fur product specified in the amendment to the Customs (Prohibited Imports) Regulations 1956 made by Statutory Rules 2004, No. 142.

Part 7 – Labelling of animal products (clause 95)

1.32 Clause 95 specifies that not less than three years after the commencement of the Act, the Authority must prepare and give to the Minister for approval a draft code of practice in relation to the labelling of animal products. The clause also stipulates

that the Authority will consult with the community by inviting and considering written submissions from members of the public, and by convening public meetings in each state and internal territory on this issue.

1.33 It is proposed that the regulated labelling of animal products will establish a system of labelling that provides consumers with information about the methods used to produce animal products where those methods may influence consumer choice because of their impact on animal welfare, or the health safety, ethical or moral concerns or religious beliefs of consumers.

1.34 The draft code of practice will apply to both imported and domestic products.

Part 8 – Animals used for experimental purposes (clauses 96-116)

1.35 Clause 94 of part 8 is a list of definitions relevant to clauses 96-116 of the bill – including definitions of 'approved research', 'pain' and 'research unit operator'.

1.36 Part 8 also establishes that a person must not operate a research unit or a supply unit or conduct a research project without a licence from the Authority. It also specifies that all experiments with animals must be conducted in accordance with a code of practice issued by the National Health and Medical Research Council.

1.37 Under clause 100, the Authority must establish a data bank of all experiments using animals, carried out both in Australia and overseas. It must also establish a data bank of alternatives to experiments using animals that are carried out both in Australia and overseas.

1.38 Clause 112 specifies that the Authority must keep a register of persons registered to use animals for scientific purposes.

1.39 Clause 113 specifies that the register must state the following for each registered person:

- (a) the person's name, address and licence number;
- (b) if the person is not an individual – the name of the principal executive officer of the registered entity;
- (c) any other information prescribed under the regulations.

1.40 Under Clause 114, the Authority must:

- (a) keep the register open for inspection, free of charge, by members of the public during office hours on business days at the Authority's office;
- (b) allow a person to take extracts, free of charge, from the register; and
- (c) give a person a copy of the register, or part of it, on payment of the fee prescribed under the regulations.

Part 9 – Funding for animal research etc (clause 117)

1.41 Part 9 stipulates that the Commonwealth must not provide funding to any organisation that uses animals for research and development or promotional activities, unless the Minister is satisfied that the organisation's use of animals is consistent with the objects of the Act, and does not contravene any code of practice established under the regulations.

1.42 This part also stipulates that all organisations that receive commercial funding must publish all other funding sources. If an organisation is in receipt of Commonwealth funding and funding from Commonwealth sources, those sources of funding must be reported with any application for Commonwealth funds and published in annual reports.

Part 10 – Administrative provisions (clauses 118-136)

1.43 Part 10 establishes that staff of the Authority are to be persons engaged under the *Public Service Act 1998*, and that the Authority may engage consultants.

Part 11 – Miscellaneous (clause 137)

1.44 Clause 137 states that the Governor-General may make regulations prescribing all matters:

- (a) required or permitted by this act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

1.45 Clause 37 also states that regulations may prescribe civil or criminal penalties for the breach of a regulation.

Consideration by the Senate Scrutiny of Bills Committee

1.46 The Senate Standing Committee for the Scrutiny of Bills has a standing brief to consider all bills as to whether they trespass unduly on personal rights and related matters, and draws attention to any bill which seeks to have retrospective impact.

Examination of the National Animal Welfare Bill 2003

1.47 In its examination of the National Animal Welfare Bill 2003, the Scrutiny Committee identified two areas of possible concern in relation to the bill:

Search without warrant – paragraphs 18(1)(d) to (g)

1.48 The Scrutiny Committee noted that paragraphs 18(1)(d) to (g) provided a variety of reasons for an inspector to enter premises without a warrant. Although the proposer of the bill did not refer, in the Explanatory Memorandum, to principles and recommendations contained in the Committee's *Fourth Report of 2000* on powers of entry and search without a warrant, he does seek to provide appropriate justification

for these provisions by reference to the need to assist or protect animals and to seize evidence which might otherwise be destroyed or concealed. In the circumstances, the Scrutiny Committee decided to make no further comment on this provision.⁶

Issue of warrant – clause 22

1.49 The Scrutiny Committee noted that the proposer of the bill, had, in commenting on clause 18 in the Explanatory Memorandum, acknowledged the 'fundamental legislative principle that power to enter premises should be conferred only with a warrant issued by a judicial officer.' Clause 22 would allow an inspector to apply for a warrant from a magistrate or a justice of the peace.

1.50 The Scrutiny Committee noted that a justice of the peace is not a judicial officer, and that this could trespass unduly on personal rights and liberties, in breach of principle 1(a) (i) of the Committee's terms of reference.⁷

1.51 Senator Bartlett responded to the Scrutiny Committee's comments in a letter dated 10 September 2003, a copy of which was included in the Scrutiny Committee's *Tenth Report of 2003*:

Although the Committee cited Paragraphs 18(1)(d) to (g) and Clause 22, it would appear that the Committee is satisfied with the justification provided within the actual provisions of Paragraphs 18(1) (d) to (g). With respect to Clause 22, however, it is clear that the identification of a justice of the peace as a judicial officer is not correct and therefore needs to be amended.

Accordingly, I will not seek to amend Paragraphs 18(1) (d) to (g); however, Clause 22 will be amended when the Bill is re-drafted or debated as per the direction of the Committee.⁸

1.52 The Scrutiny Committee noted Senator Bartlett's undertaking to amend the bill.

Examination of the National Animal Welfare Bill 2005

1.53 The Scrutiny of Bills Committee examined the National Animal Welfare Bill 2005, following its introduction into the Senate on 20 June 2005. The Scrutiny Committee noted that it had no comment to make on the bill.⁹

6 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 9 of 2003*, 20 August 2003, pp. 9-10

7 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 9 of 2003*, 20 August 2003, p. 10

8 Senate Standing Committee for the Scrutiny of Bills, *Tenth Report of 2003*, 17 September 2003, p. 245

9 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 8 of 2005*, 10 August 2005, p. 28

Submissions to the Committee's inquiry

1.54 As stated in the Introduction, the committee received 204 submissions to its inquiry. About a quarter of those were in the form of an email expressing support for the bill and calling for it to be passed by the Senate.¹⁰

1.55 A large number of submissions supportive of the bill came from supporters of the animal welfare and animal rights movements. Those submissions often referred to living conditions that denied the animals their 'fundamental rights' and followed a set format. They called for a ban on live exports¹¹ and on the mulesing of sheep, and expressed concern at the cruel treatment of farm pigs, battery hens and animals in saleyards and feedlots generally:

Broiler chicks are packed in their tens of thousands into sheds and like their egg-laying cousins, never see the light of day or feel the grass under their feet...

Pigs are known to be as intelligent as dogs, yet sows are confined to concrete and metal cages barely larger than their own bodies for most of their lives...

The live export trade has been denounced as the gross cruelty that it is by various interest groups... The government and the industry openly state that they cannot influence animal welfare in importing countries, so no animals should be sent to (those) countries ... The live export trade must end...

Animals in saleyards and feedlots are often left without food, water or shelter (certainly in Tasmania at least). They are deprived of the use of their natural behaviours in conditions that are usually atrocious.¹²

1.56 Other submissions called for an end to the 'surgical mutilation' of animals without pain relief:

Surgical mutilations – mulesing and the docking of the tails of dairy cattle and horses must be banned. There is absolutely no evidence to suggest that there is any benefit to the animal or the herd with this practice...¹³

1.57 Although some concerns were expressed about the poor treatment of some pets,¹⁴ it was the lack of regulation in the treatment of farm animals that was the major cause of concern. The bill's provisions for establishing a National Animal Welfare

10 See, for example, *Submissions* 21, 41, 58, 60, 109, 115, 124, 148, 158, 162, 165, 173, 187 and 192

11 See, for example, *Submissions* 47, 48 and 49

12 Extracts from *Submissions* 43, 45, 67, 77, 78, 84, 90, 100, 111, 143, 152, 175, 184 and 186

13 *Submission No.3*, Ms Suzanne Cass

14 See, for example, *Submissions* 3, 38, 41, 62, 74 and 101

Authority (NAWA) with regulatory powers was seen as providing an answer to most of those concerns, especially in relation to farm animals.

1.58 Lawyers for Animals (LFA), for example, submitted that, since "the States and Territories have manifestly failed to honour public interest in their administration of (animal protection) statutes and through their application of Codes of Practice, a centralised system was the only answer:

The National Animal Welfare Authority represents an immense improvement on current arrangements, whereby animal suffering is institutionalized in so-called 'welfare' legislation...

LFA supports ...the appointment of inspectors to conduct matters specified by the Authority...with general powers...as provided for in section 17, to...allow inspectors to confidently undertake their core task of inspecting animals.¹⁵

1.59 Some submitters welcomed the bill's provision that a national register of animal researchers should be set up and published to enable the NAWA to ensure that humane standards are met when animals are used for scientific experimentation. Others called for a total ban on vivisection and the use of animals in experiments.¹⁶

1.60 The bill's provision for the NAWA to keep a register of persons registered to use animals for scientific purposes raised privacy issues for some submitters and proved to be one of the most controversial issues raised by the bill. A substantial number of submissions from the scientific community called on the Senate to reject the bill expressly because of its provisions for increased regulation in the use of animals in scientific experiments and because of what they saw as a potential breach of privacy.

1.61 The majority of submissions that were critical of the bill expressed the following concerns:

- lack of consultation with stakeholders – this was a major issue for state governments, livestock industry bodies and professional industry associations in particular;¹⁷
- too much power to the proposed National Animal Welfare Authority – the argument from those submissions was that over-regulation would add to costs

15 *Submission No. 194*, Lawyers for Animals, pp. 5 and 14

16 *Submission No. 3*, Ms Suzanne Cass, *Submission No. 75*, Mr G Delaney, and *Submission No. 134*, Mr Alex Hodges

17 *Submission No 24*, Australian Racing Board, *Submission No.139*, Australian Companion Animal Council Inc and *Submission No. 191*, Department of Agriculture, Fisheries and Forestry

and have a negative impact on primary industries and animal research.¹⁸ Some argued that the proposed model was 'unworkable'.¹⁹

- privacy concerns – the bill's provisions for mandating a licensing system to operate a research unit and conduct research using animals and for keeping a register of individuals involved in scientific research was seen by some as constituting "an unacceptable breach of privacy and cater(ing) to the more extreme elements of the Animal Rights movement."²⁰
- fear that the bill, if passed, would result in the curtailment of medical research in this country:

In its current form the Bill is likely to do serious harm to Australia's effort to improve the health of its people and animals through ethical research involving animals. Considering major diseases and current pressing risks such as avian flu, it is unacceptable and dangerous to harm or curtail medical research in this manner.²¹

- fear that the bill, if passed, would result in a permanent ban on recreational fishing and hunting.

1.62 Serious concerns were also expressed about the definition of 'animal' ("Section 96 Definitions –In this part **Animal** means an invertebrate or vertebrate animal other than a human being") and other key terms in the bill and what some saw as drafting problems that could have unintended consequences:

An all-encompassing definition of "animal" in Section 96: If this definition is accepted, it would be extremely difficult for DEC (Department of Environment and Conservation, NSW) to undertake most environmental testing and field assessments for the Natural Resources Commission and other groups would be severely curtailed, with potential negative effects on sound environmental decisions.²²

We believe that there are serious unintended environmental consequences of including post-larval shrimps, prawns, isopods and amphipods within this legislation. To include malacostracans in the definition of 'animal' would restrict the ASE (Australasian Society for Ecotoxicology), regulatory authorities ... in applying rapid testing for spills and incidents ... this would seriously affect the ability to protect the environment (water sediment and soil ecosystems) from hazardous chemicals using invertebrate toxicity tests.

18 *Submission No. 91*, Australian Wool innovation Limited and *Submission No. 96*, Australian Lot Feeders' Association

19 *Submission No. 8*, NSW Farmers' Association, and *Submission No. 139*, Australian Companion Animal Council, p. 1

20 *Submission No. 105*, Australian Society for Medical Research, p. 3

21 *Submission No. 110*, Children's Medical Research Institute, p. 2

22 *Submission No. 144*, Department of Environment and Conservation (NSW)

It is not possible to find an adequate substitute for crustaceans as a surrogate for protecting their own phylum.²³

1.63 The University of Melbourne expressed the concerns put forward by several other university animal research centres when it stated:

The University is very concerned that there is no clear process planned for the operations of the National Animal Welfare Bill and the operation of concurrent State legislation. The Bill is vague on which jurisdiction would take precedence and how any variance between the requirements of different pieces of legislation would be resolved in relation to day-to-day operations and reporting to statutory authorities.²⁴

1.64 While the committee recognises the concerns expressed by the majority of submissions for all animals to be treated in a more responsible and humane way, the committee accepts the arguments put forward by many that all levels of government in Australia, industry groups and research bodies are working together through the current mechanism provided by the Australian Animal Welfare Strategy to improve the welfare of all animals in Australia. In the committee's view, the strategy provides the best approach to achieve improvements in this field. Accordingly, the committee urges all those concerned for animal welfare to work towards improving compliance with the strategy and with the various codes of practice now in existence.

Recommendation

The committee recommends that the bill should not proceed.

Senator the Hon. Bill Heffernan

Chair

23 *Submission No. 126*, Australasian Society for Ecotoxicology, p. 2

24 *Submission No.127*, University of Melbourne, p. 2

