



Griffith University Society for the Prevention of Cruelty to Animals

GUSPCA
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The Secretariat
Senate Rural and Regional Affairs and Transport Committee
Department of the Senate
Parliament House
CANBERRA ACT 2600

Dear Sir/Madam

National Animal Welfare Bill 2005

The Griffith University Society for the Prevention of Cruelty to Animals ('GUSPCA') would like to thank the Senate Rural and Regional Affairs and Transport Committee ('Committee') for providing the opportunity to comment on the *National Animal Welfare Bill 2005* ('the Bill').

GUSPCA is a university-based animal welfare organisation consisting of students and academics. GUSPCA provides support and assistance to animal protection organisations such as RSPCA Qld and Animal Liberation Qld by providing *pro bono* legal research and other services.

In short, GUSPCA strongly supports the concept of having a nationally coordinated approach to animal protection. A national approach is required to ensure uniform standards for animal protection are applied consistently throughout Australia. While a national animal welfare Act, applicable to all states and territories, would be ideal, GUSPCA acknowledges the unlikelihood of this eventuating in the foreseeable future due to the absence of any Commonwealth Constitutional grant of power over the welfare of animals and the inherent political sensitivities associated with the states referring powers to the Commonwealth (an act usually only performed out of necessity rather than convenience or even efficiency). GUSPCA therefore supports the suggestion made in the Voiceless submission concerning the idea of developing a national 'model bill' for the states and territories to adopt and give effect to, within their respective jurisdictions.¹ GUSPCA also acknowledges that this 'model bill' approach has been suggested as a method to implementing the *Australian Animal Welfare Strategy*.²

¹ Voiceless submission to *National Animal Welfare Bill 2005* Inquiry, sD(2).

² RSPCA Australia submission to *National Animal Welfare Bill 2005* Inquiry, p3.

This submission does not analyse the content of the Bill in detail rather than to simply point out that many of the substantive provisions have been modelled off the Queensland *Animal Care and Protection Act 2001* ('ACPA'). The ACPA was developed over a period of 10 years by the Queensland Department of Primary Industries and Fisheries and has proven to be a very workable and well thought-out Act. The provisions have succeeded in striking an appropriate balance between affording inspectors sufficient powers for the investigation of alleged offences, while still ensuring that inspectors are made to be accountable for their actions. To this end, GUSPCA supports the provisions of the Bill relating to the powers of inspectors with respect to entry, seizure and the giving of directions.³

The GUSPCA would however like to provide comments on two particular aspects of the Bill concerning:

- i. the independence of the Animal Welfare Authority; and
- ii. the omission of an exemption for an act done in accordance with a code of practice.

Please note that the comments provided below on these issues are not only relevant to the Bill, but also apply generally to the current regulatory framework as it stands today.

Independence of Animal Welfare Authority ('AWA')

The GUSPCA supports the establishment of the AWA but strongly opposes its subordination to the Primary Industries Ministerial Council.⁴ In the interests of Australia's responsible government system, GUSPCA does acknowledge that the AWA must be made accountable to Parliament via a Minister(s). However, GUSPCA submits that a Ministerial Council, constituted by the primary industry ministers of each state,⁵ with the role of overseeing the AWA, formulating policy, and "setting strategic directions and priorities"⁶ effectively undermines the AWA's perceived purpose. The AWA's perceived purpose of providing a democratic approach to its decision-making is effectively undermined by virtue of the Primary Industries Ministerial Council's overarching control and influence. Any 'democratic decision' made by the AWA must be made in accordance with the Primary Industries Ministerial Council's 'policy and priorities.'

Therefore, the Bill retains one of the fundamental flaws of the current regulatory framework – an inherent conflict of interest with respect to the priorities of the administering agency.

There are no other executive agencies within Australia that possess a more obvious conflict of interest in administering a law than the various primary industry departments do with respect to administering animal welfare legislation. The main priority of the various state primary industries departments is to ensure the profitability and sustainability of the primary industries within a particular state. Take the Queensland Department of Primary industries and Fisheries (DPI&F) for example; its vision is for "Profitable primary industries for Queensland" and mission to "Maximise the economic potential for Queensland's primary industries on a

³ *National Animal Welfare Bill 2005*, Division 2 – Part 4

⁴ *National Animal Welfare Bill 2005*, Schedule 1, s2.

⁵ *Ibid*, s3.

⁶ *Ibid*, s3(3)(c)

sustainable basis”.⁷ There is no disputing the fact that animal welfare interests often come into direct conflict with a proprietor’s profit margin. Within industry, animals are viewed as livestock or commodities and therefore their welfare interests are inevitably a secondary consideration in any commercial venture, and as the primary industries department’s priorities lie with promoting “profitable primary industries” it is subsequently inevitable that animal welfare legislation will be enforced very lightly if indeed it is enforced at all in this context.

An example of a state Government’s reluctance to enforce animal welfare legislation against competing commercial interests was recently demonstrated in the Supreme Court of Western Australia. The case was commenced by animal protection organisation Animals Australia after the WA Government failed to act on a complaint concerning breaches of the *Animal Welfare Act 2002 (WA)* by a live export company. The Supreme Court ordered the Director General of the Western Australian Department of Local Government and Regional Development (the primary department charged with administering the *Animal Welfare Act 2002 (WA)*) to appear before the full Supreme Court to show cause as to why the Department had not performed its public duty of investigating the complaint.⁸ It was only after the Supreme Court order that the WA Government decided to investigate the complaint.

Please note that there are many other examples demonstrating this inherent reluctance to enforce animal welfare legislation against industry but in the interests of efficiency this submission will not canvass them. The abovementioned case is sufficiently representative of all other possible examples.

Further, some government departments have taken active steps to restrict the RSPCA’s involvement in administering animal welfare legislation. The Qld DPI&F, for example, have entered into a Memorandum of Understanding (MOU) with RSPCA Qld which restricts the RSPCA’s ability to investigate complaints concerning commercial farming practises. Effectively the MOU states that the RSPCA does not have the jurisdiction to investigate complaints relating to ‘livestock’; which is defined as over 10 livestock animals of the same species or 500 poultry.⁹ This is an obvious attempt by the Qld DPI&F to prevent the RSPCA from investigating and potentially charging operators within the industry.

Ultimately, GUSPCA’s concern is that the Bill will not be administered in accordance with the ‘spirit’ of the legislation; rather, commercial interests will take priority.

For the above reasons, the GUSPCA believes the primary industry departments should be restricted to representing the interests of industry during the *legislative* process and not in the law enforcement process. The GUSPCA suggests that an alternative government agency, or a new government agency (i.e. The Department of Animal Welfare), possessing no conflicting interests, be established to administer animal welfare laws.

Omission of exemption for act done in accordance with code of practice

The GUSPCA would like to express its support for the Bill’s omission of the typical exemption for acts done in accordance with codes of practice. This omission is welcome as it effectively prevents commercial operators from escaping their obligations under the substantive provisions of the Bill. Provisions such as the ‘Duty

⁷ DPI&F Queensland Annual Report 2004-05, pi.

⁸ WASC, Acting Master Chapman, action CIV 1086 of 2005, 27.1.05

⁹ DPI&F Qld ‘*Animal Welfare Investigations: Operational Procedures and Guidelines 2005*’, sB.1

of Care' and 'Cruelty Offences' will subsequently apply to persons in charge of animals in the domestic sphere *and* the commercial sphere, thus preventing the formal discrimination and unequal treatment of equally sentient animals under the Bill.

Most animal welfare Acts throughout Australia contain exemptions or defences for acts done in accordance with codes of practice. These exemptions are to facilitate the mass exploitation of animals, legalising practises such as body mutilation and continuous close confinement that would otherwise constitute serious offences under the general cruelty provisions attracting heavy penalties. All national codes of practice are disproportionately weighted in favour of commercial considerations over animal welfare interests and are therefore contrary to the objects and spirit of the various state animal welfare Acts.

The GUSPCA applauds the omission of these exemptions.

In summary, the GUSPCA is in support of the Bill's purpose of establishing a national approach to animal protection. However, GUSPCA believes a national approach will only come to fruition through the cooperative 'model bill' approach. Whatever approach is adopted, GUSPCA strongly suggests that state primary industry departments should not be given the responsibility of enforcing animal welfare legislation due to the inherent conflict of interest. Finally, GUSPCA supports the omission of an exemption for an act done in accordance with a code of practice as it prohibits formal discrimination on the basis of commercial interests and places further obligations upon persons in charge of animals regardless of what the animal is used for.

Thankyou again for the opportunity to comment on the Bill, if you require further information please do not hesitate to contact me.

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