

**Committee Secretary  
Senate Rural and Regional Affairs and Transport Committee Department of the Senate  
Parliament House  
Canberra ACT 2600 Australia**

30 November 2005

Dear Sir/Madam,

Thank you for the opportunity to comment on Senator Bartlett's National Animal Welfare Bill 2005. Please find below a submission to this important Bill. The issue of animal welfare at a national level is long overdue.

Although I consider that the Bill could be stronger in places, I fully support it and urge the Australian Government to pass the Bill as soon as possible.

### **NATIONAL ANIMAL WELFARE BILL 2005 (Senator Bartlett)**

All maximum penalties should be written as "*xxx penalty units and/or imprisonment for xxx*", ie, penalties should be "*and/or*" not just "*or*" and many of them should be increased as a deterrent. (In all reality, maximum penalties for such offences are highly unlikely to be regularly prescribed).

All maximum penalties of 300 penalty units should have a corresponding gaol term of 2 years.

There should be separate penalties for corporation and individuals, ie, higher penalties for corporations. Otherwise, the Act could just have a general higher maximum penalty for each section in order to allow for cases where corporations are the offenders.

### **PART 3 INSPECTION**

#### **17 Powers of inspectors – general powers**

Penalty for subsection (3) should be increased from 20 units to a maximum of 100 penalty units.

### **PART 4 – ANIMAL WELFARE OFFENCES**

#### **Division 2 – Cruelty Offences**

#### **63 Breach of duty of care**

(4)(a) at the end, add *including size, age, sex and health of the animal*

#### **64 Animal cruelty prohibited**

(1) *A person must not be cruel to an animal*

Should add "*nor encourage an act of cruelty upon an animal or in the case of a person in charge of an animal, shall not authorise the commission of an act of cruelty upon the animal*"

*Max. penalty 1000 penalty units.....2 years.*

Imprisonment time should be increased to 3 year so as to be comparable to the penalty units and hence should be 1000 penalty units and/or 3 years imprisonment.

(2)(a) *...causes pain that...*

***Pain*** is defined in this Bill in Part 8 but only for that Part. The general definitions in Schedule 2 of the Bill do not include a definition of pain. A definition should be included to apply to all parts of the Act and should include both mental and physical pain, fear and distress.

- (2)(b) *kills it in a way that:*
- (i) *is inhumane; or*
  - (ii) *causes it not to die quickly; or*
  - (iii) *causes it to die in unreasonable pain;*

What is “*inhumane*” could be open to interpretation. This needs to be defined. The terms “*die quickly*” and “*unreasonable pain*” also need to be defined. Given the aggravated cruelty offences that currently occur across Australia, it is clear that people have wide ranging views on what these terms mean.

- (h)(iii)(B) *without sufficient rest between litters*

This period needs to be defined.

### **Division 3 – Prohibited conduct**

Add a section:

#### ***69A Certain animal-catching activities and trap shooting prohibited***

*A person shall not advertise, promote or take part in a match, competition or other activity in which an animal is released from confinement for the purpose of that person, or any other person, chasing, catching, confining or shooting it.*

*Maximum penalty: 250 penalty units in the case of a corporation and 100 penalty units or imprisonment for 6 months, or both, in the case of an individual.*

#### **70 Keeping or using as kill or lure for blooding or coursing**

Change to include “*or be in charge of*”

- (b) add “*trial*” before “*train*”

Change penalty:

*Maximum penalty: 1,000 penalty units in the case of a corporation or 300 penalty units or imprisonment for 2 years, or both, in the case of an individual.*

Might be useful to add:

*(2) It is a defence to any proceedings for an offence against subsection (1) if the defendant shows that the act constituting the alleged offence was done by the defendant in the course of, and for the purpose of:*

- (a) mustering stock, the working of stock in yards or any other animal husbandry activity, or*
- (b) sheep dog trials.*

Add a section:

#### ***70A Steeplechasing and hurdle racing prohibited***

*A person who organises, promotes, advertises or participates in a steeplechase or hurdle race is guilty of an offence.*

*Maximum penalty: 300 penalty units in the case of a corporation or 200 penalty units or imprisonment for 1 year, or both, in the case of an individual.*

#### **71 Possession of prohibited trap or spur unlawful**

Add in s.(1) after “*must not possess..*” “*or keep in his/her custody*”

Add:

- (d) any article, implement or other thing made or adapted, or intended by the person to be used, for attachment to an animal for the purpose of:
- (i) training the animal to fight another animal, or
  - (ii) increasing the ability of the animal to inflict injury on another animal during fighting.

Change penalty to:

*Maximum penalty: 300 penalty units in the case of a corporation and 150 penalty units or imprisonment for 6 months, or both, in the case of an individual.*

Just in case the regulation to this Act does not specifically prescribe the steel jaw trap as a prohibited trap, can add a section:

**71A Certain traps not to be set**

(1) A person must not:

- (a) in any part of Australia, set a steel-jawed trap, or
- (b) possess a steel-jawed trap with the intention of using it to trap an animal.

*Maximum penalty: 400 penalty units in the case of a corporation and 200 penalty units or imprisonment for 1 year, or both, in the case of an individual.*

(3) In this section:

**steel-jawed trap** means a trap that has jaws that are made of steel, iron or other metal and that are designed to spring together and trap an animal when a leg or other part of the animal's body comes into contact with, or is placed between, the jaws, and includes a soft-jawed trap (that is, a trap with steel jaws that are offset and padded).

Add a section:

**72A Certain electrical devices not to be used upon animals**

(1) In this section:

**electrical device** means a device of a type prescribed by the regulations.

**sell** includes:

- (a) auction or exchange,
- (b) offer, expose, supply or receive for sale, and
- (c) send, forward or deliver for sale or on sale.

(2) A person shall not:

- (a) use an electrical device upon an animal,
- (b) sell any electrical device, or
- (c) have in his or her possession or custody any electrical device.

*Maximum penalty: 250 penalty units in the case of a corporation and 100 penalty units or imprisonment for 6 months, or both, in the case of an individual.*

(3) Nothing in subsection (2) prevents a person from:

- (a) using an electrical device upon an animal belonging to a prescribed species, or
- (b) selling or having in his or her possession or custody an electrical device for use upon an animal belonging to a prescribed species.

### **73 Baits or harmful substances**

(1) *A person....must not...unless:*

(a) *a permit is issued*

A permit from whom? This Authority? Issued by a State government agency under State legislation?

(d) *baits laced by hand are laid by an approved person*

Who is an approved person?

(5) *In this section 'lay' includes deposit, distribute, leave, throw*

Should also include *bury*

*"Harmful substance"* should be defined and include *a substance containing glass or any other thing likely to kill or injure an animal*

Change penalty:

*Maximum penalty: 1,000 penalty units in the case of a corporation or 300 penalty units or imprisonment for 2 years, or both, in the case of an individual.*

### **75 Cropping dogs' ears**

### **76 Docking dogs' tails**

### **77 Debarking operations**

These sections should be expanded to include:

*A person shall not:*

(a) *dock the tail of a horse, bull, ox, bullock, steer, cow, heifer, calf or dog,*

(b) *crop the ears of a dog,*

(c) *operate upon a dog for the purpose of preventing the dog from being able to bark,*

(d) *remove one or more of the claws of a cat,*

(e) *grind, trim or clip one or more teeth of a sheep,*

(f) *perform a clitoridectomy on a greyhound, or*

(g) *fire or hot iron brand the face of an animal.*

*Maximum penalty: 300 penalty units in the case of a corporation and 100 penalty units or imprisonment for 6 months, or both, in the case of an individual.*

(2) *A person is not guilty of an offence against this section if the court is satisfied that the procedure comprising the alleged offence:*

(a) *was:*

(i) *docking the tail of a dog, cow, heifer or female calf,*

(ii) *operating upon a dog for the purpose of preventing the dog from being able to bark,*

(iii) *removing one or more of the claws of a cat,*

(iv) *grinding, trimming or clipping one or more teeth of a sheep, or*

(v) *performing a clitoridectomy on a greyhound,*

*by a veterinary surgeon, and the procedure was performed as it was necessary for the welfare of the animal.*

(3) *In this section:*

**clip** the tooth of a sheep means breaking off the crown of a tooth with pliers or another tool or implement.

**grind** the tooth of a sheep means grinding down a tooth with an electric angle grinder or another tool or implement.

**trim** the tooth of a sheep means cutting off a tooth with an abrasive disc or another tool or implement.

Should also include:

#### **77A Tail nicking prohibited**

*A person who cuts the tail of a horse with the intention of causing the horse to carry the tail high is guilty of an offence.*

*Maximum penalty: 300 penalty units in the case of a corporation and 100 penalty units or imprisonment for 6 months, or both, in the case of an individual.*

#### **77 Debarking operations**

(2)(b) & (c) & (3) These should not be an option. If a dog owner considers that a dog is a nuisance due to barking, the owner should do everything possible to find alternative remedies including appropriate dog training by a registered trainer and if this fails, find a new home for the animal.

To describe “nuisance” in relation to barking as *interference with the reasonable comfort, peace or privacy of any person* to allow such invasive surgery for the sake of convenience is inappropriate. Some people do not mind a dog barking for several hours whereas another person cannot tolerate even one yelp. No doubt, removing the dogs ability to bark is more of a nuisance to the dog than the barking ever was to the human!

#### **78 Removal of cats’ claws**

(2) delete last line “*in the interests of native wildlife*”.

Declawing a cat is a painful and permanently crippling procedure. Cats claws and the bones and cartilage that hold them in place allow cats to balance properly, climb, and defend themselves, among other functions.

To remove their claws in the interests of wildlife is completely unjustified. There are plenty of alternatives to damage to wildlife in regards to cats including getting an indoor cat, installing a cat run, or not owning a cat if one lives adjacent to bushland. (We don’t remove the development in bushland areas and the negative impacts it creates on biodiversity in the interests of wildlife and that’s far less cruel yet much more damaging long term to wildlife!)

Maximum penalty should be changed to read: *300 penalty units and/or 2 years in prison.*

#### **79 Docking of tails of cattle or horses**

See comments re: section 77

At any rate, definition of “**animal**” should be expanded to include goat, sheep, bull, ox, bullock, steer, cow, heifer, calf

Maximum penalty should be changed to read: *Maximum penalty: 300 penalty units in the case of a corporation and 100 penalty units or imprisonment for 6 months, or both, in the case of an individual.*

### **81 use for certain scientific purposes unlawful**

Maximum penalty should be changed to read:

*Maximum penalty: 600 penalty units in the case of a corporation and 300 penalty units or imprisonment for 2 years, or both, in the case of an individual.*

### **Division 4 – Prohibited events**

#### **82 Meaning of *prohibited event***

(a) *a bullfight or organised event held for public entertainment...*

After “public” add “or private”.

(f) *an event...held for public enjoyment or entertainment...*

After “public” add “or private”.

#### **83 Participation in prohibited event**

(1) *A person must not*

(a) *organise a prohibited event; or*

(b) *knowingly:*

Add:

(iv) *advertise or promote such an event*

Otherwise add to definition for “***organise a prohibited event***” to include advertise or promote.

Change maximum penalty to:

*Maximum penalty: 600 penalty units in the case of a corporation and 300 penalty units or imprisonment for 2 years, or both, in the case of an individual.*

### **Division 5 – Regulated conduct**

#### **85 Obligation to exercise closely confined dogs**

A dog should generally not be kept in closely confined conditions for 24 hours. This should be reduced to 16 hours and there should be a limit on how many days this can continue for with only a 2 hour exercise period.

Subsection (2) re: reasonable excuse as a defence would still apply.

Maximum penalty should be increased substantially from 20 penalty units to 100.

#### **86 Feral animals or pests**

Add:

(1) *the act does not involve the use of unauthorised baits or harmful substances* (link back to section 73).

Add a Part:

#### **PART 4A – TRANSPORTATION, CARRIAGE AND CONVEYANCE OF ANIMALS**

(1) *A person shall not:*

(a) *transport, carry or convey an animal, or*

(b) *where the person is a person in charge of an animal—authorise the transportation, carriage or conveyance of the animal,*

*in a manner which unreasonably, unnecessarily or unjustifiably inflicts pain upon the animal.*

*Maximum penalty: 300 penalty units in the case of a corporation and 100 penalty units or imprisonment for 6 months, or both, in the case of an individual.*

- (2) Without limiting the generality of subsection (1), a person shall not:
- (a) transport, carry or convey a horse on a multi-deck vehicle, or
  - (b) where the person is a person in charge of the horse—authorise the transportation, carriage or conveyance of a horse on a multi-deck vehicle.

*Maximum penalty: 300 penalty units in the case of a corporation and 100 penalty units or imprisonment for 6 months, or both, in the case of an individual.*

- (3) Without limiting subsection (1), a person must not transport, carry or convey a dog (other than a dog being used to work livestock), on the open back of a moving vehicle on a public street unless the dog is safely restrained or enclosed in such a way as to prevent the dog falling from the vehicle.

*Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.*

- (4) In this section:

**multi-deck vehicle** means a motor vehicle or a trailer drawn by a motor vehicle that:

- (a) is used to carry or convey animals, and
- (b) on which animals are carried or conveyed in two or more layered sections.

## **PART 5 – LIVE EXPORTS**

These should be banned altogether. This industry has never been appropriately managed nor animal welfare issues enforced.

### **88 Limitation on live exports**

As this section relates to imports for commercial purposes, the penalty should be increased to:

*Maximum penalty: 600 penalty units in the case of a corporation and 200 penalty units or imprisonment for 1 year, or both, in the case of an individual.*

### **90 Duties of veterinary surgeons**

Subsection (1) refers to a vet keeping “records as prescribed of the welfare...”. Where are these to be prescribed and by whom?

## **PART 8 – ANIMAL USED FOR EXPERIMENTAL PURPOSES**

The definition for pain in this section should be used for the whole Act.

Given the trauma and pain that animals used in experimentation undergo, penalties under subsections 97 & 98 should be increased accordingly:

*Maximum penalty: 600 penalty units in the case of a corporation and 300 penalty units or imprisonment for 2 years, or both, in the case of an individual.*

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Again, I commend the Democrats for putting forward this Bill. There are many worthy points in this proposed legislation such as banning cropping dogs' ears for cosmetic purposes and banning the cruel practice of mulesing sheep. As well as the introduction of a mechanism for gathering statistical data on items such as animals used in experiments and also for items such as auditing baits (s.73(3)).

It is a great shame that there is currently no national ban on duck hunting despite the 1998 Senate motion. It is also a great shame that this current Federal government has insisted on supporting the live sheep export industry which continuously fails to uphold any shred of animal welfare (as has been demonstrated recently with a case before the WA courts). It is also a disgrace that this country continues to support battery hen cages despite the vast majority of Australians being against it, meanwhile many countries in Europe have already banned them. There is total inequity between companion animals and those animals used for food production and experiments yet there is no justification for this, other than it is easier and less politically sensitive.

Those authorities that enforce what State and Territorial laws do exist in this in this country for animal welfare, are so completely under-resourced that it's almost a joke. It's not only about getting the legislation through Parliament, there also needs to be greater emphasis placed on resourcing inspectors to enforce such legislation.

I have worked in many developing countries in the field of animal welfare and conservation yet I am still surprised that in a so-called developed, wealthy and progressive country like ours, we are not that far behind places like China and India when it comes to animal welfare.

I thank you once again for the opportunity to make this submission and hope there is no delay in passing this legislation as soon as possible and bringing Australian animal welfare law in line with what is expected from a developed and well-educated nation like ours in the 21<sup>st</sup> century.

Yours sincerely,

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