

Office of the Director-General



Queensland
Government

Department of
Primary Industries and Fisheries

Reference: 06/00725

15 FEB 2006

Ms Roxanne Le Guen
Secretary
Senate Rural and Regional Affairs
and Transport Legislation Committee
Parliament House
Canberra ACT 2600



Dear Ms Le Guen

National Animal Welfare Bill 2005

I refer to the Senate's decision to refer the *National Animal Welfare Bill 2005* (the Bill) to the Senate Rural and Regional Affairs and Transport Legislation Committee for inquiry and report on 22 June 2005.

On behalf of the Queensland Government, I am responding to the Committee's invitation for written submissions on the Bill and the specific invitation to comment on the submission to the Committee from Mr Jed Goodfellow. I apologise that our submission has been delayed due to an administrative error.

The Department of Primary Industries and Fisheries (DPI&F) is the Queensland Government agency responsible for animal welfare. Queensland has legislated for animal welfare matters since 1925.

I note when introducing the Bill to the Senate, Senator Andrew Bartlett described Queensland's *Animal Care and Protection Act 2001* (ACPA) as "unique" and "amongst the most progressive in Australia".

The Bill proposes provisions outside the animal welfare purview of ACPA, which are of relevance to other Queensland Government agencies. The DPI&F has consulted these agencies in preparing the Queensland Government response.

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Queensland approach to animal welfare

In 2001, the Queensland Parliament unanimously passed the ACPA legislation. This legislation is regarded as one of the world's most advanced animal welfare laws.

While ACPA modernised the previous *Animals Protection Act 1925* by significantly increasing penalties and removing outdated references, major advances included the introduction of a defined and enforceable duty of care upon any person in charge of an animal, the introduction of new powers for inspectors to direct persons to take preventative action to improve the care and protection of an animal and the introduction of new penalties and powers.

ACPA provides for animal cruelty and inappropriate treatment of animals to be punished with a "bigger stick", but it also seeks to educate the wider community about their responsibilities to animals.

The DPI&F inspectors and the Royal Society for the Prevention of Cruelty to Animals (RSPCA) Queensland inspectors are authorised to enforce ACPA. There are currently 110 DPI&F Biosecurity inspectors who enforce the ACPA throughout Queensland.

Queensland acknowledges the importance of animal welfare in societal terms as well as the growing relevance to the agricultural industry with domestic and overseas demand for ethical treatment of production animals.

The Bill draws heavily from ACPA with approximately 60 of the Bill's 137 sections either completely or substantially copied from the Queensland legislation.

Queensland continues to strive for advances in animal welfare for companion and production animals. The Queensland Government, through the DPI&F, has financially supported the establishment of the Chair in Animal Welfare at the University of Queensland currently held by Professor Clive Phillips.

The Constitution

Section 51 of the Constitution does not provide for Commonwealth to make laws with respect to animal welfare.

I am advised the Commonwealth has not previously specifically legislated for the welfare of animals in Australia.

Nevertheless, Section 109 of the Constitution provides for Commonwealth law to prevail over State laws where there is inconsistency. For instance, the Bill prohibits mulesing of sheep and prescribes a maximum penalty of \$33,000 or imprisonment for one year. No such offence exists under ACPA.

National co-ordination and jurisdictional issues

The Bill does not acknowledge the Australian Animal Welfare Strategy (AAWS), which facilitates a national consultative approach to animal welfare and involves government, industry and the wider community.

AAWS aims to promote and refine the framework used to promote the welfare of animals.

The Bill also ignores the role the Primary Industries Standing Committee and Primary Industries Ministerial Council (PIMC) processes have had in achieving national consistency regarding animal welfare issues, such as the ban on cosmetic tail-docking of dogs and improved housing for layer hens.

The DPI&F is concerned jurisdictional issues will arise with State and Commonwealth animal welfare inspectors enforcing separate animal welfare legislation.

The Bill proposes that such an enforcement system would be overseen by a National Animal Welfare Authority (NAWA) which would comprise of nominations made by the Commonwealth but with no State and Territory representatives.

There is no clear indication of how NAWA or Commonwealth inspectors would be funded.

Codes of practice

The Bill does not give due recognition to the operation of industry codes of practice.

ACPA utilises these codes as minimum standards of care and specify the duty of care given to the animals or activities covered by the respective code.

In the example of mulesing of sheep, this practice is approved by "The Mode of Practice for the Welfare of Animals: The Sheep" as it is recognised as a preventative measure against flystrike of sheep. Nevertheless, industry is undertaking to phase-out mulesing as an animal husbandry practice.

These codes operate across a full range of primary production animals and activities, such as road transport.

These codes are periodically reviewed to acknowledge advances in animal welfare science, changing community expectations and evolving industry practices, as well as implications for Australia of overseas developments. Industry and animal welfare organisations, such as RSPCA, participate in such reviews.

There are continuing efforts to promote awareness of the codes and to determine ways to better ensure adoption of these codes as minimum standards.

Additional issues

Queensland has identified a number of additional issues regarding the Bill, which it wishes to comment upon.

In Queensland, animal control issues, such as the number of dogs per residence, are the responsibility of local government under the *Local Government Act 1993*. The Bill will result in inconsistencies with the application of the animal control by Queensland local governments.

The Bill proposes to restrict baiting and require any baiting to be assessed under the Commonwealth's *Environmental Protection and Biodiversity Conservation Act 1999*. Baiting programs can have significant environmental and economic benefits. The Bill's proposed requirement for "baits laced by hand" requires clarification with regards to the use of manufactured baits.

The Bill proposes to limit the control of feral or pest animals that "does not damage or cause damage to eco-systems and causes no harm or damage to non-target species". This would be impractical. While authorities make their best efforts to minimise such damage, it would be impossible to guarantee such an outcome. The feral or pest animal subject to a control program can cause damage to eco-systems and non-target species. The implementation of a control program aims to reduce that damage.

The ACPA provides extensive safeguards for the use of animals for scientific purposes. The Bill unnecessarily seeks to duplicate a regime already in place in Queensland.

Submission from Mr Jed Goodfellow

It is understood that Mr Goodfellow has made a submission to the Committee that makes reference the DPI&F's interrelationship with the Queensland RSPCA.

The RSPCA plays a roll in enforcing the ACPA for the DPI&F and is accountable to the DPI&F for that enforcement. In law enforcement terms it is unusual for a non-government agency to enforce legislation, however, this situation has arisen from the tradition of the RSPCA having an enforcement role. Given this unique situation, the relationship between the Queensland Government and the RSPCA is facilitated by a Memorandum of Understanding (MOU) which defines the scope, responsibilities and accountabilities of the RSPCA in its enforcement role.

The MOU was jointly developed by the DPI&F and the RSPCA, with all clauses subject to mutual agreement. The relevant sections of the MOU are extracted in the attachment. The question of who enforces the ACPA is influenced by location and expertise. With regard to enforcement of livestock welfare, the RSPCA is located along coastal urban areas whereas the majority of livestock enterprises are situated away from the coast. The DPI&F inspectors and veterinarians are more skilled in relation to livestock than their colleagues in the RSPCA. Although not a mandated requirement under the MOU, it is mutually accepted that the DPI&F will generally have primary responsibility for dealing with livestock animal welfare issues. Conversely, the RSPCA largely has responsibility for companion animal issues. This division of responsibilities is not an issue of constraining operations of agencies, but rather one of logistics and operational practicality.

The DPI&F takes its responsibilities under the ACPA very seriously and responds to all complaints involving livestock and, where necessary, undertakes prosecutions. Welfare standards for livestock such as contained in the Model Codes of Practice for the Welfare of Animals have been developed by state government animal welfare agencies in consultation with industry and animal welfare groups such as the RSPCA. Queensland demonstrates its commitment to animal welfare by taking a very active role in code development and recognising the codes in legislation.

Regardless of who enforces the ACPA, it is ultimately the DPI&F which is accountable to the Queensland Parliament and public for the proper and accountable enforcement of the ACPA. To claim that the DPI&F is trying to prevent investigations through the MOU with the RSPCA is both an inaccurate and unhelpful characterisation.

Conclusion

In conclusion, the Queensland Government acknowledges the intent of the Bill and the basis its own law has provided in framing it. However, the Queensland Government believes the constitutional, jurisdictional and operational issues make the Bill impractical.

Queensland has one of the most advanced pieces of animal welfare legislation.

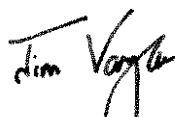
It does not wish to compromise that law, and its effectiveness, by allowing it to become subservient to a similar, yet less effective Commonwealth law where issues of inconsistency with established Queensland law and practices, jurisdictional authority and resourcing will arise.

Queensland is prepared to continue to participate in the established national processes, such as the AAWS and PIMC, to achieve consistency among interstate jurisdictions.

Indeed, Queensland believes greater emphasis should be given to AAWS as a non-legislative means of reducing duplication and confusion within community about differing approaches to animal welfare among the states.

If you require any further information regarding this matter, please do not hesitate to contact Dr Rick Symons on telephone 07 3235 4810 or email rick.symons@dpi.qld.gov.au.

Yours sincerely



Jim Varghese
Director-General

Att (1)

9 AREAS OF JURISDICTION

- 9.1 RSPCA Inspectors will have primary responsibility for enforcing the Act in relation to animals within urban, semi rural and rural areas within a two (2) hours drive of an RSPCA office where an RSPCA Inspector is located. This includes poultry establishments, riding schools, pet shops and livestock where the keeping of such livestock is not the primary business of the person or organisation involved (generally this is where there are not more than ten animals of the one species).
- 9.2 DPI Inspectors will have primary responsibility for enforcing the Act in relation to animals used in intensive/extensive commercial livestock production.
- 9.3 Where the RSPCA is not represented then DPI and/or Police will be responsible for enforcing the Act.
- 9.4 Regardless of the above, all Inspectors appointed under the Act will be required to action animal welfare incidents outside their primary areas of responsibility if the welfare of the animal is severely compromised and there is an immediate need to alleviate pain and suffering, or if directed by their organisation.
- 9.5 The DPI will have primary jurisdiction for the handling of complaints involving the use of animals for scientific purposes.