

ELECTRONIC VERSION

**DUTY AND THE BEAST:
ANIMAL WELFARE ISSUES**

BACKGROUND INFORMATION BRIEF NO 25

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SYNOPSIS

Animal welfare is one of the most emotive, divisive and difficult issues governments face, affecting more people personally than almost any other.

This paper discusses the association of man and animals through history, documenting the development of animal protection philosophy. Animal welfare is defined, with differences to animal rights highlighted. Various animal welfare organisations and their role in the issue are identified. Specific aspects of the animal welfare debate are discussed. These include:

- * the responsibility for the cost of welfare;
- * development of government committees in Australian jurisdictions to address the problem;
- * use of animals in research;
- * animal production methods; and
- * the importance of codes of practice.

The legislative development of the animal protection statutes in each Australian State and Territory together with New Zealand is documented. Relevant legislation is compared and contrasted with discussions focussing on powers of animal welfare officers, cruelty offences, regulation of animal experimentation, penalties and exemptions. Significant recent developments on animal welfare issues within the jurisdictions are identified.

Queensland's animal protection legislation is discussed separately in greater detail. The provisions of the *Animals Protection Act 1925* are explained. The most significant aspect of this report is the discussion of Queensland's proposed animal welfare legislation, and includes comments and suggestions arising from the debate.

Chapter 1 INTRODUCTION¹

Animal welfare is one of the most emotive, divisive and difficult issues governments face, affecting more people personally than almost any other.² The animal welfare cause has been described as the "last great social movement on the verge of widespread recognition in Western society this century".³ The issue is akin to the environmental movement and other social movements, such as feminism, which have gained public prominence in recent times. But the debate on the 'welfare' of animals is not new. In fact, animal welfare has a long history with references as far back as classical Greece. The modern movement has its beginnings in the sixteenth century. Since then the debate has ebbed and flowed, gaining momentum at the end of the seventeenth century. Passage of the prevention of animal cruelty legislation in Britain in 1822 was the culmination of the debate. The issue lay dormant during the twentieth century, gaining prominence again in the 1960s when philosophical doctrines on man's responsibilities to animals were developed.

Chapter 2 BACKGROUND

2.1 Man, the Master

The association between humans and animals dates back to the emergence of *Homo sapiens*.⁴ Prehistoric paintings of humans and animals were discovered in Lascaux in France earlier this century. These paintings depicted the hunting relationship between humans and several species, such as bulls, bison, reindeer and horses. Animals were hunted for clothing and later tamed for other uses - food production, labour, sport, entertainment, curiosity, beauty and companionship. Scattered among the books of the Old Testament is the change in man's attitude towards animals from one of awe to one of control. It is in the *Book of Genesis*⁵ where it is first placed on record. This right to use animals became firmly established in custom and was recognised with little question throughout the Middle Ages. Since then the pendulum of opinion has swung back and forth. In the 1600s a French essayist, Montaigne, questioned man's superiority over animals. Another two centuries passed before a mutual

¹ The title is adapted from Philip Jamieson's article on The Movement in Reform of Animal Welfare published in *The University of Queensland Law Journal*, vol. 16 no. 2, 1991, pp. 238-255.

² Formby, Doug 1991, "The Views of the RSPCA on Animal Welfare in Queensland", *Proceedings of the Animal Welfare Conference*, Brisbane, 8-9 June 1991, pp. 5-10.

³ McEwen, Graeme 1991, "Addressing the Reform Agenda in Australia", *Proceedings of the Animal Welfare Conference*, Brisbane, 8-9 June 1991, pp. 37-49.

⁴ Murray, Dick 1991, "The Great De-sexing Debate", *Proceedings of the Animal Welfare Conference*, Brisbane, 8-9 June 1991, p. 69.

⁵ *Genesis* 1:26, 9:2.

bond between man and beast was again acknowledged in Europe. In some early civilisations animals were not viewed solely as something to use. In Ancient Egypt, temples had sacred animals. Cats, crocodiles and even vultures were treated with great honour after their death. In Ancient Greece, Pythagoras believed in the transmigration of souls, where the spirits of dead people were contained in animals. Therefore Pythagoreans taught kindness to animals but not necessarily for the animals own sake. In the Eastern religions there is a strong reverence of life, where particles of divine nature are believed to exist throughout creation. Thus it is wrong to destroy or damage life even in its most humble form.

At the same time in Europe, animals were treated in stark contrast. In the two centuries before the birth of Christ the gladiatorial contests of Ancient Rome using lions elephants, ostriches and giraffes were at their height. In one day, at the opening of the Games in the rein of Titus, five thousand beasts were slaughtered.

It is an odd paradox that when we come to Christianity and the New Testament there is no specific injunction to be kind to animals. Francis of Assisi, more than a thousand years later, redressed the balance.⁶ But even if animals did not have souls according to Christian doctrines, they were held responsible for their actions. The legal trials of animals were common place in the ecclesiastical courts of the Middle Ages. Based on the *Book of Exodus*, where an ox which had gored a person was stoned, the practice of trying animals spread all over Europe. Few records survive, but it is certain thousands of pigs, dogs and bullocks were tried and put to death. The animal appeared in the dock, was defended by counsel and sometimes acquitted. In England the practice continued until 1771.

At the beginning of the 1800s, the reform in man's attitude came with a growth in commerce which fostered a notion of ethics replacing medieval fatalism.⁷ Man's care for animals became increasingly bound up with the debate on man's care for man. Therefore animal welfare gathered momentum in nineteenth century Britain as part of the philanthropic movement. Legislation was inspired by the broad growth of social controls and reforms required by rapid urban growth and political agitation during the Industrial Revolution. The first law in Britain to protect animals passed in 1822, after many attempts by philanthropist, Richard Martin. The philosophy behind the legislative movement involved anthropomorphism. The legislation, entitled the *Ill-Treatment of Cattle Act 1822*, condemned bull-baiting and beating beasts of

⁶ Saint Francis of Assisi founded the Franciscan religious order of the Roman Catholic Church during the early 1200's. He preached peace and respect for all living creatures, attracting many followers. Francis expressed his religious ideals in poems as well as through his ministry. In "Canticle of the Sun", he showed his love for all living things. He died in 1226 and was canonised in 1228. His feast day is celebrated October 4, which in more recent times has been declared World Animal Day.

⁷ "Animal Rights", *The Economist*, vol. 321, no. 7733, 16 November 1991, p. 24.

burden. Several laws followed, further restricting baiting; allowing vivisection under licence; banning the use of dogs and pit ponies to haul loads; protecting songbirds, strays and horses. Most other Western countries gradually followed suit. In 1824 William Wilberforce and Sir Thomas Fowell Buxton, two leaders of the movement to abolish the slave trade, both helped found the Royal Society for the Prevention of Cruelty to Animals. Abolitionists drew clear parallels between slavery and the maltreatment of animals.

During the twentieth century the emphasis on protection switched firmly to humanity and away from animals, with the movement stagnating for fifty years.

This change was because of the "carnage of two world wars, the demise of the philanthropic societies, and a socialist belief that animal welfare was an upper-class parody of humane compassion".⁸

Meanwhile man's view of himself and his powers changed radically. The doctrine of human rights was embodied in law in some European countries and in the United States. The equal treatment of all people; the idea of rights as inherent protection enjoyed by everyone; the new awareness of mental suffering; and the right of self-determination all found their way into western society's awareness of justice.

2.2 Defining Animal Welfare

During the 1960s man's treatment of animals was highlighted once again. Philosophists began to publish papers on animal welfare, with the mass media helping to disseminate the message. Activists borrowed twentieth century notions of human rights to examine the animal welfare issue. However, the debate over animal welfare is often confused because of a lack of knowledge, communication and understanding of animal needs. Scientists search for an objective and factual definition, while the community may be more subjective and emotive. The definition of the word 'welfare' is itself at the centre of the complexity in discussing animal welfare issues. Most of the population sees animal welfare as straightforward, but it is a complex issue where even the boundaries are unclear. No single feature of an animal can be measured and called 'welfare'.

The European Federation of the World's Poultry Science Association working party after seven years deliberation concluded in 1979 that no adequate definition of animal welfare exists. This situation has not changed since. Many have attempted to develop a definition, most enveloping "well-being" and coping with environment. The Brambell Committee (1965)⁹ said:

Welfare is a wide term that embraces both the physical and mental well-being of the animal. A decade later, a Dutch committee defined welfare as

⁸ *ibid.*

⁹ Brambell, F.W.R. 1965, Chairman: *Report of the Technical Committee to Enquire into The Welfare of Animals Kept Under Intensive Livestock Husbandry Systems. Command Paper no. 2836.* HMSO, London.

... existence in reasonable harmony with the environment both from the ethological and physiological viewpoint.¹⁰

Within Australia, one of our most prominent researchers on animal welfare issues, Linda Murphy, said:

There is no clear cut and unambiguous definition of animal welfare.¹¹

She went on to say,

... welfare is not one thing, but the algebraic sum of dozens of parameters, most of which are relative rather than absolute.¹²

Murphy believes that because of a lack of knowledge, vague terms such as "adequate", "sufficient", or conversely "lacking" or "deficient" define animal welfare needs. There is general agreement that cruelty to animals is not tolerable with this viewpoint embodied in Australian legislation.

2.3 Difference between Animal Welfare and Animal Rights

Animal welfare and animal rights are two separate issues. As with the definition of 'animal welfare', there is also no "clear and unambiguous" definition of animal rights. While animal welfare deals with the conditions experienced by animals, the animal rights concept questions man's philosophy and ethics. Animal rights assigns animal life equal legal, moral and ethical consideration of interests. Animal rights groups promote the ending of all human "exploitation" of animals. Their philosophy recognises humans as one species among many sharing the earth and that all life is valuable. The belief that animals have rights superior to those traditionally granted was first raised two hundred years ago by Jeremy Bentham.¹³ He said in 1789 the day may come where animals would gain rights which have been withheld "by the hands

¹⁰ Dutch National Council for Agricultural Research. 1977, *Report of the Dutch Committee of Experts on Animal Husbandry and Welfare*. The Hague.

¹¹ Murphy, L.B. 1987, "Animal Welfare - A Complex Phenomenon", *Intensive Animal Welfare Seminar*, Brisbane, 13-14 March 1987, pp. 31-37.

¹² *ibid.*

¹³ Jeremy Bentham (1748 -1831) was an English philosopher, lawyer and economist who founded the concept of utilitarianism. He believed ideas, institutions and actions should be judged on the basis of their utility, attempting to achieve the most happiness for the greatest number of people. He developed this philosophy to solve social problems scientifically, greatly influencing nineteenth century reformist theology.

of tyranny"¹⁴. One of the more recent advocates of animal rights, Tom Regan, argues animals "are to be treated with respect and that respectful treatment is their due".¹⁵ He believes man should not view animals as a resource.

¹⁴ Bentham, Jeremy 1789, *An Introduction to the Principles of Morals and Legislation*, ed. J.H. Burns and H.L.A. Hart (1789, London, 1970).

¹⁵ Regan, Tom 1984, *The Case for Animal Rights*, Berkeley: University of California Press.

The animal rights movement has commitment to several goals, including:

- * abolition of the use of animals in science;
- * dissolution of commercial animal agriculture; and
- * elimination of sport hunting and trapping.¹⁶

These objectives have the potential to drastically transform society. The proponents of Animal Liberation, such as Regan and Singer,¹⁷ suggest a "revolution", where human equality extends to animals. Regan supports a doctrine of rights and duties, while Singer proposes utilitarianism, both arriving at the same conclusion that man is morally required to show greater concern for animals. Realising their beliefs would apparently end "tyranny" in society, creating an environment free of animal exploitation and consumption.

This Background Information Brief will only address the more traditional issue of animal welfare, which involves removing cruelty and improving the conditions experienced by animals. The philosophical ideologies raised by animal rights groups will not be further addressed.

2.4 Organisations involved in the Issue

In Australia, organisations most commonly associated with the issue of animal welfare are the Royal Societies for the Prevention of Cruelty to Animals (RSPCA).

The first RSPCA in Australia was established in Victoria on 4 July, 1871, soon spreading to the other States. Each State in Australia has an RSPCA, with the same objectives but run autonomously. The primary objectives of the RSPCA are:¹⁸

- * prevent cruelty to animals by enforcing existing laws;
- * procure the passage of amending or new legislation necessary for animal protection;
- * sustain intelligent public discussion regarding animal welfare;
- * disseminate information about the care, protection and treatment of animals by publishing and circulating literature, conducting lectures, seminars and competitions;
- * educate the community about the humane treatment of animals; and
- * provide suitable facilities for animal care and recovery.

¹⁶ ibid. 1985, "The Case for Animal Rights", an article from *In the Defence of Animals*, edited by Peter Singer, Oxford: Basil Blackwell Publisher Ltd., p. 13.

¹⁷ Singer, Peter 1990, *Animal Liberation*, New York: A New York Review Book, Second Edition.

¹⁸ RSPCA. 1992, *Policies & Position Papers*, RSPCA Australia Incorporated, p. 3.

In 1883 the Queensland Society for the Prevention of Cruelty formed in Brisbane, following an unsuccessful attempt in 1876. Today the RSPCA is regarded as the State's leading crusader and authority on animal welfare.

The Queensland branch of the RSPCA undertakes many activities to improve and monitor animal welfare throughout the State. The RSPCA operates an animal refuge at Fairfield, also doubling as headquarters. The refuge is open 24 hours a day. At the refuge animals can be bought, treated by veterinary surgeons, or lost animals traced. An ambulance operates from the refuge, transporting injured strays and fauna to the RSPCA or to the University of Queensland Veterinary School for care.

The RSPCA is the only animal welfare organisation entrusted by the government to uphold the *Animals Protection Act 1925*. Enforcing the provisions of this Act requires running an inspectorate, involving nine officers, variously positioned throughout the State investigating cases of alleged mistreatment of animals reported to the Society. Investigations involve video, photographic, night scope and aerial surveillance, inspecting animals, issuing cautions, researching, rescuing animals, co-ordinating activities, liaising with police, and following through with prosecutions when necessary. Many of these activities involve working in unpleasant or difficult situations. Although the Society aims to prevent rather than prosecute, the cruelty investigations involve the largest expenditure by the Society. Where prosecutions occur, often the magistrate will award expenses, but these usually amount to a fraction of the cost of the investigation.

The Society also educates the public, particularly children on the care of animals. The Society has established an Education Centre, where programmes and school visits are organised. The RSPCA requires publicity for its continued existence, therefore they undertake a large amount of media liaison. A veterinary talk back radio program is conducted, as well as producing articles, publications, media statements, running competitions, and commercials. The Society has a policy section which liaises with government on issues involving animal welfare. In accordance with its objectives, the RSPCA is involved in shaping the State legislation dealing with animal welfare. A lot of energy is focused on the development of new State legislation.

Contrary to popular belief the RSPCA is a charity, relying heavily on funds from subscriptions, bequests and donations. The State Government provides some funding to the Society which has increased in the last few years, but still only forms 6.3 percent of the operating costs of the Society.

There are many other smaller animal welfare organisation in Queensland, which also receive state government funding, sharing approximately \$85 000¹⁹ in the last financial year. These organisations include Animal Welfare Incorporated, Societies for the Prevention of Cruelty to Animals, Young Animal

¹⁹ Figures quoted are derived from unpublished information from the Bureau of Animal Welfare on the financial assistance provided to animal welfare organisations since 1989.

Protection Society, Cat Protection Society, Eye on the Animals, and many refuges.

In recent years some animal welfare and animal rights organisations have joined to increase political power, particularly overseas. On the national scene, the Australian and New Zealand Federation of Animal Societies (ANZFAS) contains most of the principal animal societies in the Asia-Pacific area. Its diverse 40 member organisations have a total membership exceeding 80 000 people. Some of the member groups are purely activist groups such as Animal Liberation, whereas other groups provide care and rescue services for animals in danger or distress. Some groups deal with issues such as vivisection, or the promotion of vegetarianism or veganism. Member societies include the RSPCA, Animal Welfare Leagues and several others. All have a common goal - to improve the conditions animals experience. ANZFAS's presents the views of member welfare groups to state and federal governments, the media and the public, and provides research information on animal exploitation.

State and local governments are also involved in the issue of animal welfare. In Queensland, the Department of Housing, Local Government and Planning has a Bureau of Animal Welfare, which is responsible for dealing with animal welfare policy. Another relevant government body is the Department of Environment and Heritage which manages national parks, wildlife and the environment. In Queensland, the Department of Primary Industry deals with animal welfare issues due to staff's daily contact with rural producers and their livestock. Police officers, along with those appointed from the RSPCA, are empowered to enforce the provisions of the *Animals Protection Act 1925*.

State Governments also decide the degree of responsibility of local government, through legislation. Local governments pass by-laws to manage animals in the community. Animal welfare and animal control are the most constant forms of complaint to local government officials.²⁰ Within local government interested parties include elected representatives, environmental health officers, animal impounders and environmental officers.

Educational institutions have interests and concerns with animal welfare issues. Most University Veterinary Schools have courses in animal welfare as part of their curriculum. In the commercial arena, one of Australia's largest pet food manufacturers, Uncle Ben's of Australia, established the Petcare Information and Advisory Service in 1966, which promotes responsible pet ownership. Petcare runs nationally, working closely with other bodies involved in animal welfare issues.

Recent studies have shown the psychological and physiological benefits to health through owning pets. A close relationship with companion animals has many benefits including improved emotional and psychological development of children; companionship and support to the elderly; assist recovery rates of patients suffering from serious illness; decreases the rate of minor illness; and

²⁰ Hoffman, G.T. 1991, "Animal Welfare and Local Government", *Loggov Digest*, vol. 17, no. 3, June/July 1991, pp. 6-7.

may substantially reduce the risk of heart disease.²¹ Medical research organisations are also involved in the animal welfare issue through their use of animals in research.

Other organisations involved in the issue of animal welfare include the National Parks and Wildlife Service, rural lands boards, CSIRO, National Health and Medical Research Council, Australian Quarantine and Inspection Services, Australian Veterinary Association and numerous scientific and rural producer organisations.

²¹ Some studies which have reported the aforementioned effects include:

Anderson, W.P., Reid, C.M. & Jennings, G.L. 1992, "Is pet ownership good for your heart? The results of a survey of risk factors for cardiovascular disease in Melbourne, Australia", *Urban Animal Management: Proceedings of the First National Conference on Urban Animal Management in Australia*, 1992, Brisbane, pp. 149-153.

Jennings, G., Nelson, L., Nestel, P., Esler, M., Korner, P., Burton, D., & Bazelmans, J. 1986, "The effects of changes in physical activity on major risk factors, hemodynamics, sympathetic function, and glucose utilisation in man: a controlled study of four levels of activity", *Circulation*, vol. I, pp. 30-40.

National Heart Foundation of Australia. 1989, *Risk Prevalence Study*, NHFA, Canberra.

Social Development Committee. 1989, *Inquiry into the Role of Welfare of Companion Animals in Society*, Government Printer, Melbourne.

Chapter 3 PRESENT SITUATION IN AUSTRALIA

3.1 The Crux - Who Pays?

The welfare debate has raised public consciousness of man's treatment of animals through extensive media coverage of many issues. One of the issues rarely canvassed is who will pay for the success of the animal welfare movement. The list of groups who are expected to pay the cost of welfare measures include:

- * consumers;
- * government, for society generally;
- * animal welfarists; and
- * agricultural producers and other animal users.

Few agricultural producers believe they are capable or responsible for meeting the costs of welfare.²² Producers object to absorbing the cost because they are unconvinced of the welfarists technical demands. They are suspicious of the welfarists motives, and fear they will become uncompetitive if competing countries do not have the same constraints.

The notion that consumers will pay for the cost of animal welfare measures may be ignoring economic reality. There is consensus by most in the community that they want welfare, but whether consumers are willing to pay the commensurate cost is uncertain. Strong consumer demands for free-range eggs which attract a premium price may suggest a change in public attitude. Whan, an agricultural researcher, believes this consumer preference is not due to concern for the hens, but because consumers believe they are buying a superior product.²³

Whan believes the animal welfare lobby is under the greatest obligation to meet the costs of prescribed welfare measures. He believes this would conform with the 'user-pays' principle since the welfarists are the major consumers of the results of animal welfare. This argument ignores some of the positive aspects of the debate, such as that experienced in the environmental debate, where the community as a whole receives benefit from changes in behaviour and improvements in technology. The RSPCA and other welfare organisations could argue they are major contributors to the cost of animal welfare.

Government subsidisation or regulation would pass the costs of animal welfare on to the community. Regulation would impose heavy costs on rural producers without a commensurate gain in production. If welfare costs were subsidised by government the costs would be more evenly distributed.

²² Whan, Ian 1987, "The crux of animal welfare - who pays?", *Brahman News*, June 1987, no. 75, pp. 12-14.

²³ *ibid.*

McEwen states:

... the animal welfare debate is riddled with the self-justification of interest groups who do not wish their convenience or economic interest disturbed. The way round such narrowly based self-justification is to accept that the cost of proper animal welfare should be shouldered by the whole community and not just particular vested interests.²⁴

This leads to arguments about the efficacy of potentially introducing services or practices promoted by minorities where the social benefit is not always self-evident. Federal and state governments have addressed this problem by initiating reviews of legislation and undertaking research on animal welfare issues.

3.2 The Development of Government Committees

Community concerns for animal welfare in Australia have been reflected in the creation of government committees to deal with some of the problems. Federal Parliament established the Senate Select Committee on Animal Welfare in May 1983 to investigate all aspects of animal welfare. The committee dealt with individual welfare issues,²⁵ encouraging an open examination of a wide range of animal welfare concerns. In May 1991, the Senate instructed the committee to finish current inquiries and disband. Many questioned this decision. On September 4, 1991, the Senate agreed to establish a Standing Committee on Rural and Regional Affairs to investigate rural issues, including animal welfare.

²⁴ McEwen, *op. cit.*, p. 42.

²⁵ The Committee presented ten reports to the Senate. These were:

Export of Live Sheep from Australia	1985
Dolphins and Whales in Captivity	1985
Kangaroos	1988
Animal Experimentation	1989
Sheep Husbandry	1989
Intensive Livestock Production	1990
Racing Industry	1991
Culling of Large Feral Animals in the Northern Territory	1991
Transport of Livestock within Australia	1991
Equine Welfare in Competitive Events other than Racing	1991

Each State has formally or informally in the last decade established committees to investigate animal welfare concerns.²⁶ In Queensland, the Animals Protection Act Review Committee was established in 1990 to review the legislation and make recommendations for change. The committee had representatives from several organisations involved in animal welfare. Because of the review, a Green Paper was issued for public comment. An Animal Welfare Bill is being drafted. The Western Australian Government created a similar committee in 1991, which is still reviewing the legislation. In other States, such as South Australia and the Australian Capital Territory, statutory authorities have been created to monitor animal welfare issues.

These various committees have investigated many animal welfare issues, including livestock production practices.

3.3 The Rural Side of the Problem

Maughan believes animal welfare is one of the most important issues facing agriculture today.²⁷ He says it has the potential to dramatically change agriculture. Graziers have stressed

The welfare of the producer's livestock is a major determinant of the viability of the enterprise.²⁸

Many procedures are available to reduce animal stress while increasing productivity and profitability to producers. Supplementary feeding in times of nutritional stress is an obvious example. Most farmers are unlike Mr Jones from Orwell's *Animal Farm*. They do have a caring compassionate respect for their stock and often are not in the business only for the money. Most animal welfare organisations, particularly in Queensland, are aware of this prevailing attitude of rural producers. But, due to farmers' vulnerability to market forces,

²⁶ *Formal Committees:*

Tasmania: Animal Welfare Advisory Committee, Animal Welfare Bill 1992, cls.39-41.

South Australia: Animal Welfare Advisory Committee, *Prevention of Cruelty to Animals Act 1985*, Part II.

Australian Capital Territory: Animal Welfare Advisory Committee, *Animal Welfare Act 1992*, Part IX.

Informal Committees:

New South Wales: Animals Welfare Advisory Council

Western Australia: Animals Welfare Advisory Committee.

²⁷ Maughan, Noel 1986, "The Impact of Welfare Issues on Farming Practices", *Farm Animal Welfare: Proceedings of a Conference*, Ballarat, Victoria, 5 September 1986, p.15.

²⁸ Joyce, Jan 1991, "Animal Welfare - The Graziers' Perspective", *Proceedings of the Animal Welfare Conference*, Brisbane, 8-9 June 1991, p. 52.

there are instances where if the farmer suffers, the land and the animals also suffer. Drought and decreasing value of some livestock in recent years have highlighted this link between the farmer and the animal's welfare. A highly visible campaign epitomising this association was run by the Australian Wool Corporation, which organised a flock reduction campaign. Graziers received compensation for each animal destroyed. The value of the livestock had declined so dramatically, it was more merciful to terminate the animal's life with a bullet rather than let them die through starvation and hunger. Many other traditionally accepted animal husbandry techniques attract large amounts of criticism. Some of the more hotly debated animal husbandry procedures include mulesing,²⁹ spaying, castration and branding. Animal research aimed at increasing agricultural production is also often criticised.

3.4 Research

Animal experimentation has aroused strong opposition throughout the last century, facing the strongest opposition in the last two decades. Independent estimates of the number of animals used in experiments are not available. Animal liberationists believe up to 1.5 million animals were experimented on in Australia in 1991.³⁰ Many of these animals would have experienced minimal interference. Some of this research involves human health, while other research involves improving knowledge on animal behaviour and physiology. Most research is in laboratories, while some involves field trials. Anderson notes a large proportion of Australian research involves humans or *in vitro* techniques.³¹

Scientists are obliged to deal with animal welfare concerns. Research institutions are required to adopt the Australian Code of Practice for the Care and Use of Animals for Scientific Purposes to receive funding from the National Health and Medical Research Council, the CSIRO, the Australian Agricultural Council, and government organisations. The code's aims are to:³²

- * emphasise the responsibilities of both investigators and

²⁹ Mulesing is the surgical removal of the skin surrounding the vulva and anus of lambs to increase the area of bare skin in the breech area. The operation reduces the incidence of fly strike.

³⁰ Safe, Mike 1991, "Animal Rights - and Wrongs", *The Australian Magazine*, 17 August 1991, pp. 17-27.

³¹ Anderson, W.P. 1987, "Education and Communication about Animals in Research", *Intensive Animal Welfare: Proceedings of a Symposium*, Bardon Professional Centre, Brisbane, 13/14 March, 1987, p. 163. In vitro experimentation involves techniques using test tubes or other laboratory equipment, simulating animal experimentation.

Australian code of practice for the care and use of animals for scientific purposes. 1990, produced by the National Health and Medical Research Council, C.S.I.R.O., and the Australian Agricultural Council, Commonwealth of Australia, Australian Government Printing Service: Canberra, p. 1.

- institutions using animals;
- * ensure the welfare of animals is considered an essential factor;
- * ensure the animal use is valid;
- * minimise the number of animals used in projects and limit or avoid pain or distress; and
- * promote the development and use of techniques which replace animal experiments.

This code places obligations on researchers to be aware of and concerned for the welfare needs of research animals. The key element of this code is that all proposals for animal-based experiments must be submitted in advance to institutional Animal Experimentation Ethics Committees for scrutiny. The code provides terms of reference for the committee's membership and functions. Committees, containing an academic, researcher, welfarist and layperson, ensure experimentation complies with relevant legislation and guidelines. The effectiveness of ethics committees relies on accountability, where researchers have to account to an external group of people the need and methods required for a particular experiment. Comments have been made on the adequacy of ethics committees. Wright cited many instances where committees adopted procedures which did not satisfy the code.³³ Often when committees requested information on anomalies between applications and actual procedures, responses were not very illuminating. Involvement of external, independent committee members, required by the code, was often minimal. Wright reported researchers had no strong desire to spend time and money looking for alternatives to animal experimentation. He believes funding constraints, the academic requirement to "publish or perish" and the researcher's views that pain can be justified is skewing the ethics committee's role towards ensuring pain is minimised, instead of deciding whether the experiment has merit or could be performed in another way.

The welfare problems surrounding animal research have been addressed to a limited extent in the animal welfare legislation throughout Australia.

Codes of Practice

Model codes of practice are recognised in the animal welfare legislation in Australia and New Zealand. They were written and developed on a consultative basis with industry and the community. A Subcommittee on Animal Welfare was formed for this task in July 1980 for the States and Commonwealth. Fifteen codes of practice are approved by the Committee and endorsed by the Australian Agricultural Council and the Commonwealth Scientific and Industrial Research Organisation. These codes cover issues such as the transport of livestock or focus on particular areas of production such as the pig and poultry industry. Laws, an agricultural researcher, describes welfare codes as definitions of acceptable husbandry practices to ensure the animal's welfare,

³³ Wright, Brett 1992, "The Animal Labs", *Animal Liberation Magazine*, January/March 1992, no. 39, pp. 16-18.

not husbandry texts.³⁴

In Australia and New Zealand the primary method used to regulate animal research is by appointing institution-based animal experimentation ethics committees (AEECs). These committees examine proposals for animal research and determine if it should proceed or be amended. Although codes have varying legal status depending on the State, Territory or country, the AEECs utilize them to determine the type of research to be permitted. Some of the benefits of codes include:³⁵

- * codes give specific guidance on health, husbandry and welfare, but allow scope for producers to exercise judgement;
- * codes provide an agreed set of guidelines for a minimum standard of welfare;
- * they provide an authoritative statement which form the basis of agricultural extension;
- * codes provide a method for uniformity between States. Some differences will exist because of the diverse environments across Australia;
- * codes are used to resolve disputes;
- * they can be modified following changes in scientific knowledge, economic constraints, or community attitudes;
- * codes are established independently;
- * they identify areas where existing knowledge is limited, requiring research; and
- * provide documentary evidence to other nations that Australia treats animal welfare as an important priority.

Disadvantages of codes have been identified by MacNamara, who believes they have been developed as a defensive step against public criticism diverting

³⁴ Laws, L. 1989, "The Need for Codes of Practice - Transport Restraint", *Recreational Animal Welfare: Proceedings of a Symposium*, held at Bardon Professional Centre, Brisbane, 14-15 April 1989, p. 9.

³⁵ These authors identified the benefits of codes:

- . Gee, R.W. 1986, "Animal Welfare - the real issues of urban and rural Australia", *Australian Veterinary Journal*, vol. 61, no. 8, pp. 245-247.
- . Joyce, op. cit., p. 55.
- . Laws, L. 1985, "Codes of Conduct for Grazing Animal Welfare. The Scientist's Viewpoint", *Grazing Animal Welfare*, eds. B.L. Moore and P.J. Chenoweth, University of Queensland Press, Brisbane, pp. 18-21.
- . Moore, B.L. 1982, "The evolution of national codes of animal welfare practice", *Australian Advances in Veterinary Science*, pp. 132-135.

attention away from many areas of animal welfare concern.³⁶ He suggested codes created situations in which animal welfare standards were reduced, but provided no specific instances. McEwen agreed saying:

The Codes of Practice are drawn principally by (agricultural) producers and an inspection of their terms makes it clear that producer interests rather than animal welfare prevail in the event of their conflict...A system that relies largely on self-regulation is no system at all.³⁷ Holder says codes do not address some of the relevant issues of concern by many in the community.³⁸ McEwen added that evidence suggests that codes are not followed and are rarely enforced. The opposing view, offered by Carroll, is industry self-regulation by compliance with agreed Codes of Practice as an appropriate method of encouraging good animal welfare practices.³⁹ Joyce contends that:

Codes of Practice by their nature are sufficiently flexible to provide a guide to a range of circumstances. In contrast, regulations are very inflexible.⁴⁰

Several comments have been made on including codes in legislation. Many authors consider detailed government regulation of the welfare of livestock as difficult because such an action could:

- * prevent innovation by producers as a result of delays, red tape and increased costs;
- * encourage the incorrect attitude that animal cruelty or suffering is only wrong because it is illegal;
- * discourage a positive attitude of personal responsibility;
- * take several years to develop, making it difficult to reflect changing community standards;
- * not cover a unique set of requirements without being restrictive; and
- * make the legislation lengthy and difficult to comprehend by the target audience.

The main problem with not including codes of practice in relevant legislation is the concurrent inability to enforce provisions. If the provisions are

³⁶ MacNamara, J. 1985, "Animal Welfare - A Public Issue", *Grazing Animal Welfare*, eds. B.L. Moore & P.J. Chenoweth, University of Queensland Press, Brisbane, pp. 181-185.

³⁷ McEwen, op. cit., p. 43.

³⁸ Holder, J.M. 1987, "The Veterinarian and welfare in animals in the intensive livestock production industries", *Intensive Animal Welfare: Proceedings of a Symposium*, Bardon Professional Centre, Brisbane, 13-14 March 1987, p. 7.

³⁹ Carroll, Lex 1991, "Animal Welfare - The Cattlemen's Perspective", *Proceedings of the Animal Welfare Conference*, Brisbane, 8-9 June 1991, p. 63.

⁴⁰ Joyce, op. cit., p. 56.

unenforceable, they lose authority.

Chapter 4 COMPARATIVE LEGISLATION IN AUSTRALIA

4.1 History

Australian legislation for the protection of animals followed the reforms of the early 1800s in Britain. A genuine concern for animal welfare was evident in early nineteenth century colonial Australia. The *Sydney Gazette* of that period frequently admonished cruelty to animals as eliciting "indignation in the breast of a spectator not wholly bereft of feeling".⁴¹ Although a concern existed and legislation was passed in Britain in 1822, the first animal cruelty legislation enacted in Australia was in Van Diemen's land in 1837.⁴² This was two years after the principal English Act of 1822 had been repealed and replaced with more extensive legislation. The 1850s marked the adoption of animal cruelty legislation in each of the colonies, with the exception of South Australia. Further legislation appeared in the four colonies during the 1860s and in all States in the early 1900s and 1920s. The 1950s was a period of amending legislation in all States and within the last decade there has been a further period of legislative revision throughout the country. The Inaugural Animal Welfare Ministers Conference was held in Adelaide on 4 October 1991 where it was agreed to strive for uniformity in the legislation throughout the Australian jurisdictions. Recent changes in the animal welfare legislation shows this is being achieved.

4.2 The Status of Legislation throughout Australia

The last decade has seen a resurgence of legislative activity in the field of animal welfare. In the humanitarian spirit of the eighties, the welfare state turned its attention towards the revision of the scope and philosophy of its animal protection legislation.⁴³ New South Wales, the Australian Capital Territory, Victoria and South Australia have all recently introduced complete revisions of their animal cruelty legislation, while Queensland, Tasmania and Western Australia are currently at various stages of reviewing their existing provisions.

⁴¹ *Sydney Gazette*, 1 January 1804, quoted in Jamieson, Philp, "Duty and the Beast: The Movement in Reform of Animal Welfare Law", *The University of Queensland Law Journal*, vol.16, no.2, 1991, p. 239.

⁴² William IV, No. 3. Prosecutions were clearly brought under the legislation: the *Hobart Town Courier* noted the imposition of fines for convictions of cruelty given against Thomas Dowling (14 September 1838) and Richard Hume (12 October 1838). Records at Richmond Gaol record six days solitary confinement to Charles M in September 1838 for cruelty.

⁴³ Jamieson, Philip 1989, "Animal Welfare: A Movement in Transition", *Law and History in Australia: A collection of papers presented at the Eighth Australian Law & History Conference*, Adelaide, 1989, p. 21.

4.3 Animal Welfare's Legislative Development

Each State and Territory of Australia has animal welfare legislation, as shown in Appendix 1. This legislation has evolved from the founding Australian legislation of 1837 enacted in Tasmania. This statute remained in force in Tasmania until replaced by more extensive legislation in 1877,⁴⁴ although provisions against animal fighting had been introduced under the *Police Act 1865*.⁴⁵ This legislation was replaced in 1904,⁴⁶ and again in 1925 by the *Cruelty to Animals Prevention Act 1925* which is the current Act. In late November 1992,⁴⁷ the Animal Welfare Bill 1992 was presented to Parliament in Tasmania. The Bill has not proceeded past the first reading stage.⁴⁸

In New South Wales, legislation of 1850⁴⁹ remained in force until 1901⁵⁰ and was then not replaced until 1979,⁵¹ with substantial amendments in 1987. The 1850 legislation established precedent in Australia by recognising the offence of cruelty and made specific provision in respect of animal fights and the carriage of animals.

The New South Wales 1850 legislation remained law in both Victoria and Queensland after their separation from New South Wales. Eventually it was replaced in Queensland in 1901⁵² and in Victoria in 1864.⁵³ While in Queensland the legislation was replaced by specific animal cruelty legislation, the legislative history of animal protection in Victoria is more complex. In summary, the provisions for animal protection were placed, for around one hundred years, in various pieces of police legislation.

Following the recommendations of the Statute Law Revision Committee that the protection of animals be dealt with as a separate measure,⁵⁴ the *Protection of*

⁴⁴ *Cruelty to Animals Act 1877* (TAS).

⁴⁵ *Police Act 1865* (29 Vict No 10) (TAS), s.83.

⁴⁶ *Prevention of Cruelty to Animals Act 1904* (TAS).

⁴⁷ Parliament of Tasmania, House of Assembly, 18 November 1992, p. 5064.

⁴⁸ This information was correct as at 1 February 1993.

⁴⁹ 14 Vict No 40 (NSW), *An Act for the more effectual prevention of Cruelty to Animals*, assented to 1 October 1850.

⁵⁰ The *Prevention of Cruelty to Animals Act 1901* (NSW), though earlier amended by the *Criminal Law and Evidence Amendment Act 1891* (55 Vict No 5) and by an *Act to Amend the Law Respecting Cruelty to Animals*, No 11 of 1899.

⁵¹ The *Prevention of Cruelty to Animals Act 1979* (NSW).

⁵² *Animals Protection Act 1901* (QLD).

⁵³ *Police Offences Statute 1864* (VIC), Part II, s. 18 (27 Vict No 225).

⁵⁴ Victoria. Legislative Assembly, *Parliamentary Debates* (1965), vol. 279, p.

Animals Act 1966 was passed. This Act has since been replaced by the *Prevention of Cruelty to Animals Act 1986*. The objectives of the Act are listed in s.1. These include:

- * prevent cruelty to animals;
- * encourage the considerate treatment of animals; and
- * improve the level of community awareness about the prevention of cruelty to animals.

In South Australia, the *Police Act 1863* provided for the prevention of cruelty to animals in essentially the same terms as those appearing in the Victorian legislation of the following year. It was repealed by the *Police Act 1869*.⁵⁵ In 1908 a separate *Prevention of Cruelty to Animals Act* was enacted, most of its provisions being drawn from the then existing legislation in New Zealand, New South Wales and Queensland.⁵⁶ That legislation was succeeded by the *Prevention of Cruelty to Animals Act 1936*, again replaced in 1985.⁵⁷

The South Australian Act, the *Prevention of Cruelty Act 1908*, was repealed from application in the Northern Territory when the *Prevention of Cruelty to Animal Ordinance 1935* was introduced. This Act has been variously amended, but is still in force.

In Western Australia, provisions making it an offence to "cruelly treat any animal whatsoever" were contained in the *Police Ordinance 1849*.⁵⁸ The provision was re-enacted in 1861⁵⁹, but was altered in the *Police Act 1892*⁶⁰ to make a more specific provision against cruelty. New legislation was proposed in 1912, but it was not until 1920 that the provision was replaced by the *Prevention of Cruelty to Animals Act 1920*, which is current.

In 1959, the Australian Capital Territory introduced the *Prevention of Cruelty to Animals Act 1959*.⁶¹ This Act repealed the *Prevention of Cruelty to Animals (Trap Shooting) Ordinance 1953* and the relevant New South Wales legislation, the *Homing Pigeons Protection Act 1909*. Following several years of consultation, the

546; (1966), vol. 281, p. 2720; (1966) vol. 282, pp. 3426-3427.

⁵⁵ 33 Vict No 15 (VIC).

⁵⁶ South Australia. Legislative Assembly. *Parliamentary Debates* 1908, p. 112.

⁵⁷ *Prevention of Cruelty to Animals Act 1985* (SA).

⁵⁸ 12 Vict No 20 (WA), s.20.

⁵⁹ The *Police Ordinance 1861* (WA), 25 Vict No 15, s.21.

⁶⁰ 55 Vict No 27 (WA), s.79.

⁶¹ This Act has in the past been cited as the *Prevention of Cruelty to Animals Ordinance 1959*. This changed when the *Self-Government (Citation of Laws) Act 1989* was enacted which required most Ordinances to be cited as Acts.

Animal Welfare Act 1992 was passed.

As with many of the States of Australia, early animal welfare legislation in New Zealand was found in the police statutes.⁶² Some other provisions were variously scattered amongst the *Poultry Act 1924*, *Stock Amendment Act 1938*, *Wildlife Act 1953* and the *Meat Act 1938*. The laws relating to animal welfare were eventually consolidated when the *Animals Protection Act 1960* was enacted.

The legislative position in Queensland is treated separately in chapter 5.

4.4 Definition of Animals

Animals protected by animal welfare statutes are defined in the relevant legislation. In Tasmania, the definition of an animal is broad, including animals other than humans.⁶³ Animals in New South Wales legislation are defined solely with reference to members of the vertebrate species, such as mammals, birds, amphibians and fish.⁶⁴ Most other States also have a definition of animals including only vertebrates.⁶⁵ South Australian and Victorian legislation exclude fish from the protection of the legislation.

The Western Australian statute narrowly applies the meaning of "animal" to include only a "domestic or captive animal",⁶⁶ thus excluding all animals in a natural state. In the Northern Territory, the term animal extends to every species of quadruped and bird, whether in a natural or domestic state, and all other animals dependent upon humans for their care or sustenance or those in a state of captivity.⁶⁷ The definition of an animal in New Zealand legislation is lengthy as it specifies animals included.⁶⁸ The definition includes horses, cattle, sheep, pigs, goats, dogs, cats, mules, ass, birds, and marine mammals in a domestic or wild state. Amphibians and reptiles are excluded unless kept in captivity. The Minister can also declare a species of animal to be covered by this Act.⁶⁹ Legislation in all jurisdictions excludes hybrids from the protection of

⁶² Examples of New Zealand police statutes containing animal welfare legislation include the *Police Offences Act 1927* and the *Summary Proceedings Act 1955*.

⁶³ *Cruelty to Animals Prevention Act 1925* (TAS), s.3.

⁶⁴ *Prevention of Cruelty to Animals Act 1979* (NSW), s.4.

⁶⁵ *Prevention of Cruelty to Animals Act 1986* (VIC), s.3.
Animal Welfare Act 1992 (ACT), s.4.
Prevention of Cruelty to Animals Act 1985 (SA), s.3.

⁶⁶ *Prevention of Cruelty to Animals Act 1920* (WA), s.3.

⁶⁷ *Prevention of Cruelty to Animals Act 1935* (NT), s.3.

⁶⁸ *Animal Protection Act 1960* (NZ), s.2.

⁶⁹ *ibid.*, s.2(e).

legislation.

Differential protection of animals according to perceived public benefit and economic viability has resulted over time. Domesticated animals which have the greatest general sentiment attached to them, such as dogs, are afforded the greatest protection in relatively recent Australian legislation. As Orwell noted in *Animal Farm*, "All animals are equal but some animals are more equal than others".⁷⁰ Anomalies in the treatment of animals occurs in most legislation in Australian jurisdictions. For example, in Queensland, s.4(1)(f) of the *Animals Protection Act 1925* requires that a dog habitually confined or tied up must be exercised for two hours each day, otherwise owners face prosecution. No similar provisions are made for intensively housed animals such as pigs. An example in New South Wales is s.7(2) of the *Prevention of Cruelty to Animals Act 1979* specifically prohibits the carrying of horses on a multi-deck vehicle, while other animals who may equally suffer are not protected. The existing laws in all States maintain a distinction between companion animals and farm animals. Animal rights activists often cite such examples as the community's anthropomorphic view of animal welfare.⁷¹

4.5 Powers of Animal Welfare Officers

All Australian animal welfare statutes nominate officers with the powers to enforce the provisions of these Acts. Information on the powers of officers in each State and Territory is included in Appendix 2. The RSPCA and police are the principal enforcers of the legislation, although others can additionally be appointed as officers. Only the Northern Territory and New Zealand do not empower the RSPCA to be officers. The Australian Capital Territory's legislation uniquely empowers the Minister to appoint a public servant to be the Animal Welfare Authority.⁷² The Authority, under s.76, appoints officers who perform duties and exercise powers under the Act.

Animal welfare officers have the authority to enter premises if a breach of an Act is or is suspected to be occurring. In some jurisdictions, warrants are required to enter certain establishments. Details of entry requirements are summarised in Appendix 2. A warrant is not required to enter any premises in New South Wales. Dwelling houses can not be entered under Victorian legislation, although other premises can be entered. In Tasmania and New Zealand, warrants are required to enter dwellings. In the Australian Capital Territory, special provisions apply to the entering of research establishments.

Officers are given specific indemnity from prosecution in most jurisdictions. (See Appendix 2). This is not the case in the Australian Capital Territory. Owners are able to claim compensation against officers if an animal dies or is

⁷⁰ Orwell, George 1946, *Animal Farm: A Fairy Story*, London:Secker & Warburg, p. 85.

⁷¹ McEwen, op. cit., p. 40.

⁷² *Animal Welfare Act 1992* (ACT), s.6.

injured in the course of the officer's duties where the officer's malice or negligence significantly contributed to animal's predicament.⁷³ Offenders are compelled to provide officers with their name and address in all States except Tasmania, Western Australia, and the Northern Territory. The Tasmanian Animal Welfare Bill 1992 introduces this provision. In all States and Territories, officers have the power to seize animals and destroy those that are suffering. In all jurisdictions, apart from Western Australia, police have the only power of arrest. In Western Australia, any officer can apprehend a person without a warrant for alleged cruelty.⁷⁴

4.6 Animal Cruelty Offences

The animal cruelty legislation of the Australian States create offences of a criminal nature. The legislation emphasises the requirement of *mens rea*, a "guilty mind", which is achieved through qualifying adverbs such as "knowingly", "intentionally" or through having "permitted" or "caused" a particular action. See Appendix 3 for provisions within each jurisdiction which establish *mens rea*.

All animal welfare legislation defines cruelty. Most legislation describes cruelty as the commission or omission of an act whereby unnecessary suffering is caused. The Northern Territory, Queensland and Western Australia make no specific provision for the offence of cruelty by omission, and define "ill-treatment" of an animal in terms which does not cover passive cruelty.⁷⁵ The sections of legislation listing animal cruelty offences are contained in Appendix 3. Offences are fairly similar between jurisdictions. They generally involve the wounding, overworking, torment, confinement, abandonment, failure to supply medical treatment, use in sporting or public performances, trapping, baiting or shooting of animals. The RSPCA recognises the offence of organised cruelty, which includes blooding greyhounds with live animals, cockfighting and dog fighting. The RSPCA has information which suggests these activities are widespread throughout Queensland, New South Wales and Victoria. Most States have provisions relating to organised cruelty offences. Under section 18 of the ACT legislation, rodeos and game parks are prohibited.⁷⁶ Aggravated cruelty, defined as an act resulting in the "death or serious disablement of the animal", is recognised in New South Wales, Victoria, New Zealand and the Australian Capital Territory. The Tasmanian Bill also recognises this offence. Normally, fines for aggravated cruelty are much greater than for the general

⁷³ *ibid.*, s.94.

⁷⁴ *Prevention of Cruelty to Animals Act 1920* (WA), s.10.

⁷⁵ *Prevention of Cruelty to Animals Act 1935* (NT), s.3.; *Animals Protection Act 1925* (QLD), s.3; and *Prevention of Cruelty to Animals Act 1920* (WA), s.3(f).

⁷⁶ Game parks are premises where animals other than fish are confined and they are taken or killed as a sport for a fee or other consideration. See further section 18(3) of the Act.

offence of cruelty.

The anti-cruelty statutes provide for the imposition of fines and/or imprisonment for the infringement of provisions. Fines vary between \$200 and \$10,000 or 6 to 12 months jail for the general offence of cruelty. Exact penalties are listed in Appendix 3. Another penalty often imposed is depriving an offender from ownership of the animal, which is employed in all of the jurisdictions. In the New Zealand legislation, parents of children who allow their children to commit an offence can also be found guilty.⁷⁷

Most legislation contains provisions exempting certain activities from punishment. Some activities involve inflicting pain to animals. This act is lawful if there is an adequate and reasonable object in undertaking the particular activity. Activities generally exempted from prosecution include agricultural practices, slaughtering animals in agreement with religious practices, hunting or trapping of vermin or providing veterinary treatment. Practices in accordance with recognised codes of practice are exempted in New South Wales, Victoria, South Australia, Australian Capital Territory and New Zealand. Appendix 3 lists provisions exempting certain activities from prosecution.

4.7 Animal Experimentation

Most Australian jurisdictions regulate experimentation on animals with the relevant provisions contained in the animal welfare legislation. The sections of legislation in each jurisdiction is listed in Appendix 4. The Tasmania, Western Australian, Northern Territory and New Zealand legislation contains few provisions regulating animal experimentation. In the current Tasmanian Act, section 5(h) prohibits administering any poisonous or injurious substance except for the purposes of scientific research. In the Northern Territory, vivisection performed by a qualified medical practitioner, veterinary surgeon or by a person authorised by the Minister is exempted from prosecution. An experiment involving animal inoculation or feeding is also exempted.

Similar provisions exist in Western Australia. New Zealand regulations prohibit experiments or teaching involving a live animal unless performed in accordance with a code of ethical conduct relating to the welfare and humane treatment of the animal involved. The codes of conduct must be approved by the Minister and involve the appointment of a committee. The code is published in the *Gazette* and is enforceable. Offences against the code would involve a \$1 000 fine and three months imprisonment. The Tasmanian Bill proposes to license research institutions, introduced Animal Experimentation Ethics Committees (AEEC), recognise codes of practice and increases penalties. This legislation would align Tasmania with the other States.

Unlike the other jurisdictions New South Wales' statute controlling animal research has been placed in separate legislation, the *Animal Research Act 1985*.

⁷⁷ *Animals Protection Act 1960* (NZ), s.5(a).

New South Wales, Victoria, South Australia and the Australian Capital Territory all licence research institutions and experimenters. These States also require the establishment of AEECs to review scientific procedures at each licensed research institution. Teachers using animals are required to be licensed in South Australia and the Australian Capital Territory. Codes of Practice are recognised in these jurisdictions and are used by the AEECs in their functioning.

Penalties vary greatly between states. In the Northern Territory a fine of \$200 is the maximum that can be imposed, while corporations in New South Wales could face fines of up to \$100,000. In the States where licensing is required there are penalties for individuals as well as corporations. Exact penalties are listed in Appendix 4.

4.8 Recent Developments in some Jurisdictions

4.8.1 Tasmania

In Tasmania, animal cruelty discussions have focussed on the Animal Welfare Bill currently before Parliament. The Bill will make the Tasmanian legislation uniform with the other States. In particular, the Bill requires the establishment of an Animal Welfare Advisory Committee. The membership and functions of the committee are detailed in clauses 39 and 40. Proposed functions involve advising the government on animal welfare issues, "conducting an ongoing review of the laws relating to animal welfare" and developing community education programs. The Tasmanian Bill's unique feature is the payment of fines into an Animal Welfare Trust Account (cl.47), which the Minister may apply to animal welfare purposes.

4.8.2 Victoria

Recently in Victoria, a great deal of controversy⁷⁸ occurred over proposed legislation, the Companion Animals Bill 1991, which would have established a comprehensive registration scheme for all companion animals and associated businesses to be administered by local councils.⁷⁹ Special registration provisions would have applied to dangerous dogs.⁸⁰ Part 6 of the Bill regulated and administered payments of registration fees into an Animal Welfare Fund, similar to provisions in the current Tasmanian Bill. The basic aim of the Bill was to provide financial incentives to companion animal owners to have their pets desexed. Entire animals would cost 200% more to register than desexed animals, except for certain groups such as guide dog owners.⁸¹ A unique

⁷⁸ Magazanik, Michael 1992, "Pet subject is a touchy one", *The Age*, 4 April 1992, p. 21.

⁷⁹ Companion Animals Bill 1991, clause 5.

⁸⁰ *ibid.*, cls.35-40.

⁸¹ *ibid.*, cl.4.

aspect of this proposed legislation was the requirement to register cats.⁸² Local councils would have been able to determine their own fee structure. This Bill, introduced by the Kirner Government on 14 November 1991, has now lapsed due to the change of government.⁸³

4.8.3 *New South Wales*

The NSW government is currently further reviewing their animal cruelty legislation.

The Animal Welfare Advisory Council investigating the management of animal welfare in the State released a public discussion paper in November 1992.⁸⁴ The terms of reference for the review were to examine the legislation and its administration and enforcement. Some of the major conclusions were that a positive duty of care be placed upon people to care for animals, incorporate Codes of Practice for Welfare and Enforcement Officers into the legislation, establish the New South Wales Animal Welfare Advisory Council as a statutory body, regularly review the Act, increase penalties to \$2 000 and/or two years imprisonment for an individual, and \$100 000 for a corporation, deter trivial or vexatious charges and require annual reporting and accountability. The banning of operations removing nerves from horse's limbs, steeplechasing and hurdle-racing, and imposing severe restrictions on the use of whips was also recommended.⁸⁵ Other suggestions to arise from the review include changing the name of the current legislation, curtailing powers of RSPCA officers, prohibiting or regulating traditional surgical or husbandry procedures performed without anaesthetics including mulesing, prohibit the slaughter of meat according to religious or other customs without humane stunning or shooting and empower the New South Wales Agriculture and Rural Land Protection Boards to draft and enforce the provisions in rural operations.⁸⁶

A NSW Law Reform Commission report recommended dangerous dog legislation similar to the proposed Victorian legislation, the Companion Animal Bill 1991. Prison terms of seven years or fines up to \$100 000 have been introduced to the State's *Dog Act 1966* for people using their dog as a weapon.⁸⁷

⁸² *ibid.*, cl.5.

⁸³ Victoria. Legislative Assembly, *Parliamentary Debates*, vol. 9, p. 1804.

⁸⁴ New South Wales. Department of Agriculture, *Ministerial Review of Prevention of Cruelty to Animals Act 1979 and Regulations*, vol.1, Public Discussion Paper prepared by the Ministerial Review Team, November 1992.

⁸⁵ Talty, Martin 1993, "Govt call to curb cruelty in racing", *The Sydney Morning Herald*, 15 January 1993, p. 3.

⁸⁶ "RSPCA report 'bombshells'", *The Land*, 7 January 1993, p. 2.

⁸⁷ Totaru, Paola and Cornwall, Deborah "Now it's jail for dog attacks", *The Sydney Morning Herald*, 20 January 1993, p. 2.

4.8.4 *South Australia*

The cat control issue is being debated in most States including South Australia. In October last year, the Cat Working Party released a report on cat control. They made the following recommendations:

- * allocation of federal government funds to develop humane forms of biological control of unowned cats;
- * cat sales include a voucher for desexing;
- * enact local government legislation enabling regulation of cat numbers on properties;
- * education programs to encourage the confinement of cats; and
- * introduce a standard system of cat identification.

4.8.5 *Western Australia*

In November 1991, the then Western Australian Minister for Local Government, the Hon. David Smith, announced the establishment of an Animal Welfare Advisory Committee. The aim of the Committee is to review the animal welfare legislation and to provide advice to the Minister. Almost 100 individuals or groups nominated for membership to the Committee. Specific issues being addressed include cat control, the use of animals in scientific research and entertainment and the use of steel jawed traps.

4.8.6 *Australian Capital Territory*

The Australian Capital Territory legislation has only recently been enacted, with a great deal of controversy. One of many of the contentious issues was that circuses can not be conducted without a permit.⁸⁸ Penalties include a \$10 000 fine and/or one year jail. Certain animals are banned from entering the Australian Capital Territory,⁸⁹ including bears, cheetahs, elephants, lions, tigers and those defined in s.4. Others issues debated were the banning of steel-jawed traps and restrictions on other traps and the incorporation of Codes of Practice into legislation.

⁸⁸ *Animal Welfare Act 1992 (ACT)*, ss.51-59.

⁸⁹ *ibid.*, s.52.

Chapter 5 SITUATION IN QUEENSLAND

5.1 Background

Developments in recent years have increased the community's awareness of animal welfare issues. Media attention focusing on abhorrent cases of animal cruelty has shown the extent of abuse in Queensland.

5.2 Statistics on Cruelty

A search of RSPCA Queensland annual reports, some dating back as far as 1923, reveals that cruelty statistics, although increasing in absolute numbers over time, parallel the population growth of Brisbane.⁹⁰ In 1954-55, Fairfield refuge admitted 5 900 dogs and 7 000 cats, of these 17.4% were rehoused and less than 1% reclaimed. Of those reclaimed most were dogs. In 1991-92, 14 256 dogs and 13 745 cats were admitted resulting in 19.9% rehoused and 2.3% reclaimed, again most of those reclaimed were dogs. Some salient points include:

- * 52% of the kittens arriving in Queensland refuges arrive in three months of the year;⁹¹
- * admissions of animals to refuges and their fate shows little variation between years;⁹²
- * if more animals are admitted, they are euthanased not rehoused;⁹³
- * the major reason for abandoning a pet was because of behavioural problems (49%), followed by moving house (20%);⁹⁴
- * of the animals that are rehoused, a significant number are returned to the shelter;
- * few stray animals are claimed, especially cats;
- * most animals presented to the shelter are euthanased. At Fairfield Refuge last year, 23 065 animals were euthanased;⁹⁵ and

⁹⁰ Upton, Bill 1992, "Animal Shelter Management, Animal Control and Animal Welfare", *Urban Animal Management: Proceedings of the First National Conference on Urban Animal Management in Australia*, 1992, Brisbane, p. 139.

⁹¹ "Destined to Die: No.: 23,065", *RSPCA Annual Report 1992*, p. 1.

⁹² Upton, op. cit., p. 140.

⁹³ *ibid.*

⁹⁴ *ibid.*, These results are from a survey of people relinquishing ownership of their dog at Fairfield Refuge during 1991.

⁹⁵ Upton, op. cit, p. 139.

- * the problem appears not to be related to the prevailing economic conditions.⁹⁶

Duhs and Collyer⁹⁷ reported that 8% of Brisbane residents obtained their dog from the RSPCA, while coincidentally the Fairfield shelter handles about 8% of Brisbane's dog and cat population annually.

Each week in Brisbane the RSPCA receives 200 or more complaints of animal cruelty. Last financial year, the RSPCA in Queensland received 6 847 genuine complaints, resulting in 20 prosecutions and 67 cautions under the *Animals Protection Act 1925*. One of the successful prosecutions was of Oakey Holdings Ltd., owners of the Whyalla feedlot, in November 1991. The prosecution resulted from the death of 2 681 cattle, after failing to provide shelter. Most prosecutions though originate in urban areas.

In 1991 the then Police Commissioner, Newnham, suggested that animal welfare groups should take heart in the climbing animal cruelty statistics because it is a reflection of a successful education programme.⁹⁸ He said the community are reporting offences where previously they had not bothered. This may provide little comfort to those organisations over-worked at refuges.

5.3 Current Legislation

The *Animals Protection Act 1925* replaced the *Animals Protection Act 1901*, "for the more effectual prevention of cruelty to animals".⁹⁹ The RSPCA strongly lobbied for the 1901 Act because the New South Wales legislation of 1850 did not afford animals the protection desired.

⁹⁶ *ibid.*

⁹⁷ Duhs, E.J. & Collyer, C.W. 1979, *Brisbane Dog Survey: Preliminary Report*, Queensland Institute of Technology, Brisbane.

⁹⁸ Newnham, Noel 1991, "Policing Animal Welfare in Queensland", *Proceedings of the Animal Welfare Conference*, Brisbane, 8-9 June 1991, p. 112.

⁹⁹ Long title of *Animals Protection Act of 1901*, 1 Edw. 7 No. 26.

Seven amending Acts have been passed over the present Act's 68 year history,¹⁰⁰ to update the legislation. But there are many hallmarks of disarray, where the legislation has not kept pace with technology and community expectations. When the Bill was introduced to Parliament in 1925, debate focused on issues of importance of the day - the working and doping of horses and greyhounds, employees' and drivers' treatment of work animals, the use of horses for food on pig farms and protecting homing pigeons described by the Home Secretary, Hon. J. Stopford MLA, as a "national asset".¹⁰¹ This legislation does not adequately reflect modern society's views on animal welfare.¹⁰²

The meanings of certain terms in the *Animals Protection Act 1925* are defined in s.3. An animal is defined as any animal or bird in a natural or domestic state. Domestic and captive animals are defined. Cruelty is an action which is "unreasonable, unnecessary, or unjustifiable ill treatment". The Secretary, Chief Inspector and Inspectors of the RSPCA, members of the Police Service and others appointed by Governor-in-Council are the primary administrators of the *Animals Protection Act 1925*.

Cruelty offences such as ill-treating an animal, failing to provide suitable food, shelter or drink, failure to treat an injury, encouraging the fighting or baiting of an animal, failing to exercise a confined dog for two hours a day, docking tails, hunting, administering drugs or batteries, and abandonment are listed in s.4. The maximum penalty for a person found guilty of an offence is \$1 000 or six months imprisonment. A qualifying statement in s.4(2) prevents offences being limited to those listed. This section also exempts some actions from prosecution. Failing to provide medical treatment to a sick or injured animal is not an offence if it is likely to be healed or cured without treatment. An animal which is afflicted with disease or injury causing suffering may be killed humanely. Sections 4(3) and 4(4)(b) allows the killing of a dog which rushes at, or causes injury to, any person. Dogs can also be ordered to be destroyed by a court if they worry, kill, or injure any cattle, sheep, horses, swine or poultry in an enclosed place according to s.4(4)(a).

Homing pigeons, as mentioned earlier, are protected by s.5. Under s.6 compensation for injury caused to an animal, person or property is available from a person convicted of an offence for an amount not exceeding \$1 000. Exemptions from the application of the Act are listed in s.7. The slaughtering of

¹⁰⁰ Acts amending the *Animal Protection Act 1925* No. 25 (QLD) include:
Animals Protection Act Amendment Act 1952, 1 Eliz 2 No. 44;
Animals Protection Act Amendment Act 1954, 3 Eliz 2 No. 23;
Animals Protection Act Amendment Act 1957, 6 Eliz 2 No. 21;
Animals Protection Act Amendment Act 1971, No. 29;
Animals Protection Act Amendment Act 1977, No. 54;
Animals Protection Act Amendment Act 1981, No. 117; and
Animals Protection Act Amendment Act 1991, No. 1.

¹⁰¹ Queensland. Parliament, *Parliamentary Debates*, vol. 146 p. 1337.

¹⁰² McKinnon, A.J. 1992, "Queensland Government's Initiatives in Animal Welfare", *Urban Animal Management: Proceedings of the First National Conference on Urban Animal Management in Australia*, 1992, Brisbane, p. 88.

animals in compliance with religious requirements; acknowledged animal husbandry practices such as dehorning, castrating and mulesing; destroying or exterminating certain animals; hunting animals not in a domestic state or protected by law; scientific experimentation conducted in accordance with regulations; slaughtering of animals as food for mankind; destroying stray dogs or cats; and operations performed in accordance with normal veterinary practice are all exempted from the provisions of the Act.

Officers or a court can prohibit the use of an animal considered unfit for work for up to 21 days under s.8. This section also details the steps for extending or removing the order.

Sections 9 to 15A delineate the powers of officers. Officers can "enter into any place" to inspect an animal and its accommodation to determine if provisions of the Act have been contravened under s.9. Police can, without a warrant, arrest people suspected of committing an offence.¹⁰³ Animals or possessions may be seized by officers if involved in contravening a provision of the Act¹⁰⁴ and detained for evidence until the court proceedings. Section 11(3) allows the court to order the offender to pay a reasonable cost for keeping the animal during this period. Any animal or possessions seized under this Act are forfeited to the State¹⁰⁵ and disposed of as the Minister directs according to s.11(5). Compensation is not available for these actions. If a person interferes with property or animals seized, that person would be liable for a \$1 000 fine and/or six months jail. Animals may be destroyed when experiencing continued suffering from abandonment, disease, injury or disability according to s.13. Injured or disabled animals can be removed from public places at the cost of the owner.¹⁰⁶ Debts incurred by officers in enforcing these provisions are recoverable from the owner as a civil debt.¹⁰⁷ Section 14 of the Act allows a Justice of the Peace to authorise in writing the killing of an animal which ought to be destroyed due to its weak, disabled or diseased state, with no compensation recoverable. Private citizens can provide confined animals with food and water, with reasonable costs recoverable from the owner.¹⁰⁸ Section 15A of the Act allows officers to demand the name and address of people suspected of committing an offence.

Obstructing an officer from exercising authority by virtue of this Act is an offence according to s.16. Hindering an officer would incur a \$200 penalty. People are deemed to be guilty of an offence if they actually commit the offence; aid or abet people involved in an offence; directly or indirectly cause others to

¹⁰³ *Animals Protection Act 1925*, s.10.

¹⁰⁴ *ibid.*, s.11.

¹⁰⁵ *ibid.*, s.11(4).

¹⁰⁶ s.13(2).

¹⁰⁷ s.13(3).

¹⁰⁸ s.15.

commit an offence; knowingly permit an offence; or is the owner of an animal involved in an offence where reasonable precautions against the commission of an offence were not taken.¹⁰⁹ Employees charged with an offence may be exonerated if proven the acts were undertaken in the course of employment and the employee made the employer aware of the animals treatment.¹¹⁰ The employer can then be summonsed and if found guilty, be liable for the cost of both prosecutions. Courts may demand an owner or employer to produce animals and drivers involved in proceedings under the Act.¹¹¹ Section 19 of the current legislation enables the judiciary to divest convicted people of the ownership of any animal.

Any person knowingly selling or purchasing any "decrepit" domestic animal, except for slaughter, commits an offence under s.20. Animals must be slaughtered as quickly and with as little pain and terror as possible.¹¹² Animals delivered to slaughter houses can not be used for any work,¹¹³ or sold alive.¹¹⁴ Pigs over three months of age and calves can not be transported without suitable partitions, according to s.21A.

Section 22 lists provisions relevant to offences under the Act. Where no penalty for an offence is specified, a general penalty of \$2 400 applies. Offences against this Act are summary prosecutions. Time limits apply for the commencement of proceedings under s.21(4). Civil remedies are not affected by proceedings under this Act.¹¹⁵

Many comments have been made on the adequacy of penalties handed down for offences under the Act. Thelander said no meaningful body of precedent has been established because the legislation is debased by poor judicial interpretation.¹¹⁶ The RSPCA also points out that a lack of cohesion between them and the Police Service in some prosecutions results in an offender being given a sentence equivalent to a first offence, when in fact the person may have a history of offences within Queensland and other States.

Section 23 allows the development of regulations necessary for the administration of the Act. These regulations may involve the adoption of any

¹⁰⁹ ss.17(1)-(2).

¹¹⁰ s.17(3).

¹¹¹ s.18.

¹¹² s.21.

¹¹³ s.21(4).

¹¹⁴ s.21(6).

¹¹⁵ s.22(5).

¹¹⁶ Thelander, Andrew 1991, "Positive Concepts in Legislative Reform", *Proceedings of the Animal Welfare Conference*, Brisbane, 8-9 June 1991, p. 21.

standards, rules or codes. In 1991, an amending Act was passed which recognised and adopted the principles of the Code of Practice for the Care and Use of Animals in Research.¹¹⁷ Up until this time, there had been no regulations governing animal experiments in Queensland.

Local government is the institution principally invested with the responsibility for urban animal management. Local authority's ultimate responsibility is the protection and welfare of the community at large by making and enforcing by-laws for the control of animals within their area. The Local Government Association of Queensland has a resolution dating back to 1985 calling for the implementation of uniform dog control by-laws throughout urban areas of the State. This policy has not been implemented although there have been several attempts.

One of the major responsibilities of local government in the area of animal control and welfare is the promotion of responsible animal ownership. The City of Brisbane is offering incentives to owners such as rebates on registration fees to enrol in RSPCA pet obedience programs and for de-sexing pets. Other local governments are distributing pamphlets explaining council by-laws on animal registration and penalties. The Townsville City Council's pamphlet includes publicity on their "Dob in a Dog" campaign, which is aimed at encouraging the public to report nuisance animals. Moreton Shire Council's pamphlet outlines the costs involved in owning a pet, stating a dog costs \$700 a year to own, which is \$11 000 over the animal's life. While this claim is not sourced on the pamphlet, Murray estimates a more conservative annual maintenance cost for dogs between \$400 and \$600.¹¹⁸ The Brisbane City Council is in the process of enacting by-laws on the requirements for the keeping of dogs and the penalties for non-compliance. These have been described as "Australia's toughest dog control laws".¹¹⁹ Public awareness and the cost of enforcing by-laws is a difficult matter, particularly as laws differ between different local government areas.

Other Acts in Queensland impinge on the animal welfare legislation. At present, the powers of stock inspectors under the *Stock Act 1915* with respect to the welfare of animals, are restricted to travelling stock. Inspectors can prevent sick or diseased stock from travelling, and, under certain circumstances, direct animals to veterinary treatment, or, in the case of moribund animals, order they be destroyed.

¹¹⁷ *Animals Protection Act Amendment Act 1991* (QLD), No.1, Section 23(2) allowed the adoption of the Australian code of practice for the care and use of animals for scientific purposes in the *Animals Protection (Use of Animals for Scientific Experiments) Regulations 1991* (*Queensland Government Gazette* 27 April 1991, pp. 2679-2680).

¹¹⁸ Murray, R.W. 1991, *An Analysis of the Characteristics, Social Impact and Management of the Townsville Dog Population*, M.Sc. Thesis, James Cook University of North Queensland, Townsville.

¹¹⁹ McCarthy, John 1993, "End dog law delay:council", *The Courier-Mail*, 7 January 1993, p. 5.

Under the *Meat Industry Act 1965*, slaughtering establishments are required to humanely slaughter and handle stock. Beames made the comment that many of the powers and provisions under the legislation in Queensland involve a fair amount of subjectivity, achieving little towards protecting animal welfare.¹²⁰

There are a variety of civil actions available in tort. These include civil assault actions for damages, nuisance and for trespass to property.¹²¹ Queensland is the only State in Australia that relies exclusively on common law in relation to liability for injuries caused by dogs and is described as a "potpourri" of special rules of medieval origin.¹²² The common law divided animals into those that are "dangerous" and those that are "harmless". Dogs have generally been classified as harmless, and in order for a dog owner to be liable for any injury inflicted, the owner needed to know from past behaviour that the animal was likely to be vicious¹²³, which is known as *scienter*.¹²⁴ Common law also allows for actions to be brought for negligence or nuisance for harm inflicted by a dog.

Most States of Australia have legislation relating to the ownership and control of dogs,¹²⁵ except for Queensland. This means that in Queensland, the owner or person in control of the dog may be subject to both criminal and civil liability for any injury the dog inflicts. There have been recent calls for the introduction of State legislation to control dog problems, similar to Victoria's proposed Companion Animal Bill 1991.¹²⁶ Stronger penalties have recently been introduced in the New South Wales *Dog Act 1966* in an attempt to curb the increasing number of dog attacks, particularly on children. Anyone inciting their dog to attack face fines of up to \$100 000 and seven years imprisonment .

¹²⁰ Beames, John 1991, "Enforcement - Queensland Department of Primary Industries", *Proceedings of the Animal Welfare Conference*, Brisbane, 8-9 June 1991, p. 119.

¹²¹ Hill, J.S. 1983, "Pets, People and the Law", *Proceedings of the Urban Animal Integration Symposium*, Brisbane, November 1983, p.211.

¹²² Hennessy, Peter 1992, "What you should know about liability for injuries caused by dogs at home and at large", *Urban Animal Management: Proceedings of the First National Conference on Urban Animals Management in Australia*, Brisbane, 1992, p. 47.

¹²³ *Draper v Hodder* [1972] 2 QB 556(CA).

¹²⁴ The word, *scienter*, derives from Latin and refers to the fact that the relevant act has been done knowingly or wilfully.

¹²⁵ Examples of such legislation include the *Dog Act 1966* (NSW) and *Dog Act 1970* (VIC). This legislation specifies the liability of the owner, or person in control of the dog, for any damage it causes.

¹²⁶ Hennessy, *ibid.*, p. 57.

Dog owners could also incur \$1 000 fines for attacks on people or animals.¹²⁷

5.4 Proposed Legislation

The *Animals Protection Act 1925* is being reviewed in Queensland. This review was initiated in response to changing community attitudes towards animal welfare matters, advancements in scientific knowledge and animal behaviour, and to encourage consistency in animal welfare legislation throughout Australia. The review process involved the establishment of the Animals Protection Act Review Committee, which had wide representation from the community. The debate surrounding animal welfare has received a large amount of attention in Queensland, culminating in the release of a green paper in 1990, a conference in June, 1991 and the drafting of legislation.

The Animals Protection Act Review Committee advised that the new legislation should improve and protect the welfare of animals by discouraging cruelty and increasing community awareness of the need for animal welfare, although recognise humans use animals. The proposed legislation has four objectives, which include providing mechanisms to penalise persons who are cruel to animals; protecting animals used in recreation or entertainment from unnecessary suffering; ensuring scientific experiments on animals are conducted in a responsible and open manner; and developing and maintaining proper standards of care by incorporating codes of minimum standards into legislation.¹²⁸ The legislation will also provide a basis for educating the community on animals welfare matters.

The definition of animal will be expanded to include any live member of a vertebrate species excluding fish and human beings, which is similar to definitions in other Australian jurisdictions. The deliberate torture and mutilation of free-living fish in aquaria as well as the inhumane slaughter of crabs and lobsters are to be considered offences in the proposed legislation. Some submissions on the proposed Bill requested that the definition be altered, removing "species", as this eliminates hybrid animals. Animal research will be defined as any "procedure, test, experiment, inquiry, investigation or study in connection with which an animal is used, including surgical, medical, psychological, biological, chemical or physical treatment, as well as taking any material or substance from the body of an animal". The Act will apply within the State and along the coast of Queensland. Animal welfare issues are to be controlled through the establishment of administrative and advisory bodies. A Bureau of Animal Welfare has already been created in the Department of Housing, Local Government and Planning, with functions involving the administration, co-ordination and review of legislation, funding, training and policy development pertaining to animal welfare. A statutory body, the Animal

¹²⁷ Totaru, Paola and Deborah Cornwall, "Now it's jail for dog attacks", *The Sydney Morning Herald*, 20 January 1993, p. 2.

¹²⁸ Information on the proposed legislation is based on unpublished material provided by the Bureau of Animal Welfare, as well as personal communication with those involved in its drafting.

Welfare Advisory Committee (AWAC), will be established to facilitate the development of a balanced and co-ordinated approach to animal welfare issues and to provide advice to the Minister. Similar committees have been established in New South Wales, Australian Capital Territory and South Australia. Membership of the committee will be representative of those with major interests in animals and animal welfare in Queensland. Thirteen members will be appointed to the committee, including representatives from the RSPCA, Department of Primary Industries, Australian Veterinary Association, Local Government Association, as well as people from scientific and rural organisations.

General cruelty provisions are to be created in relation to providing an animal with sufficient and suitable food, water, shelter, exercise and treatment. Animals will be protected from the infliction of unnecessary or gratuitous pain and suffering. Although the central concept of the legislation will be the prevention of cruelty to animals, different degrees of cruelty will be recognised. Two types of offences will be created. There will be "serious" and "other" offences, including the recognition of "aggravated cruelty". In this "other" category, it would be an offence not to provide an animal with food, water and shelter, but where an animal was starved to death, the offence would then become "aggravated cruelty". The RSPCA is concerned at categorising offences.¹²⁹ The types of offences that will be recognised by the legislation are similar to those discussed in other Australian jurisdictions. Some new provisions have been introduced, such as the banning of animals in events involving throwing, chasing, hurdle racing and steeplechasing. Animals used for entertainment must be used in accordance with Codes of Practice. The docking of tails, de-clawing, de-barking and the cropping of ears will be prohibited except where performed for veterinary medical reasons or where permitted by a regulation or Code of Practice. Giving an animal as a prize would require the written permission of the Director-General. The RSPCA would also like to see the banning of the sale of animals from street or flea markets. As mentioned in previous sections Animal Liberation groups often cited examples from the legislation where there were differing community attitudes towards the treatment of companion and farmed animals. This new legislation will redress the balance.

Research involving animals would require operating within Codes of Practice, allow external review by authorised inspectors, establishment of an Animal Research Review Board and may consist of a system of negative licensing, where certain standards have to be met and maintained.

Codes of Practice outlining minimum standards for the use and treatment of animals in particular situations are to be recognised in the legislation. Acceptance of Codes will be through endorsement to the Minister by the Animal Welfare Advisory Committee (AWAC). The Codes will be published in the

¹²⁹ Comments attributed to the RSPCA are derived from the Society's submission on the Act and personal communication on 12 January, 1993 with State Manager, Terry Wright, Chief Inspector John Barnett and Dr Cam Day, head of the Policy and Education division.

Gazette and subject to disallowance by the Legislative Assembly, similar to New Zealand and Australian Capital Territory legislation. Regulations will be able to incorporate, or operate by reference to, approved Codes of Practice. They will contain conditions acceptable for the housing or transporting of animals, keeping of records, licensing conditions, fees, commercial use of animals and animal research. Contravening a regulation or Code of Practice would constitute an offence.

Animal husbandry practices will be recognised in codes with exceptions in times of natural disaster. These provisions are supported by the rural organisation such as the Queensland Graingrowers Association, Cattlemen's Union, United Graziers Association and the RSPCA. Animal Liberation groups believe the proposed legislation strongly favours the rural producer's interests. Other exemptions are similar to those in the present Act.

There have been many calls for heavier penalties from a number of areas, including the RSPCA and other animal welfare groups. The penalty for committing an offence in the "other" category is a fine of \$7 200 and/or six months jail, while offences of "serious" or "aggravated" cruelty incur a \$15 000 fine and/or one year imprisonment. Repeating a serious or aggravated cruelty offence within five years would incur a \$48 000 penalty for individuals and \$300 000 for corporations. Alternative penalties such as on-the-spot fines or official warnings may also be introduced to free prosecutions from the courts. The RSPCA believes that provisions divesting an offender of animal ownership should be made mandatory for certain periods as often other penalties are ineffectual. Officers would incur no civil liability for an honest act in performance with duties required under the legislation.

In addition to officers appointed from the RSPCA and members of the Police Service, the Minister may appoint any government officer or any other person to enforce the provisions of the Act. The RSPCA welcomes an increase in the number of officers, but is concerned about co-ordination between different organisations in an investigation. They perceive a situation where a person is approached by a number of officers for the same offence. There would also be the problem of determining the group responsible for prosecution and caring for animals seized. For this reason, the RSPCA would like more co-ordination with government, and particularly the Police in investigations. The RSPCA is also concerned at the level of training and experience these officers will possess, as presently the police only have limited training in the area of enforcing animal welfare.

Powers of officers include demanding name and address, arrest by police officers, stopping and searching vehicles, right to enter any regulated place, force entry with a warrant, power to obtain warrants by telephone or similar facility, warrants not required in exceptional circumstances and power to seize or destroy an animal. The Cattlemen's Union believes the power to enter commercial livestock premises should be limited to police officers and DPI inspectors. This suggestion is opposed by the United Graziers Association as they would prefer DPI staff to be maintained as extension staff rather than "regulators". The University of Queensland and Queensland University of Technology proposed that officer's powers of entry be curtailed in relation to

research establishments as there may be risks not readily assessable, such as the presence of pathogens or radioactivity. Both institutions question the lack of information on ethics committees contained in the proposed legislation.

The RSPCA points out that the proposed Bill forms the basis of their cruelty investigations and prosecutions. Therefore, the legislation is very important to the Association as it affects the efficiency of the inspectorate and the ability of RSPCA staff to fulfil its objectives. The RSPCA is concerned about the requirement to obtain a warrant before entering certain premises, and the possibility that this warrant may need to be issued by a magistrate rather than a justice. Representatives of the RSPCA believe this provision would severely curtail their present high level of investigations due to the cost and time involved. They believe it is possible to increase their powers in certain areas without impinging on civil liberties, but consider the relationship between humans and animals as unique requiring greater protection than relationships between people.

An owner of an animal cruelly treated by another person will be able to claim compensation. Appeals will be able to be made in relation to animals seized, the issuing or conditions of licenses, and decisions made by the Director-General, similar to the Australian Capital Territory legislation.

Education is integral in spreading the animal welfare message. The Government is a major sponsor of Pet Week and is trialing Pet Pep, a petcare education program, in primary schools. More recently, the Government has sponsored television advertisements encouraging more responsible pet ownership. An innovative provision within Australia involves the AWAC developing an educational program where offenders may be referred by the Courts.

Both the Cattlemen's Union and the United Graziers Association raised doubts on the adequacy of the Local Government Department administering the Act. The Cattlemen's Union believes the DPI should be the administering body, while the United Graziers Association wants the police to have responsibility for this function, as they are currently responsible for the stock squad.

A number of submissions on the proposed legislation were received from Aboriginal and Torres Strait Islander communities concerned at a lack of recognition of their traditional hunting rights and customs.

The proposed changes to the legislation have received praise, but also some criticism, as would be expected with any major legislative reform. The President of the Australian and New Zealand Federation of the Animal Societies (ANZFAS), Mr Graeme McEwen stated:

... while the Bill constitutes an important first step, unfortunately the principal impression the Bill creates is that serious inquiry or thinking concerning animal welfare is to await another day. The Bill falls far short of the serious endeavour to come to terms with the moral dilemma proper animal welfare poses for the concerned legislator.

After-all, this Bill will stand as society's assessment of its moral responsibility towards animals and their suffering, and therefore it is not surprising that its preparation should require substantial care and substantial thought.

It is not sufficient that its formulation and passage be obtained on the basis of a luke-warm consensus or a bottom line appeasement of the various interest groups.¹³⁰

With an issue as contentious as animal welfare, a "bottom line appeasement" of the groups involved may be the best that can be expected.

¹³⁰ McEwen, *op. cit.*, p. 49.

Chapter 6 CONCLUSION

6.1 The 'bark' stops here

One hundred and seventy-one years have passed since the first animal welfare legislation was debated. It is sixty-eight years since the *Animals Protection Act 1925* became law in Queensland. In this time a great deal has changed - information on the scientific study of animal ecology, physiology and behaviour has increased dramatically. The community has become more concerned with animal welfare matters, as shown by over one thousand submissions received on the proposed legislation in Queensland. Thelander commented:

...animals have contributed more to this State than all the breweries and football teams put together. Our efforts to protect their welfare are efforts towards our own prosperity, both moral and economic. We now have the opportunity to take a leading role in the world of animal welfare, an opportunity we must not let pass".¹³¹

This statement is supported by McEwen, who believes that for too long band-aids have been applied to the moral and social dilemmas posed by animal welfare, rather than radical surgery of real and widespread legislative reform.¹³²

Recent reviews and amendments to animal welfare legislation in other States have abrogated the problem to a degree. The community's responsibilities with this issue though cannot be abrogated.

The debate on the welfare of animals is a contentious issue and one that will not be resolved effortlessly or quickly. "Animal welfare is always a matter of opinion, one on which everyone is keen to have a say".¹³³ It is complicated by emotion, practicality, genuine concern and politics. An imperative action is to work towards managing the situation to the satisfaction of all sections of society. The concerns of primary producers, conservationists, animal welfarists and the community must be allowed to be expressed, with common goals recognised, acknowledged and achieved. The drafting of legislation to address the animal welfare and management issues requires research on the problems concerned. In addition, the legislation must be clearly comprehended by those of whom it targets, and be enforceable. Thelander suggests animal welfare laws should not only be a mechanism whereby offenders can be punished for acts of cruelty, but should encourage people to take responsibility and recognise the needs of animals.¹³⁴

Misunderstanding is at the root of the problem of animal welfare. Increasing the levels of knowledge and understanding between those involved in the care

¹³¹ Thelander, op. cit., p. 21.

¹³² McEwen, op. cit., p. 37.

¹³³ Formby, loc. cit.

¹³⁴ Thelander, loc. cit.

and use of animals is an important priority. Unfortunately, much of the debate has been one-sided, and emotive rather than rational. Because of this, it is important the community be informed on animal welfare issues allowing balanced judgments after consideration of the arguments.

Substantial expenditure by the community and government for education, research, enforcement of legislation and information dissemination enabling a paradigm shift in the communities perception of the responsibilities for animal welfare is where the '**bark**' stops.

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APPENDIX 1: ANIMAL WELFARE LEGISLATION IN AUSTRALIA & NEW ZEALAND

STATE / TERRITORY	PRINCIPAL ACT	OTHER RELEVANT LEGISLATION
TASMANIA	Cruelty to Animals Prevention Act 1925.	Law of Animals Act 1962. Dog Control Act 1987. Animal Welfare Bill 1992.
NEW SOUTH WALES	Prevention of Cruelty to Animals Act 1979.	Dog Act 1966. Animal Research Act 1985. Exhibited Animals Protection Act 1986. Endangered Fauna (Interim Protection) Act 1991. Impounding Bill 1992.
VICTORIA	Prevention of Cruelty to Animals Act 1986.	Pounds Act 1958. Livery & Agistment Act 1958. Dog Act 1970. Companion Animals Bill 1991.
SOUTH AUSTRALIA	Prevention of Cruelty to Animals Act 1985.	Dog Control Act 1979. Dog Control (Dangerous Breeds) Amendment Bill 1992.
WESTERN AUSTRALIA	Prevention of Cruelty to Animals Act 1920.	Dog Act 1976. Animal Resources Authority Act 1981.
AUSTRALIAN CAPITAL TERRITORY	Animal Welfare Act 1992.	Dog Control Act 1975.
NORTHERN TERRITORY	Prevention of Cruelty to Animals Act 1935.	Dog Act 1980.
NEW ZEALAND	Animals Protection Act 1960.	Animals Act 1967. Animals Remedies Act 1967. Dog Control & Hydatids Act 1982. Animals Law Reform Act 1989.
QUEENSLAND	Animals Protection Act 1925.	

APPENDIX 2: POWERS OF ANIMAL WELFARE OFFICERS

	TAS		NSW	VIC	SA	WA	ACT	NT	NZ
	Act	Bill							
Legislation	1 see Legend	2 see Legend	3 see Legend	4 see Legend	5 see Legend	6 see Legend	7 see Legend	8 see Legend	9 see Legend
RSPCA	_s3	_cl 3	_s4	_s18(1)(b)	_s28	_s3	_s76	×	×
POLICE	_s3	_cl 13	_s4	_s18(1)(b)	_s3	_s15	_s77	_s3	_s9
OTHER	×	_part 5	_s4	_s18,35	s28	_s15	_s78	_s15	_s9
Powers of Entry									
all premises	_s7(1)	_cl 16(1)	_s25(1)	_s21(1)(a)	_s29(1) warrant required	_s16 warrant required	_s81-84 warrant required	_s17 warrant required	_s10(1)
dwellings	_s7(2) warrant required	_cl 16(2) warrant required	–	–	×	–	–	–	_s10(3) warrant required
other	_s7(1)	_cl 16(1)	–	_s21(1)	–	–	–	–	–
Indemnity from Prosecution	×	_cl 48	_s32A	×	_s32	×	_s75	×	_s14
Offender provide name & address	×	_cl 26	_s27(A)	_s21(1)(a)	_s29(1)(a)	×	_s82(1)(e)	_s14	_s17
Officers seize animal	_s9	_cl 17	_s26	_s21(1)(d)	_s29(1)(c)	_s12	_s82(1)(g)	×	_s10(4)
Officers destroy animal	_s10(1)	_cl 24	_ss.26A & ss.26(4)	_s21(1)(c)	_s30	_s13,14	_s85(2)(c)	_s16	_s12
Arrest									
Police only	–	–	–	–	–	–	–	–	–
Officers & Police						–			

LEGEND FOR LEGISLATION:

1. Cruelty to Animals Prevention Act 1925.
2. Animal Welfare Bill 1992.
3. Prevention of Cruelty to Animals Act 1979.
4. Prevention of Cruelty to Animals Act 1986.
5. Prevention of Cruelty to Animals Act 1985.

6. Prevention of Cruelty to Animals Act 1920.
7. Animal Welfare Act 1992.
8. Prevention of Cruelty to Animals Act 1935.
9. Animals Protection Act 1960.

APPENDIX 3: ANIMAL CRUELTY OFFENCES

	TAS		NSW	VIC	SA	WA	ACT	NT	NZ
	Act	Bill							
Legislation	1 see Legend	2 see Legend	3 see Legend	4 see Legend	5 see Legend	6 see Legend	7 see Legend	8 see Legend	9 see Legend
Established mens rea	s5(1)	cl 8(1)	s4(2)	s9	s13(2)(a)	s4(1)	s8(1)	s4(1)	s3(bb)
Cruelty Offences	s5(2)	Part 2	Part 2	s9	Part 3	s4	Part 2	s4	ss.3(a)-(z)
Aggravated Cruelty Recognised	×	_cl 9	_s6	_s10	×	×	_s10	×	_s4
Deprive Animal Ownership	_s10(4))	cl 44	_s31(2)	_s12	_s36	_s21	_s101	_s22	_ss.16&16 A
Fines/Penalties	General offence								
	\$400 or 3 months jail	\$5000 or 12 months jail	\$2000 or 6 months jail	\$1000 or 3 months jail (First offence) \$5000 or 12 months jail (Third and subsequent offences)	\$10000 or 12 months jail	\$5000 or 12 months jail	\$10000 or 12 months jail	\$200 or 6 months jail	\$1000 or 3 months jail
	Corporations								
	×	×	×	×	×	×	5 times maximum fine	×	×
	Aggravated Cruelty								
	×	\$10000 or 18 months jail	\$4000 or 12 months jail (summary) 24 months jail (indictment)	\$5000 or 12 months jail	×	×	\$10000 or 12 months jail	×	\$2000 or 24 months jail
Exemptions	s5(3)	ss.4,3 4	s24	ss.6,7	ss.43,44	ss.6,23	ss.20,111	ss.4(5),5,2 1	s19

LEGEND FOR LEGISLATION:

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| <p>1. Cruelty to Animals Prevention Act 1925.
2. Animal Welfare Bill 1992.
3. Prevention of Cruelty to Animals Act 1979.
4. Prevention of Cruelty to Animals Act 1986.
5. Prevention of Cruelty to Animals Act 1985.</p> | <p>6. Prevention of Cruelty to Animals Act 1920.
7. Animal Welfare Act 1992.
8. Prevention of Cruelty to Animals Act 1935.
9. Animals Protection Act 1960.</p> |
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APPENDIX 4: ANIMAL EXPERIMENTATION

	TAS		NSW	VIC	SA	WA	ACT	NT	NZ		
	Act	Bill									
Legislation	1 see Legend	2 see Legend	3 see Legend	4 see Legend	5 see Legend	6 see Legend	7 see Legend	8 see Legend	9 see Legend		
Relevant Section	s5(h)	Part 4	whole Act	Part 3	Part 4	s23	Part 4	ss21(1)d-e	s19A		
Licensing	Institutions	×	_cl 29(1)	_Part 4	_s26	_s16	×	_s25(1)	×	×	
		Researchers	×	×	ss25-36	_s31	_s16	×	_s37(1)	×	×
			Teachers	×	×	×	×	_s16	×	_s37(1)	×
Animal Experimentation Ethics Committees	×	_cl 30(3a)	_Part3	_s28	_s23	×	_s50	×	×		
Recognise Codes of Practice	×	_cl 34	_s4	_s7	_s44	×	_Part 3	×	_s19A		
Fines/Penalties	General	\$400 or 3 months jail	\$5000 or 12 months jail	\$2000 or 12 months jail	\$1000-\$2500 or 3-6 months jail	\$10000	\$500	\$5000 or 6 months jail	\$200	\$1000 or 3 months jail	
	Corporations	×	×	\$100000	First offence \$50000 Subsequent offences \$100000	\$50000	×	\$10000 or 12 months jail	×	×	

LEGEND FOR LEGISLATION:

1. Cruelty to Animals Prevention Act 1925.
2. Animal Welfare Bill 1992.
3. Animal Research Act 1985.
4. Prevention of Cruelty to Animals Act 1986.
5. Prevention of Cruelty to Animals Act 1985.
6. Prevention of Cruelty to Animals Act 1920.
7. Animal Welfare Act 1992.
8. Prevention of Cruelty to Animals Act 1935.
9. Animals Protection Act 1960.

