



---

Queensland Parliamentary Library

---

## Duty and the Beast: Animal Care and Protection Bill 2001

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

*This paper discusses the legislative development of the animal protection regime in Queensland. The provisions of the current Animals Protection Act 1925 are explained. The major part of this brief is the discussion of the Animal Care and Protection Bill 2001 and the events leading up to the tabling of this legislation. The current and proposed legislation is compared and contrasted. In addition, significant recent developments on animal welfare issues within other jurisdictions are identified.*

**Queensland Parliamentary Library**  
**Research Publications and Resources Section**

Ms Mary Seefried, Director	(07) 3406 7116
Ms Karen Sampford, Research Publications Officer	(07) 3406 7310
Mr Wayne Jarred, Senior Parliamentary Research Officer	(07) 3406 7422
Ms Nicolee Dixon, Parliamentary Research Officer	(07) 3406 7409
Ms Cathy Green (part time) Parliamentary Research Officer	(07) 3406 7641

**© Queensland Parliamentary Library, 2001**

**ISSN 1443-7902**

**ISBN 0 7242 7928 8**

Copyright protects this publication. Except for purposes permitted by the Copyright Act 1968, reproduction by whatever means is prohibited, other than by Members of the Queensland Parliament in the course of their official duties, without the prior written permission of the Parliamentary Librarian, Queensland Parliamentary Library.

Inquiries should be addressed to:  
Director, Research Publications & Resources  
Queensland Parliamentary Library  
Parliament House  
George Street, Brisbane QLD 4000  
Director: Ms Mary Seefried. (Tel: 07 3406 7116)

Information about Research Publications can be found on the Internet at:

[Http://www.parliament.qld.gov.au/parlib/research/index.htm](http://www.parliament.qld.gov.au/parlib/research/index.htm)

## CONTENTS

<b>1 EXECUTIVE SUMMARY .....</b>	<b>1</b>
1.1 DUTY OF CARE.....	1
1.2 PROACTIVE, EDUCATIVE APPROACH.....	1
1.3 DEFINITION OF ANIMAL.....	2
1.4 APPLICATION OF THE ACT .....	2
1.5 TYPE OF ANIMAL USE .....	2
1.6 CODES OF PRACTICE .....	2
1.7 ENFORCEMENT.....	3
1.8 ANIMAL WELFARE ADVISORY COMMITTEE .....	3
1.9 OFFENCES .....	3
1.10 PENALTIES .....	4
<b>2 INTRODUCTION .....</b>	<b>6</b>
<b>3 COMPARATIVE LEGISLATION IN AUSTRALIA.....</b>	<b>7</b>
3.1 HISTORY .....	7
3.2 THE STATUS OF LEGISLATION THROUGHOUT AUSTRALIA .....	8
3.3 RECENT DEVELOPMENTS IN SOME JURISDICTIONS .....	9
3.3.1 Western Australia.....	9
3.3.2 Northern Territory .....	10
3.3.3 New Zealand.....	10
<b>4 CRUELTY STATISTICS.....</b>	<b>11</b>
4.1 BACKGROUND.....	11
4.1.1 Australia .....	11
4.1.2 Queensland.....	11
<b>5 CURRENT QUEENSLAND LEGISLATION.....</b>	<b>12</b>

5.1	BACKGROUND .....	12
5.1.1	<i>Kill the Bill, Not the Animals Campaign</i> .....	14
5.2	ANIMALS PROTECTION ACT 1925 .....	14
5.2.1	Definitions.....	15
5.2.2	Cruelty Offences .....	15
5.2.3	Exemptions .....	15
5.2.4	Other .....	16
5.2.5	Powers of Officers .....	16
5.2.6	Penalties .....	17
5.2.7	Regulations .....	17
<b>6</b>	<b>THE ANIMAL CARE AND PROTECTION BILL 2001 .....</b>	<b>18</b>
6.1	BACKGROUND TO THE BILL .....	18
6.2	PROVISIONS OF THE BILL – IN DETAIL .....	19
6.2.1	Purpose and Application of the Act.....	19
6.2.2	Interpretation.....	21
6.2.3	Codes of Practice .....	22
6.2.4	General Animal Offences.....	22
6.2.5	Using Animals for Scientific Purposes .....	28
6.2.6	Code Compliance Monitoring and Authorised Officers .....	29
6.2.7	Investigation and Enforcement – Chapter 6.....	30
6.2.8	Evidence and Legal Proceedings .....	33
6.2.9	General Provisions .....	34
6.3	COMMUNITY RESPONSE TO THE BILL.....	35
6.3.1	Costs of Implementation .....	36
<b>7</b>	<b>CONCLUSION.....</b>	<b>37</b>
	<b>RECENT PARLIAMENTARY LIBRARY RESEARCH PUBLICATIONS</b>	
	<b>2001.....</b>	<b>38</b>





## 1 EXECUTIVE SUMMARY

The Animal Care and Protection Bill 2001 (the Bill), tabled in the Queensland Legislative Assembly on 31 July 2001<sup>1</sup>, completely changes the way animal welfare is dealt with in Queensland. The Minister for Primary Industries and Rural Communities, the Honourable Henry Palaszczuk, said in his second reading speech that the Bill is *the most forward looking piece of legislation in this field in Australia...dealing with today's animal welfare issues in an innovative way.*<sup>2</sup>

The following is a summary of the major changes as proposed in the animal welfare legislation in Queensland.

### 1.1 DUTY OF CARE

Instead of defining animal cruelty offences, the Animal Care and Protection Bill 2001 places a duty of care on people in charge of animals. This duty of care is to provide positively for the welfare of animals based on “Five Freedoms” which are internationally acknowledged.<sup>3</sup> These freedoms involve providing appropriate food, water and living conditions, as well as treating disease and injury and promoting mental well being. This is considered the key proactive aspect of the Bill.

*Providing positively for the welfare needs of animals is at the opposite end of the welfare continuum to the mere absence of being cruel, the focus of the current Act.*<sup>4</sup>

### 1.2 PROACTIVE, EDUCATIVE APPROACH

The Bill promotes the responsible care and use of animals by focusing on education underpinned by legislation. The current Act is prescriptive in defining and punishing cruelty. It does not contain any educative provisions. In line with the proactive, educative approach undertaken in the Animal Care and Protection Bill 2001, animal welfare inspectors will be able to issue written animal welfare directions. This initiative will allow inspectors to order specific actions the person in charge of an animal must undertake in order to ensure the animal is being taken

---

<sup>1</sup> Hon. Henry Palaszczuk MP, Minister for Primary Industries and Rural Communities, “Animal Care and Protection Bill 2001”, Second Reading Speech, *Queensland Parliamentary Debates*, 31 July 2001, p. 1987.

<sup>2</sup> Hon. H. Palaszczuk MP, p 1987.

<sup>3</sup> F.W.R. Brambell (Chairmen), *Welfare of animals kept under intensive livestock husbandry systems*, Technical Committee Report, 1965-66 UK Command Papers, 2836, iv.

<sup>4</sup> *Animal Care and Protection Bill 2001*, Explanatory Notes, 31 July 2001, p. 4.

care of properly. These directions are aimed at preventing a potential animal cruelty situation from occurring, or resolving an existing problem. Inspectors will not have to wait for acts of cruelty to occur, as is the case under the current Act.

### **1.3 DEFINITION OF ANIMAL**

The Bill applies to all vertebrate animals, except human beings. Unlike the current Act, this includes fish. In addition, the Bill enables the future inclusion of some invertebrates, for example, octopi, squid, crabs, crayfish, lobsters and prawns.

### **1.4 APPLICATION OF THE ACT**

The *Animals Protection Act 1925* was silent on its application to the Crown. This Bill binds all persons and the Crown to its provisions.

### **1.5 TYPE OF ANIMAL USE**

The Bill covers all types of animal use including livestock production, recreation, sport, entertainment, the control of feral and pest animals, the use of animals in scientific experiments and animals used for work purposes. The *Animals Protection Act 1925* was not as inclusive, particularly in relation to some livestock.

### **1.6 CODES OF PRACTICE**

Australian model codes of practice on animal welfare in a wide range of animal use situations will be recognised. These codes, already developed by the Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ), will establish acceptable benchmarks in animal welfare. The legislative recognition of codes of practice will enable livestock producers to demonstrate their acceptance of standards for animal welfare, as it is increasingly becoming an important market acceptance and access issue, particularly in relation to international markets.

The current Act only recognises two codes. The first is the Code for circus animals. The second Code regulates the use of animals for scientific purposes. This Bill will continue to make it an offence not to comply with these Codes. In fact, the use of animals for scientific purposes will become more *accountable, open and responsible*.<sup>5</sup> Organisations and private individuals that use animals for scientific purposes will have to register with the DPI, supplying certain

---

<sup>5</sup> Animal Care and Protection Bill 2001 (Qld.), **clause 3(d)**.



information. Approval from an Animals Ethics Committee is also necessary before experimentation on animals can occur.

## **1.7 ENFORCEMENT**

The Bill has a broad range of enforcement powers in order to protect animals from cruelty. It recognises the unique situation where an animal, as the victim of an offence, is unable to provide direct evidence of an offence, and as such the Bill departs from some of the fundamental legislative principles outlined in the *Legislative Standards Act 1992*. However, this departure is balanced against additional accountability requirements not forming part of the current Act. There are provisions that protect the rights of individuals and ensure investigations are undertaken in a fair and objective manner.

Unlike the current Act, the Bill allows the RSPCA *and* the Department of Primary Industries (DPI) to be the main agencies enforcing the Act. This enables the immediate appointment of 120 additional government inspectors across the state, decreasing the strain on the RSPCA, particularly in investigating suspected abuse in inland and remote areas. The RSPCA and DPI are drawing up procedural guidelines to ensure that there is uniformity across their organisations in the handling of alleged offences. Unlike the *Animals Protection Act 1925*, police officers will not be appointed as inspectors, but will be able to fully respond to animal welfare complaints through provisions in the *Police Powers & Responsibilities Act 2000*.

## **1.8 ANIMAL WELFARE ADVISORY COMMITTEE**

The Bill allows for the establishment of an Animal Welfare and Advisory Committee. The committee will provide advice to the Minister on animal welfare issues, allowing stakeholders to provide feedback to the Department of Primary Industries. This provision brings Queensland's animal welfare legislation into line with most other Australian and New Zealand jurisdictions.

## **1.9 OFFENCES**

The Animal Care and Protection Bill 2001 effectively has five general categories of animal welfare offences. These categories include the following:

1. Breach of the duty of care;
2. General animal cruelty such as beating, abusing, terrifying, abandoning, killing in an inhuman manner or transporting animals which are unfit;

3. Prohibited offences such as bullfights, cockfights, and dogfights;
4. Regulated surgical procedures are an offence when not carried out by a vet, in the interests of the animal's welfare. These procedures include docking the tails of cattle and horses, cropping dogs' ears, debarking dogs and declawing cats. There will also be restrictions on the sale of animals who have had these procedures undertaken; and
5. Other prohibited and regulated conduct which includes coursing or live bleeding of animals, allowing animals to be injured or killed by dogs or other animals and the use of certain traps or baits.

Exemptions to these offences are included. In addition there are offences relating to the administration of the Act, for example, failing to comply with an animal welfare directive, obstructing an officer, failing to comply with a compulsory code of practice, tampering with seized property, impersonating an authorised officer or inspector, along with many others.

### **1.10 PENALTIES**

Current penalty levels under the *Animals Protection Act 1925* are outdated and considered ineffective. The maximum penalty for cruelty in the existing Act is a \$1500 fine or 6 months imprisonment, although a maximum fine of \$3 000 applies for other offences. The RSPCA has pointed out that the legislation dealing with animals in Queensland was inconsistent.<sup>6</sup> They gave the example where a person found catching an undersized crab faced a fine of \$75 000 under the *Fisheries Act 1994*, but only a \$1 500 fine for starving animals to death.

Penalties for people or organisations found guilty of offences in the Bill are increased to a more realistic level. Maximum fines are increased 2400% for individuals, and sentences for imprisonment are also substantially increased. The new maximum penalty for cruelty by individuals will be a \$75 000 fine or two years imprisonment. The maximum penalty levels for corporations are five times the levels for individuals. The current Act does not distinguish between offences by individuals or corporations. The following table contains a comparison of penalties for offences between the *Animals Protection Act 1925* and the Animal Care and Protection Bill 2001.

---

<sup>6</sup> Sean Parnell, "RSPCA fights back to show \$340 000 profit", *Courier-Mail*, 28 September 1998, p 4.

<b>Table 2: Comparison of Penalties for Offences under the Current and Proposed Animal Welfare Legislation in Queensland</b>						
<i>Animals Protection Act 1925</i>				<i>Animal Care and Protection Bill 2001</i>		
<b>Offences</b>	Section	Penalty Units	Fine/ imprisonment	Clause	Penalty Units	Fine/ imprisonment
Cruelty	4(1)	20	\$1 500/ 6 months	18(1)	1 000	\$75 000/ 2 years
Breach of duty of care	--	--	--	17(2)	300	\$22 500/ 1 year
Abandonment	4(1)(l)	20	\$1 500/ 6 months	19	300	\$22 500/ 1 year
Dog fighting	4(1)(c)	20	\$1 500/ 6 months	21(1)	300	\$22 500/ 1 year
Being present at a prohibited event	--	--	--	21(2)	150	\$11 250/ 1 year
Cropping dog's ears	4(1)(j)	20	\$1 500/ 6 months	23	100	\$7 500
Obstructing an officer	9(2), 16	4	\$300	206 (1)	500	\$37 500
Failure to comply with an animal welfare directive	--	--	--	161	100	\$7 500/ 1 year

**Notes:**

--: denotes that the current Act is silent on this type of offence. In Queensland, one penalty unit is currently set at \$75 according to section 5 of the *Penalties and Sentences Act 1992*.

## 2 INTRODUCTION

There are increasing community expectations that people should treat animals humanely, regardless of whether animals are used for companionship, sport, recreation, entertainment (zoos), the production of food and fibre, science or form part of the environment (wildlife, pest or feral animals). This results in a number of types of interactions between animals and humans resulting in a wide range of attitudes to what constitutes acceptable ways to interact with animals.

Animal welfare is one of the most emotive and difficult issues governments face, affecting more people personally than almost any other.<sup>7</sup> In the year 2000, the Queensland Minister responsible for animal welfare received more than 7000 items of correspondence on animal welfare issues.<sup>8</sup> However, the debate over the welfare of animals is not new. In fact, animal welfare has a long history with references as far back as classical Greece<sup>9</sup>. The modern movement has its beginnings in the sixteenth century. Since then the debate has ebbed and flowed.

The issue 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. After many attempts, philanthropist Richard Martin passed the first law in Britain to protect animals in 1822. 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 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. During the twentieth century the emphasis on protection switched firmly to human rights, resulting in complacency in the achievements already made regarding the legislative regime for the welfare of animals.

Animal welfare, however, gained prominence again in the 1960s when philosophical doctrines on man's responsibilities to animals were developed. Activists borrowed twentieth century notions of human rights to examine the animal welfare issue. Philosophers, such as Peter Singer, began to publish papers on animal welfare, with the mass media helping to disseminate the message.

---

<sup>7</sup> Doug Formby, "The Views of the RSPCA on Animal Welfare in Queensland", *Proceedings of the Animal Welfare Conference*, Brisbane, 8-9 June 1991, pp. 5-10.

<sup>8</sup> Hon. H. Palaszczuk MP, p. 1989.

<sup>9</sup> 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 animal's own sake.

In the humanitarian spirit of the eighties, the state turned its attention towards the revision of the scope and philosophy of its animal protection legislation.<sup>10</sup> In the 1980s, the United Kingdom's Farm Animal Welfare Council established the five freedoms<sup>11</sup> that recognised an animal's welfare includes its physical and mental well being. Specifically, the committee defined an animal's welfare as involving the following freedoms:<sup>12</sup>

1. **Freedom from hunger and thirst:** by ready access to fresh water and a diet suitable to maintain full health and vigour;
2. **Freedom from discomfort:** by providing an appropriate environment including shelter and a resting place;
3. **Freedom from pain, injury and disease:** by prevention and rapid diagnosis and treatment;
4. **Freedom to express normal behaviour:** by providing sufficient space, proper facilities and company of the animal's own kind; and
5. **Freedom from fear and distress:** by ensuring conditions and treatment avoid mental suffering.

The last decade has seen a resurgence of legislative activity in the field of animal welfare.

### 3 COMPARATIVE LEGISLATION IN AUSTRALIA

#### 3.1 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*.<sup>13</sup> Although a concern existed and legislation was

---

<sup>10</sup> Philip Jamieson, "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.

<sup>11</sup> <http://www.defra.gov.uk/animalh/welfare/fawc/fawc-welfare.htm>

<sup>12</sup> RSPCA Australia, *RSPCA Policies & Position Papers*, RSPCA Australia Inc: Kingston, 2000, p. 4.

<sup>13</sup> *Sydney Gazette*, 1 January 1804, quoted in Philip Jamieson, "Duty and the Beast: The Movement in Reform of Animal Welfare Law", *The University of Queensland Law Journal*, 16(2), 1991, p 239.

passed in Britain in 1822, the first animal cruelty legislation enacted in Australia was in Van Diemen's land (later to be known as Tasmania) in 1837.<sup>14</sup> 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. The New South Wales legislation of 1850 established precedent in Australia by recognising the offence of cruelty.

Further legislation appeared in the four colonies during the 1860s and in all States in the early 1900s and 1920s. The 1950s were 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.

### 3.2 THE STATUS OF LEGISLATION THROUGHOUT AUSTRALIA

All Australian and New Zealand jurisdictions have enacted legislation to prevent cruelty to animals and safeguard their welfare. This legislation defines specific acts or omissions that constitute animal welfare offences and provides defences and exemptions to conduct which would otherwise constitute an offence. Most jurisdictions have legislation regulating the use of animals for research and teaching purposes.

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 to a limited degree. The Northern Territory and New Zealand have completely revised their legislation in the last few years. New South Wales, the Australian Capital Territory, Tasmania, Victoria and South Australia undertook complete revisions of their animal cruelty legislation during the early to mid-1990s. Queensland and Western Australia are currently at various stages of reviewing their existing provisions.

The following table identifies the current animal welfare legislation in Australian jurisdictions and New Zealand.

**Table 1: Animal Welfare Legislation in Australia and New Zealand**

**Jurisdiction**

**Legislation**

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

Queensland	<i>Animals Protection Act 1925</i> Animal Care and Protection Bill 2001 introduced into the Queensland Legislative Assembly on 31 July 2001.
New South Wales	<i>Prevention of Cruelty to Animals Act 1979</i>
Victoria	<i>Prevention of Cruelty to Animals Act 1986</i>
Tasmania	<i>Animal Welfare Act 1993</i>
South Australia	<i>Prevention of Cruelty to Animals Act 1985</i>
Western Australia	<i>Prevention of Cruelty to Animals Act 1920</i> Animal Welfare Bill 2001 introduced into the WA Legislative Assembly on 1 August 2001.
Australian Capital Territory	<i>Animal Welfare Act 1992</i>
Northern Territory	<i>Animal Welfare Act 1999</i>
New Zealand	<i>Animal Welfare Act 1999</i>

### 3.3 RECENT DEVELOPMENTS IN SOME JURISDICTIONS

#### 3.3.1 Western Australia

Western Australia has taken more than a decade to draft new animal welfare legislation. 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 was 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 addressed included cat control, the use of animals in scientific research and entertainment and the use of steel jawed traps.

A Bill was presented and passed in the Lower House in 2000, and was listed for debate on the upper House Notice list.<sup>15</sup> However, before debate could ensue, the Western Australian Parliament rose and an election was called, thus the bill lapsed. However, only a day after the Queensland Government introduced its Bill on

<sup>15</sup> Introduced by Mr Paul Omodei, Minister for Local Government, Animal Welfare Bill 1999, *Western Australian Parliamentary Debates*, 24 November 1999, pp. 3699-3700.

animal welfare, the Western Australian government introduced into the Lower House.<sup>16</sup> In the Bill's second reading speech, it was stated that the Bill will *provide for the protection of animals by regulating the use of animals for scientific purposes and prohibiting cruel, inhuman or improper treatment of animals*.<sup>17</sup> It will replace the current *Prevention of Cruelty to Animals Act 1920*. Of significance, the Bill will<sup>18</sup>:

- Substantially increase penalties for cruelty offences to a maximum penalty of \$50 000 and 5 years imprisonment, with a minimum penalty of \$2 000 prescribed;
- Increase controls on the use of animals for scientific experiments;
- Increase the powers for inspectors;
- Bind the Crown to the operation of the Act;
- Enable cruelty offences to fish to be dealt with under the *Fish Resources Management Act 1994*;
- Allow infringement notices for minor offences; and
- Define new cruelty offences with appropriate defences in special circumstances.

### 3.3.2 Northern Territory

The Northern Territory reviewed its 1935 Prevention of Cruelty to Animals Act during the 1990s. The 1935 Act had many deficiencies including penalty levels of only \$200, and the requirement that charges be laid within a month or the offender became immune from prosecution.<sup>19</sup> The revised Animal Welfare Act was passed in 1999 after extensive community consultation.

### 3.3.3 New Zealand

The New Zealand *Animals Protection Act 1960* was replaced by extensively revised legislation in 1999. The *Animal Welfare Act 1999* focuses not on crimes against animals, instead it creates a duty of care towards animals.<sup>20</sup> Penalties for cruelty were increased dramatically, particularly for corporations. National advisory

---

<sup>16</sup> Mark McGowan, Parliamentary Secretary, Animal Welfare Bill 2001, *Western Australian Parliamentary Debates*, 1 August 2001, p. 1858.

<sup>17</sup> McGowan, p 1858.

<sup>18</sup> Western Australian Government, *Animal Welfare Bill 2001: Explanatory Memorandum*, tabled in the Western Australian Legislative Assembly, 1 August 2001, p 1858.

<sup>19</sup> "Northern Territory Legislation", *Animals Today*, 7(2), 1999, p 33.

<sup>20</sup> Peg Loague, "A New Animal Welfare Act for New Zealand", *Animals Today*, 7(3), 1999, p. 20.



committees were enshrined in the legislation. The ARMCANZ codes of practice are established as benchmarks.

## 4 CRUELTY STATISTICS

### 4.1 BACKGROUND

In recent years, the community's awareness of animal welfare issues has increased. This is largely due to media attention focusing on abhorrent cases of animal cruelty, which have shown the extent of abuse in Queensland.

#### 4.1.1 Australia

The Royal Society for the Prevention of Cruelty to Animals (RSPCA) throughout Australia receives tens of thousands of animals every year in every state and territory. In 1999-2000, RSPCA Australia received 138 607 animals, including 67 204 dogs and 50 485 cats.<sup>21</sup> As well as receiving large numbers of dogs and cats, the RSPCA took in 220 918 other animals including horses, livestock and wildlife, such as bandicoots, echidnas, blue-tongued lizards, sea lions, ferrets and native birds. The RSPCA found new homes for 21 415 dogs and 15 162 cats, however over 39 % of dogs and 61 % of cats were euthanased. RSPCA Inspectors carried out 47 989 cruelty investigations and 2 153 routine inspections in 1999-2000.<sup>22</sup> Over half of all cruelty complaints investigated involved dogs (26 907). These investigations resulted in 150 prosecutions for cruelty to dogs.

#### 4.1.2 Queensland

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.<sup>23</sup> In 2000/2001, RSPCA Queensland received 33 274 dogs, a decrease of 3 306 animals.<sup>24</sup> According to an RSPCA Qld spokesperson the decline over the last years has resulted from an increase in activity by Brisbane City Council officers dealing with animals, particularly stray

---

<sup>21</sup> Personal communication, RSPCA Qld, 30 August 2001.

<sup>22</sup> Personal communication, RSPCA Qld, 30 August 2001.

<sup>23</sup> Bill Upton, "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.

<sup>24</sup> Personal communication, RSPCA Qld, 30 August 2001.

dogs.<sup>25</sup> Of the animals coming into RSPCA shelters, 20 864 were euthanased. Of these, 9 214 dogs and 10 570 cats were euthanased. An additional 8 989 animals were adopted from the RSPCA in 2000-2001 in Queensland.

In 1999-2000, the RSPCA Queensland Inspectorate responded to 9 411 complaints of alleged cruelty, an increase of 506 cases from the previous year.<sup>26</sup> In addition, they placed a record number of 70 prosecutions before the Queensland courts. Courts imposed fines of almost \$33 000, and awarded costs of more than \$40 000 against defendants.<sup>27</sup> However, the RSPCA claims the cost of investigating animal cruelty is more than 1.1 million annually.<sup>28</sup>

The Queensland branch of the RSPCA has recently achieved two precedent-setting victories.<sup>29</sup> The first was a conviction for dog fighting, the first in Queensland's history.<sup>30</sup> In addition, the Court of Appeal upheld a conviction against Afro-Ostrich Farms in relation to providing food and shelter to livestock animals, establishing a legal standard for animal husbandry. The difficulty the RSPCA has in bringing prosecutions is demonstrated by the prosecution list for February to May 2001, which shows that the largest fine imposed was \$1 000, with the average being \$600. In most cases, costs awarded were less than \$500; however two prosecutions involved the awarding of costs of around \$10 000.<sup>31</sup>

## 5 CURRENT QUEENSLAND LEGISLATION

### 5.1 BACKGROUND

The current Queensland legislation regulating animal welfare is the *Animals Protection Act 1925*. This Act replaced the *Animals Protection Act 1901*.<sup>32</sup> Until 1901, animal cruelty offences in Queensland were dealt with by New South Wales legislation of 1850.<sup>33</sup>

---

<sup>25</sup> Personal communication, RSPCA Qld, 30 August 2001.

<sup>26</sup> RSPCA Qld., *Annual Report 1999-2000*, RSPCA: Brisbane, p 8.

<sup>27</sup> <http://www.rspcaqld.org.au/HTML/RSPCA%20Inspectorate.html>

<sup>28</sup> <http://www.rspcaqld.org.au/HTML/Cruelty%20Stories.html>

<sup>29</sup> RSPCA Qld., p. 9.

<sup>30</sup> Steele Tallon, "Raiders close to dog fights", *Sunday Mail*, 29 October 2000, p 24. **Taylor (on behalf of the RSPCA) v Danen**. Judgement delivered on 31 March 2000 in the Ipswich Magistrates Court.

<sup>31</sup> <http://www.rspcaqld.org.au/PDF%20Files/Imprint%20Page6.pdf>

<sup>32</sup> *Animals Protection Act of 1901*, 1 Edw. 7 No 26.

<sup>33</sup> 14 Vict No 40 (NSW), *An Act for the more effectual prevention of Cruelty to Animals*, assented to 1 October 1850.

The RSPCA had strongly lobbied for the 1901 Act because the 1850 legislation did not afford animals the protection desired nor did it provide the RSPCA with sufficient authority to efficiently discharge their duties. However by 1925, the RSPCA had become aware of shortcomings in the 1901 legislation and the *Animals Protection Act 1925* was enacted *for the more effectual prevention of cruelty to animals*.<sup>34</sup> This Act was modeled on English and Western Australian legislation of the time, and, significantly, provided officers of the RSPCA with powers to enter premises in order to assist animals and secure evidence of an offence. It provided for the protection of animals against cruelty and neglect. 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, as a "national asset".<sup>35</sup>

Nine amending Acts have been passed over the present Act's 76-year history,<sup>36</sup> to update the legislation. The most recent amendment was in 2000. But there are many instances where the legislation has not kept pace with technology and community expectations. During the 1990s it was recognised that the *Animals Protection Act 1925* did not adequately reflect modern society's views on animal welfare.<sup>37</sup> In order to address these issues, the then Minister proposed an animal welfare package, part of which involved a rewrite of the current legislation. This required the establishment of the Animal Protection Act Review Committee, which had community representation including animal welfare groups, veterinarians, scientists, agricultural producers and police.

The review resulted in the release in 1990 of a green paper on animal welfare for general discussion, a conference in June 1991 and the drafting of legislation. Proposals in the initial draft legislation have been extensively discussed in the

---

<sup>34</sup> Long title of the *Animals Protection Act 1925*, 16 Geo 5 No 25.

<sup>35</sup> Hon. J. Stopford (Home Secretary), *Animals Protection Bill 1925*, *Queensland Parliamentary Debates*, vol. 146, 15 October 1925, p 1337.

<sup>36</sup> 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;  
*Animals Protection Act Amendment Act 1991*, No. 1;  
*Statute Law Revision Act (No 2) 1995*, No 58; and  
*Police Powers and Responsibilities Act 2000*, No 5.

<sup>37</sup> Allan McKinnon, "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.

Parliamentary Library's publication *Duty and the Beast: Animal Welfare Issues* published in 1993.<sup>38</sup>

### **5.1.1 *Kill the Bill, Not the Animals Campaign***

Although a great deal of debate on animal welfare and its legislation ensued in Queensland in the early 1990s, an actual Bill was never tabled in Parliament. In July 1993, a copy of the drafting guidelines for the Bill was obtained by the *Courier Mail*. This resulted in the culmination of a campaign to stop the proposed Bill proceeding. Groups involved in the Advisory Committee came out publicly and criticised the drafting proposals. Those opposing the proposed Bill at that time included the RSPCA, the Police, Animal Liberation, the Queensland Association for Community and Animal Welfare, and other individuals.

The most vocal opponent of the proposed Bill was the RSPCA, who believed it weakened animal protection in the state rather than improving the situation.<sup>39</sup> The RSPCA claimed that the government had ignored the recommendations of the Advisory Committee, releasing drafting guidelines not agreed to by the committee. The RSPCA obtained legal opinion on the drafting guidelines, which suggested the proposals required changing.<sup>40</sup> As a result, the RSPCA began the *Kill the Bill, Not Animals* campaign. This involved mounting public support against the Bill. They sent a public letter of protest to the Minister, and asked that supporters do the same. Acrimonious debate followed. There was a great deal of media attention devoted to the discussion of the proposed Bill. As a result, the animal welfare groups were successful in preventing the Bill becoming law at that time.<sup>41</sup>

Since then, the responsibility for animal welfare issues has shifted from the Local Government Department to the Department of Primary Industries where it currently resides. However, local government authorities are still responsible for animal control such as the registration of dogs, de-sexing of dogs and cats, controls over stray dogs and cats, barking dogs and dangerous dogs. Since 1993, the Department of Primary Industries has undertaken extensive consultation.

## **5.2 ANIMALS PROTECTION ACT 1925**

This section details the current provisions of the *Animals Protection Act 1925*.

---

<sup>38</sup> Glenda Emmerson, *Duty and the Beast: Animal Welfare Issues*, Queensland Parliamentary Library Background Information Brief No 25, 1993.

<sup>39</sup> RSPCA, "Torture and Mutilation condoned under new Act", *Imprint*, Newsletter of the Royal Society for the Prevention of Cruelty to Animals, 1 September 1993, p. 1.

<sup>40</sup> RSPCA, 1993, p. 1.

<sup>41</sup> Pat Gillespie, "Year of the stud and all that bull", *The Sunday Mail*, 2 January 1994, p. 47.

### **5.2.1 Definitions**

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 that 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*.

### **5.2.2 Cruelty Offences**

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, de-barking, hunting, coursing, administering drugs or batteries, and abandonment are listed in s 4. The maximum penalty for a person found guilty of an offence is \$1500 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 that is afflicted with disease or injury causing suffering may be killed humanely. Section 4(3) allows the killing of a dog that rushes at, or causes injury to, any person. A court can order that dogs be destroyed if they worry, kill, or injure any cattle, sheep, horses, swine or poultry in an enclosed place according to s 4(4).

### **5.2.3 Exemptions**

Exemptions from the application of the Act are listed in s 7. The slaughtering of 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.

### 5.2.4 Other

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 \$1 500.

### 5.2.5 Powers of Officers

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. Officers may seize animals or possessions involved in contravening a provision of the Act<sup>42</sup> and retain as 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 State<sup>43</sup> 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 \$1 500 fine 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.<sup>44</sup> Debts incurred by officers in enforcing these provisions are recoverable from the owner as a civil debt.<sup>45</sup> Section 14 of the Act allows a Justice of the Peace to authorise in writing the killing of an animal that 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.<sup>46</sup> Section 15A of the Act allows officers to demand the name and address of people suspected of committing an offence.

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.

Obstructing an officer from exercising authority by virtue of this Act is an offence according to s 16. Hindering an officer incurs a \$3 000 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 commit an offence; knowingly permit an offence; or is the owner of an animal involved in an offence

---

<sup>42</sup> *Animals Protection Act 1925*, s 11.

<sup>43</sup> s 11(4).

<sup>44</sup> s 13(2).

<sup>45</sup> s 13(3).

<sup>46</sup> s 15.

where reasonable precautions against the commission of an offence were not taken.<sup>47</sup> Employees charged with an offence may be exonerated if proven that the acts were undertaken in the course of employment and the employee made the employer aware of the animal's treatment.<sup>48</sup> 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.<sup>49</sup> 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.<sup>50</sup> Animals delivered to slaughter houses can not be used for any work<sup>51</sup> or sold alive.<sup>52</sup> Pigs over three months of age and calves can not be transported without suitable partitions, according to s 21A.

### 5.2.6 Penalties

Section 22 lists provisions relevant to offences under the Act. Where no penalty for an offence is specified, a general penalty of \$3 000 applies. Time limits, with a maximum of 12 months allowable, apply for the commencement of proceedings under this Act.<sup>53</sup> Civil remedies are not affected by proceedings under this Act.<sup>54</sup>

### 5.2.7 Regulations

Section 23 allows the development of regulations necessary for the administration of the Act. These regulations may involve the adoption of any 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.<sup>55</sup> Up until this time, there had been no regulations governing animal experiments in Queensland.

---

<sup>47</sup> ss 17(1)-(2).

<sup>48</sup> s 17(3).

<sup>49</sup> s 18.

<sup>50</sup> s 21(2).

<sup>51</sup> s 21(4).

<sup>52</sup> s 21(6).

<sup>53</sup> s 22(4).

<sup>54</sup> s 22(5).

<sup>55</sup> *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)*.

The *Animals Protection Regulation 1991*, last amended in 1999, currently contains provisions relating to the keeping of layer hen housing. Specifically the regulations provide for minimum floor areas for layer hens.<sup>56</sup> Since 1998, the regulations have also recognised the *Queensland Code of Practice for the Welfare of Animals in Circuses*.<sup>57</sup> The regulations make it a requirement for the owner of a circus to comply with the code in relation to the acquisition, breeding, care, display, housing, training and transport of vertebrate animals exhibited in a circus.

## 6 THE ANIMAL CARE AND PROTECTION BILL 2001

### 6.1 BACKGROUND TO THE BILL

The *Animals Protection Act 1925* (the current Act) has been under review in Queensland for more than a decade. This review was initiated in response to changing community attitudes towards animal welfare matters, advancements in scientific knowledge and animal behaviour, and to bring the welfare legislation in line with modern legislation principles, such as natural justice and recognising people's personal rights. In addition, welfare issues are becoming increasingly important for the trade and marketing of livestock products, both domestically and internationally.

According to the explanatory notes for the Bill, the *Animals Protection Act 1925* has a number of deficiencies including:<sup>58</sup>

- It is reactive to animal welfare issues as it only punishes acts of cruelty to animals after they occur;
- It exempts major areas of animal use, such as livestock production, from its provisions;
- It does not contain fundamental legislative provisions the community considers necessary, or suitable accountability mechanisms making it difficult to enforce;
- It is not written in "plain" English and is therefore not easily comprehended by the community;
- Penalty levels for offences have not kept pace with similar offences in other legislation and therefore offer little deterrent value.

As a result, it was recognised in the early 1990s that the *Animals Protection Act 1925* be reviewed. At the same time, the Inaugural Animal Welfare Ministers

---

<sup>56</sup> *Animals Protection Regulations 1991*, Part 3 – Layer Hen Housing.

<sup>57</sup> *Animals Protection Regulations 1991*, Part 4.

<sup>58</sup> Explanatory Notes, 2001, p 2.



Conference was held in 1991 where it was agreed to strive for uniformity in the legislation throughout the Australian jurisdictions. In Queensland, 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 through extensive consultation with stakeholders.

## 6.2 PROVISIONS OF THE BILL – IN DETAIL

### 6.2.1 Purpose and Application of the Act

The Animal Care and Protection Bill 2001 will repeal the *Animals Protection Act 1925*, replacing it with contemporary legislation which will *promote the responsible care and use of animals*<sup>59</sup>, as well as assist in protecting animals from acts of cruelty. The Bill has the following objectives, as listed in **clause 3**, to:

- Promote the responsible care and use of animals;
- Provide standards for the care and use of animals;
- Protect animals from unjustifiable, unnecessary or unreasonable pain and acts of cruelty; and
- Ensure the scientific use of animals is accountable, open and responsible under a nationally accepted standard involving compliance with a code of practice.

It will achieve these objectives by<sup>60</sup>:

1. Imposing a duty of care on all persons in charge of animals (**clause 4(c)**);
2. Prohibiting certain conduct in relation to animals (**clause 4(d)**);
3. Adopting codes of practice for animal welfare through regulations, with some codes requiring compliance (**clauses 4(a) and (b)**);
4. Requiring compliance with the *Australian Code of Practice for the Care and Use of Animals for Scientific Purposes* where a person is using animals for scientific purposes (**clause 4(e)**);

---

<sup>59</sup> Long title of the Animal Care and Protection Bill 2001.

<sup>60</sup> Animal Care and Protection Bill 2001 (Qld.), **clause 4**.

5. Registering certain users of animals for scientific purposes as was recommended by the Senate Select Committee into Animal Welfare in 1989<sup>61</sup> (**clause 4(f)**);
6. Appointing authorised officers to monitor compliance with compulsory codes (**clause 4(g)**);
7. Appointing inspectors to investigate and enforce the provisions of the Bill (**clause 4(h)**); and
8. Providing for the establishment of an animal welfare advisory committee to advise the Minister on animal welfare issues (**clause 4(i)**).

The legislation will also provide the basis for educating the community on animal welfare issues.

**Clause 5** binds all persons, including the State, to the provisions of the Act. This is in contrast to the *Animals Protection Act 1925*, which is silent on the matter of application to the Crown. However **clause 6** provides that the Bill does not apply to the State for animals protected, or an animal in the wild, under the *Nature Conservation Act 1992*. The relationship between this Bill and the *Fisheries Act 1994*, *Nature Conservation Act 1992* and the *Racing and Betting Act 1980* is clarified in **clause 7**. Actions considered lawful under the aforementioned Acts are not considered an offence under this Bill, unless it relates to the scientific use of animals.

Aboriginal and Torres Strait Islander people's native title rights, traditions and customs are recognised under **clause 8**. However it provides for the making of regulations in order to prescribe the conditions for doing a particular action by an Aborigine or Torres Strait Islander. A Regulatory Impact Statement, prepared in accordance with section 43 of the *Statutory Instruments Act 1992*, is required before a regulation can be made. As a result, this clause may impact on the rights and liberties of individuals contravening section 4(2)(a) of the *Legislative Standards Act 1992* which requires that legislation should have regard to the rights and liberties of individuals. The Explanatory Notes for the Bill state the clause is attempting to balance conflicting interests while maintaining the welfare of animals at levels the community finds acceptable.<sup>62</sup> The current *Animals Protection Act 1925* is silent on recognising traditional Aboriginal or Torres Strait Islander customs. The RSPCA had called upon the Aboriginal and Torres Strait Islander Commission, as far back as 1995, to establish rules about traditional hunting

---

<sup>61</sup> Australia. Parliament. The Senate Select Committee on Animal Welfare, *Animal Experimentation*, Parliamentary Paper no. 396, vol. 32, AGPS: Canberra, 1989, para. 15.57.

<sup>62</sup> Explanatory Notes, 2001, p. 7.

following a series of complaints.<sup>63</sup> Apparently the RSPCA had been criticised for not acting on such complaints. These provisions should address this issue.

**Clause 9** does not limit civil rights or remedies that exist, in a manner similar to s 22(5) of the *Animals Protection Act 1925*.

### 6.2.2 Interpretation

Definitions used to interpret this Act are listed in the Schedule (**clause 10**). This list is much more extensive than the twelve terms currently defined under section 3 of the *Animals Protection Act 1925*. Of significance, **clause 11** defines an “animal”. Included are all live vertebrates, including mammals, birds, reptiles, amphibians and fish, but not human beings (**clause 11(2)**). The Australian Capital Territory, Tasmania and South Australia also define animals in terms referring to members of the vertebrate species.<sup>64</sup> This is in line with the RSPCA’s model animal welfare legislation.<sup>65</sup>

In the future, regulations will allow the Bill to also cover some live invertebrates, specifically those from the class Cephalopoda (such as octopi and squid) and Malacostraca (such as crabs, crayfish, lobsters and prawns). This provision is included to allow for the protection of these invertebrates if conclusive scientific evidence becomes available showing that these creatures are capable of experiencing pain and suffering. As a result, this definition is much more extensive than the definition of animals listed in section 3 of the *Animals Protection Act 1925*. The Western Australian Animal Welfare Bill 2001 does not include fish; however provision is made for cruelty offences against fish to be included under other legislation.<sup>66</sup> This is more extensive than the current definition of an animal under Western Australian legislation.<sup>67</sup>

**Clause 12** defines the meaning of a “person in charge” of an animal. The definition includes a person who owns, leases or has a licence in an animal; has custody of an animal; or whose employee has custody of the animal.

---

<sup>63</sup> “Black hunters put on notice”, *Courier-Mail*, 30 August 1995, p. 5.

<sup>64</sup> See: *Animal Welfare Act 1992* (ACT.), s 2; *Prevention of Cruelty to Animals Act 1985* (SA), s 3; and *Animal Welfare Act 1993* (Tas), s 3.

<sup>65</sup> RSPCA Australia, p 141.

<sup>66</sup> *Animal Welfare Bill 2001* (WA), clause 5.

<sup>67</sup> *Prevention of Cruelty to Animals Act 1920* (WA), s 3.

### 6.2.3 Codes of Practice

Codes of practice outlining minimum standards for the use and treatment of certain species of animals in particular situations are recognised in the Bill (**clause 13**). These codes, established by ARMCANZ, are informally known as the “Pink Codes” for livestock.<sup>68</sup> The types of codes to be recognised are listed in **clause 13(2)**. The codes will be able to be used by animal users and inspectors to assess duty of care responsibilities (**clause 16**). Any codes adopted under regulation must be tabled in the Legislative Assembly within 14 days of the regulation being gazetted, thus ensuring public access to the provisions of the code (**clause 14**). **Clause 15** provides for regulations to make compliance to certain codes, or parts thereof, mandatory. It is an offence for a person not to comply with a compulsory code requirement, carrying a fine of \$22 500. Such a high penalty is considered necessary for breaches of the minimum acceptable standards established in compulsory codes of practice, particularly when it is considered that such codes often deal with animals kept in large numbers.

Model codes of practice are already recognised in other animal welfare legislation in Australia and New Zealand.<sup>69</sup> They were written and developed on a consultative basis with industry and the community. The Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ) have approved more than twenty codes of practice. These codes cover issues such as the transport, husbandry and sale of livestock, focusing on particular areas of livestock production such as the pig, cattle, deer, sheep, emu, buffalo and the poultry industry.

### 6.2.4 General Animal Offences

**Chapter 3** of the Bill deals with general animal offences.

#### 6.2.4.1 Breach of Duty of Care

**Clause 17** makes it an offence for a person in charge of an animal to breach the duty of care. The maximum penalty for this offence is \$22 500 or 1 year’s imprisonment. **Clauses 17(3)** and **17(4)** defines duty of care, which basically

---

<sup>68</sup> Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ), “Model Codes of Practice for the Welfare of Animals”, CSIRO, [http://www.affa.gov.au/docs/operating\\_environment/armcanz/pubsinfo/mcpwa/animal\\_welfare.html](http://www.affa.gov.au/docs/operating_environment/armcanz/pubsinfo/mcpwa/animal_welfare.html)

<sup>69</sup> For example:  
*Prevention of Cruelty to Animals Act 1985* (SA), s 43;  
*Animal Welfare Act 1993* (Tas.), section 34; and  
*Animal Welfare Act 1993*, (ACT), s 20 and Part 3.

encapsulates the “Five Freedoms” of animal welfare, which were discussed in more detail in Section 2 – “Introduction”. Duty of care provisions form part of the RSPCA’s model animal welfare legislation<sup>70</sup>, and are also included in the current Tasmanian legislation.<sup>71</sup>

Animal Liberation Qld claims that the five freedoms as espoused in the duty of care provision are not consistently applied to animals produced for food. For example, they claim animals farmed for food are not able to express normal behaviours as espoused in the Five Freedoms, if confined to feedlots and battery hen cages.<sup>72</sup>

The Queensland Branch of the Australian Veterinary Association (AVA) has continued to express disappointment that there are no provisions compelling third parties to report breaches of the duty of care provisions.<sup>73</sup>

#### 6.2.4.2 Cruelty Offences

Animal cruelty is prohibited under **clause 18(1)**. The maximum penalty for animal cruelty is \$75 000 or 2 years’ imprisonment. Under the current Act, the maximum penalty for cruelty is \$1 500 or six months’ jail. There have been many calls for heavier penalties from a number of stakeholders, including the RSPCA and other animal welfare groups. These calls have been heeded in this Bill, as fines have been increased 50 fold for individuals. For example, abandoning an animal is an offence subject to a \$22 500 fine or one year’s jail (**clause 19**). The current abandonment provision in the *Animals Protection Act 1925*, section 4(1)(l), only carries a \$1 500 fine or six months’ imprisonment. In New South Wales, the maximum penalty for abandoning an animal is \$5 500 and/or six months’ jail for individual, with corporations subject to fines five times that for an individual.<sup>74</sup>

**Clause 18(2)** defines animal cruelty without limiting what may constitute cruelty.

- (2) *Without limiting subsection (1), a person is taken to be cruel to an animal if the person does any of the following to the animal—*
- (a) *causes it pain that, in the circumstances, is unjustifiable, unnecessary or unreasonable;*
  - (b) *beats it so as to cause the animal pain;*
  - (c) *abuses, terrifies, torments or worries it;*
  - (d) *overdrives, overrides or overworks it;*

---

<sup>70</sup> RSPCA Australia, p 141.

<sup>71</sup> *Animal Welfare Act 1993* (Tas.), s 6.

<sup>72</sup> Animal Liberation Qld, personal communication, 28 August 2001.

<sup>73</sup> Australian Veterinary Association, Queensland Branch, Personal communication, 27 August 2001.

<sup>74</sup> *Prevention of Cruelty to Animals Act 1979*, (NSW), s 11.

- (e) uses on the animal an electrical device prescribed under a regulation;
- (f) confines or transports it—
  - (i) without appropriate preparation, including, for example, appropriate food, rest, shelter or water; or
  - (i) when it is unfit for the confinement or transport; or
  - (iii) in a way that is inappropriate for the animal's welfare; or

Examples for subparagraph (iii)—

  - placing the animal, during the confinement or transport, with too few or too many other animals or with a species of animal with which it is incompatible
  - not providing the animal with appropriate spells.
  - (iv) in an unsuitable container or vehicle;
- (g) kills it in a way that—
  - (i) is inhumane; or
  - (ii) causes it not to die quickly; or
  - (ii) causes it to die in unreasonable pain;
- (h) unjustifiably, unnecessarily or unreasonably—
  - (i) injures or wounds it; or
  - (ii) overcrowds or overloads it.

The Queensland Branch of the Australian Veterinary Association (AVA) continues to be concerned with the somewhat subjective nature of these definitions, which could pose a problem for veterinarians when required to provide evidence in court.<sup>75</sup> It would be difficult, however, to be prescriptive. This would need to be tested in court.

#### 6.2.4.3 Prohibited Events

Prohibited events are defined in **clause 20**. These events include unacceptable events such as bullfights, cockfights, dog fights, coursing, the release and hunting of an animal and certain other prescribed public entertainment events which may result in pain to an animal, such as the throwing or catching of animals. Similar provisions are contained in section 4 of the *Animals Protection Act 1925*. However the Bill additionally makes it an offence to participate in a prohibited event (**clause 21**) or to even be present at such an event (**clause 22**). Participating in a prohibited event incurs a \$22 500 fine, while being present at such an event may incur a \$11 250 fine. Both offences may be subject to one year's imprisonment.

---

<sup>75</sup> Australian Veterinary Association, 27 August 2001.

The first conviction for dog fighting in Queensland's history occurred only last year.<sup>76</sup> Even though there was a conviction, a fine of only \$1 000 was imposed, as the maximum penalty was only \$1 500. Apparently, the current fine levels were so insignificant they were considered "an operating cost" and "equivalent to beer money" to those involved in this activity.<sup>77</sup>

Legislation in other Australian states and territories also prohibits the sport of animals' fighting.<sup>78</sup> For example, New South Wales legislation makes it an offence subject to a maximum penalty of \$5 500 and/or six months jail for an individual, with corporations subject to fines five times that for an individual.<sup>79</sup> Other jurisdictions have penalties varying between \$5 000 and \$50 000.<sup>80</sup>

#### 6.2.4.4 Regulated Surgical Procedures

Some surgical procedures are regulated under the Bill. These procedures are generally only considered acceptable if carried out by a veterinary surgeon in the interests of the animal's welfare or are done in a way prescribed by regulation. These procedures include:

- cropping dogs' ears (**clause 23**);
- docking dogs' tails (**clause 24**); and

<sup>76</sup> Steele Tallon, "Raiders close to dog fights", *Sunday Mail*, 29 October 2000, p 24.

<sup>77</sup> Sid Maher, "Animal cruelty attack", *Sunday Mail*, 11 October 1998, p 10.

<sup>78</sup> See:

- *Animal Welfare Act 1992* (ACT), section 17, maximum penalty is \$10 000;
- *Prevention of Cruelty to Animals Act 1920* (WA), section 4(1)(c), maximum penalty is \$5 000 or one years jail however the *Animal Welfare Bill 2001* (WA), clause 32, increase this to a \$50 000 fine and 5 years jail;
- *Prevention of Cruelty to Animals Act 1985*, section 13(2)(e), maximum penalty is \$10 000 or one years jail;
- *Animal Welfare Act 1993* (Tas.) , section 10(2), maximum penalty is \$50 000 or one year's jail;
- *Animal Welfare Act 1999* (NT), section 21, maximum penalty is \$10 000 and 12 month's jail.

<sup>79</sup> *Prevention of Cruelty to Animals Act 1979*, (NSW), s 18.

<sup>80</sup> See:

- *Animal Welfare Act 1992* (ACT), section 17, maximum penalty is \$10 000;
- *Prevention of Cruelty to Animals Act 1920* (WA), section 4(1)(c), maximum penalty is \$5 000 or one years jail however the *Animal Welfare Bill 2001* (WA), clause 32, increase this to a \$50 000 fine and 5 years jail;
- *Prevention of Cruelty to Animals Act 1985*, section 13(2)(e), maximum penalty is \$10 000 or one years jail;
- *Animal Welfare Act 1993* (Tas.) , section 10(2), maximum penalty is \$50 000 or one year's jail;
- *Animal Welfare Act 1999* (NT), section 21, maximum penalty is \$10 000 and 12 month's jail.

- debarking operations (**clause 25**).

If a person, other than a veterinary surgeon, crops a dog's ears or its tail, then that person is liable to a \$7 500 fine. The RSPCA has been critical of the decision not to ban tail docking of dogs' tails outright as is the case in some countries.<sup>81</sup>

If a person, other than a veterinary surgeon, performs an operation to prevent a dog from barking or reduce the volume of its bark, they are subject to a maximum \$22500 fine or one year's imprisonment. A person, other than a veterinary surgeon, that undertakes the debarking procedure except under specified conditions (**clauses 25(2-3)**) is also liable to a \$22 500 fine or one year's imprisonment.

It is also an offence under **clause 26** to remove a cat's claws unless undertaken by a veterinary surgeon in the interests of the cat's welfare. **Clause 27** makes it an offence for a person, other than a veterinary surgeon undertaking the procedure for welfare reasons, to dock the tail of cattle or horses. Both offences are subject to a \$22 500 fine or 1 year's imprisonment. This category of offence is currently listed in section 4(1)(j) of the *Animals Protection Act 1925*, however it carries a much smaller penalty level of \$1 500 or six months jail. Unlike the current Act, the Bill provides for restrictions on the sale and supply of animals subjected to regulated surgical procedures (**clauses 28-29**).

Animal Liberation Qld has argued that these provisions allow the continuation of certain practices, which they believe, should be more rightly banned. However, the government contends that these provisions provide protection to veterinarians who would be required to undertake these procedures for the animal's welfare, for example, where a cancer may have to be removed.<sup>82</sup> In addition, **clauses 28-29** regulate the supply of animals that have undergone these procedures, by requiring a veterinary certificate to be supplied with the animal at point of transfer.

#### **6.2.4.5 Prohibited and Regulated Conduct**

The Bill also makes it an offence to undertake other prohibited and regulated conduct such as:

- causing captive animals to be injured or killed by a dog (**clause 30**);
- releasing an animal for injury or killing by a dog (**clause 31**);
- to keep or use a lure or kill an animal for blooding or coursing (**clause 32**);
- use a prohibited trap or spur (**clause 35**);

---

<sup>81</sup> "New laws have claws", *Courier-Mail*, 7 July 2001, p 11.

<sup>82</sup> Department of Primary Industries, personal communication, 5 September 2001.



- administer or feed an animal a substance or bait with the intention of injuring or killing that animal (**clause 36**); and
- unlawfully allowing an animal to injure or kill another animal (**clause 37**).

These offences incur a maximum penalty of \$22 500 or one year's imprisonment. Exemptions are provided in specific circumstances to inspectors and veterinary surgeons.

**Clause 33** places an obligation on a person in charge of a dog that is considered closely confined for 24 hours to be exercised for 2 continuous hours or two one hour periods in the next 24 hours. The maximum penalty for not exercising a confined dog is a \$1 500 fine.

**Clause 34** makes it an offence to possess a prohibited trap or spur. Regulations will determine "prohibited traps" as animal trap designs develop continuously, and these may need to be quickly prohibited if they are found to cause excessive pain and suffering. A maximum penalty of \$7 500 applies for possession of a prohibited trap or spur without reasonable excuse.

In July this year, the Queensland RSPCA's first attempt to prosecute for cockfighting failed because inspectors had to rely on catching offenders actually undertaking a fight.<sup>83</sup> The provisions in the new Bill solve this problem, as even the possession of implements, such as spurs, used in cockfights would attract a fine of \$7 500 (**clauses 34-35**). This brings it into line with New South Wales legislation which prohibits the possession of implements, such as spurs, used in the fighting of animals.<sup>84</sup> Under the NSW Act, the maximum penalty for an individual is \$5 500 and/or six-month imprisonment, with corporations liable to up to five times the fine for individuals.<sup>85</sup> A similar provision exists in Australian Capital Territory legislation, with the penalty being a maximum fine of 100 penalty units.<sup>86</sup>

#### **6.2.4.6 Exemptions**

Exemptions to the general animal offences contained in Chapter 3 of the Bill are provided in **clauses 38-47**. These provisions provide that if an exemption applies to a particular act or omission, the person in charge of an animal is not deemed to have committed an offence. These exemptions are more specific than those listed in section 7 of the *Animals Protection Act 1925*. Exemptions listed in the Bill include the following:

- Compliance with a relevant code of practice (**clause 40**);

---

<sup>83</sup> "New laws have claws", *Courier-Mail*, 7 July 2001, p. 11.

<sup>84</sup> *Prevention of Cruelty to Animals Act 1979* (NSW), s 17.

<sup>85</sup> *Prevention of Cruelty to Animals Act 1979* (NSW), s 17 (b)(ii).

<sup>86</sup> *Animal Welfare Act 1993* (ACT), s 6.

- Controlling feral or pest animals (**clause 42**);
- Feeding animals to another animal, for example live animals to raptors in order to keep them alive, as they will only accept live food (**clause 43**);
- Fishing using certain live baits allowing the legitimate use of live bait for commercial and recreational fishing to continue (**clause 44**);
- Slaughtering animals in accordance with a religious faith, such as the Kosher (Jewish) and Halal (Muslim) methods of slaughter (**clause 45**); and
- The use of fishing apparatus under a shark fishing contract with the State (**clause 46**).

## 6.2.5 Using Animals for Scientific Purposes

**Chapter 4** of the Bill regulates the use of animals for scientific purposes.

### 6.2.5.1 Preliminary

**Clause 48** defines the meaning of using an animal for “scientific purposes”. The definition includes activities performed in a scientific discipline, such as diagnosis, environmental or field studies, product testing, research and teaching.

The State Government states in its Explanatory Notes that although the use of animals in scientific experiments is a major area of public concern, there continues to be valid reasons for the use of animals in scientific research in some cases.<sup>87</sup> As such, the Bill is aimed at making the use of animals for scientific purposes more *accountable, open and responsible*.<sup>88</sup> In addition, the Bill aims to minimise unnecessary pain and stress to animals involved in research.

The most recent edition of the *Australian Code of Practice for the Care and Use of Animals for Scientific Purposes*, published by the National Health and Medical Research Council (NHMRC)<sup>89</sup>, is defined in **clause 49** as the code to be relied upon under this Bill. This code is nationally recognised, and is aimed at ensuring the humane care of animals used for scientific purposes. It is currently recognised in the *Animals Protection Regulations 1991*. This code forms part of all Australian

States’ and Territories’ animal welfare legislation, as it is part of a nationally accepted standard for the scientific use of animals.<sup>90</sup>

---

<sup>87</sup> Explanatory Notes, 2001, p. 33.

<sup>88</sup> Animal Care and Protection Bill 2001 (Qld.), **clause 3(d)**.

<sup>89</sup> Currently, the most recent edition of this code can be found at: <http://www.health.gov.au/nhmrc/research/awc/code.htm>

<sup>90</sup> For example:

### 6.2.5.2 Registering Scientific Users

**Clauses 52 – 90** detail the administration of the new legislative requirement created under **clause 51** of the Bill for the registration of scientific users of animals. The Commonwealth Senate Select Committee into Animal Welfare recommended this action in 1989.<sup>91</sup> The Committee believed that registration would allow for the better control of animals in scientific experiments if such organisations and individuals could be identified.

These provisions are aimed at making the use of animals for scientific purposes more accountable by:

- Making people who use animals for scientific purposes register with the chief executive of the Department of Primary Industries or face a fine of \$22 500 or one year's imprisonment (**clause 51**);
- Maintaining a register of these details which must be made available to the public<sup>92</sup>;
- Providing exemptions to registration<sup>93</sup>; and
- Placing restrictions on scientific users under **clauses 91-93**, such as banning certain types of experimentation without approval.

### 6.2.6 Code Compliance Monitoring and Authorised Officers

**Chapter 5** of the Bill provides for the creation of processes for monitoring compulsory code requirements. **Clause 94** describes the purpose of Chapter 5. It states:

*(1) The purposes of this chapter are to—*

- *ensure compliance with compulsory code requirements and the scientific use code; and*
- *prevent animal suffering; and*

- 
- *Prevention of Cruelty to Animals Act 1985 (SA), ss 16-22;*
  - *Animal Welfare Act 1993 (Tas.); Part 4;*
  - *Animal Welfare Act 1992 (ACT), Part 4;*
  - *Control of Vivisection Experimentation Regulation 1959 (WA) which may be replaced by Part 2 of the Animal Welfare Bill 2001;*
  - *Prevention of Cruelty to Animals Act 1986 (Vic.), Part 3;*
  - *Animal Welfare Act 1999 (NT), Part 5; and*
  - *Animal Research Act 1985 (NSW).*

<sup>91</sup> Australia. Parliament. The Senate Select Committee on Animal Welfare, para. 15.57.

<sup>92</sup> Animal Care and Protection Bill 2001 (Qld.), **clauses 60-62**.

<sup>93</sup> **clauses 64-70**.

- promote standards of animal care provided for under codes of practice.
- (2) The purposes are achieved by providing for—
- authorised officers to monitor compulsory code requirements and the scientific use code; and
  - programs about carrying out the monitoring.

According to the Explanatory Notes<sup>94</sup>, this Chapter is part of the Bill’s proactive approach to animal welfare. Authorised officers will be appointed to monitor<sup>95</sup> compliance with the relevant compulsory code requirements in order to ensure animal users adhere to the code’s provisions.<sup>96</sup> Authorised officers will have powers less than the usual “enforcement type” powers of inspectors.<sup>97</sup> These types of officer’s powers are designed to ensure monitoring will be effective.

## 6.2.7 Investigation and Enforcement – Chapter 6

**Chapter 6** of the Animal Care and Protection Bill 2001 details the appointment of inspectors, their powers and the making of animal welfare directions.

### 6.2.7.1 Inspectors

**Clause 114** provides for the appointment of inspectors from a list set out in the clause. It is limited to public servants, employees of the RSPCA, or others declared approved under regulation who have the necessary expertise or training. Primarily, police officers and RSPCA officers enforce the existing *Animals Protection Act 1925*.<sup>98</sup> **Clause 114** allows for additional inspectors to be appointed as it will allow Department of Primary Industries’ employees who are veterinarians or stock inspectors to be eligible as inspectors. This will lead to the appointment of an additional 120 officers.<sup>99</sup> In addition, the current Act makes no requirement for specific training or expertise prior to appointment. Under the Bill, this situation will be rectified bringing it into line with Victorian practice, and the RSPCA’s model animal welfare legislation<sup>100</sup>, which requires inspectors to have minimum levels of training prior to appointment. The Bill does not provide for the appointment of honorary officers, as was the case under the *Animals Protection Act 1925*. This was considered unnecessary under the Bill.

<sup>94</sup> Explanatory Notes, 2001, p. 45.

<sup>95</sup> Animal Care and Protection Bill 2001 (Qld.), **clauses 95-98**.

<sup>96</sup> **clauses 99-106**.

<sup>97</sup> **clauses 107-113**.

<sup>98</sup> Section 3 of the *Animals Protection Act 1925* defines an “officer”.

<sup>99</sup> Department of Primary Industries, *Animal Welfare in Queensland: Information about the new animal welfare Bill*, Brisbane: 2001, p 14.

<sup>100</sup> RSPCA Australia, pp. 163-165.

**Clause 115** states that the function of an inspector is *to investigate and enforce compliance* with the Bill. **Clauses 116-118** detail the conditions of appointment. Identity cards are required under **clauses 119-121**.

### 6.2.7.2 Powers of Inspectors

**Clauses 122-157** detail the powers of inspectors in relation to entering properties or vehicles and the necessity for warrants in some circumstances. **Clauses 122 and 123** allow for inspectors to enter premises without a warrant. These provisions are considered essential in order to protect animals under the Bill and for inspectors to obtain evidence of an animal welfare offence.<sup>101</sup> Entry is limited to particular circumstances as outlined in these provisions.

**Clause 137** establishes the general powers of entry for inspectors. Specifically it states:

*The inspector may do any of the following —*

- (a) *enter the place using reasonable force;*
- (b) *search any part of the place;*
- (c) *open, using reasonable force, a cage, container, pen, yard or other structure confining or containing an animal or other thing to examine the structure, animal or other thing;*
- (d) *take reasonable measures to relieve the pain of an animal at the place;*
- (e) *examine or inspect or film, photograph, videotape or otherwise record a image of, an animal, document or other thing at the place;*
- (f) *take a sample of or from an animal or other thing at the place for analysis or testing;*
- (g) *copy a document at the place;*
- (h) *take into the place the equipment, materials or persons the inspector reasonably requires for exercising a power under this part;*
- (i) *brand, mark, tag or otherwise identify an animal at the place;*
- (j) *take a necessary step to allow a power under paragraphs (a) to (i) to be exercised.*

Seizure and forfeiture powers are established under **clauses 142- 157**. Specifically **clause 144** provides for the seizure of an animal for various reasons, but one involves providing veterinary treatment to the animal.

These powers are quite different to those delineated in sections 8-15 of the current *Animals Protection Act 1925*. It was primarily the RSPCA's objections to the provisions relating to the powers of inspectors that resulting in the abandonment, at

---

<sup>101</sup> Explanatory Notes, 2001, p. 8.

the time, of the then draft Bill in 1993.<sup>102</sup> However since that time, there has been extensive consultation, and the RSPCA is satisfied with the provisions as drafted.

### Animal Welfare Directives

Under **clause 158**, an inspector has the power to give directions about an animal's welfare to the person in charge of an animal. The inspector may issue these animal welfare directives if an inspector believes that an animal:

- is not being cared for properly;
- is experiencing undue pain;
- requires veterinary treatment;
- should not be used for work; or
- is seized under the bill.

Animal welfare directions are a new initiative under this Bill and are aimed at being proactive, preventing a potential animal cruelty offence from occurring, or resolving an existing problem.

The power to issue animal welfare directions is conferred in **clause 159**. The directives could include rectifying problems relating to the provision of food, water, rest or shelter, or obtaining veterinary treatment. Directions must be in writing (**clause 160**). It would be an offence not to comply with the direction with a maximum penalty of \$7 500 or 1 year imprisonment (under **clause 161**). Other powers of inspectors are contained in **clauses 162-170**. These relate to the power of inspectors to destroy an animal (**clause 162**). Under the current Act, section 14 allows a Justice of the Peace to authorise in writing the killing of an animal that ought to be destroyed due to its weak, disabled or diseased state, with no compensation recoverable. **Clause 162** gives the power to destroy animals directly to inspectors. The Queensland Branch of the Australian Veterinary Association has some continuing concerns that a decision to destroy an animal does not require a veterinary diagnosis.<sup>103</sup> They believe that the recommended training programs for accrediting inspectors will hopefully address this issue.

**Clause 163** allows inspectors to require a person to state their name and address. This is similar to section 15A of the 1925 Act, which allows officers to demand the name and address of people suspected of committing an offence. Failing to comply with this directive under the current Act incurs only a \$3 000 fine, while under the

---

<sup>102</sup> RSPCA, 1993, p. 1.

<sup>103</sup> Australian Veterinary Association, Queensland branch, Personal communication, 27 August 2001.

Bill, it will incur a \$3 750 fine.<sup>104</sup> Other Australian jurisdictions have similar provisions.<sup>105</sup>

### 6.2.7.3 Notice of Damage

**Clauses 171-173** provide for inspectors to be accountable when dealing with a person's property. Inspectors could damage things whilst exercising the powers conferred by the provisions of this Bill. These clauses make inspectors accountable for this damage by requiring them to give written notice of the damage undertaken and ensure that the person is aware that they may make a claim in relation to the damage.

## 6.2.8 Evidence and Legal Proceedings

**Chapter 7** of the Bill contains provisions designed to assist in the legal proceedings resulting from the Bill. In the past, the RSPCA has been hindered in bringing successful prosecutions because of the lack of provisions dealing with evidence and legal proceedings in the current Act. This Chapter clarifies these issues and provides for remedies, reviews and appeals of decisions made under the Bill.

### 6.2.8.1 Evidence

**Clauses 174-181** are provisions relating to evidence. Specifically, **clause 178** states that an offence under this Bill is a summary offence (any person may prosecute) and time limits for the commencement of proceedings apply. This is similar to section 22(4) of the current Act.

### 6.2.8.2 Orders Relating to Animal Welfare Offences

Orders allowing the disposal or forfeiture of animals and possessions are allowed under **clause 182**. Some animal welfare offences are of a sufficiently serious nature to warrant a person convicted of an animal welfare offence being prohibited from

---

<sup>104</sup> Animal Care and Protection Bill 2001 (Qld.), **clause 164**.

<sup>105</sup> For example:

- *Prevention of Cruelty to Animals Act 1979* (NSW), section 27A, maximum fine \$2 750;
- *Animal Welfare Act 1993* (Tas.), section 26, maximum fine \$1 000;
- *Prevention of Cruelty to Animals Act 1985* (SA), section 29(8), maximum penalty \$1 000; and
- *Animal Welfare Act 1992* (ACT), section 82(1)(h), maximum penalty \$5 000 and/or six month's imprisonment.

owning another animal for a stated period, or permanently.<sup>106</sup> In addition to the normal appeal process available under the *Justices Act 1886*, an additional review process is provided in **clause 188**. The criteria and procedures for making these orders are detailed in **clauses 185-186**. Contravening these orders constitutes an offence subject to a \$22 500 fine or 1 year's imprisonment.<sup>107</sup>

### **6.2.8.3 Remedies**

**Clauses 189-192** detail the remedies available for compensation under the Bill.

### **6.2.8.4 Reviews and Appeals**

**Clauses 193 – 205** establishes the procedures for review and appeal of decisions made under the Bill.

**Clause 193** requires that an appeal against a decision made under the Bill must first start with an application for review. The remaining provisions outline the steps involved in a review and an appeal.

## **6.2.9 General Provisions**

**Chapter 8** contains provisions relating to other offences such as obstructing an inspector (**clause 206**) and impersonating an officer (**clause 207**). Obstructing an inspector may result in a \$3 750 fine, while impersonating an officer has a maximum penalty of \$1 875.

**Clause 209** makes corporations involved in the administration of the Bill, namely the RSPCA, accountable for their actions. In the second reading debate on the Bill, the Minister said that under the current 1925 Act, he is accountable to parliament for the administration of the Act, but that the RSPCA inspectors are not accountable to the Minister or the parliament.<sup>108</sup> This provision improves the accountability requirements of those administering the Act.

Under **clause 210** of this Bill, for the first time it is an offence to even attempt to commit an offence, with the penalty being half the maximum penalty for the completed offence. This is at the other end of the spectrum to dealing with animal welfare offences under the current Act, where an offence has to be proven to have been committed before action can be taken.

---

<sup>106</sup> Animal Care and Protection Bill 2001 (Qld.), **clause 183**.

<sup>107</sup> **clause 187**.

<sup>108</sup> Hon. H. Palaszczuk MP, p. 1989.



The Minister may establish an Animal Welfare Advisory Committee under **clause 211** to advise the Minister. This provision brings Queensland into line with other Australian and New Zealand jurisdictions. The Senate Select Committee on Animal Welfare first recommended the appointment of such a body in 1989.<sup>109</sup> Similar committees are created under the animal welfare legislation in South Australia<sup>110</sup>, Tasmania<sup>111</sup>, Australian Capital Territory<sup>112</sup>, Northern Territory<sup>113</sup> and New Zealand<sup>114</sup>.

### ***Police Powers***

**Clauses 225 – 229** amend the *Police Powers and Responsibilities Act 2000* enabling police to act as inspectors with the full powers conferred by this Bill.

## **6.3 COMMUNITY RESPONSE TO THE BILL**

The proposed changes to the legislation have received praise, but also some criticism, as would be expected with any major legislative reform.

Consultation on the Animal Care and Protection Bill 2001 has been occurring since the 1990s. It has included the release of a green paper for public consultation. This paper resulted in the then responsible department receiving over 1 000 submissions. The Explanatory Notes to the Bill list in detail the key stakeholders consulted in the drafting of the Bill.<sup>115</sup> Almost 30 industry and animal welfare organisations were consulted along with 17 government agencies.

The Minister stated:<sup>116</sup>

*The policies in the Bill have been developed over several years in consultation with animal welfare groups, livestock industries and other animal user groups. All of these have supported the policy principles enshrined in this Bill and all support the need for modern legislation. Relevant stakeholder groups have scrutinised the Bill and given it their “thumbs up”.*

The RSPCA is the organisation most affected by the provisions of the Bill. This legislation forms the basis of their cruelty investigations and prosecutions. Therefore, it is very important to the Association as it affects the efficiency of the

<sup>109</sup> Australia. Parliament. The Senate Select Committee on Animal Welfare, para. 15.57.

<sup>110</sup> *Prevention of Cruelty to Animals Act 1985* (SA), ss 6-12.

<sup>111</sup> *Animal Welfare Act 1993* (Tas.), Part 6.

<sup>112</sup> *Animal Welfare Act 1992* (ACT), s 4.

<sup>113</sup> *Animal Welfare Act 1999* (NT), Part 4.

<sup>114</sup> *Animal Welfare Act 1999* (NZ), Part 4.

<sup>115</sup> Explanatory Notes, 2001, pp. 13-15.

<sup>116</sup> Hon. H. Palaszczuk MP, p. 1990.

inspectorate and the ability of RSPCA staff to fulfil its objectives. RSPCA Qld's Chief Executive Officer Mark Townend said that with this Bill, the government is moving to protect animals with the strongest deterrents possible, making Queensland one of the most advanced animal welfare protection jurisdictions in the world.<sup>117</sup> Unlike the situation in 1993, when the RSPCA was leading a campaign against the draft proposals, this time the RSPCA is attempting to ensure the successful passage of the Bill, and has called upon all sides of politics to expeditiously pass the Bill through Parliament.<sup>118</sup>

*Everyone has been waiting so long for this we don't want to see it held up in Parliament.*<sup>119</sup>

Mr Townend commented that he hoped that in the future, Parliament would amend provisions appropriately as issues arise during the Bill's implementation and operation.<sup>120</sup>

AgForce, which represents Queensland's rural producers, has expressed support for the Bill.<sup>121</sup> A spokesperson said they fully agreed with the fundamental shift in the way animal welfare issues were treated, and it was important to their members in relation to marketing. As has been mentioned before, access to some markets may be limited in the future if producers cannot demonstrate that production is undertaken humanely.

### 6.3.1 Costs of Implementation

The Explanatory Notes for the Animal Care and Protection Bill 2001 states that administering the provisions of the Bill will involve a new role for the Department of Primary Industries. The cost of administration will be a recurrent expenditure of \$1.6 million.<sup>122</sup>

The RSPCA also expects administration costs to increase for them under the Bill. Currently they receive \$165 000 annually from the state government.<sup>123</sup> This year, they have also asked for an additional payment from the state government in order to assist with the expected increase in costs.

---

<sup>117</sup> RSPCA, Media Release, "Government's firm stance on cruelty confirms Smart State status", 31 July 2001.

<sup>118</sup> RSPCA, 31 July 2001.

<sup>119</sup> Matthew Franklin, "Prison and big fines in new animal cruelty law", *Courier-Mail*, 31 July 2001, p 1.

<sup>120</sup> Personal communication, 27 August 2001.

<sup>121</sup> Personal communication, 28 August 2001.

<sup>122</sup> Explanatory Notes, 2001, p. 6.

<sup>123</sup> RSPCA (Qld.), p 24.

When introducing the Bill into the Queensland Parliament, the Minister announced that the government would assist the RSPCA to educate people about the importance of caring and protecting animals by making a \$90 000 contribution to establishing a mobile education awareness unit to tour the state.<sup>124</sup> The RSPCA expects that the mobile unit will help to inform the community of its new responsibilities under the Bill, as well as assist in the dissemination of the animal welfare message. It is expected to visit schools, tertiary institutions, agricultural shows and workplaces throughout the state.

## **7 CONCLUSION**

One hundred and seventy-nine years have passed since the first animal welfare legislation was debated. It is seventy-six 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 also become more concerned with animal welfare matters, and this Bill provides a legislative framework where these concerns can be addressed.

Unlike attempts to introduce amended animal welfare legislation in 1993, key stakeholders appear to generally support the provisions of the Animal Care and Protection Bill 2001.

---

<sup>124</sup> Hon. H. Palaszczuk MP, p. 1988.

## RECENT PARLIAMENTARY LIBRARY RESEARCH PUBLICATIONS 2001

### RESEARCH BRIEFS

RBR 22/01	<i>Government Funding for Non-State Schools in Queensland: The Education (Accreditation of Non-State Schools) Bill 2001</i>	Sep 2001
RBR 21/01	<i>Accreditation of Non-State Schools in Queensland: The Education (Accreditation of Non-State Schools) Bill 2001</i>	Sep 2001
RBR 20/01	<i>Penalties and Sentences (Non-Contact Orders) Amendment Bill 2001</i>	Sep 2001
RBR 19/01	<i>Current and prospective treatments for heroin dependence in the light of a recent national evaluation (the NEPOD Report)</i>	Aug 2001
RBR 18/01	<i>Community Benefits Associated with the Gaming Machine Industry: The Gaming Machine Amendment Bill 2001</i>	July 2001
RBR 17/01	<i>The Emergence of Community Style Banking as a Response to the Closing of Bank Branches</i>	June 2001
RBR 16/01	<i>High Court Abolishes Negligence Immunity for Highway Authorities</i>	June 2001
RBR 15/01	<i>Greenhouse Gases Emission Abatement and Carbon Credits – Australia's Response and the Queensland Forestry and Land Title Amendment Bill</i>	June 2001
RBR 14/01	<i>Regulating Pay Day Lending: The Consumer Credit (Queensland) Amendment Bill 2001</i>	June 2001
RBR 13/01	<i>The Allocation of Parliamentary Seats for Indigenous Minority Groups</i>	June 2001
RBR 12/01	<i>Employees and the Internet – Issues for Public and Private Sector Employers</i>	June 2001
RBR 11/01	<i>Valuers Registration Amendment Bill 2001</i>	May 2001
RBR 10/01	<i>The New South Wales-Queensland Border Rivers Amendment Bill 2001</i>	May 2001
RBR 9/01	<i>The Dating Game: The Introduction Agents Bill 2001 (Qld)</i>	May 2001
RBR 8/01	<i>Dangerous Goods Safety Management Bill 2001: Implementing the National Approach to the Handling of Dangerous Goods</i>	May 2001
RBR 7/01	<i>The Future of the Kyoto Protocol: The Lead Up to the Resumed Climate Change Talks in Bonn in July 2001</i>	May 2001
RBR 6/01	<i>The Status of Children Amendment Bill 2001</i>	April 2001
RBR 5/01	<i>The Crimes at Sea Bill 2001: National Legislation for Crimes in Australian Waters</i>	April 2001
RBR 4/01	<i>Innovation Strategies of the Queensland and Commonwealth Governments</i>	Mar 2001
RBR 3/01	<i>Drug Courts</i>	Mar 2001
RBR 2/01	<i>E-Democracy and Election Campaigns: Recent Case Studies from USA and Developments in Australia</i>	Feb 2001
RBR 1/01	<i>E-Voting: Elections via the Internet?</i>	Feb 2001

### RESEARCH BULLETINS

RB 4/01	<i>Violence in the Mass Media: Are There Negative Consequences?</i>	Jun 2001
RB 3/01	<i>Towards improved Public Health: The Tobacco and Other smoking Products (Prevention of Supply to Children) Amendment Bill 2001</i>	April 2001
RB 2/01	<i>Towards the 'Smart State': The Electronic Transactions (Queensland) Bill</i>	April 2001
RB 1/01	<i>Laws against inciting Racial or Religious Vilification in Queensland and Australia: the Anti-Discrimination Amendment Bill 2001</i>	Mar 2001

Research Papers are available as PDF files:

- to members of the general public abstracts are available on the parliamentary web site, URL, <http://www.parliament.qld.gov.au>
- <http://www.parliament.qld.gov.au/Library/Query.exe> – ResearchPubs -Library

A complete listing of research papers is available at the following site: <http://www.parliament.qld.gov.au/parlib/research/index.htm>

Parliamentary Library - Research Publications & Resources Telephone (07) 3406 7108

Orders may be sent to Maureen McClarty, [Maureen.McClarty@parliament.qld.gov.au](mailto:Maureen.McClarty@parliament.qld.gov.au)





**This Publication:**

**RBR 2001/23** *Duty and the Beast: Animal Care and Protection Bill 2001*(QPL September 2001)

**Related Publications:**

**BIB 1993/25** *Duty and the Beast: Animal Welfare Issues* (QPL April 1993)