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REVIEW

ANIMAL CARE AND PROTECTION ACT

We acknowledge the Traditional Owners of country throughout Australia and recognise their continuing connection to land, waters and culture.

We acknowledge that this document was written on land stolen from and never ceded by the Gadigal People.

We pay our respects to their Elders past, present and emerging.

> We don't have a duty to **speak** for the animals;
> we have an obligation to be **heard** for the animals.
>
> Matt Ball (2006)

DOCUMENT DETAILS

Animal Liberation. 2021. A submission by Animal Liberation in response to the review of the Animal Care and Protection Act 2001. Sydney: Animal Liberation.

ABOUT ANIMAL LIBERATION

Animal Liberation has worked to permanently improve the lives of all animals for over four decades. We are proud to be Australia's longest serving animal rights organisation. During this time, we have accumulated considerable experience and knowledge relating to issues of animal welfare and animal protection in this country. We have witnessed the growing popular sentiment towards the welfare of animals, combined with a diminishing level of public confidence in current attempts, legislative or otherwise, to protect animals from egregious, undue, or unnecessary harm. Our mission is to permanently improve the lives of all animals through education, action, and outreach.

INTELLECTUAL PROPERTY RIGHTS

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Contact: Alex Vince, Campaign Director   Cover photo courtesy of Farm Transparency Project

We present this submission on behalf of Animal Liberation.

Animal Liberation is pleased to lodge a submission in response to the Queensland Government's review of the Animal Care and Protection Act 2001.

We request that it be noted from the outset that the following submission is not intended to provide an exhaustive commentary or assessment in response to the review. Rather, our submission is intended to provide a general examination and responses to select areas of key concern.

As such, the absence of discussion, consideration or analyses of any particular aspect or component must not be read as or considered to be indicative of consent or acceptance. For the purposes of this submission, Animal Liberation's focus covers aspects that we believe warrant critical attention and response.

We have reviewed the discussion paper provided and related or relevant legislation and documents. Our submission in response to the review, its discussion paper and additional commentary we believe is relevant and warranted is outlined as follows.

Sincerely,

Alex Vince   Lisa J. Ryan
Campaign director   *Regional campaign co-ordinator*

DISCLOSURE & CONSENT

Animal Liberation confirms its consent to the Committee to publish this submission in full on the Committee's website.

WHAT HAPPENS TO THEM
MATTERS TO THEM
REGAN 1983

1. EXECUTIVE SUMMARY

1.1 The Department of Agriculture and Fisheries ('DAF' or 'the Department') and Biosecurity Queensland ('BQ') have sought public commentary on a review concerning the Animal Care and Protection Act ('ACPA'). Animal Liberation welcomes the opportunity to provide commentary and does so in the following submission.

1.2 As per the opening letter attached above, we request that it be noted from the outset that the following document is not intended to provide an exhaustive commentary or assessment of the issues under consideration. Rather, it is intended to provide a general examination of select areas of key concern. As such, the absence of discussion, consideration or analysis of any particular aspect or component of the review, its accompanying discussion paper, the survey or the reform process itself must not be read as or considered to be indicative of approval, consent or acceptance.

1.3 Broadly, however, the following submission holds:

BOX 1

1.3.1 That the current regulatory regime and framework governing animal welfare in Queensland is outdated and provides insufficient protections for animals of all kinds;

1.3.2 That any reforms that do not sufficiently and transparently address the flaws outlined in this submission will fail to achieve lasting and enforceable protections;

1.3.3 That significant and non-negotiable changes must be made in the effectiveness of compliance and enforcement;

1.3.4 That the Australian public is increasingly demanding higher levels of welfare in line with increasing recognition of animal sentience, individuality and ability to experience a gamut of emotions;

1.3.5 That regulation of animal welfare issues must be effective, consistent and proactive;

1.3.6 That an operational and viable solution is the establishment of an Independent Office of Animal Welfare ('IOAW').

1.4   Finally, and in general, the current submission holds the following to be true:

1.4.1   That other-than-human animals can and do routinely suffer as a direct result and consequence of a range of human behaviours, actions, omissions and choices;

1.4.2   That for legislation of any kind to function properly and achieve its stated objectives, spirit and intent, it must not only be well crafted but appropriately executed and efficiently enforced;

1.4.3   That the ability and proven capacity of other animals to suffer obliges us to minimise or eliminate the occurrence of such physical or psychological harm and provide appropriate and adequate protection from its commission;

1.4.4   That to live ethically, healthfully and sustainably, choices which needlessly or unnecessarily cause harm to other animals, threaten the environment and/or public health must be avoided or minimised (as far is possible).

2. PREFACE

2.1 Animal cruelty is a diverse issue that affects animals globally (Tiplady 2013). It has been described as a "wicked" problem and has been identified as one of "the most emotive and difficult issues governments face, affecting more people personally than almost any other" (Emmerson 2001; Knight and Barnett 2008; Fernandes et al. 2019). Consumers and non-consumers alike have driven public discussion on the issue of animal welfare, particularly in the context of production, leading to a "marked rise in public concern over the last two decades" (Taylor and Signal 2009; Cornish et al. 2016; Fernandes et al. 2019). Concurrently, the production of animals has substantially increased[1] and is expected to continue to grow (Ferguson and Colditz 2019; Fernandes et al. 2019). These dramatic figures have prompted many to increasingly question the environmental sustainability of contemporary food production and the welfare of the animals in those systems (Godfrey et al. 2010; Garnett et al. 2013; Allievi et al. 2015).

2.1.1 A recent study commissioned by the Federal Department of Agriculture found that 95% of respondents considered animal welfare to be a concern and 91% of respondents wanted reforms to address these concerns. It noted that "research indicates a fundamental community belief that animals are entitled to the protection of relevant rights and freedoms" and that many attitudes are "closely aligning with activist sentiment". As a result, it concluded that "the public has a clear expectation for effective regulation to uphold these freedoms and expect highly transparent practices, regulation and enforcement" (Futureye 2018).
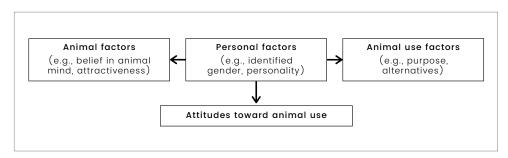

Figure 1. Beliefs that underlie attitudes toward animal use
Adapted from Knight and Bennett 2008

2.2 Due to rising public concern for animal welfare, Australian studies have identified a range of faults and deficiencies in contemporary animal protection legal frameworks (Morton et al. 2020). These faults range from the ambiguity of the language used in legislation,

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1 Compared to production rates in the 1960s, twice as many cattle, four times as many pigs and more than 10 times as many chickens are now bred, with individuals weighing between 20-30% more on average (Thornton 2010). Rising populations have influenced the development of unsustainable production methods, with some arguing that laws and regulations have "put pressures on farmers to become more efficient and therefore potentially put animal welfare on a collision course with profitability" (Rauw et al. 1998; Ingemann et al. 2008). This perspective, however, subsumes animal welfare and the ethical issues current practices impose.

2.2 the reliance on non-government organisations ('NGOs') or charities for their enforcement, and the relative leniency of the penalties imposed for offences (Sharman 2002; Boom and Ellis 2009; Ellis 2010; Cao 2015; Morton et al. 2018). In sum, these create a gap between the goals of animal law and the practical reality of its governing system (Morton et al. 2020).

2.2.1 The current review represents an opportunity to modernise the Queensland animal welfare protection framework and an opportunity to ensure that its contents uphold emerging community expectations.

3. INTRODUCTION

3.1 The Queensland Government committed to a review of the ACPA on 8 December 2020 (Queensland Government 2021a). It is the primary animal welfare legislation in Queensland and applies to all vertebrate and invertebrate species (Morton et al. 2020; Queensland Government 2021b). The ACPA sets minimum standards for animal welfare, maximum penalties for offences and provides inspectorate powers to act when actions breach these standards (Queensland Government 2021a).

3.1.1 The current review marks 20 years since the commencement of the ACPA (Queensland Government 2021a). According to the discussion paper, the review aims to "improve the welfare of animals in Queensland" (Queensland Government 2021b). It contains a series of policy proposals for amendments to ACPA, some of which suggest keeping current provisions while others include options for reform or the establishment of new provisions.

3.1.2 The discussion paper does not propose any changes to other legislation, such as the Animal Management (Cats and Dogs) Act 2008, the Exhibited Animals Act 2015 or the Veterinary Surgeons Act 1936. Similarly, the recommendations from the Martin Inquiry and the various Codes of Practice ('COPs') adopted under the standards of the Animal Welfare National Standards and Guidelines are not included in the review.

3.2 The Department acknowledges that the ACPA has been operating "without a significant review" since its enactment and that in that time "the community's concern for animal welfare has evolved". This includes "an increasing expectation that people will provide animals with an appropriate level of care and protection regardless of the circumstances under which they are kept or used". It acknowledges that animal welfare is "held in high regard" by the Queensland community (Queensland Government 2021a). The Department maintains that it intends to ensure that "laws, standards and penalties reflect scientific knowledge and community expectations" (Queensland Government 2021a).

3.2.1 The Department of Agriculture and Fisheries ('the Department' or 'DAF') acknowledges that "consultation is integral to improving animal welfare legislation" (Queensland Government 2021b). However, the DAF has maintained that while it generally intends to "reflect scientific knowledge and community expectations", it will do so "while allowing animal industries to continue to operate appropriate and without unnecessary regulatory burden" (Queensland Government 2021a).

4. PURPOSE OF THE ACPA

BACKGROUND

4.1   The discussion paper explains that a key purpose of the ACPA is to "achieve a reasonable balance between the welfare needs of animals and the interests of people whose livelihood is dependent on the animals" (Queensland Government 2021b). Elsewhere, the Department has maintained that it intends to ensure that "laws, standards and penalties reflect scientific knowledge and community expectations" (Queensland Government 2021a). It has acknowledged that "consultation is integral to improving animal welfare legislation" (Queensland Government 2021b). However, the Department has simultaneously maintained that while it generally intends to "reflect scientific knowledge and community expectations", it intends to do so "while allowing animal industries to continue to operate appropriately and without unnecessary regulatory burden" (Queensland Government 2021a).

4.1.1   The discussion paper explicitly seeks feedback on whether this purpose (i.e., to "achieve a reasonable balance between the welfare needs of animals and the interests of people whose livelihood is dependent on the animals") is "still suitable", particularly in regards to "increased animal welfare expectations and consumer preferences". It seeks feedback on what the purpose of the ACPA should be if respondents disagree with this premise.

4.1.2   The Department of Agriculture and Fisheries ('the Department' or 'DAF') acknowledges that "consultation is integral to improving animal welfare legislation" (Queensland Government 2021b). However, the DAF has maintained that while it generally intends to "reflect scientific knowledge and community expectations", it will do so "while allowing animal industries to continue to operate appropriate and without unnecessary regulatory burden" (Queensland Government 2021a).

RESPONSE: GENERAL

4.2   Laws currently provide humanity with varying degrees of dominion over other animals. Some categories of animals, such as companion animals, enjoy comparatively greater protection than others, such as those used in the production of flesh, fibre or bodily fluids (Taylor and Signal 2009; Clement 2011; Shyam 2018). Regardless of the purpose, utility value or category an animal inhabits, however, this

4.2   dominion places a corresponding burden upon our behaviour and any activities involving them. As such, we have a range of obligations relative to our position of power (Arbon and Duncalfe 2014). This extends beyond individuals and encompasses the activity of industry.

4.2.1   The national study commissioned by the Federal Department of Agriculture that found that 95% of respondents considered farmed animal welfare to be a concern also found that a distrust of industry and government influence exists. The study found that this distrust appears to be "fuelled by the perception that there is a lack of transparency and that certain information may be kept hidden intentionally or deliberately obscured". This relates to regulation insofar as these perceptions stem from concerns about industry's ability or willingness to adhere to current standards, the government's effectiveness in enforcing standards and whether the current standards are sufficient to ensure good animal welfare (Futureye 2018).

4.2.2   Such a perception is evident in the consultation of the current review. For example, reference to "the use of baits" as an issue highlighted in original publications announcing the community consultation and its absence in both the discussion paper and the online survey have been identified as a possible deliberate omission by critics (Munro O'Brien 2021). It can be reasonably inferred that increasing community awareness regarding "the use of baits", including the indiscriminate nature of chemicals currently used to kill unwanted or unwelcome wildlife, the recent increase in reports of non-target companion animal deaths to 1080 poison in Queensland and moves made elsewhere to ban its use, may have influenced this omission (Darveniza 2019; Munro O'Brien 2020a; Munro O'Brien 2020b; Curtin 2021; Dahlstrom 2021).

4.3   The establishment of a "duty of care" for animals and its inclusion in animal protection legislation is becoming a central component of many animal welfare laws (Ministry for Primary Industries 2020). Though they are framed in various ways in equivalent legislation elsewhere, each intends to provide a mechanism whereby it is a requirement to provide the basic needs in accordance with current animal welfare science. The concept is encoded in the current version of the ACPA and includes provisions for breaches of duty of care (see section 17).

4.3.1   Equivalent reviews or reforms conducted elsewhere in Australia have identified a broad consensus between industries that use animals and the wider community that minimum standards or duties of care should be applied to

4.3.1   animals (DJPR 2020). These, however, should extend beyond prohibitions on cruelty (Animal Liberation 2020). The recent national study also found the major driver of concern to be "an increased focus on animals' level of sentience" (Futureye 2018).

4.3.2   It is important that any amendments that stipulate a minimum standard of care are governed under a clear and comprehensive definition of what constitutes cruelty. Though it is understood that these are not included in the current review, it is equally as important that subordinate instruments (e.g., auxiliary Regulations or COPs) are reviewed and amended as necessary to ensure that they are aligned with the relevant clauses encoded in the forthcoming Act. The present review represents is an opportunity to place the Queensland framework on par with equivalent frameworks.

RESPONSE: ANIMAL WELFARE AND SENTIENCE

4.4   "Animal welfare" is a term that is increasingly being used by a range of actors and interests, including companies, consumers, veterinarians, politicians and the public. However, the term can mean different things to different people (Phillips 2009). Historical perspectives have seen animal welfare primarily in physical terms (i.e., shelter, feed and other basic elements). This led to the erroneous belief that "if an animal is healthy and producing well, it is faring well" (Hewson 2003).

4.4.1   Contemporary understanding has expanded earlier considerations dramatically. This includes the concept of One Welfare, wherein "animal welfare depends on and influences human welfare and environmental sustainability" and includes consideration of mental and physical health (RSPCA Australia 2020). One Health has been described as a concept that "makes moral problems explicit" by defining the collaboration necessary to "attain optimal health for people, animals and our environment" (AVMA 2008; van Herten and Meijboom 2019). Similarly, while the concept of the "Five Freedoms"[2] that was first formulated in the early 1990s had a significant impact on international animal welfare policy and have become synonymous with rights to some, contemporary studies have emphasised that these must extend beyond restrictions on use and facilitate "a life worth living" (Mellor 2016).

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2   See Appendix 1 for a basic schematic on the Five Freedoms.

Figure 1. One Welfare schematic. Image: RSPCA Australia (2020)

4.5 Fundamentally, sentience is "the capacity to have feelings" (Broom and Fraser 2015). It is necessarily associated with welfare: sentience has been described as "underpin[ning] the entire animal welfare movement" (Proctor 2012). In the last 25 years of the 20th century, there was "a surge in interest in animal sentience" as experts "realised that welfare problems can be better tackled with anunderstanding of how animals feel" (Duncan 2006). Though the study of consciousness is a "central concern" in neuroscientific study, it is not limited to the perceptual apparatus of human animals (Sacks 2017). Historical accounts have maintained that "consciousness [is] not a 'thing' but a 'process'" (James 1909). Consciousness, therefore, is not something someone possesses. Rather, it is something someone does. While we may not, in our lifetimes, know what it is like to be a bat, a rat, a bird or a whale, there is no doubt that they are conscious (Dennett 1995). Such a conclusion has been scientifically accepted for some time. Charles Darwin, for example, wrote "there is no fundamental difference between man [sic] and the higher mammals in their mental faculties" (Darwin 1889).

4.5.1 Consciousness has simultaneously been "central to and a stumbling block" in animal welfare (Dawkins 2014). Animal

4.5.1   welfare is widely seen as inherently different to other areas of protection because there is a correspondingly wide belief that animals have feelings and experience emotions (Singer 1975; Midgley 1983; Regan 1984; Rollin 1989). However, consciousness is elusive and difficult to study – even in humans (Cartmill 2000; Koch 2004; Duncan 2006; Blackmore 2012; Dawkins 2012). Fundamentally, it is a state of awareness experienced by a feeling organism aware of itself and the environment (Schönfeld 2006). There is an emerging consensus that current evidence supports attributing consciousness to a wide range of species, including other mammals, birds and cephalopods (Birch et al. 2020). While the affects of feeling may be conscious, some maintain that it can also be unconscious. Such "affective aspects of consciousness" are evident in fish and amphibians and is an important link between sentience, affective states and "a life worth living", especially insofar as it relates to ethical standards and what humans owe to other animals (Feinberg and Mallatt 2016).

4.5.2   Some have suggested that it may only be acceptable to consider one psychological faculty higher or lower "if and only if the behavioural capacities entailed by the former properly include the behavioural capacities entailed by the latter" (Sober 1998). That is, a reasonable justification for believing that an animal does not have some psychological faculty may be that they do not exhibit behaviours typical of that faculty. In other words, it is best based on what they do and how they behave rather than who they are. As such, the core concern and guiding premise of the following submission can be encapsulated in three succinct words: welfare is experiential. For example, research has shown that chickens in the commercial meat industry will opt for feed "laced with analgesics" to treat the discomfort or pain associated with their abnormal growth rates (D'Silva 2003).

RESPONSE: SENTIENCE IN OTHER JURISDICTIONS AND EQUIVALENT LEGISLATION IN AUSTRALASIA

4.6   Changes to animal welfare legislation elsewhere in the world influence government and industry policy direction in Australia (Manning et al. 2021).

4.6.1   **New Zealand**

Animal sentience was recognised in New Zealand ('NZ') under its overarching Animal Welfare Act in 2015. Though the NZ Government had announced plans for this recognition to be incorporated into codes during future

4.6.1   views, updated codes for several industries do not currently contain reference to animal sentience or the Five Freedoms framework (Manning et al. 2021).

4.6.2   **Canberra**

The Australian Capital Territory ('ACT') became the first Australian jurisdiction to legally recognise animal sentience in 2019 (Kotzmann 2019). However, this recognition is currently applied exclusively to companion animals (Manning et al. 2021).

4.6.3   **Victoria**

The Victorian Government's 2017 Animal Welfare Action Plan included reforms to the Prevention of Cruelty to Animals Act 1986 ('POCTA') that comprised introducing new principal animal welfare legislation that included a "recognition of sentience". It noted that "sentience is the primary reason that animal welfare is so important" (DEDJTR 2017). Today, the Victorian Government recognises animals as sentient, noting that "they experience feelings and emotions such as pleasure, comfort, fear and pain" (DJPR 2021).

RESPONSE: CONCLUSION

4.7   In order for the ACPA to fulfil its purpose and abide by its spirit, it must recognise animal sentience. The present review offers the opportunity for the Department to modernise the ACPA and align Queensland's primary animal welfare legislation with sound science and community expectations.

5. REPORTING REQUIREMENTS

BACKGROUND

5.1   The discussion paper explains under the current framework, voluntary reports of animal welfare concerns may be made to the Department, the RSPCA or the Queensland Police Service ('QPS'). Relevant sections of the ACPA protect such persons from defamation and civil or criminal liability if they provide inspectors with information "that they reasonably believe may help with the investigation of an animal welfare offence". It also explains that such a person "does not breach any code of professional etiquette or ethics or accepted standards of professional conduct" in so doing (Queensland Government 2021b).

    5.1.1   The discussion paper acknowledges that "there are no legal requirements for Australian veterinary professionals to report animal welfare concerns to authorities". Policies, such as the Australian Veterinary Association's ('AVA') Animal Abuse Policy, advise that veterinarians have "a duty of care abd an ethical obligation to prevent further abuse" (AVA 2013).

    5.1.2   The discussion paper notes that regulatory approaches to the reporting of animal welfare concerns by veterinary professionals vary internationally. It cites approaches in the United Kingdom ('UK') and NZ as being "similar" to those in Australia, noting that mandatory duties exist in the United States in instances where veterinarians suspect the commission of cruelty to animals (Queensland Government 2021b). See Appendix 2 for an overview of mandatory reporting duties in the US.

    5.1.3   In considering the applicability and appropriateness of enacting a veterinarian duty to report animal welfare concerns, the discussion paper argues that "some owners may be discouraged from seeking essential treatment for their injured animals if they believe that they will be reported to authorities". The discussion paper maintains that this requirement to report "could undermine their [veterinarians] efforts to work with clients to prevent further cruelty or neglect" (Queensland Government 2021b). The following section of this submission will provide responses to this segment of the discussion paper and conclude by providing a modest series of recommendations.

5.2   Veterinarians have an ethical obligation to provide and facilitate good and proper care for animals (see, for example, the AVA's Code of Professional Conduct). This responsibility is subject to significant conflict (Williams 2002). For example, professional and ethical conflict arises when it relates to the unnecessary euthanasia of otherwise healthy animals (Rollin 2001). Thus, though there is a general expectation that appropriate management exists to provide for societal expectations concerning the protection of animal welfare by veterinarians, this may depend upon the willingness and ability of any given veterinarian to engage in ethical reasoning and openly question accepted practices that occur routinely with animals or that they may be asked to do" (Hernandez et al. 2018).

5.2.1   These conflicts are also be amplified in instances where animals have a projected and limited lifespan (i.e., farmed animals bred for production who either fulfill their intended purpose and are killed or succumb to injury, disease or are deemed poor performers and are killed) or in cases that involve domestic violence (i.e., the life expectancy of a companion animal in a household marked by violence is estimated to be significantly lower than those in safe and loving environments) (Lachance 2016; Hoffman and Valencak 2020). In the former example, medications and antibiotics are often administered to prolong a productive lifespan or mediate the poor welfare outcomes associated with the conditions of their captivity, thereby raising serious ethical and professional questions concerning the appropriateness of such treatment. These practices also raise significant public health concerns, particularly relating to antibiotic resistance and instances of zoonotic disease transmission[3](Tomley and Shirley 2009; Karesh et al. 2012; Kasimanickam et al. 2021). Thus, a fundamental question in veterinarian ethics is to whom responsibility is owed: the patient (animal) or the client (human) (Rollin 2006)? Each of these fundamentally relates to the present property status of animals and the relative dominion that this affords humans (Francione 1995).

5.3   Social expectations concerning the conduct and responsibilities of professional veterinarians are evolving in line with the emerging concerns for animal welfare outlined elsewhere in this submission (see, for example, subsection 2.1.1 and the cited report commissioned by the Commonwealth Government). Veterinarians are not longer employed to practicing strictly curative medicine and must consequently "take collective and global perspectives into account", particularly as they relate to animal welfare and public health (Meijboom 2018; van Herten and Meijboom 2019).

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3   Studies estimate that over 60% of human infectious diseases are "caused by pathogens shard with wild or domestic animals" and can be caused by cross-species transmission (Karesh et al. 2012).

5.3.1   Increasingly, this encompasses wildlife management, the scientific underpinnings of "humane killing" and the welfare of wild animals in captivity (Walls and Fox 1973; Gregory 2003; Jones 2003; Deem 2007; Braverman 2018). Each of these roles and their associated responsibilities can be expected to continue to increase as efforts are made to protect Australia's imperilled native species from ongoing extinction threats (Lindenmayer 2015; Woinarski et al. 2015).

RECOMMENDATION: ENACT A DUTY TO REPORT

5.4   As the discussion paper and accompanying literature published by the Department acknowledge, community concern for animal welfare has "evolved" in the time since the ACPA was enacted. Similarly, the Department has acknowledged "an increasing expectation that people will provide animals with an appropriate level of care and protection regardless of the circumstances under which they are kept or used" (Queensland Government 2021a). As the stated objectives of the present review are to "improve the welfare of animals in Queensland", it is incumbent upon the primary animal welfare legislation to require professionals to proactively prevent the commission of acts that constitute harm or cruelty to animals (Queensland Government 2021b).

5.4.1   Despite the reservations outlined in the discussion paper (i.e., that "some owners may be discouraged from seeking essential treatment for their injured animals if they believe that they will be reported to authorities"), this concern is not considered sufficient to detract from the value added to Queensland's animal welfare protection framework should a duty to report be enacted. Rather, it should be supported by a proactive enforcement regime that seeks to act in the spirit of the ACPA (i.e., to "improve the welfare of animals").

CASE STUDY: PELORUS ISLAND

A relevant case study relating to mandatory reporting of animal welfare concerns in Queensland is the Pelorus Island "death-row dingoes" experiment (Schwartz 2016a).

BACKGROUND

In early July 2016, two male dingoes were trapped on mainland Queensland and transported to Pelorus Island in the Great Barrier Reef. The purpose of the project was to exploit the predatory nature of the dingo in "experimental 'feral' goat eradication" (Probyn-Rapsey and Lennox 2020). The project was designed and operated by staff of the local council (Hinchinbrook Shire Council), the Department of Agriculture and Fisheries ('DAF') and ecologists employed by the University of Southern Queensland ('USQ'). The premise of the project was to remove the island's wild goat population in order to protect the island's ecosystem (Schwartz 2016a).

The project involved the experimental surgical insertion of polymer-coated capsules containing sodium monofluoroacetate (1080 poison) in the bodies of the released dingoes (Schwartz 2016b). Such a technique had never been employed before. During the preparatory stage of the project, the veterinarians tasked with performing the experimental procedure expressed concern about its appropriateness (personal correspondence available upon request). However, despite such reservations, the veterinarians performed the procedure that would ultimately lead to the death of the dingoes. Poisoning with 1080 has been condemned by the RSPCA as "inhumane", with victims experiencing prolonged suffering for many hours or days prior to inevitable coma and death (there is no antidote to 1080 poisoning) (Sherley 2007).

Though the project was cancelled after campaigning by Animal Liberation and an Interim Conservation Order ('ICO') to protect a vulnerable native bird species, the concerns of the veterinarians were not accounted for or recorded (Schwartz 2016c; Probyn-Rapsey and Lennox 2020).

A mandatory reporting mechanism impelling veterinarians to register concerns for animal welfare may have prevented the project from occurring and provides a foundational case study for consideration in deliberations about its value and appropriateness in Queensland.

6. ESTABLISHING & ENFORCING APPROPRIATE PENALTIES

BACKGROUND

6.1 The discussion paper notes that setting maximum penalties involves consideration of a range of factors, including community expectations, deterrence considerations, the level or degree of criminality involved in the offence, the impacts the offence may have upon broader society and the prevalence of the offence (Queensland Government 2021b).

6.1.1 The discussion paper explains that courts consider a range of factors in considering sentencing and "are not obliged to impose the maximum penalty" available" (Queensland Government 2021b). The discussion paper goes on to note that courts may consider the circumstances, historical case law or jurisprudence and sentences meted out in similar cases. It notes that Queensland currently has "the highest maximum animal welfare penalties".[4] As the following section will show, these are rarely enacted.

RESPONSE: GENERAL

6.2 A consistent feature of animal welfare law reform in Australia over recent years has been increases to maximum penalties for the offences outlined above (Geysen et al. 2014). In Queensland, courts must consider aggravating and mitigating factors when sentencing offences against animals (QSAC 2019). Maximum penalties can be unbderstood as representing "a benchmark against which the gravity of an offence should be measured" (Markham 2009).

6.2.1 As noted elsewhere, maximum penalties have been a component of increasing reforms across the country, with Queensland increasing maximum penalties in 2001 (Morton et al. 2020). Often, such increases are described as measures to "get tough" on the issue of animal cruelty or abuse (Morgan 2002; Sankoff 2005). However, evidence detailed in Magistrate's Courts sentencing records reveal that these are not reflected in sentencing (Boom and Ellis

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4   This may be expected to change, however, if the "eight-fold" increases to NSW's equivalent legislation is enacted (Marshall 2020). Paradoxically, NSW was also the first Australian state to pass "ag-gag" laws intended to stifle the dissemination of damning evidence relating to animal welfare (Gelber and O'Sullivan 2020).

6.2.1 2009; Markham 2009; Geysen et al. 2010; Morton et al. 2018). In fact, "less than 10% of the maximum penalties are being used in court" (Morton et al. 2018). As studies have noted, "this implies [...] that legislative intent is not being achieved" (Morton et al. 2020).

6.3 Due to the evolving concerns for animal welfare noted elsewhere in this submission and in the Government's publications (i.e., "the community's concern for animal welfare has evolved"), it is apparent that public sentiment has prompted such legislative reform (Morton et al. 2020; Queensland Government 2021a). Similar pronouncements to those published by the Department have been espoused elsewhere.[5]

6.3.1 Australians have been shown to be in favour in stronger penalties for animal welfare offences, particularly for deliberate acts that constitute cruelty (Taylor and Signal 2009). More recently, the Commonwealth commissioned report published in 2018 identified "failures to punish breaches in animal welfare standards" as a potential threat to the social licence of the sector. It also identified a series of regulatory expectations it mapped across various phases. These include observation, emergent, popularisation, challenge, governance and normative stages. Within these, it identified enforcement and the severity of consequences to be particularly important. As such, at the challenge stage it found that regulators are "criticised for failures to punish breaches" and "fines are levied but considered insufficient" (Futureye 2018). As the following section will amply show, it appears that the Queensland framework is currently in such a stage and will continue to remain so unless proactive steps are made to adhere to the spirit of the ACPA and the underlying community expectations that inform its content.

RESPONSE: CONCLUSION

6.4 While there is merit to the premise that penalties act as deterrents to offences of animal cruelty, the legislation that informs these must be crafted and enacted according to sound science and community expectation. The current review offers the Queensland Government the opportunity to align the penalty regime contained within the ACPA with these (i.e., it must recognise the sentience of animals and legislate provisions to protect physical and mental suffering regardless of the purported utility, purpose or value of individuals).

5   For example, during consultations on a bill proposing penalty increases in South Australia, it was noted that "the proposed changes [were made to] reflect the public's concerns" (South Australia Legislative Council 2007).
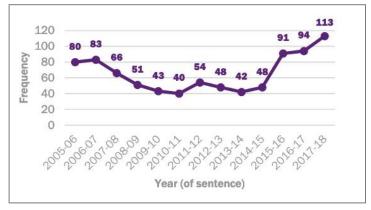
7. HISTORICAL PENALTIES FOR OFFENCES AGAINST ANIMALS

NB   The following section will adopt the phrase "offences against animals" as a collective term for all of the offences under the ACPA.
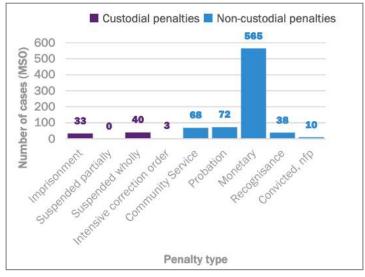
ANIMAL CRUELTY

7.1   There are a range of offences which deal with animal welfare in Queensland. The offence of animal cruelty is set out under section 18 of the ACPA. This offence covers a range of behaviours considered unjustifiable or unreasonable, including beating, tormenting, transporting inappropriately (see section 6: dogs above) or killing an animal inhumanely. The offence of serious animal cruelty is not set out under the ACPA. Rather, it is included under section 242 of the Criminal Code. This offence provides that "a person who, with the intention of inflicting severe pain or suffering, unlawfully kills, or causes serious injury or prolonged suffering to, an animal commits a crime". Other offences include breaches to the duty of care (see section 17 of the ACPA). Courts have discretion to impose any available Queensland sentencing order for offences against animals (QSAC 2019).

7.1.1   The maximum penalties for each offence vary from sentences of between one year imprisonment (breaches of duty of care under the ACPA), three years imprisonment (animal cruelty under the ACPA) and seven years imprisonment (serious animal cruelty under the Criminal Code). Under the ACPA, maximum financial penalties range from fines of between $40,035 (breach of duty of care) and $266,900 (animal cruelty). Under the Criminal Code, maximum fines are not specified. However, under sections 45 and 46 of the Penalties and Sentences Act 1992, if a maximum fine is not specified the maximum penalty depends on where the case is heard (i.e., if the case is heard in the Magistrates Court the maximum fine is $22,019, if the case is heard in the District Court the maximum fine is $557,153 and if the case is heard in the Supreme Court there is no limit on the maximum fine).

7.1.2   In Queensland, the majority of sentenced cases involving offences against animals (over 50%) are breaches of duty of care. Over a third were for offences of animal cruelty. The Queensland Sentencing Advisory Council ('QSAC') explains that this indicates offences were "more often characterised by offenders neglecting to provide adequate care for animals as opposed to deliberate acts of cruelty" (QSAC 2019).
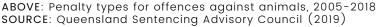
7.1.3 In the thirteen (13) years between 2005 and 2018, a total of 1,115 cases involving 1,020 offenders were sentenced for offences against animals. These cases involved 2,416 charges for various offences. In 76.5% of these cases, the offence against animals was the most serious offence ('MSO') (QSAC 2019). MSOs are defined as the offence which received the most serious sentence (QSAC 2020). In the 262 cases in which an offence against animals was not the MSO, the most common MSO was assault (QSAC 2019). As the figure below reveals, these cases have been increasing. In 2010-11 only 40 cases were finalised and led to sentences for offences against animals compared to 113 in 2017-18.

ABOVE: Number of cases sentenced for offences against animals, 2005–2018
SOURCE: Queensland Sentencing Advisory Council (2019)

7.1.4 From 2005 to 2018, over 90% of offenders received a non-custodial penalty. Animal cruelty offences are more likely to incur a custodial (prison) sentence (19.1%) when compared to breaches of duty of care (2.6%). Fines are the most common penalty imposed (68.2%). They are "the most common penalty imposed across each of the different offences" (QSAC 2019).
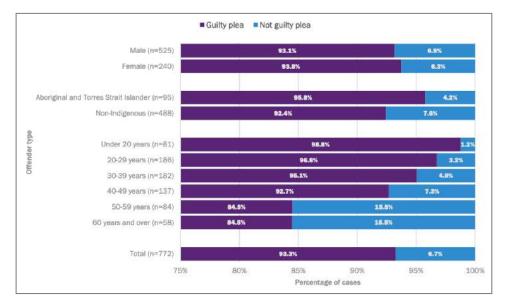

ABOVE: Penalty types for offences against animals, 2005–2018
SOURCE: Queensland Sentencing Advisory Council (2019)

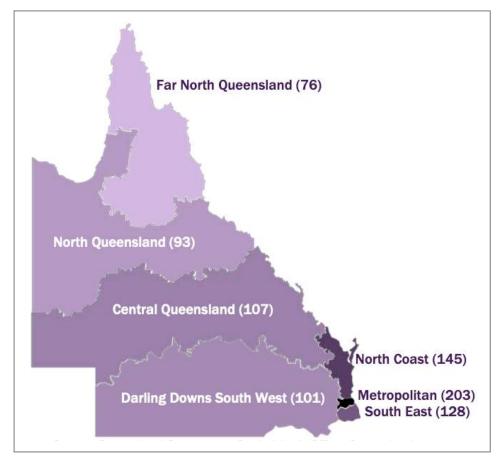| Penalty type	Animal cruelty	Breach of duty of care to animal	Other
Custodial penalties			
Imprisonment	30	3	0
Partially suspended	0	0	0
Wholly suspended	27	9	4
Intensive correction order	3	0	0
Non-custodial penalties			
Community service	31	37	0
Probation	46	22	4
Monetary	156	362	47
Recognisance	17	18	3
Convicted, not further punished	4	5	1

ABOVE: Penalty types by offence type, 2005–2018
SOURCE: Queensland Sentencing Advisory Council (2019)

7.1.5 Over 90% of offenders pleaded guilty for offences against animals; only 6.7% pleaded not guilty. Offenders aged 50 years or over were least likely to enter a guilty plea (84.5%). Offenders under 20 years were the most likely to enter a guilty plea (98.8%) (QSAC 2009).

ABOVE: Plea type of offenders sentenced for offences against animals, 2005–2018
SOURCE: Queensland Sentencing Advisory Council (2019)

7.1.6 Of the total cases outlined in subsection 7.1.5 above, the majority occurred in the metropolitan region. This provides a general indication of the type of offence as there are comparatively few large commercial or intensive agriculture operations in this region. This also relates to the key cruelty and duty of care provisions contained within the ACPA insofar as they "apply directly to companion animals" (Geysen et al. 2010). The treatment of farmed animals may be exempt from its application where there is compliance with a relevant COP (Dale 2009).

ABOVE: Cases sentenced for offences against animals by region, 2005-2018
SOURCE: Queensland Sentencing Advisory Council (2019)

ASSOCIATED OFFENCES

7.2   Some offenders sentences for offences against animals in Queensland were also sentenced for other offences at the same hearing. Over half of those recorded between 2005 and 2018 only had one offence against animals sentenced in their hearing. Nearly 20% had one additional offence and 23.9% had more than one (QSAC 2019).

7.2.1   The majority of breach of duty offences were heard alongside other breaches of duty offences and the majority of animal cruelty offences were head alongside other animal cruelty offences. The most common additional offences associated with the offence of animal cruelty were "resisting a police officer, offensive behaviour and trespass". The number of sentences offences per offender varied dramatically, from 1 to 131. The average was calculated by QSAC as 2.6 sentenced offences per event (QSAC 2019).

7.3   Between 2010 and 2012, there were 120 cases sentenced for offences against animals. Of these cases, 58 (48.3%) had previously been sentenced for another offence and 42 (35%) reoffended. These were collectively involved in 173 prior crimes and 105 subsequent crimes. Over a third (41.7%) recorded no prior or subsequent sentenced offences. A quarter (25%) recorded sentenced offences prior to and following their offence against animals. Male offenders were found to be "significantly more likely to offend" (QSAC 2019). The two most common prior offences were resisting a police officer (17.5%) and offensive behaviour (13.3%). Offenders who were previously sentenced for a breach of a domestic violence order ('DVO') or breach of bail conditions had more than one prior sentence for these offences. According to QSAC, most prior offences and subsequent offences can be categorised as "offences against justice and government" (QSAC 2019).

	Offence	Sentenced cases	Offender count
	Resist or hinder police officer or justice official	28	21 (17.5%)
	Offensive behaviour	30	16 (13.3%)
	Exceed the prescribed content of alcohol or other substance limit	15	14 (11.7%)
	Illicit drug offences, not elsewhere classified	15	12 (10.0%)
	Breach of domestic violence order	21	11 (9.2%)
	Drive while licence disqualified or suspended	13	11 (9.2%)
	Breach of bail	19	10 (8.3%)
	Driving under the influence of alcohol or other substance	10	9 (7.5%)

ABOVE: Top eight prior offences of sentenced offences against animals, 2010–2012
SOURCE: Queensland Sentencing Advisory Council (2019)

CONCLUSION

7.4   This section has provided a general overview of available data relating to offences against animals in Queensland. These provide evidence indicating that studies maintaining that offences remain largely under-penalised and are not aligned with contemporary and emerging community expectations.

8. CONCLUDING COMMENTS

8.1   Society is undergoing a complex transformation driven by growing tensions between sites and forces of "old power" and "new power" (Heimans and Timms 2018). While the former is characterised by "closed, inaccessible and leader driven" power, the latter is "open, participatory and peer driven" (Heimans and Timms 2014). For institutions to respond to or embrace emerging power dynamics, they cannot merely articulate the associated values (e.g., collaboration and transparency). They must also adapt and alter operational models to permit and promote "the co-production of ideas" and co-ownership of solutions". In sum, "public participation cannot simply be a marketing exercise" (Fernandes et al. 2019).

8.1.1   Similar conclusions have been reached in the regulation of other issues. For example, experts in the field of land use planning and policy have identified principles to improve or harness greater positive social, cultural and environmental outcomes. These include "the provision [of] opportunities to establish and develop coordinated approaches" in order to "enable continuous participation of interested communities in the policy and planning processes". Such experts, however, note that such principles are not being effectively facilitated by governments. Rather, they are being "actively diminished" (Thackway 2018). Similarly, the democratic principle of participatory engagement have increasingly undergone a metamorphosis wherein community consultation has been critiqued as "public relations" exercises intended to steer public opinion, particularly in order to provide the pretence of open dialogue and transparency (Beder 1999).

8.1.2   Studies have concluded that "in light of the societal concerns around animal welfare and the loss of public trust or social licence for the production and sale of animal products", as evidenced by the findings of the report commissioned by the Federal Government, such models of "new power" must be embraced via more inclusive and collaborative stakeholder networks with an emphasis on "greater transparency and strong governance" (Fernandes et al. 2019). An Australian example of such a strategy is the Australian Animal Welfare Strategy ('AAWS'), established by the Commonwealth Government in 2004 (Chen 2016; Ford 2016).

8.2   The current review process offer the Queensland Government the opportunity to modernise the ACPA, align its contents and provisions with community expectations and update its outdated or ineffective

8.2   components. Such reforms would enable the ACPA to abide by its spirit and the proclamations regarding its intent made by the Department, particularly insofar as it professes to intend to observe and act upon emerging community expectations. In particular, we recommend that:

8.2.1   Animal sentience is encoded into the ACPA as per the information provided in section 4 of this submission. This should be defined to include the capacity to experience both physical and mental states. It should not be limited to a particular set or subset of species (i.e., it should not be narrowly applied to companion animals). Rather, it should be applicable to all species whom current or emerging science indicate are capable of exhibiting sentience. In this manner, the precautionary principle should be applied in order to ensure that species who have the capacity to suffer do not and are legally protected from its commission.

8.2.2   Mandatory reporting by veterinarian professionals should be included as per the information provided in section 5 of this submission.

8.2.3   An assessment of the current penalty regime should be made and be publicly accessible for comment or review. This should include reference to maximum penalties and inform any reforms in the ACPA. This should note the studies and findings outlined in section 6 of this submission).

8.2.4   A review of the enforcement regime should be conducted, particularly as it relates to the provision of further funding for an increased RSPCA inspectorate.

8.3   Generally, we recommend that analyses or fact-finding efforts should be conducted to inquire into:

8.3.1   shade for farmed animals (particularly those confined in feedlots or grazing regions);

8.3.2   the use of baits (particularly relating to the use of 1080 poison and non-target impacts);

8.3.3   rodeos (particularly the use of young animals and the welfare implications of their use);

8.3.4   greyhound racing (particularly relating to track design and its welfare implications),

8.3.5   horse racing (particularly relating to the killing of surplus or uncompetitive animals);

8.3.6   the use of traps (particularly relating to the welfare implications of foothold, steel-jawed, padded, glue and Opera House traps);

8.3.7   pig-dogging (particularly relating to unlawful releases of young animals for future hunting and the welfare implications, inclduing for the dogs used);

8.3.8   tethering dogs (particularly relating to minimum housing requirements that should be clearly and explicitly specified).

8.4   Animal Liberation appreciates the opportunity to provide this submission and thanks the Department for its consideration.
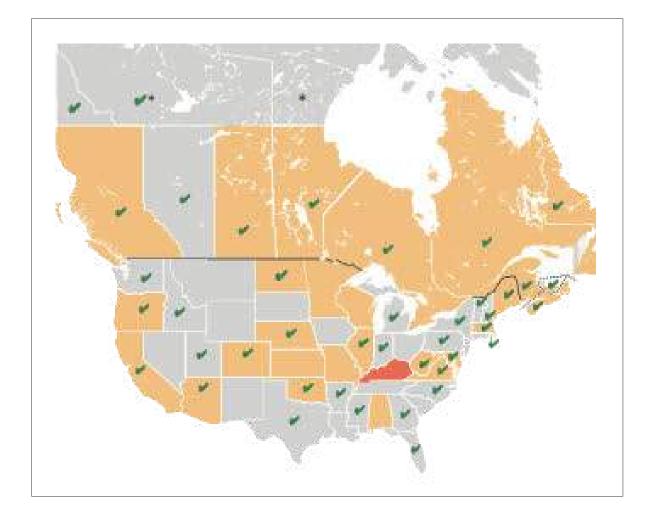
APPENDICES

APPENDIX 1 BASIC SCHEMATIC OF THE FIVE FREEDOMS

	FREEDOMS	PROVISIONS
1	Freedom from thirst, hunger and malnutrition	By providing ready access to fresh water and a diet to maintain full health
2	Freedom from discomfort and exposure	By providing an appropriate environment, including shelter and a comfortable resting area
3	Freedom from pain, injury and disease	By prevention or rapid diagnosis and treatment
4	Freedom from fear and distress	By ensuring conditions and treatment which avoid mental suffering
5	Freedom to express normal behaviour	By providing sufficient space, proper facilities and company of the animal's own kind

Adapted from Mellor (2016)

APPENDIX 2 MANDATORY REPORTING DUTIES IN THE US

Mandatory veterinarian reporting duties in the United States. Image: Rees (2019)

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