

DRAFT SECOND READING SPEECH

HON GUY BARNETT MP

Animal Welfare Amendment Bill 2022

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Mr Speaker, I move that the Bill now be read a second time.

Animal welfare is an important issue and Tasmania's *Animal Welfare Act 1993* ("the Act") is robust legislation that ensures the welfare of animals, including pets, livestock and wildlife.

The Act was always intended to be improved and enhanced in line with community standards, new knowledge, and "real world" experience with its operation.

The intent for the Act to promote continuous review and improvement of Tasmania's animal welfare system is reflected in the establishment and functions of the Animal Welfare Advisory Committee (AWAC) under sections 39 and 40. The AWAC provides advice to the Minister on animal welfare matters, and its membership is drawn from a diverse range of Government, industry and community organisations with particular interest and expertise in animal welfare issues.

One of the AWAC's core legislated functions is to conduct an ongoing review of the laws relating to animal welfare, and to recommend to the Minister changes in animal welfare legislation.

The Act has been amended several times in the three decades since it commenced. The most recent of these amendments was in 2013-2014.

Since then, officers responsible for "on-the-ground" animal welfare investigations and enforcement (which include both Government officers and officers employed within the RSPCA) have identified the need for additional improvements in the Act. The AWAC was also asked by the previous Minister to review the Act and make any recommendations on future amendments.

These two processes identified the need for a suite of further amendments to the Act, which led to the development of the Amendment Bill that is now before the House.

I will take the House through the key amendments proposed in the Bill. However, before I do that, I would like to note that this Bill is the product of advice and public consultation.

As I indicated earlier, the amendments proposed are the outcome of a review conducted by the AWAC. The AWAC represents key Tasmanian animal welfare stakeholders, including RSPCA, Local Government, Animals Australia and the Tasmanian Farmers and Graziers Association (TFGA).

The Bill was also released for a public consultation period of four weeks which closed on 20 July. NRE Tas received eighty-five written submissions on the draft Bill from a wide cross-section of the community. All the submissions have been considered carefully by NRE Tas prior to the Bill's introduction to Parliament.

And I want to briefly take the opportunity to thank all those people who have contributed to the development of the Bill and made submissions during the consultation process. These contributions are essential to ensuring that the Bill is fit for purpose, and that the Act continues to reflect contemporary community expectations and standards in relation to animal management and welfare.

Mr Speaker, I will now move on to explaining the key amendments to the Act that are being proposed.

The first of these is to amend the animal cruelty offence in section 8 of the Act to specifically ban pronged collars, which are used to correct animal behaviour by inflicting pain and discomfort.

The ban was first recommended by the AWAC after its 2013 review of the Act. It will apply to the use of pronged collars on any species of animal, even though such collars are primarily used for training dogs.

The ban on pronged collars is supported by the national and Tasmanian branches of the RSPCA, and the Tasmanian branch of the Australian Veterinary Association. They say the use of pronged collars is both physically and emotionally harmful to dogs and does not constitute a reasonable or justifiable training method when compared with other available methods that do not involve inflicting pain.

The ban will bring Tasmania into line with Victoria, where pronged collars have been prohibited since 2008. There is also currently a proposal by the Queensland Government to ban their use, and the import of pronged collars into Australia is prohibited under Commonwealth legislation.

The next amendments I will talk about Mr Speaker, are aimed at improving and simplifying the conduct of court prosecutions under the Act.

The Bill includes amendments to provide for an alternative conviction under section 8 of the Act (cruelty) if the person is not found to have been intentional or reckless in causing suffering under section 9 (aggravated cruelty). This removes the current need for duplicitous charges under both sections 8 and 9. With the amendments, an alternative verdict on a single charge will be available in cases where the court finds a person has committed cruelty through neglect, or omissions to perform a duty (in breach of section 8) but is not satisfied beyond reasonable doubt that the cruelty was intentional or reckless in breach of section 9.

There is also a proposed amendment to section 3A of the Act (which deals with the care or charge of animals). Currently a person can potentially evade their legal duty of care by abandoning an animal and denying ownership. In such situations, despite there being prima facie evidence of the owner's identity, proving beyond doubt who is (or was) responsible for the care or charge of an animal can be unnecessarily difficult and expensive for investigating authorities. This problem often arises in cases where the apparent owner of a mistreated or abandoned animal obstructs an investigation or refuses to cooperate with animal welfare officers.

The amendment will enable an evidentiary presumption – that a person had control, custody, or possession of an animal – to be created by an allegation in a formal prosecution complaint. A defendant can rebut the presumption by producing evidence that shows, on the balance of probabilities, they did not have control or possession of the animal. For example, in the case of livestock, such evidence could be National Livestock Identification System (NLIS) records which indicate another person was the livestock owner, or that they never had possession of the animal.

Mr Speaker, this amendment will allow the prosecution to require defendants to “disprove” an allegation they had the care or charge of an animal – in other words – to reverse the onus of proof on that aspect of the case. But I want to emphasise it is not intended that this amendment will change the *standard* of proof that is needed to convict a person of any offence under the Act.

A court will still need to be satisfied *beyond reasonable doubt* of a defendant's guilt to convict. The prosecuting authority will also need to be able to prove *beyond reasonable doubt* all elements of an animal welfare offence with admissible evidence – and that will always require a great deal more evidence than simply making an allegation in a complaint.

The amendment will likely provide added incentive for animal owners to properly identify their animals, to trace and manage their animals' movements and to keep good records. A person who has done these things will have evidence to rebut false allegations regarding their ownership or possession of an animal.

Apart from the legal protection, an added benefit for livestock owners is enhanced animal traceability, which supports a rapid and effective response to a disease outbreak.

Mr Speaker, I will now move onto amendments aimed at clarifying the functions and powers of animal welfare officers, particularly in respect of the entry to premises and the possession of animals.

Section 16 of the Act requires amendment to give authorised officers the power to enter premises, including dwellings, in an emergency such as fire or flood, to provide immediate assistance to animals in urgent need. This power to enter a premises without a warrant would only be used in situations where an emergency exists or where the animals are in actual or imminent danger.

The next amendments – additions to section 17 and the insertion of section 17A in the Act – are aimed at expanding and clarifying the scope of an officer's powers to take possession of animals.

Amendments to section 17 (1) add new grounds and replace the word “and” with “or”. These amendments will enable an officer to take possession of an animal if they reasonably believe that any one or more of the following grounds exist:

- an animal welfare offence has been, is being or is likely to be committed in respect of the animal; or
- the animal requires medical treatment by a veterinary surgeon to relieve, or reduce, the pain or suffering of the animal; or
- the animal's life is endangered; or

- the animal's pain or suffering will be unreasonably or unjustifiably prolonged.

The changes will complement the extension of powers under section 16 which allow entry to a premise or dwelling in the case of an emergency.

The insertion of the new section 17A into the Act will enable a Magistrate to order that an animal be removed from the custody of a person if satisfied that, without the order, the welfare of the animal is at risk.

This new provision was necessary to enable a Magistrate to make such orders to prevent animal cruelty, on the application of an officer, and purely for welfare reasons. The Act currently only allows such orders to be made by a court after cruelty has occurred, where the owner of the animal has been prosecuted and found guilty of an offence.

The meaning of 'disposal' of an animal has also been clarified to include euthanasia, sale, or rehoming. Including the options available for animal disposal in the legislation, from euthanasia to sale or transfer of ownership to the RSPCA or the Crown will allow for better animal welfare outcomes and will align Tasmania with similar provisions in other States.

Mr Speaker, the Bill will also amend section 24 of the Act to reduce the time for which carcasses of animals euthanised by officers must be kept from 7 days to 48 hours.

Holding carcasses can create difficulty in cases where appropriate storage may not be available (particularly for large animal carcasses). Carcasses from animal welfare cases usually have no commercial value and are disposed of by deep burial in a municipal land fill. This amendment has no direct bearing on animal welfare but enables better management of carcasses with faster disposal if required. It will reduce the costs of responding to animal welfare cases where animals are euthanised as a last resort.

That last point leads me to the next amendments – which provide for early (pre-trial) cost recovery from animal owners for care of seized or treated animals and to remove doubt that this applies to costs incurred by the Crown.

The amendments allow a court to make cost orders so that the owner can be required to pay any costs and expenses properly incurred by a person, including the Government, in providing care or treatment to an animal. This promotes more efficient functioning of the legislation by alleviating the burden on the public purse to bear the costs of animal care.

This power is particularly important in cases involving large numbers of animals or protracted periods of care. At present, section 22 of the Act provides for cost recovery by court order, but this must follow a final determination of court proceedings, which can take years.

Section 45(2) of the Act currently provides a general head of power for a person to recover costs of functions performed under the Act (irrespective of whether the matter related to court proceedings) however there was some doubt that the section applies to the Crown. The reason for this is section 41 of the *Acts Interpretation Act 1931* which excludes the Crown from references in legislation to “a person”. The Act amendment will remove all doubt that the Crown can recover animal care and treatment costs.

Mr Speaker, recent animal welfare investigations by NRE Tas have revealed difficulties where the offences have occurred in Tasmania, but parties or evidence involved in the offence are in another State. Investigation of such offences requires legislative functions to be performed outside of Tasmania, or “extra-territorially”. However, in the absence of an express or implied intent for legislation to have extra-territorial operation, its provisions can only operate within State borders.

Accordingly, it is proposed to amend section 26, which enables officers to require persons to provide information, to ensure that it can have extra-territorial operation. The amended section expressly empowers officers to obtain records, documents and other information from persons who are outside Tasmania. This will ensure animal welfare compliance investigations are not prevented or impeded by key witnesses and evidence simply leaving Tasmania.

Mr Speaker, the last amendments I will outline relate to animal research. In the draft Bill released for public consultation it was proposed to amend the Act in three respects.

Firstly, an amendment was proposed to allow an Animal Ethics Committee to approve animal research that involves baiting and shooting activities that would otherwise breach section 10 of the Act; and the use of animals to train other animals in breach section 11.

NRE Tas received nineteen submissions opposing this amendment. Submitters argued that it was difficult to conceive of situations where activities such as live animal baiting or shooting of captive animals would be acceptable research activities. After considering the submissions, it was decided not to proceed with this amendment.

Secondly, the Bill will enable authorised disease surveillance and monitoring programs (using accepted methodologies) to be added to the current exemptions from animal research licensing

requirements. The current exemptions are observational studies, normal animal management operations and veterinary treatment administered for the welfare of the animal. An example of new exempt activity would be the taking of blood samples for disease status determination.

And thirdly, the Bill will make it an offence to threaten, intimidate or abuse an inspector (animal research) appointed under section 36 of the Act, as has always been the situation for officers appointed under section 13.

In conclusion Mr Speaker, this Bill will deliver another round of improvements to ensure Tasmania retains an animal welfare system that reflects contemporary community standards, promotes humane animal management practices, and ultimately delivers better protections to animals from cruelty in this State. I commend the Bill to the House.