



Tasmania

Review of the *Animal Welfare Act 1993*

**Joint Report and Recommendations by the Department
of Primary Industries and Water and the Animal
Welfare Advisory Committee**

July 2006

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Executive Summary

The Department of Primary Industries and Water and the Animal Welfare Advisory Committee recommend that the Animal Welfare Act and Regulations be amended to:

Broaden the duty of care provisions to embrace whoever makes (or omits making) the decisions which directly or indirectly lead to, or are reasonably likely to lead to, animal welfare compromise, and make all such persons legally accountable for the welfare of animals in their care and charge.

Take legal action in respect of “whole herd” mismanagement likely to result in animal welfare compromise, without having to particularise each animal in the herd.

Increase penalties for offences under the Act.

Better particularise certain cruelty offences.

Increase the period of limitations in respect of legal proceedings.

Introduce restrictions on glueboard traps.

Provide powers for officers to gather information, enhance officers’ powers to give legal instructions and define functions of officers.

Facilitate an approach to the use of animals in research consistent with the national approach.

Better define the function and legal status of animal welfare standards.

Provide for the issuing of infringement notices.

Make provisions in respect of certain evidentiary matters.

Establish offences of creating or possessing images of animal abuse.

Regulate the conduct of rodeo events.

Provide reserve powers to regulate to allow a person to determine matters.

Make provisions in relation to parties to offences.

Further tighten regulations on docking dogs’ tails.

Provide for interstate orders to apply in Tasmania.

Introduction

The Animal Welfare Act commenced in 1993 and has since been subject to six relatively minor amendments. The Act was, and remains, a modern, forward-thinking piece of legislation. It was one of the first in the country to adopt the “duty of care” principle, and in addition offers a mechanism for preventing acts of cruelty, rather than merely punishing them.

However, community expectations and attitudes towards animal welfare issues are continually rising. It is important that legislation which is based on community standards, such as the animal welfare legislation, is periodically subject to community review.

To this end, the Tasmanian Government together with the Animal Welfare Advisory Committee (AWAC) has undertaken a review of the Animal Welfare Act and Regulations, with full public consultation. This review represented an opportunity for all stakeholders to assess the legislation to ensure it continues to be relevant and effective, and meet the expectations of contemporary society.

In August 2005, a Discussion Paper was prepared and released under the auspices of the AWAC, drawing on the combined experience of the then Department of Primary Industries, Water and Environment and the RSPCA in administering and enforcing the legislation to date. This Discussion Paper highlighted key issues requiring consideration, and suggested possible amendments to ensure the legislation remains relevant and contemporary.

A total of 42 submissions were received, from a range of stakeholders including organisations and individuals. These submissions covered a number of issues, including those raised in the Discussion Paper as well as matters not dealt with in the paper. All of the submissions were summarised and taken into account in the review.

The AWAC and the Animal Welfare Branch of the Department of Primary Industries and Water have carefully considered all of the issues regarding the *Animal Welfare Act 1993*, and have prepared the following report and recommendations.

1. Section 3 - Interpretation

Several amendments to this section may arise as a result of amendments to the Act. These may include definitions of: person, custody, “care or charge”, abandon, glue board trap, animal research, scientific purposes, animal, rodeo event, bait (in a non-fishing sense).

2. Section 4 - Exemptions

Current wording

The Act provides conditional exemption of certain activities from the cruelty provisions.

4. Non-application of Act

(1) Sections 8, 9 and 10 do not apply to practices used in the hunting of animals done in a usual and reasonable manner and without causing excess suffering unless the practices are prohibited by this or any other Act.

(2) Sections 8, 9 and 10 do not apply to practices used in –

(a) recreational fishing; or

(b) angling; or

(c) commercial fishing –

done in a usual and reasonable manner and without causing excess suffering unless the practices used are prohibited by this or any other Act.

(3) Sections 8 and 9 do not apply to any animal research carried out in a licensed institution if that research is carried out –

(a) with the approval of the Animal Experimentation Ethics Committee; and

(b) in accordance with any procedures approved by the Animal Experimentation Ethics Committee; and

(c) in accordance with a Code of Practice relating to animal research.

(4) Section 10(1)(a) and section 10(3) do not apply to the feeding of an animal if the feeding is carried out in a reasonable manner, having regard to the natural behaviour of the animal.

Issues

Hunting and fishing are exempt provided they are done in a “usual and reasonable manner” and without causing “excess suffering”.

Animal research is closely regulated under Part 4, so the exemption under s.4(3) is highly conditional. Researchers stepping outside the comprehensively documented regulatory framework are exposed to the cruelty provisions, which is appropriate. There are further exemptions in relation to animal research, which are difficult to interpret – see [9. Part 4 Animal Research](#)

Section 4(4) was specifically included to allow animals in captivity to be fed a live diet where necessary, without contravening the Act.

To establish cruelty provisions and then provide exemptions attracts understandable criticism. The exemptions in relation to hunting and fishing are problematic. Without any documented guidelines, it is difficult for a hunter, angler, officer or Court to determine what is “usual and reasonable” practice.

The approval of an animal welfare standard for wallaby hunting was the first attempt to officially document “usual and reasonable” hunting practices in Tasmania. There are no official codes of practice for any other allowable form of hunting, or for any form of recreational or professional fishing. In the absence of such codes, the general exemptions from the cruelty provisions (sections 8 and 9) for hunting and fishing should remain.

The Australian Animal Welfare Strategy provides a framework for the development and application of codes of practice on a national basis. Rather than unilaterally develop codes of practice for hunting and fishing in Tasmania, it would be prudent to participate in the development of these codes nationally.

On the other hand, the exemption of both hunting and fishing from the provisions of section 10 is confusing. The intention of section 10 is to prohibit organised animal fighting, baiting and release-and-kill competitions.

Sections 10(1)(a) and 10(3) establish offences in relation to fighting and baiting. It could be argued that hunting and fishing involving fighting or baiting¹ is not being done in a usual and reasonable manner and without causing excess suffering. The suffering likely to be caused by such activities could be considered to be excessive in that it is more than needed to reasonably hunt or fish.

Sections 10(1)(b) and 10(2) establish offences in relation to matches or competitions involving releasing animals to kill, injure or worry them. The intention of these provisions is to ban activities such as the coursing of dogs and the blooding of greyhounds using a live animal as bait. Restricting this ban to matches and competitions (ie where there is a prize to compete for) would seem to have little justification in terms of animal welfare outcomes.

Release-and-kill practices are sometimes used for recreational hunting and fishing – for example deer hunting on game farms and angling on dams stocked for the purpose. It was not the intention of the Act to ban such activities, provided they are undertaken in a usual and reasonable manner and without causing excessive suffering.

Submissions

Submissions were divided on this issue, with a majority not supporting the concept of exemptions from cruelty provisions. Those not supporting exemptions in general favoured codes of practice.

Outcome required

The ideal outcome would be to have an Act with no exemptions. This will require the development of codes of practice setting out “usual and reasonable” practice, eventually covering all forms of hunting, recreational fishing, angling and commercial fishing currently undertaken in Tasmania.

Recommendations

That Tasmania adopts nationally developed codes of practice, providing standards and guidelines for what is considered to be usual and reasonable practices, for hunting (other than wallaby hunting), recreational fishing, angling and commercial fishing practices, as they become available.

That the exemptions from the provisions of sections 8 and 9 for these practices be removed as appropriate codes of practice are adopted.

That exemptions for hunting and fishing from the provisions of section 10(1)(a) and 10(3) be removed now.

That the references to “match or competition” be removed from sections 10(1)(b) and 10(2)

¹ Used in its non-fishing sense. The Shorter Oxford Dictionary definition includes - set on to bite or worry, set dogs on a confined animal, harass with persistent attacks, hunt with dogs.

3. Section 6 - Duty of Care

Current wording:

6. Duty of care to animals

A person who has the care or charge of an animal has a duty to take all reasonable measures to ensure the welfare of the animal.

Issues:

Section 6 places a statutory duty of care on persons with the care or charge of an animal.

Such care or charge is at the heart of the offences created by sections 7, 8 and 9 of the Act, where it is alleged (under s8 and s9) that a defendant omitted to do a duty within the meaning of s6 (to take all reasonable measures to ensure the welfare of the animals) which caused unreasonable and unjustifiable pain or suffering (in the case of section 9, resulting in death or serious disablement).

By definition, domestic animals (as opposed to free living animals) are reliant on human support and must at all times have someone with duty of care for their welfare, or must be deemed to be abandoned.

Section 6 should assist officers and Courts in determining who is responsible for the welfare of animals when there is sufficient nexus between person and animal. This section therefore should provide a means of establishing this nexus. It does not go far enough at present.

In a corporate farming enterprise, or any multi-layered management structure, the senior person on the ground (usually an employee) is taken to be the person with the care or charge, and is given instructions under s.14 or charged with offences arising as a result of not discharging his or her duty of care.

This person may have day to day “care or charge”, but may have limited powers to be able to discharge his or her duty of care (limited powers of intervention) – ie may be told what to do by someone higher up in the management of the corporation.

The directors of corporations should be liable for the actions and omissions in respect of animal welfare.

Submissions:

The majority of submissions supported strengthening of the duty of care provisions, better prescribing corporate duty of care and the addition of deeming provisions. Submissions from a corporate farming enterprise and the TFGA were notable exceptions.

Outcome required:

Officers need the ability to identify, engage, and if necessary, take action against whoever makes the decisions (or omits making decisions) which directly or indirectly lead to, or are reasonably likely to lead to, animal welfare compromise.

All persons with the capacity to make or not make such decisions in respect of an animal should have a legal duty of care for the welfare of that animal, and should be held accountable to take ‘all reasonable measures’. Duty of care should embrace direct and indirect responsibility.

At all times there must be an identifiable person or persons with the care or charge of domestic animals: if not, these animals should be deemed to have been abandoned by whoever last had care or charge.

Recommendations

“Person” for the purposes of the Act to specifically include corporation, director, manager, owner, caretaker, sharefarmer, trainer.

Deem managers, directors and corporations to have a duty of care for animals in the ownership, care or charge of the corporation, and that such duty of care is not diminished by dissolution or bankruptcy of the corporation after the date of the offence.

Deem employers to be responsible for acts and omissions of employees, with a defence that they could not have reasonably prevented the act or omission.

Define “care or charge” to include control, possession, ownership, custody, “share farming”, and unless there is an unambiguous agreement to the contrary, agistment.

Deem the owner of animals to be responsible for their welfare unless proven to the contrary.

Deem the operators of any premises where animals are held for the purposes of commerce, to have duty of care for all animals on the premises.

Provide that if a corporation is guilty of an offence, any person who takes part in the management of that corporation is guilty of the offence (with a defence that they could not have reasonably prevented the commission of the offence), and that dissolution or bankruptcy of the corporation after the date of the offence does not remove this guilt.

Where during a hearing it appears that the person committing the alleged offence was acting on the instructions of an employer, provide that a Court may order the employer to appear and answer the charge as if it had been filed against the employer, and may dismiss the charge against the employee.

s.64 Meat Hygiene Act 1985

s.33A NSW POCTA 1979

s.41 Vic POCTA 1985

s.80(1) WA Animal Welfare Act 2002

s.61 Agricultural and Veterinary Chemicals (Control of Use) Act 1995

4. Section 7 - Method of Management

Current wording:

7. Management of animals

A person who has the care or charge of an animal must not use a method of management of the animal which is reasonably likely to result in unreasonable and unjustifiable pain or suffering to the animal.

Issues

The intention of this provision is to enable action to be taken against a person whose customary method of management is likely to result in cruelty – ie it is a “proactive” provision. It was intended to be the lowest of the three grades of offence – offences under section 8 (cruelty) and section 9 (aggravated cruelty) being higher and highest level offences respectively.

A common application is in respect of groups of animals or whole herds determined to be at risk due to a method of management.

The maximum penalty under this section is 40 penalty units, reflecting the intention that it represent a low grade offence. However the impact on the welfare of whole herds is potentially much greater than the impact of a simple section 8 offence on a single animal. The maximum penalty under section 8 is 100 penalty units. 40 penalty units is a relatively small fine for a “whole herd” mismanagement offence.

Because of the lesser penalties, Section 7 charges involving mismanagement may be treated as alternatives to Section 8 charges involving cruelty to individual animals. In many instances the section 7 charges are more important, in that they challenge what may become routine, accepted methods of management.

Submissions

The majority of submissions favoured extending this provision to cover herds and flocks. Submissions from a corporate farming enterprise and the TFGA were notable exceptions.

Outcome required

There is a need to be able to prosecute in respect of “whole herd” mismanagement likely to result in animal welfare compromise, without having to particularise each animal in the herd.

The maximum penalty should be able to reflect the seriousness of a “whole of herd” mismanagement problem.

Recommendations

Section 7 should be amended to refer to “animal or group of animals”.

Increase the maximum penalty to 100 penalty units for a natural person, 500 penalty units for a corporation.

5. Section 8 – Cruelty to animals

Issues

Section 8(1) provides the basis of the Act in terms of defining and prohibiting general animal cruelty, in terms of unreasonable and unjustifiable pain or suffering. It provides that

“a person must not do any act, or omit to do any duty, which causes or is likely to cause unreasonable and unjustifiable pain or suffering to an animal”.

This section allows the “use” of animals, in that it allows acts and omissions causing or likely to cause *reasonable and justifiable* pain or suffering. All modern animal welfare legislation recognises this right to “use” animals reasonably, provided there is justification.

Section 8(2) sets out a series of prescribed offences in fairly general terms. It is not intended the Act should be overly prescriptive. The Regulations offer a more appropriate mechanism for prescribing various offences (s. 8(2)(k)).

S.8(2)(e) makes it an offence to have “possession or custody of an animal that is confined, constrained or otherwise unable to provide for itself and fail to provide the animal with appropriate and sufficient food, drink, shelter and exercise”. Does this mean the offence is failing to provide all of these four things, or failing to provide any one of them?

The desired outcome is that failure to provide any one of these things is an offence. The word “or” instead of “and” is preferable.

Also, the words “appropriate and sufficient” may themselves not be sufficient to meet the desired outcome, in the absence of any guidelines.

Appropriate and sufficient in respect of food should mean:

- a) a diet sufficient in quality and quantity to meet the nutritional requirements of the animal for maintenance, growth, production and reproduction, and to sustain the animal in reasonable body condition at all times; and
- b) a frequency of feeding appropriate to the digestive system and metabolism of the animal.

Appropriate and sufficient in respect of drink should mean a fluid intake sufficient in quality and quantity to meet the fluid balance requirements of the animal at all times.

Appropriate and sufficient in respect of shelter should mean shelter which affords protection from the adverse effects of weather.

It is recommended this section be re worded in accordance with the above.

8(2)(f) makes it an offence to abandon an animal of a species usually kept in a state of confinement or for domestic purposes. In order to be able to make a distinction between abandonment (which is really relinquishing the duty of care) and what is likely to be a lesser offence of neglect, it may be useful to define “abandon” in terms such as “discard, set loose or otherwise dispose of, for the purposes of relinquishing ownership, control, supervision, care, charge or custody”.

8(2)(h) makes it an offence to administer to an animal an injurious drug or a toxic or noxious substance except for certain circumstances. One of these, 8(2)(h)(v) is the control of prescribed animals using prescribed substances (ie the chemical control of pest animals). A schedule of prescribed animals and prescribed substances is established in the Regulations.

The use of Regulations is not the most effective mechanism to administer the chemical control of pest animals as the process to amend regulations is too slow to keep up with improvements in chemical management methods. A more flexible process is required – perhaps a power to allow the Minister, upon the advice of the Animal Welfare Advisory Committee, to establish a register of pest animals and the substances permitted under s.8 for their control.

In addition, the need to control animals during an emergency animal disease event is not sufficiently covered. During such events it may be necessary to use toxic or noxious substances to control or kill animals to prevent the spread of disease. In 2003 Cabinet approved an amendment which would achieve the desired outcome. The amendment, which was not proceeded with, was to insert at 8(2)(h)(iva) “the control of a disease declared under the *Animal Health Act 1995* to be a List A disease.”

AWAC considers that the maximum penalties for this section should be increased to 100 penalty units for natural persons and 500 penalty units for corporations. DPIW supports this recommendation.

Recommendations

s.8(2)(e)

That “food, drink, shelter and exercise” be amended to “food, drink, shelter or exercise”

That “appropriate and sufficient” be defined in terms of outcome:

Appropriate and sufficient in respect of food should be defined in terms of:

- a) a diet sufficient in quality and quantity to meet the nutritional requirements of the animal for maintenance, growth, production and reproduction, and to sustain the animal in reasonable body condition at all times; and*
- b) a frequency of feeding appropriate to the digestive system and metabolism of the animal.*

Appropriate and sufficient in respect of drink should be defined in terms of a fluid intake sufficient in quality and quantity to meet the fluid balance requirements of the animal at all times.

Appropriate and sufficient in respect of shelter should be defined in terms of shelter affording protection from the adverse effects of weather.

S,8(2)(f)

That “abandon” be defined in terms such as “discard, set loose or otherwise dispose of, for the purposes of relinquishing ownership, control, supervision, care, charge or custody”.

s.8(2)(h)

Provide a more flexible process for prescribing animals and substances - perhaps a power to allow the Minister, upon the advice of the Animal Welfare Advisory Committee, to establish a register of pest animals and the substances permitted under s.8 for their control.

Insert at 8(2)(h)(iva) “the control of a disease declared under the Animal Health Act 1995 to be a List A disease.”

Increase maximum penalties for this section to 100 penalty units for natural persons and 500 penalty units for corporations.

6. Limitations, Sections 9 and 10

Issues

Section 26(1) of the *Justices Act 1959* provides:

In the case of a simple offence that is not an indictable offence, or of a breach of duty, unless some other time is limited for making complaint by the law relating to the particular case, complaint must be made –

(a) within 6 months from the time when the matter of complaint arose

(b) against a provision of an Act that has been declared in accordance with subsection (1A) to be an Act to which this paragraph applies –

(i) within 3 years from the time when the matter of complaint arose; and

(ii) within 6 months from the time when the matter of complaint came to the attention of the Director of Consumer Affairs and Fair Trading.

(1A) The Minister responsible for administering the *Consumer Affairs Act 1988* may declare, by order published in the *Gazette*, an Act to be an Act to which subsection (1)(b) applies.

The Act does not specify limitations, therefore the 6 month period applies. This has proven inadequate in respect of complex animal welfare investigations involving whole herd welfare and corporate ownership.

A period of 2 years would be ample, 12 months possibly sufficient, in which to gather available evidence to support a prosecution in such cases.

The question of personally archived evidence of serious offences has also arisen. Video material more than 6 months old cannot be used in evidence, even if it clearly identifies offences and offenders.

There is a high likelihood that people who organise animal fighting and baiting will record these activities. The seriousness of these offences is such that there should be a longer period of limitations on them.

Submissions

The majority of submissions favoured extending the period of limitations. Submissions from a corporate farming enterprise and the TFGA were notable exceptions.

Required Outcome

Officers and prosecutors should have sufficient time to be able to gather and prepare evidence of alleged contraventions of the Act and Regulations and lodge complaints with the courts. In most cases, 2 years would be sufficient time to be able to do this.

In the case of certain section 9 and 10 offences, there should be longer time limits, and higher maximum penalties should apply.

Recommendation

Prescribe a period of limitations of 2 years, except for Section 9 and 10 offences.

Prescribe a period of limitations of 5 years for Section 9 and 10 offences.

Prescribe increased maximum penalties for Section 9 and 10 offences – 200 penalty units for natural persons, 1000 penalty units for corporations.

s.63 Meat hygiene Act 1985

s.35 Agricultural and Veterinary Chemicals (Tasmania) Act 1994

s. 4(1) Criminal Code Act 1924

s.26(1) Justices Act 1959

7. Section 12 -Traps

Current wording

12. Traps

(1) Subject to subsection (2), a person must not set, lay or place a leghold trap or snare.

Penalty:

Fine not exceeding 5 penalty units.

(2) A person may apply to the Minister for an exemption to use a leghold trap or snare.

(3) The Minister, in granting an exemption, may impose any condition the Minister considers appropriate.

(4) This section does not apply to –

(a) the use of a mist net by a person who holds a permit to use a mist net granted under the *Nature Conservation Act 2002*; or

(b) a gillnet used in accordance with any regulations or rules made under the *Living Marine Resources Management Act 1995*; or

(c) a box trap, cage trap, mousetrap and other similar devices.

(5) The Minister may delegate the powers under this section to the Secretary.

Issues

The Act prohibits the use of leghold traps and snares, but not their sale or possession.

Given there is evidence of occasional, but not widespread, use of leg hold traps, some tightening of the restrictions is probably warranted, however the issue of genuine collectors needs to be addressed. It is unlikely such people actively use the traps in their collection. A permit or licence system for collectors, which would be difficult to enforce, is therefore unlikely to achieve any significant animal welfare gains.

New leg hold traps are occasionally retailed in Tasmania. These are unlikely to be attractive to collectors, and are most likely to be purchased by people intending to use them to trap animals.

Glueboard traps, which operate by trapping rodents in tenacious glue, are controversial. The humane killing of glue-trapped rodents is problematical. They cannot be humanely removed for destruction, and if not removed, die slowly. Some jurisdictions are considering banning these devices.

The Animal Welfare Act has been questioned as an appropriate vehicle to ban the sale or possession of devices which are only harmful in use. The Living Marine Resources Management Act provides precedent regarding banning the possession of equipment which may be used to commit an offence.

Submissions

Many submissions advocated a complete ban on leghold and glueboard traps. Two private submissions advocated no change regarding leghold traps and snares.

Two submissions opposed a ban on glueboard traps. TFGA regard these as the last line of defence against mice, and support their use in the food and dairy industries under a code of practice, which is an option worth considering.

Outcome required

Minimise the availability of leg hold traps for non-collectors and glueboard traps except with Ministerial discretion in situations of rodent-borne disease where all other options have been exhausted.

Recommendation

Create an offence of possession or sale of a leg hold trap other than an inactivated trap or one which is part of a recognised collection.

(Note: This recommendation was not supported by the Animal Welfare Advisory Committee on grounds of practicality, but was included in this report by the Department of Primary Industries and Water. The recommendation was subsequently rejected by Government.)

The Ministerial exemption provision, which gives a mechanism for emergency use of leg hold traps, should be retained.

Create an offence of setting, placing or laying a glueboard trap except where Ministerial exemption is granted.

8. Part 3 - Powers and functions of Officers

Issues

The Act has a glaring weakness in that there are insufficient investigative powers. There are no powers to require a person to provide any information other than name and address. There are no powers for officers to seize anything other than animals and items used in the committing of an offence.

These deficiencies are proving to be a major stumbling block in the investigation of animal welfare contraventions.

There are many statutes where relevant powers exist. In these cases it is commonly provided that, where information is provided pursuant to a statutory authority, such information is not admissible against the person being questioned.

The powers of officers are prescribed, but the functions of officers (which are referred to in the Act) are not.

Section 14 gives officers power to “give such instructions to any person in control of an animal as may be necessary to assess or ensure the welfare of the animal.” It is questionable if this gives officers powers to require someone who may not have the current control of an animal to take action to ensure the welfare of animals in the future. For example, can an officer

- instruct the owner/operator of an empty livestock transport vehicle to repair obvious hazards (eg jagged edges, holes in decks) before carrying any more livestock?
- Instruct the operator of an empty saleyard to repair injurious surfaces or repair faulty plumbing before allowing any animals to access a particular area?

Some submissions to the review recommended officers being given powers of arrest. This requires consideration at the Executive level before a Departmental recommendation can be made.

Submissions

Ten submissions favoured increasing the powers of officers. A corporate farming enterprise, TFGA and three submissions from private individuals opposed any increase in powers.

Required outcome

Officers and inspectors (s.38) need the powers to require the provision of relevant information, including answers to questions, and records.

Officers need the powers to be able to seize anything the officer reasonably believes can be used as evidence that an offence under the Act has been or will be committed.

The functions of officers should be clearly stated.

Officers need powers to be able to instruct a person who is usually in control of animals or is expected to be in control of animals in the future to do something to ensure the welfare of animals.

Recommendations

Include powers to require any person to answer any question or otherwise provide information the officer considers relevant to performance and exercise of his functions and powers and provide as directed a document in the person’s control, with failure to comply being an offence.

Include an indemnity provision similar to s.68(3) of the Animal Health Act 1995. Alternatively, S.68 in its entirety may provide a model for this amendment.

The Act should make it an offence to knowingly give false information to an officer.

Include powers to seize any thing the officer reasonably believes can be used as evidence that an offence under the Act has been or will be committed.

Include a section prescribing the functions of officers. This will need to be developed, but may include:

- *Protect, secure and ensure the welfare of animals*
- *Advise and instruct persons with the care or charge of animals*
- *Investigate and take appropriate action upon instances of potential and actual contraventions of the Act.*

Amend s.14(1) to include powers to instruct a person who is usually in control of animals or is expected to be in control of animals in the future to do something to ensure the welfare of the animals.

Training should be provided for officers in the application of increased powers.

s.23 and 35 Meat Hygiene Act 1985

s.68 Animal Health Act 1995

s.36, 37 Workplace Health and Safety Act 1995

s.40 Forest Practices Act 1995

s.92 Environmental Management and Pollution Control Act 1994

9. Part 4 Animal Research

9.1 Section 27 (Animal Research)

This section restricts research to licensed institutions (1), lists certain activities that do not require an institutional licence (2), and enables those licensed institutions to conduct research at multiple locations (3).

Species

The Act applies the same definition of animal to research as it does to other parts. The approved research Code of Practice (the *Australian code of practice for the care and use of animals for scientific purposes, 7th Edition 2004*) embraces a broader range of species including higher-order invertebrates, namely cephalopods (octopus, nautilus, cuttlefish and squid). There is a growing body of evidence that these and other invertebrate species are sentient and have other attributes associated with vertebrates such as learning ability and individual personalities.

Recommendation

To be consistent with the Code and to also be responsive to ethical and biological advances the ability to expand the scope of the research provisions of the Act with regard to species should be included via the making of Regulations prescribing species as required. It would appear no amendment is necessary. This ability already exists under s.3, animal, (b).

Definition of animal research and exemptions

The Act currently defines animal research as:

any procedure, test, experiment, inquiry or study in the course of which –

(a) an animal is subjected to –

- (i) surgical, medical, psychological, biological, chemical or physical treatment; or
- (ii) abnormal condition of heat, cold, light, dark, confinement, noise, isolation or overcrowding; or
- (iii) abnormal dietary conditions; or
- (iv) electric shock or radiation treatment; or

(b) any material or substance is extracted or derived from the body of the animal;

This is a two part definition. In order to qualify as animal research, an activity must involve both scientific intent (as expressed by the terms procedure, test, experiment etc) and must involve certain prescribed treatments.

The Code uses a definition based on scientific intent only, and gives examples of varying specificity:

“animal research” means the use of animals for scientific purposes.

“Scientific purposes” means all those purposes which aim to acquire, develop or demonstrate knowledge or techniques in any area of science including teaching, field trials, environmental studies, research, diagnosis, product development, and the production of biological products

The Act and Code definitions are in accord as to the fundamental requirement for there to be scientific intent.

In prescribing treatments, the Act definition creates loopholes – certain treatments performed with scientific intent, and which may compromise animal welfare, could fall outside the definition of animal research and therefore escape the licensing and Animal Ethics Committee requirements.

The Code definition, if adopted, would include any procedure at all involving animals (provided it was done with scientific intent), even if there is no animal welfare compromise. This “very wide net” approach, which is used by some of the larger mainland jurisdictions, appears to go beyond the original intention of the Act, and probably exceeds community expectations in respect of animal research. In addition, enforcement of this approach would require considerable resources.

Subsection (2) specifically exempts certain procedures, which otherwise may fall within the definition of animal research, from the requirement to be carried out in a licensed institution. The subsection exempts:

- (a) the owner of an animal who conducts observational studies on the animal; or
- (b) a person who administers veterinary treatment to an animal for the welfare of the animal; or
- (c) a person who conducts normal animal management operations.

The first of these exemptions is problematic. Firstly, it provides an unqualified exemption for observational studies (which may impact adversely on the welfare of animals), and secondly it applies only to the owner of the animals. The very narrow concept of “ownership” is not used elsewhere in the Act – instead the much broader concept of “care or charge” is used. In addition, placing an ownership, custody or “in-charge” qualification on who can perform observational studies does not take into account free living animals.

The exemption for veterinary treatment is necessary only because the definition of animal research includes medical treatment.

The exemption for “normal management operations” is an indicator that the original intention of the Act was not to licence research involving no additional untoward effects.

Required outcome

The requirement to be licensed under Section 27 should apply to persons undertaking procedures on animals:

- a) for scientific purposes, and
- b) which lead to animal welfare compromise in excess of what the animals involved would be expected to encounter if they were not being used for scientific purposes.

This would remove the need for the three current exemptions, or indeed any exemptions at all.

Note that funding bodies or scientific publishers may require that projects have Animal Ethics Committee approval. The Act does not prevent a licensed institution undertaking activities which fall outside of the definition of animal research, nor does it prevent Animal Ethics Committees approving and overseeing such activities.

Recommendations

(a) Remove S 27 (2)

(b) Redefine animal research in S 3 along the lines of the following:

any procedure, test, experiment, inquiry or study involving animals, which aims to acquire, develop or demonstrate knowledge or techniques in any area of science or teaching

and

which results or is reasonably expected to result in animal welfare compromise in excess of what the animals involved would be expected to encounter if they were not being used for such a procedure, test, experiment, inquiry or study.

Determination of Institution

Currently anyone/thing that is not listed as an institution in S 3 must be separately determined to be an institution. This is awkward. The interesting exceptions to institutions are State Schools - this can't be tolerated as they may engage in 'research' as much as any other learning institution. State Schools undertaking animal research should be licensed to do so.

Recommendation

Reword the interpretation of Institution in S3 as ‘any organisation that applies for a licence for the use of animals for scientific purposes’. This again would be consistent with the Code which includes all use of animals in teaching as well as research.

9.2 Section 30 (Grant of licences)

This section describes the approval procedure for a licence and the minimum conditions of the licence.

Consultation with the Advisory Committee

Subsection (1) states that the Minister may grant or not grant a licence on the advice from an inspector and after consultation with the Advisory Committee (AWAC). There is no provision for the Minister to delegate this task.

The current wording implies that consultation with the Advisory Committee is required for every licence application. While this is done via the inspector communicating with the Chair of the Committee, its actual usefulness with regard to advising the Minister is questionable considering the information that can be captured on application forms. The functions of AWAC also include advising the Minister on all matters pertaining to animal welfare including research and thus a specific requirement to consult on licensing is redundant.

Recommendations:

*That the references to the Advisory Committee at S 30 (1) and S 32 (1) be removed.
That a provision is made for the Minister to delegate his powers under Part 4.*

Inspections of institutions

The conditions as set out in s.30 (3) of the current Act are satisfactory apart from (c) which requires an annual inspection of the institution. This sub section does not define who conducts this inspection or what components of the institution should be inspected.

Section 38 empowers inspectors to conduct thorough inspections of institutions. Thus S30 (3) has been enforced in Tasmania by inspectors who ensure Tasmanian institutions' AEC activities comply with the approved Code by attending AEC meetings, conducting facility inspections and contributing to operational and procedural development for AECs.

The responsibility to 'inspect' interstate institutions licensed to work in Tasmania has been informally delegated to the jurisdictional regulator in that institution's State via national 'mutual recognition' of AECs. This is particularly important in the Tasmanian situation where there are many more interstate institutions with their own AECs (12 including two overseas institutions) than Tasmanian (2) currently licensed to work in Tasmania.

Recommendation

For the Act to reflect enforceable research inspection conditions it is proposed that the 'annual inspection' (S 30 (3)) be replaced with 'that the institution be inspected as to its compliance with the Code by an inspector or equivalent authority on a regular basis but at least every twelve months' or words to that effect.

External Reviews

External review of research institutions has been identified as an issue since the approval by all States of the current edition of the Code. While the Code does not make external reviews compulsory, one State (Queensland) has taken the view that its regulatory role includes actively participating in these reviews. They have informally advised the Department that for an interstate (eg Tasmanian) institution to be licensed to conduct research in Queensland it will have to at least state when the last external review was conducted and may be required to submit the results of the review.

The Code recommends that an external review be conducted every three years. The National Health and Medical Research Council (NHMRC) which prepares the Code is currently developing standard operating procedures for these external reviews. The guidelines in the Code for these reviews acknowledge that current regulatory inspections may suffice and that the reviews have a primary educative role for the institution.

A triennial review of the AEC by a suitably qualified team whose members are external to the institution and at least one that is external to the State conducted every three years is appropriate. It would enable some real national 'standardisation' on which to base 'mutual recognition'. The value of the regulator being involved in their own State's institutions' reviews is debatable, but it is essential that the regulator keeps a 'watching brief' on the activities of licensed institutions as is the current practice and complies with the Code's guidelines.

Recommendation

That an additional licence condition be included in S 30 (3) 'that the licensed institution advise an Inspector of the date and nature of any external review of the institution's Animal Ethics Committee'.

9.3. Section 35 (Annual reports)

States the requirements for reporting animal research activities by licensed institutions.

The current situation is that an annual report must be tabled in Parliament between 30 June and 30 September. This complies with current national requirements and should be retained.

Institutions are required to report no later than 14 months initially then every 12 months. This was all very well when there were six Institutions and they were all licensed to the same renewal date (31 March). Now there are 31 Institutions - 15 of which are interstate (13) or overseas (2) - on different licence renewal dates. Currently institutions are requested to report by the 31st May of each year they are licensed. This may not be in strict accordance with the Act.

National requirements and at least four other States (Vic, QLD, SA and NSW) require reports for the previous calendar year the Institution was licensed. This includes any research conducted in that period - whether the project is completed or not. Major funding bodies such as the NHMRC require the same reporting. Thus some Tasmanian institutions are required to generate several reports using different time frames for no particular statistical reason.

Recommendation

To enable some commonality and flexibility in institutional reporting alternative wording for S.35(1) would be 'A licensed institution must submit a report to the Minister of its activities in relation to the use of animals for scientific purposes by a date determined by the conditions of the licence, but at least every 12 months'. Further, S 35 (2) should be removed.

9.4. Specifying procedures and types of animals for scientific purposes

The Act does not prohibit any particular procedure or type of animal from the research provisions. There are examples in other States where specific procedures require direct Ministerial approval (eg

'Death as an end point' and eye irritancy testing in Victoria²) or have tighter record keeping requirements (eg lethality testing in Victoria and New South Wales).

Imposing higher hurdles for some procedures may not necessarily improve animal welfare. In such cases, higher hurdles reflect the community's perception of the severity of the procedure on the animal or the relative value placed on the animal (eg primates compared to sheep).

Consequences of prohibiting or otherwise prescribing procedures and/or species in the research context may include:

- migration of procedures/projects which do not necessarily reduce the overall use of the procedure except in the jurisdiction where it is either banned or has stricter regulation;
- changes in protocol to procedures that may be perceived to have a lower level of impact but may either require a larger number of animals to be used to achieve the same scientific outcome or is not significantly different in severity from the animal's point of view;
- the authority of AEC's being undermined. AECs represent a standard format for the interfacing of science and ethics. They must be responsive to institutions, funding bodies, Government and researchers but at all times adhere to a nationally agreed Code of Practice. If Ministerial approval is to be sought for a project that is already peer reviewed and approved by an AEC one wonders who will be better qualified to advise the Minister.

Recommendation

That the Act not be amended to prohibit or restrict the use of specific procedures and/or animal species in animal research.

10. Section 44 - Animal Welfare Standards

Current wording

44. Animal welfare standards

(1) The Minister, after consultation with the Advisory Committee, may approve standards of animal welfare.

(2) Standards of animal welfare are to include standards –

(a) to be followed in the care and management of animals; and

(b) for the education and guidance of persons involved in the care and management of animals.

In addition, s.50 provides regulation making powers, including:

50(4) Regulations may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method issued, formulated, prescribed, adopted or published by any authority or body as in force at a particular date.

Issues

The current wording of s.44 gives no real guidance as to the legal status of the animal welfare standards, other than that they are Ministerially approved.

The animal welfare standards are intended principally as educational documents for those people with the care or charge of animals. The Act itself prohibits cruelty without being overly prescriptive. The Standards have also been used occasionally by Courts in helping to assess

² Victorian *Prevention of Cruelty to Animals (Amendment) Regulations 2006*

whether or not cruelty has occurred – compliance or otherwise with the relevant component of the standard being taken into account. The use of standards by the Courts has been *ad hoc* – perhaps because they appear to lack any legal status other than Ministerial approval.

The currently approved standards are in fact Official Codes of Practice (OCPs). Most are based on or the same as the Australian Model Codes of Practice (which cover livestock only) developed under the PIMC framework. Where there is no nationally agreed model, standards are developed in Tasmania – eg *Transport of Livestock Across Bass Strait, Bobby Calves, Wallaby Hunting*.

OCPs are a mix of “musts” (minimum acceptable standards) and “shoulds” (desirable standards). It is argued that the minimum acceptable components should be mandatory and enforced, and the desirable standards should be strongly encouraged. There are moves within the Primary Industries Ministerial Council framework to create nationally uniform minimum standards of animal welfare, and have these enforced by the jurisdictions.

The legal status and enforceability of OCPs varies considerably between jurisdictions. In some jurisdictions, compliance with a particular part of an OCP constitutes a defence against charges relating to that part.

Submissions

Submissions from animal welfare groups tended to oppose making compliance with a code a defence. Submissions from farmer groups and the Australian Veterinary Association supported making compliance with a code a defence.

Required outcome

Confusing nomenclature (standards of animal welfare, minimum standards, codes of practice) should be avoided, however national moves towards uniform “Australian standards” should be accommodated.

The Act should be clear as to the purpose and function of OCPs, and in particular to their application in cases before the Courts. Any minimum standards to be enforced must be clearly identified.

Given that OCPs are likely to evolve, it would be desirable to be able to mandate minimum standards as amended by a designated process, without having to amend regulations.

Compliance with a measurable component of an OCP should be a legitimate defence against cruelty charges arising solely in respect of that component. Conversely, non-compliance should constitute evidence supporting the charges.

The issue of OCPs, their status and application, is central to the Act, and requires careful consideration by AWAC.

Recommendations

Compliance with an approved OCP should be a defence against a relevant charge and non-compliance should constitute evidence supporting the charge. Some consideration should be given to applying approved OCPs in this way either to charges under s. 7, 8 and 9 or restricting the application to s.7 charges. Given that OCPs tend to sanction “methods of management” there may be an argument for restricting their application as a defence to charges under s.7.

A mechanism to make the “minimum standard” components of approved COPs to be mandatory and enforceable should be established, if s.50 does not already provide such a mechanism.

11. Infringement Notices

Issues

The infringement notice mechanism offers a means of enforcement outside of the Courts. It is a useful and practical means of punishing lower grade offences.

The Act does not provide powers to issue infringement notices. RSPCA Animal Welfare Inspectorate believes the idea has merit, and DPIW agrees.

In electing to pay the fine, the infringer in effect admits guilt. Failure to pay the fine amounts in effect to a not guilty plea, and will result in the matter proceeding through the Courts.

There are several specific offences included in the Act which are amenable to infringement notices. These include many of the offences under s.8(2) 2.

The Animal Health Act and Regulations have recently been amended to allow the issuing of infringement notices, and could be used as a model.

The decision to use an infringement notice rather than prosecute will have to be made on-the-spot by the officer in question. Given that the matter could still end up before the courts, the officer will need to be sure of all points of proof of the offence in question. It will be necessary to train officers in the application of infringement notices.

Submissions

TFGA was the only respondent to oppose the use of infringement notices.

Required Outcome

Officers should have the ability to issue infringement notices.

Recommendation

That the Act be amended to allow the issuing of infringement notices for prescribed offences.

It will be necessary to also amend the Regulations to detail the actual offences and the levels of penalties that apply to those infringement notices.

12. Evidentiary matters

Issues:

It seems reasonable to expect a veterinary or veterinary pathology report to be taken by the Courts as *prima facie* evidence of the particulars therein contained, whether or not the author of that report is present in Court.

Given the small numbers of authorised officers under the Act, and the ready availability of a database listing these officers, it seems to be unnecessary for prosecution, in each case, to have to establish this authority to the satisfaction of the courts, other than by sworn evidence.

Recommendations:

That the Act be amended to include a provision that a veterinary or veterinary pathology report is to be taken by the Courts as prima facie evidence of the particulars therein contained, whether or not the author of that report is present in Court.

That a provision similar to the following, adapted from the Victorian Prevention of Cruelty to Animals Act 1986, be included:

In any legal proceedings under this Act, in the absence of evidence to the contrary, proof is not required of the approval of a person as an officer or an inspector (as defined under section 3).

13. Images of animal abuse

As mentioned previously, there is a likelihood that people who organise animal fighting and baiting (or indeed any form of ritual animal abuse) will record images of these activities.

There is a good argument for making the creation and possession of images of animal abuse an offence, in the same way the possession of images of child abuse is an offence. There will need to be a provision (in addition to s.16A) to allow images of animal abuse to be created and possessed for a range of legitimate purposes, such as evidentiary purposes.

Recommendation:

That a specific offence be provided in relation to taking, participating in the taking of and possession of images of animal abuse.

14. Rodeos and related events

Rodeos and related events using animals for entertainment, such as picnic race meetings, are not defined or regulated for animal welfare purposes. There is no Official Code of Practice for the conduct of rodeos in Tasmania, a deficiency requiring priority action.

In addition, unofficial rodeo events such as “mutton busting” and poddy calf riding (both involving children being invited to ride sheep or calves) cause concern. These events are not conducted under any code of practice, and use animals unfit for the purpose.

There are model rodeo codes available. Rodeos conducted by members of the Australian Professional Rodeo Association (APRA) are required by that Association to comply with the APRA Code of Practice. In addition, the National Consultative Committee on Animal Welfare (NCCAW) has produced a recommended code of practice for rodeos (refer *NCCAW Position Statement – Standards for the Care and Treatment of Rodeo Livestock*).

The NCCAW and APRA codes are very similar. States and Territories are progressively adopting the NCCAW code, to present a uniform national approach. The NCCAW code strongly recommends, but does not mandate, veterinary attendance.

An official code of practice should mandate the following (this list is not exhaustive):

- Veterinarian to inspect all animals prior to rodeo and to have authority to prevent any animal taking part
- Veterinarian to take control of incidents involving injury to animals
- Rodeo events to be defined and described
- No other events to be permitted
- Minimum weight, age and body condition standards to apply for animals competing in each event
- No sheep or calves to be ridden.

Submissions

Submissions did not address this issue, however considerable correspondence has been received indicating strong public support for tighter regulation. The Rodeo industry is itself supportive of tighter regulation.

Outcome required

That compliance with the approved code of practice for all defined rodeo events be mandatory. That non compliance be an offence. That veterinary attendance for duration of rodeo be mandatory.

Recommendation

Insert provisions into the Act

- a) requiring rodeo events (as defined) to be conducted in accordance with the approved code of practice;*
- b) making the conduct of rodeo events in breach of the code of practice an offence under the Act;*
- c) making the conduct of sheep riding and calf riding events offences;*
- d) making the conduct of a rodeo event without veterinary attendance an offence.*

This requires a mechanism for approving a code of practice. The current provisions for the Ministerial approval of standards of animal welfare under s.44 is the obvious mechanism to use.

15. Power for Regulations to authorise a person to determine matters

Some Acts provide a regulation making power to enable the Regulations for that Act to authorise persons to determine certain matters.

For example the *Animal (Brands and Movement) Act 1994* at section 34(5) provides that:

A regulation under this section may authorise any matter or thing to be from time to time determined, applied or regulated by any person specified in the regulation.

Also section 105(5) of the *Animal Health Act 1995* provides the following:

The regulations may authorise any matter to be from time to time determined, applied or regulated by the Secretary or Chief Veterinary Officer.

The Act does not establish a specific authority, other than the Minister. The Minister has specific powers in regards to the appointment of officers and inspectors, membership and functions of the Advisory Committee, animal research, leg hold traps and the Animal Welfare Trust Account only.

A similar provision to the above would provide a reserve power to be able to regulate to create a determining authority – be it the Minister, Secretary, Inspector, Officer. One possible use of this power would be to regulate to provide for someone (perhaps an Inspector) to make a determination as to whether or not a procedure constitutes animal research for the purposes of the Act.

Recommendation

That a power be created in the Act to Regulate to authorise a person to determine matters, similar to the provisions of s.34(5) of the Animal (Brands and Movement) Act 1994.

16. Parties to offences

There are times when offences under the Act are committed by persons other than those with the care or charge of the animal. A person with the care or charge of an animal who knowingly permits, or fails to prevent such offences should be held liable, as should a person who aids or abets the commission of an offence.

Recommendations

That the Act be amended to include provisions in relation to parties to offences. It should be an offence to (without reasonable excuse) aid, abet (counsel, procure etc) any other person to do any act, or omit to do any duty, which causes or is likely to cause unreasonable and unjustifiable pain or suffering to an animal.

17. Keeping and killing of dogs and cats for meat production

The Australian Government is considering banning the importation of dog and cat fur products. The Prime Minister wrote to the States and Territories seeking parallel bans on the keeping and killing of dogs and cats for fur.

In order to ensure that imported products are treated no less favourably than domestically produced “like” products, consistent with Australia’s World Trade Organisation obligations, an import ban would need to be accompanied by a ban on domestic production and sale.

The keeping of dogs and cats for fur or meat production is not illegal in Tasmania, although the provisions of the *Meat Hygiene Act 1995* would prevent selling or transporting such meat.

South Australia has specifically banned the production, sale and consumption of dog and cat *meat*. The ban was effected under that State's *Summary Offences Act 1953*. This vehicle was used because the issue was seen by the South Australian Government as being unrelated to animal welfare, and fundamentally cultural in nature. As such it has been grouped with other summary offences against public order, decency and morality. The equivalent Tasmanian legislation would appear to be the *Police Offences Act 1935*.

Recommendation

That the use of dogs and cats for fur or meat is a cultural, rather than animal welfare issue, and as such the Act is not an appropriate vehicle for regulating these activities.

18. Regulations

The Animal Welfare Regulations will expire on 31 December 2006, and must be re written and receive official approval before that date.

The content of the new Regulations will depend on amendments to the Act. Some possible changes are:

Reg 4 – Control of prescribed animals. If the Act is amended to provide for the Minister to make a register of substances and animals for the purposes of s.8(2)(h)(v), this Reg and Schedule 1 will become redundant.

Reg 6 – Domestic fowls in cages. This may need to be amended to more fully embrace the decision of the Primary Industries Ministerial Council on this matter, although the *Egg Industry Act* provides an alternative vehicle for implementation of the PIMC decisions.

Reg 4A – Prescribed acts

One issue of direct relevance is the docking of dogs tails. Animal Welfare Officers are finding evidence of the illegal docking of dog's tails but are encountering difficulties in determining who is responsible for the docking.

The current wording is:

4A. Prescribed acts

(1) For the purpose of section 8(2)(k) of the Act, the following are prescribed acts:

(a) the strangling of an animal with a device or by any other means;

(b) the docking of the tail of a dog (*canis familiaris*).

(2) Subregulation (1)(b) does not apply to a veterinary surgeon who for therapeutic purposes, using anaesthesia, docks the tail of a dog (*canis familiaris*).

Thus it is an offence for anyone other than a veterinarian to dock a dog's tail, and even then the veterinarian can only dock a dog's tail for therapeutic purposes and using anaesthesia.

The offence is the actual act of docking a tail.

Recommendation

In order to increase the effectiveness of the tail docking regulation, it is recommended the offence be one of docking a dog's tail or permitting, allowing, or causing a dog's tail to be docked.

New Regulations may be required to:

- prescribe offences and penalties with respect to the issuing of Infringement Notices
- prescribe minimum standards of animal welfare
- provide for a person to determine matters
- prescribe certain species or genera as animals for the purposes of Part 4
- implement the nationally agreed ban on the mulesing of sheep after 2010.

19. Section 43 - Custody of Animals

Under this section, a court may disqualify a person convicted of an offence under the Act from having custody of any animal or class of animal, or may place conditions on such custody. Equivalent legislation exists in other jurisdictions.

People convicted and subsequently disqualified are known to have moved interstate to avoid the disqualification. Mutual recognition provisions would ensure disqualifications/conditions imposed interstate would apply also in Tasmania. Victoria has recently amended its animal welfare legislation to include such a mutual recognition provision, via registration of interstate orders (S. 12A and 12B, *Prevention of Cruelty to Animals Act 1986*).

Recommendation

That a provision be made such that disqualifications or conditions placed on the custody of animals imposed by any Australian court under animal welfare legislation are to apply in Tasmania.

List of recommendations

Section 4

- 1. That Tasmania adopts nationally developed codes of practice, providing standards and guidelines for what is considered to be usual and reasonable practices, for hunting (other than wallaby hunting), recreational fishing, angling and commercial fishing practices, as they become available.*
- 2. That the exemptions from the provisions of sections 8 and 9 for these practices be removed as appropriate codes of practice are adopted.*
- 3. That exemptions for hunting and fishing from the provisions of section 10(1)(a) and 10(3) be removed now.*
- 4. That the references to “match or competition” be removed from sections 10(1)(b) and 10(2)*

Section 6

- 5. “Person” for the purposes of the Act to specifically include corporation, director, manager, owner, caretaker, sharefarmer, trainer.*
- 6. Deem managers, directors and corporations to have a duty of care for animals in the ownership, care or charge of the corporation, and that such duty of care is not diminished by dissolution or bankruptcy of the corporation after the date of the offence.*
- 7. Deem employers to be responsible for acts and omissions of employees, with a defence that they could not have reasonably prevented the act or omission.*
- 8. Define “care or charge” to include control, possession, ownership, custody, “share farming”, and unless there is an unambiguous agreement to the contrary, agistment.*
- 9. Deem the owner of animals to be responsible for their welfare unless proven to the contrary.*
- 10. Deem the operators of any premises where animals are held for the purposes of commerce, to have duty of care for all animals on the premises.*
- 11. Provide that if a corporation is guilty of an offence, any person who takes part in the management of that corporation is guilty of the offence (with a defence that they could not have reasonably prevented the commission of the offence), and that dissolution or bankruptcy of the corporation after the date of the offence does not remove this guilt.*
- 12. Where during a hearing it appears that the person committing the alleged offence was acting on the instructions of an employer, provide that a Court may order the employer to appear and answer the charge as if it had been filed against the employer, and may dismiss the charge against the employee.*

Section 7

13. Section 7 should be amended to refer to “animal or group of animals”.
14. Increase the maximum penalty to 100 penalty units for natural persons, 500 penalty units for corporations.

Section 8(2)(e)

15. That “food, drink, shelter and exercise” be amended to “food, drink, shelter or exercise”
16. That “appropriate and sufficient” be defined in terms of outcome:

Appropriate and sufficient in respect of food should be defined in terms of:

- *a diet sufficient in quality and quantity to meet the nutritional requirements of the animal for maintenance, growth, production and reproduction, and to sustain the animal in reasonable body condition at all times; and*
- *a frequency of feeding appropriate to the digestive system and metabolism of the animal.*

Appropriate and sufficient in respect of drink should be defined in terms of a fluid intake sufficient in quality and quantity to meet the fluid balance requirements of the animal at all times.

Appropriate and sufficient in respect of shelter should be defined in terms of shelter affording protection from the adverse effects of weather.

Section 8(2)(f)

17. That “abandon” be defined in terms such as “discard, set loose or otherwise dispose of, for the purposes of relinquishing ownership, control, supervision, care, charge or custody”.

Section 8(2)(h)

18. Provide A more flexible process for prescribing animals and substances - perhaps a power to allow the Minister, upon the advice of the Animal Welfare Advisory Committee, to establish a register of pest animals and the substances permitted under s.8 for their control.
19. Insert at 8(2)(h)(iva) “the control of a disease declared under the Animal Health Act 1995 to be a List A disease.”
20. Increase maximum penalties for this section to 100 penalty units for natural persons and 500 penalty units for corporations

Limitations, sections 9, 10

21. Prescribe a period of limitations of 2 years, except for Section 9 and 10 offences.

22. *Prescribe a period of limitations of 5 years for Section 9 and 10 offences.*
23. *Prescribe increased maximum penalties for Section 9 and 10 offences – 200 penalty units for natural persons, 1000 penalty units for corporations.*

Section 12 Traps

24. *Create an offence of possession or sale of a leg hold trap other than an inactivated trap or one which is part of a recognised collection. (Note: This recommendation was not supported by the Animal Welfare Advisory Committee on grounds of practicality, but was included in this report by the Department of Primary Industries and Water. The recommendation was subsequently rejected by the Government.)*
25. *Create an offence of setting, placing or laying a glueboard trap except where Ministerial exemption is granted.*

Part 3 Powers and functions of officers

26. *Include powers to require any person to answer any question or otherwise provide information the officer considers relevant to performance and exercise of his functions and powers and provide as directed a document in the person's control, with failure to comply being an offence.*
27. *Include an indemnity provision similar to s.68(3) of the Animal Health Act 1995. Alternatively, S.68 in its entirety may provide a model for this amendment.*
28. *The Act should make it an offence to knowingly give false information to an officer.*
29. *Include powers to seize any thing the officer reasonably believes can be used as evidence that an offence under the Act has been or will be committed.*
30. *Include a section prescribing the functions of officers. This will need to be developed, but may include:*
- Protect, secure and ensure the welfare of animals*
 - Advise and instruct persons with the care or charge of animals*
 - Investigate and take appropriate action upon instances of potential and actual - contraventions of the Act.*
31. *Amend s.14(1) to include powers to instruct a person who is usually in control of animals or is expected to be in control of animals in the future to do something to ensure the welfare of the animals.*
32. *Training should be provided for officers in the application of increased powers.*

Part 4 Animal Research

33. *To be consistent with the Code and to also be responsive to ethical and biological advances the ability to expand the scope of the research provisions of the Act with regard to species should be included via the making of Regulations prescribing species as required. It does not appear to be necessary to amend the Act to achieve this. See S.3 (definition of animal)*

34. Remove S 27 (2)

35. Redefine animal research in S 3 along the lines of the following:

any procedure, test, experiment, inquiry or study involving animals, which aims to acquire, develop or demonstrate knowledge or techniques in any area of science or teaching
and

which results or is reasonably expected to result in animal welfare compromise in excess of what the animals involved would be expected to encounter if they were not being used for such a procedure, test, experiment, inquiry or study.

36. Reword the interpretation of Institution in S3 as ‘any organisation that applies for a licence for the use of animals for scientific purposes’. This again would be consistent with the Code which includes all use of animals in teaching as well as research

37. That the references to the Advisory Committee at S 30 (1) and S 32 (1) be removed.

38. That a provision is made for the Minister to delegate his powers under Part 4.

39. For the Act to reflect enforceable research inspection conditions it is proposed that the ‘annual inspection’ (S 30 (3)) be replaced with ‘that the institution be inspected as to its compliance with the Code by an inspector or equivalent authority on a regular basis but at least every twelve months’ or words to that effect.

40. That an additional licence condition be included in S 30 (3) ‘that the licensed institution advise an Inspector of the date and nature of any external review of the institution’s Animal Ethics Committee’.

41. To enable some commonality and flexibility in institutional reporting alternative wording for S.35(1) would be ‘A licensed institution must submit a report to the Minister of its activities in relation to the use of animals for scientific purposes by a date determined by the conditions of the licence’. Further, S 35 (2) should be removed.

42. That the Act not be amended to prohibit or restrict the use of specific procedures and/or animal species in animal research.

Section 44 Animal Welfare Standards

43. Compliance with an approved COP should be a defence against a relevant charge and non-compliance should constitute evidence supporting the charge. Some consideration should be given to applying approved COPs in this way either to charges under s. 7, 8 and 9 or restricting the application to s.7 charges. Given that COPs tend to sanction “methods of management” there may be an argument for restricting their application as a defence to charges under s.7.

44. A mechanism to make the “minimum standard” components of approved COPs to be mandatory and enforceable should be established, if s.50 does not already provide such a mechanism.

Infringement Notices

45. That the Act be amended to allow the issuing of infringement notices for prescribed offences.

46. *It will be necessary to also amend the Regulations to detail the actual offences and the levels of penalties that apply to those infringement notices.*

Evidentiary matters

47. *That the Act be amended to include a provision that a veterinary or veterinary pathology report is to be taken by the Courts as prima facie evidence of the particulars therein contained, whether or not the author of that report is present in Court.*

48. *That a provision similar to the following, adapted from the Victorian Prevention of Cruelty to Animals Act 1986, be included:*

49. *In any legal proceedings under this Act, in the absence of evidence to the contrary, proof is not required of the approval of a person as an officer or an inspector (as defined under section 3).*

Images of animal abuse

50. *That a specific offence be provided in relation to taking, participating in the taking of and possession of images of animal abuse.*

Rodeos

51. *Insert provisions*

(a) requiring rodeo events (as defined) to be conducted in accordance with the approved code of practice;

(b) making the conduct of rodeo events in breach of the code of practice an offence under the Act;

(c) making the conduct of sheep riding and calf riding events offences;

(d) making the conduct of a rodeo event without veterinary attendance an offence.

Power to authorise matters

52. *That a power be created in the Act to Regulate to authorise a person to determine matters, similar to the provisions of s.34(5) of the Animal (Brands and Movement) Act 1994.*

Parties to offences

53. *That the Act be amended to include provisions in relation to parties to offences. It should be an offence to (without reasonable excuse) aid, abet (counsel, procure etc) any other person to do any act, or omit to do any duty, which causes or is likely to cause unreasonable and unjustifiable pain or suffering to an animal.*

Dog and cat meat and fur

54. *That the use of dogs and cats for fur or meat is a cultural, rather than animal welfare issue, and as such the Act is not an appropriate vehicle for regulating these activities.*

Tail docking

55. *In order to increase the effectiveness of the tail docking regulation, it is recommended the offence be one of docking a dog's tail or permitting, allowing, or causing a dog's tail to be docked.*

Section 43 - Custody of Animals

56. That a provision be made such that disqualifications or conditions placed on the custody of animals imposed by any Australian court under animal welfare legislation are to apply in Tasmania.