

Review of the
Animal Care and Protection Act 2001

DISCUSSION PAPER



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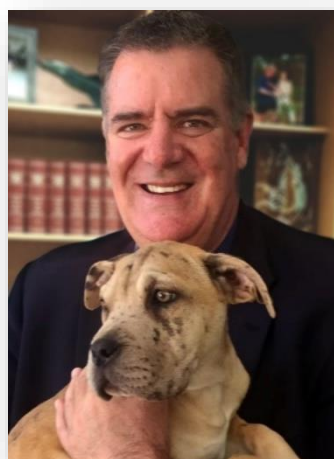
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Foreword

I know that Queenslanders love their animals. Animals are members of our family, are integral to agricultural production, are involved in sport and recreational activities and assist individuals and services in quarantine and inspection. Animals are also important to the economy, international trade and research.

There is also a critical relationship between human health, animal health and animal welfare. During the response to the coronavirus pandemic, many people turned to their animals for comfort and as exercise companions. Many people acquired a dog or cat for the first time during isolation.



While the *Animal Care and Protection Act 2001* provides a strong framework for animal welfare in Queensland, it has been operating for 20 years without a significant review.

Queensland's animal welfare laws set minimum standards for the welfare of animals, set maximum penalties for offences and provide powers to inspectors to act when people's actions fall below the minimum standards. We want to make sure our laws, standards and penalties reflect contemporary community expectations while allowing animal industries to continue to operate appropriately and without unnecessary regulatory burden.

The Queensland Government has committed to a review of the *Animal Care and Protection Act 2001* and this discussion paper marks the commencement of the review. It also represents a significant step towards ensuring animal welfare laws continue to meet community expectations and continue to protect the welfare of animals in Queensland.

The Honourable Mark Furner MP

A handwritten signature in dark ink, reading 'M Furner'.

**Minister for Agricultural Industry Development and Fisheries and
Minister for Rural Communities**



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1 Introduction

The review of the *Animal Care and Protection Act 2001* (ACPA) aims to improve the welfare of animals in Queensland and broad community views are being sought on the current legislative framework of the ACPA.

This discussion paper sets out high-level policy proposals for amendments to the *Animal Care and Protection Act 2001* (ACPA). Some of the proposals suggest maintaining current provisions, while other proposals raise options for change and the introduction of new provisions.

The discussion paper does not seek comment on the codes of practice and fees contained in the *Animal Care and Protection Regulation 2012*. Also, it does not propose any changes to the *Animal Management (Cats and Dogs) Act 2008*, *Criminal Code Act 1899* (Qld), *Exhibited Animals Act 2015*, *Police Powers and Responsibilities Act 2000*, the *Police Service Administration Act 1990*, or the *Veterinary Surgeons Act 1936*.

While the recommendations from the *Inquiry into animal cruelty in the management of retired Thoroughbred and Standardbred horses in Queensland* (the Martin Inquiry) have been taken into account, this review does not include their implementation. The government will continue to implement the Martin Inquiry recommendations independent of the review of the ACPA.

In Queensland, the standards from Animal Welfare National Standards and Guidelines are adopted as compulsory Codes of Practice under the *Animal Care and Protection Regulation 2012*. The Codes of Practice will also not be considered as part of this review.

How the review will be completed

Consultation is integral to improving animal welfare legislation. Queenslanders have wide experience and diverse knowledge about the welfare of animals. The release of this discussion paper marks the beginning of the consultation process and provides a platform for feedback and comment on current provisions of the ACPA as well as proposals for new provisions and changes.

The Department of Agriculture and Fisheries (DAF) will manage the review process and gather community and stakeholder feedback.

After the consultation period for the discussion paper closes, all feedback will be considered. The revised policy proposals for changes to the ACPA will be incorporated into a Bill.

Have your say

You can provide feedback on all of the issues raised in the discussion paper or on just the issues that are relevant to you. You can complete a survey or upload a written submission at daf.engagementhub.com.au/animal-welfare.

All feedback must be lodged by midnight on Friday 21 May 2021.



Privacy

This privacy statement applies to participants who provide feedback as part of the review.

The Department of Agriculture and Fisheries (DAF) is collecting personal information from you, including your name, email address, phone number, geographic location and commentary or opinion, for the purpose of the review of the *Animal Care and Protection Act 2001* (the ACPA). Information gathered via survey responses and written submissions will inform the review of the ACPA and development of policy and legislative proposals. As part of the legislative review and implementation process, the DAF will need to share some information with relevant Queensland government agencies and information may be included in regulatory impact assessment reports, for example to the Office of Best Practice Regulation. Personal information will not be included in these reports or published. Information (excluding personal information) may be compiled into a public report to summarise the consultation process. Please let DAF know if you do not wish to have your response or submission included in a public report by emailing ACPAreview@daf.qld.gov.au.

DAF collects your information to register you as a user on DAF's Engagement Hub and all data is maintained on our Customer Relationship Management system hosted on the Engagement Hub site. We register you to manage your input into the ACPA review and so we can contact you about the results of the review and invite you to participate in future online surveys and activities. Your participation in any activity is voluntary. If you do not wish to receive further communication and engagement, you can unsubscribe to the site at any time via the link provided in the registration email. For more information on Engagement Hub and how it is used by DAF please read the privacy statement at: <https://daf.engagementhub.com.au/privacy-policy>. For general information about how DAF handles your personal information go to: www.daf.qld.gov.au/site-information/privacy.



2 Animal welfare legislation in Queensland

The ACPA is the principal animal welfare legislation in Queensland. It applies to all vertebrate animals including amphibians, fish, mammals, reptiles and invertebrate animals including cephalopods (for example octopuses, squid and cuttlefish). It does not apply to humans or some developmental stages of certain animals.

The ACPA allows for the making of codes of practice and regulates the use of animals for scientific purposes.

Inspectors appointed under the ACPA have a broad range of powers available when responding to complaints about the welfare of animals. These powers include entry to a place with and without consent in certain circumstances, seizure of animals, limited entry to provide relief to an animal and giving an animal welfare direction.

The ACPA provides a broad range of compliance options, from non-regulatory through to criminal prosecutions. It establishes a range of animal welfare offences including cruelty, breach of duty of care, prohibited events and regulated procedures. The maximum penalties for offences under the ACPA range from a fine of \$2 669 for failing to exercise a closely confined dog to 3 years imprisonment for animal cruelty. A full discussion on all of the maximum penalties under the ACPA is included in Part 13 of this paper.

Other Acts in Queensland also relate to animal welfare. These Acts provide other offences and powers of enforcement for animal welfare matters for other agencies and ensure that Queensland has a strong framework of animal welfare laws. These Acts include the Criminal Code (Schedule 1 of the *Criminal Code Act 1899 Qld*), the *Police Powers and Responsibilities Act 2000*, the *Police Service Administration Act 1990*, the *Racing Integrity Act 2016* and the *Veterinary Surgeons Act 1936*. These Acts will be considered to ensure they align with any proposed changes to the ACPA but are not a primary part of the review.



What is an Act?

An Act is legislation is passed by Parliament. Acts set out broad legal and policy principles. An Act specifies offences and powers for enforcement. It states who may enforce or make decisions about the provisions of the Act.

The first step in creating an Act is preparing a Bill (draft Act). This can take considerable time; it includes stakeholder consultation and regulatory impact assessment. After the Bill is introduced into Parliament, a Parliamentary Committee examines the Bill. Then Parliament debates issues about the Bill and votes for it to become an Act.

An Act commences once it has received Royal Assent from the Queen through her representative, the Governor of Queensland.

An Act may be completely new or may amend another Act. An Act can only be amended or repealed by another Act.

What is a Regulation?

The power to make Regulations is contained in Acts. It is delegated by Parliament to the Governor-in-Council, which is the Governor acting with the advice of the Executive Council (Ministers). Regulations generally contain technical information and specific requirements for meeting the Act. Provisions contained in Regulation are mandatory and have penalties for non-compliance.

Codes of Practice

A Code of Practice provides detailed information about how to meet requirements of an Act or Regulation in relation to a particular industry or activity. Codes of Practice may be mandatory or voluntary; the status of a particular Code of Practice is specified in the legislation that adopts or refers to it.



3 Purposes of the ACPA

One of the purposes of the ACPA is to provide standards for the care and use of animals that *“achieve a reasonable balance between the welfare needs of animals and the interests of people whose livelihood is dependent on the animals.”*

QUESTIONS

One of the purposes 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...”.

This purpose is still suitable with increased animal welfare expectations and consumer preferences.

- ☐ Strongly agree
- ☐ Somewhat agree
- ☐ Neither agree nor disagree
- ☐ Somewhat disagree
- ☐ Strongly disagree

If you disagree, what do you think the purpose should be?

4 Prohibited events

Animal welfare law in Queensland prohibits certain events that are considered to be unacceptable treatment of animals. These are referred to as ‘prohibited events’ under the ACPA. All states and territories have similar types of prohibited events covering broadly the same activities.

Prohibited events under Chapter 3 Part 3 of the Act include:

- cockfighting
- bullfighting
- dogfighting
- coursing
- certain types of hunting
- certain events that cause an animal pain. This may include events in which people attempt to catch, fight or throw animals.

It is offence to organise, supply animals to, participate in, or be present at prohibited events.

QUESTIONS

The current prohibited event provisions are appropriate.

- ☐ Strongly agree
- ☐ Somewhat agree
- ☐ Neither agree nor disagree
- ☐ Somewhat disagree
- ☐ Strongly disagree

If you disagree, what would you change?

5 Reporting of animal welfare concerns by veterinary professionals

Currently in Queensland, anyone may voluntarily report animal welfare concerns to DAF, the RSPCA or the Queensland Police Service. The ACPA protects a person acting honestly and in good faith who gives an inspector information that they reasonably believe may help with the investigation of an animal welfare offence. The person is protected from civil and criminal liability, and liability under an administrative process. The ACPA also states that a person giving the information does not breach any code of professional etiquette or ethics or accepted standards of professional conduct. They are also protected in defamation proceedings regarding any publication of the information. Confidentiality requirements that would otherwise apply are eased.

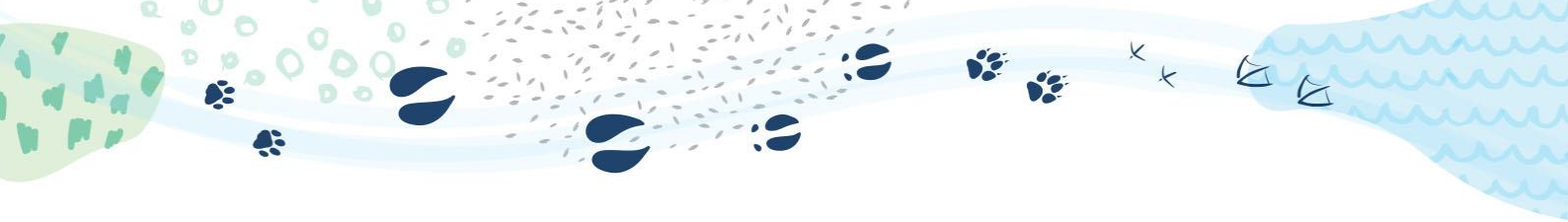
Currently there are no legal requirements for Australian veterinary professionals to report animal welfare concerns to authorities. Professional guidelines¹ advise that veterinarians have a duty of care and an ethical obligation to prevent further abuse. These guidelines encourage veterinarians to contact authorities so that the authorities can deal directly with the suspected perpetrator.

Regulatory approaches to this issue vary overseas. The United Kingdom and New Zealand adopt a similar approach to Australia. In the United States, about 20 states place a mandatory duty upon veterinary professionals to report suspected animal cruelty to the authorities. Other states do not require reporting but allow veterinary professionals to take action by permitting them to break patient-client confidentiality to report abuse.

In Queensland, veterinary surgeons, veterinary specialists and animal nurses² are well qualified and well placed to identify likely animal cruelty or neglect. They are uniquely skilled

¹ Australian Veterinary Association (2013). Animal abuse policy. Accessed 4 February 2021 from www.ava.com.au/policy-advocacy/policies/animal-welfare-principles-and-philosophy/animal-abuse/

² 'Veterinary surgeons', 'veterinary specialists', 'veterinary practitioners' and 'animal nurses' are defined in the *Veterinary Surgeons Act 1936*.



and experienced to be able to discern 'normal' animal illnesses, malnutrition and injuries from those deliberately inflicted on an animal or resulting from severe neglect.

However, some owners may be discouraged from seeking essential treatment for their injured animals if they believe that they will be reported to authorities. It is possible that having a legal requirement for veterinary professionals to report could undermine their efforts to work with clients to prevent further cruelty or neglect.

Mandatory reporters may also fear reprisals, noting the well documented link between animal abuse and human violence. However, merely reporting a concern will not automatically lead to punishment of the client. Any report would need to be assessed and, if necessary, investigated. Inspectors have a range of compliance options under the ACPA to respond to animal welfare concerns, which includes education and animal welfare directions.

QUESTIONS

Veterinary professionals should have obligations under the ACPA to report suspected incidents of animal cruelty or neglect to authorities.

- Strongly agree
- Somewhat agree
- Neither agree nor disagree
- Somewhat disagree
- Strongly disagree

If you disagree, please explain why.

6 Regulated surgical procedures

Procedures limited to veterinary surgeons

Part 4 of Chapter 3 of the ACPA contains offences relating to certain procedures (regulated surgical procedures) that are carried out on animals. Regulated surgical procedures are procedures that are generally done for cosmetic reasons or convenience and not for the health and wellbeing of the animal. Therefore, these procedures are only permitted if they are performed by a veterinary surgeon who considers it is in the interest of the animal's welfare.

The following procedures can only be performed by a veterinary surgeon (sections 23 and 25 to 27 of the ACPA):

- cropping a dog's ear
- debarking operations
- removal of a cat's claws

- docking the tail of a horse or cow

For dog debarking operations, a veterinary surgeon may conduct the operation if they believe it is the only way to stop nuisance barking without destroying the dog. The dog's owner must provide the veterinary surgeon with a notice requesting the operation. The notice must state that the barking is a nuisance, and describe previous, unsuccessful attempts to prevent the nuisance barking.

QUESTIONS

The current list of surgical procedures restricted to veterinary surgeons is appropriate.

- ☐ Strongly agree
- ☐ Somewhat agree
- ☐ Neither agree nor disagree
- ☐ Somewhat disagree
- ☐ Strongly disagree

If you disagree, what should procedures be added or removed?

Docking a dog's tail

A person other than a veterinary surgeon must not dock a dog's tail unless the docking is done in a way prescribed by regulation. A veterinary surgeon must only dock a dog's tail if they consider it in the best interest of the dog's welfare or the docking is done in a way prescribed by regulation. As yet, no regulations about tail docking have been prescribed.

QUESTIONS.

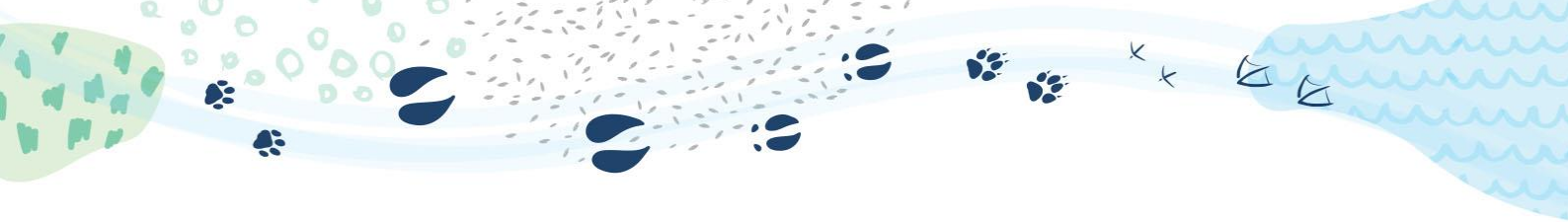
The current provision on tail docking of dogs is appropriate.

- ☐ Strongly agree
- ☐ Somewhat agree
- ☐ Neither agree nor disagree
- ☐ Somewhat disagree
- ☐ Strongly disagree

If you disagree, please tell us how you think the provisions should change.

Supplying animals subject to regulated surgical procedures

For ear cropping, cat claw removal, docking a horse tail and debarking, it is an offence to supply to another person an animal that has undergone this type of procedure unless it is



accompanied by a certificate from a veterinary surgeon stating the procedure was performed according to the requirements of the ACPA.

QUESTIONS

The current provisions for the supply of animals that have undergone a regulated surgical procedure are appropriate.

- ☐ Strongly agree
- ☐ Somewhat agree
- ☐ Neither agree nor disagree
- ☐ Somewhat disagree
- ☐ Strongly disagree

If you disagree, please tell us how you think the provisions should change.

7 Possession or use of certain traps or spurs

The ACPA prohibits the possession and use of certain traps and spurs without a reasonable excuse. These can inflict unnecessary pain and suffering on animals and do not align to modern animal management and welfare expectations. Prohibited spurs include spurs with sharpened or fixed rowels³, and cockfighting spurs⁴. It is a reasonable excuse to possess a prohibited trap or spur provided it has been rendered inoperable for use and the possession is for display or part of a collection. The ACPA provides for prohibited traps to be prescribed under the Animal Care and Protection Regulation 2012. No prohibited traps are currently prescribed.

QUESTIONS

The current provisions for traps and spurs are appropriate.

- ☐ Strongly agree
- ☐ Somewhat agree
- ☐ Neither agree nor disagree
- ☐ Somewhat disagree
- ☐ Strongly disagree

If you disagree, please tell us how you think the provisions should change.

³ Spurs are worn on the boots of a rider and are used to urge the animal to move. Some spurs have rowels attached, which are star-shaped wheels. Rowels must not be sharp, and must not be fixed i.e., they must freely rotate.

⁴ Cockfighting spurs are blades or points attached to a rooster's legs to cause injury to the other bird. Cockfighting is prohibited under the ACPA.



8 Dogs

Use of a dog to injure or kill another animal

There are three offences in the ACPA relating to the use of a dog to injure or kill another animal:

- knowingly causing an animal in captivity to be injured or killed by a dog
- releasing an animal to allow it to be, or in circumstances in which it is likely to be, injured or killed by a dog
- keeping or using an animal as a kill or lure to blood a dog, or to race or train a coursing dog.

QUESTIONS

The current offences relating to the use of dogs to kill or injure another animal are appropriate.

- ☐ Strongly agree
- ☐ Somewhat agree
- ☐ Neither agree nor disagree
- ☐ Somewhat disagree
- ☐ Strongly disagree

If you disagree, what would you change?

Closely confining a dog

A person in charge of a dog that is closely confined for a period of 24 hours must ensure the dog is exercised or allowed to exercise itself either for the next 2 hours or for the next hour plus another hour in the next 24 hours. In deciding whether a dog is 'closely confined', the dog's age, physical condition and size is to be considered.

QUESTIONS

The current offence relating to confining a dog is appropriate.

- ☐ Strongly agree
- ☐ Somewhat agree
- ☐ Neither agree nor disagree
- ☐ Somewhat disagree
- ☐ Strongly disagree

If you disagree, what should be changed?



Restraint of dogs in open vehicle trays and trailers and open windows

Dogs are frequently transported in open utility/truck trays and trailers and allowed to protrude from open windows. Unrestrained dogs in these situations are at an increased risk of serious injury or death. They may fall or jump from moving vehicles or may cause an accident if the driver of the vehicle or other road users become distracted.

QUESTION

Transporting an unrestrained dog in the back of an open utility, tray of a truck or from an open window should be made a specific offence under the ACPA.

- ☐ Strongly agree
- ☐ Somewhat agree
- ☐ Neither agree nor disagree
- ☐ Somewhat disagree
- ☐ Strongly disagree

9 Using animals for scientific purposes

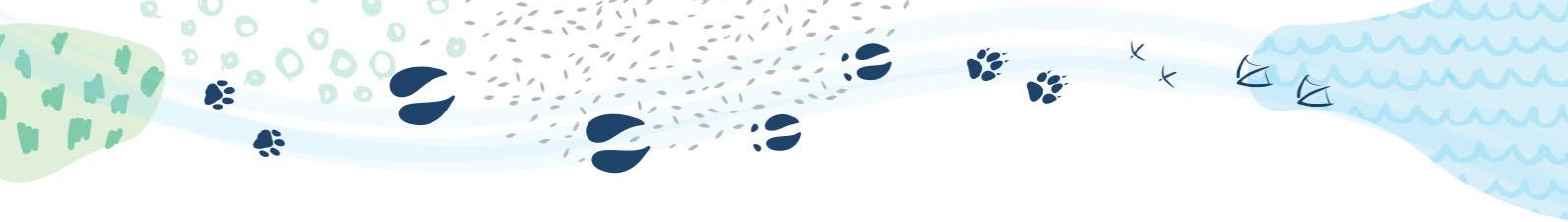
Animals are involved in science and research in schools, universities, medical laboratories and private organisations. Animal based research includes genetic engineering, medical and agricultural research and drug safety testing. One of the purposes of the ACPA is to ensure that any use of animals for scientific purposes is accountable, open and responsible (section 3).

Chapter 4 of the ACPA provides a framework for the responsible care and use of animals for scientific purposes in Queensland. This is achieved through a registration scheme for scientific users and adoption of the *Australian code for the care and use of animals for scientific purposes* 8th edition 2013 (Scientific Use Code) as a compulsory code.

The Scientific Use Code promotes the ethical, humane and responsible care and use of animals for scientific purposes. The Scientific Use Code provides a framework and governing principles which guide decisions and actions related to these. Under the Scientific Use Code, animal ethics committees are established with a primary responsibility to ensure that all activities relating to the care and use of animals for scientific purposes are conducted in compliance with the Scientific Use Code.

Section 48 of the ACPA defines when an animal is used for a scientific purpose. This section is used as a guide when it is being decided whether a use of an animal is considered as “scientific use” and that it should be protected Chapter 4 of the ACPA.

Section 48(1)(a) states that an animal is used for scientific purposes if it is used in “an activity performed to acquire, demonstrate or develop knowledge or a technique in a scientific discipline.”



Examples of what activities may be considered as a “use for scientific purposes” are provided as part of section 48(1)(a).

The definition in the ACPA largely aligns with the definition of scientific use in the current Scientific Use Code. However, definition of ‘scientific purposes’ in the Scientific Use Code also includes these additional elements:

- the creation and breeding of a new animal line where the impact on animal wellbeing is unknown and uncertain
- diagnosis, product testing and the production of biological products

Section 92 prohibits the use of animals for certain scientific purposes, except with the chief executive’s approval, as these procedures are designed to cause the death of, or significant stress to the animals involved and alternatives to using animals are available. Prohibited purposes include the Draize eye test or skin irritancy test (or similar test), the classical LD 50 test (or similar test) and the testing of sunscreen products. On 1 July 2020, the testing of cosmetic products was removed from section 92. The Scientific Use Code is being amended and will ban the use of animals for the testing of finished cosmetic products and chemical ingredients solely used in cosmetics.

QUESTIONS

The scope of when an animal is used for scientific purposes should be aligned with the Scientific Use Code. In particular, it should be expanded to:

- *accommodate advances in science such as the creation and breeding of new animals where the impact on the animal’s wellbeing is unknown or uncertain, and*
 - *add other practices that involve the use of animals for science, including diagnosis, product testing and production of biological products.*
- Strongly agree
 - Somewhat agree
 - Neither agree nor disagree
 - Somewhat disagree
 - Strongly disagree

Other provisions in the APCA relating to the scientific use of animals are appropriate.

- Strongly agree
- Somewhat agree
- Neither agree nor disagree
- Somewhat disagree
- Strongly disagree

If you disagree, what should be changed?



10 Inspectors

Powers of inspectors

Inspectors have significant responsibilities and need to be responsive, fair and respectful. When exercising powers and performing functions under the ACPA, inspectors must act in a way that aligns with the purposes set out in section 3 of the ACPA. They are also required to uphold the ethical standards that apply to all public servants.

What is an inspector?

Inspectors are appointed to investigate and enforce compliance with the ACPA.

The ACPA allows the Director-General of DAF to appoint an individual who is:

- a public service officer or employee (currently a number of Biosecurity Queensland employees are appointed as inspectors), or
- an employee of the Royal Society for the Prevention of Cruelty to Animals (Queensland), or
- another individual prescribed in a regulation. Currently this includes Queensland police officers.

To appoint an inspector, the Director-General of DAF must be satisfied that the person has the necessary expertise or experience, and that they have completed any approved training.

A person is appointed under the ACPA only if the chief executive is satisfied the person being appointed has the necessary expertise or experience. To be appointed as an inspector under the ACPA, a person must undertake training delivered by DAF.

One of the functions of an inspector is to enforce the ACPA. Inspectors have a broad range of powers, including powers that allow entry to places to investigate suspected breaches of the ACPA with or without consent, to provide urgent relief to an animal or to assist an abandoned animal. Inspectors also have the power to give an animal welfare direction and seize an animal for its welfare. There are also powers to enter a place and seize animals or other evidence using a warrant.

Since the commencement of the ACPA in 2001, the powers of inspectors have been fine-tuned to address specific concerns such as dog fighting, abandoned animals and animals locked in hot cars.

QUESTIONS

The powers of inspectors under the ACPA are sufficient to allow inspectors to effectively deal with animal welfare incidents and do not require strengthening.

- ☐ Strongly agree
- ☐ Somewhat agree
- ☐ Neither agree nor disagree
- ☐ Somewhat disagree
- ☐ Strongly disagree

If you disagree, what should be changed?

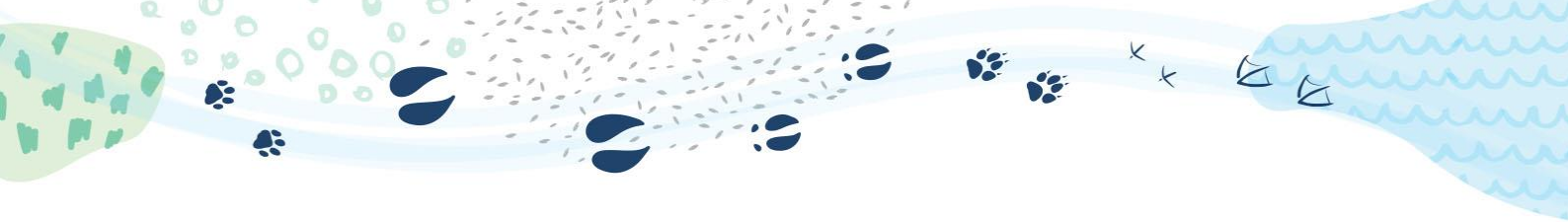
Externally appointed inspectors

In most states and territories, the responsibility for the enforcing animal welfare legislation is shared between government agencies and non-government organisations such as the RSPCA .

Table 1 provides a comparison of the administrative and enforcement arrangements for animal welfare legislation by jurisdiction.

Table 1 - Comparison of animal welfare administrative and enforcement arrangements in Australia by jurisdiction

Jurisdiction	Administrator	Enforcers
Queensland	Department of Agriculture and Fisheries (Biosecurity Queensland)	Department of Agriculture and Fisheries, RSPCA, Police
Australian Capital Territory	Territory and municipal services	RSPCA, Territory and Municipal Services
New South Wales	Department of Primary Industries	RSPCA, Animal Welfare League, Police
Northern Territory	Department of Industry, Tourism and Trade	Department of Industry, Tourism and Trade, Police
South Australia	Department of Environment, Water and Natural Resources	Primary Industries and Regions SA, Department of Environment, Water and Natural Resources, RSPCA, Police
Tasmania	Department of Primary Industries, Parks, Water and Environment	Department of Primary Industries, Parks, Water and Environment, RSPCA, Police
Victoria	Department of Jobs, Precincts and Regions	Department of Jobs, Precincts and Regions, Other state government officers, RSPCA, Police
Western Australia	Department of Primary Industries and Regional Development	Department of Primary Industries and Regional Development, RSPCA, Police, Local Governments, Department of Parks and Wildlife & DOC



In Queensland, the government provides funding to support the RSPCA's inspection activities. The RSPCA also acts as a lobbyist advocating for changes in government animal welfare policy and legislation.

As a charity, the RSPCA separately raises funds for its animal welfare activities, which include maintaining animal shelters and actions taken by its inspectors.

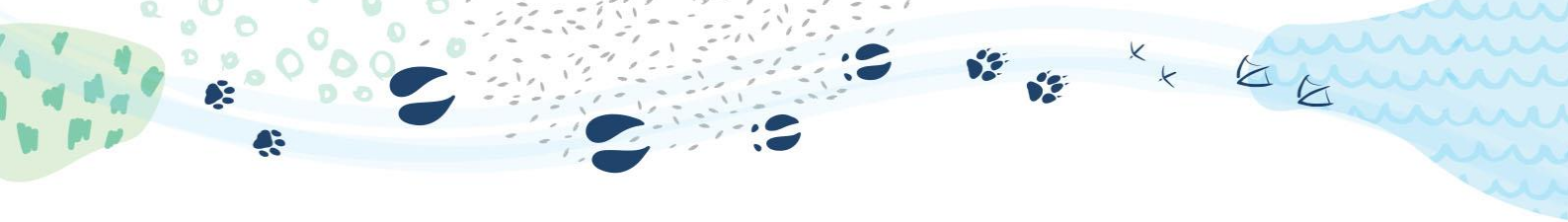
An activity agreement between DAF and the RSPCA defines the responsibilities and obligations of RSPCA in the area of enforcement of the ACPA. Among other things, the agreement acknowledges that the RSPCA has an advocacy role and may have policies that differ from DAF policies. In order to minimise the risks of any conflict of interest, the agreement requires RSPCA to clearly separate its enforcement role from its policy advocacy role.

Under the agreement, RSPCA inspectors are required to abide by the *Code of Conduct for the Queensland Public Service*, the *Public Sector Ethics Act 1994* and must conduct prosecutions under the model litigant principles. However, as RSPCA inspectors are not public servants, the RSPCA is effectively responsible for ensuring compliance with these standards.

A number of public reviews in Victoria, Western Australia and New South Wales have been conducted into the way in which non-government organisations enforce animal welfare legislation. Most recently, the Select Committee on Animal Cruelty Laws in New South Wales⁵ considered whether it was appropriate for the government to authorise charitable organisations to investigate and prosecute acts of animal cruelty.

The committee also considered the issue of public scrutiny and accountability of the work of the AWL and RSPCA in New South Wales. The committee noted that the AWL and RSPCA are not government entities and therefore not subject to the same scrutiny and accountability as public servants. For example, the AWL and RSPCA are exempt from the New South Wales *Administrative Decisions Review Act 1997* and the New South Wales *Government Information (Public Access) Act 2009*. Submissions to the Committee suggested that because these organisations are receiving public funds, they should be accountable to the public.

⁵ Select Committee on Animal Cruelty Laws in New South Wales. Media release: Independent office of animal protection recommended. Report tabled 4 December 2020. Available at www.parliament.nsw.gov.au



A review conducted by the Legislative Council of Western Australia in 2015⁶ examined funding provided by the government to enforce the relevant animal welfare legislation, the way in which the RSPCA used its powers and whether there are better structures for enforcing animal welfare legislation in Western Australia. The Legislative Council of Western Australia made a number of recommendations including that the former Department of Agriculture and Fisheries (now the Department of Primary Industries and Regional Development) be given the power to direct and conduct all prosecutions under the *Animal Welfare Act 2002* (WA).

QUESTIONS

It is appropriate for the Queensland Government to authorise non-government organisations, such as the RSPCA, to undertake investigations and conduct prosecutions under the ACPA.

- ☐ Strongly agree
- ☐ Somewhat agree
- ☐ Neither agree nor disagree
- ☐ Somewhat disagree
- ☐ Strongly disagree

If you disagree, please tell us why.

People from non-government organisations who are appointed as inspectors under the ACPA should be subject to the same accountability as public servants in terms of ethics and codes of conduct.

- ☐ Strongly agree
- ☐ Somewhat agree
- ☐ Neither agree nor disagree
- ☐ Somewhat disagree
- ☐ Strongly disagree

If you disagree, what standard of accountability should they be subject to?

11 Compliance and enforcement

The ACPA contains a range of compliance and enforcement options. The options allow for a graduated approach to compliance from non-regulatory and non-criminal (education and warning letters) through to criminal sanctions (Table 2).

⁶ Select Committee into the operations of the Royal Society for the Prevention of Cruelty to Animals Western Australia (Inc). Report tabled 19 May 2016. Available at www.parliament.wa.gov.au

Table 2 - Compliance options for animal welfare offences under the ACPA.

Education, information or warning	Animal welfare direction	Penalty infringement notice	Seizure of animals	Prosecution
Available, does not rely on legislation to be given.	Available under ACPA.	Not currently available under the ACPA, but being considered as part of the ACPA review.	Available under ACPA.	Outcomes include fines, imprisonment or court-ordered disposals or prohibitions, and the recording of a conviction. Available under ACPA.

Increasing seriousness of animal welfare issue or level of breach or cruelty

Most animal welfare incidents are managed by education and warnings. Failing to meet an animal's needs has many causes and is rarely intentional or malicious. Often the cause is a lack of education, financial hardship or health issues. Education and/or the use of animal welfare directions usually see improved outcomes for animal welfare.

Prosecution is appropriate for deliberate acts of cruelty and more serious incidents of neglect. In addition to fines and imprisonment, courts can order a person convicted of an animal welfare offence to dispose of animals permanently or for a stated period.

In between these two responses are penalty infringement notices (PINs), also referred to as on-the-spot fines. PINs are suitable for clearly defined, low-level offences. Currently there are no PIN offences under the ACPA.

Most Australian jurisdictions (New South Wales, Victoria, Tasmania and South Australia) currently use PINs as an enforcement option for dealing with animal welfare offences. Western Australia is in the process of establishing a PIN scheme.

There is already flexibility in how non-compliance with the ACPA can be addressed and criminal prosecution is available for the most serious animal welfare offenders. However, there may be additional options (such as PINs) that can allow for effective action without resorting to criminal prosecution.

QUESTIONS

The current suite of compliance options (not including PINs, as discussed below) for responding to breaches of animal welfare under the ACPA is comprehensive.

- ☐ Strongly agree
- ☐ Somewhat agree
- ☐ Neither agree nor disagree
- ☐ Somewhat disagree
- ☐ Strongly disagree

If you disagree, what should be changed?

PINs should be introduced as a compliance option under the ACPA for clearly defined, low range animal welfare offences.

- ☐ Strongly agree
- ☐ Somewhat agree
- ☐ Neither agree nor disagree
- ☐ Somewhat disagree
- ☐ Strongly disagree

If you disagree, please tell us why.

12 Orders relating to animal welfare offences

Under the ACPA (section 182) a court can order a person who has been convicted of an animal welfare offence to dispose of or forfeit their animals.

A disposal order given for the sale of an animal may direct the way in which the sale is to take place and how the proceeds of the sale are to be distributed.

Following the conviction of a person for an animal welfare offence, a court may make an order prohibiting that person from possessing or purchasing an animal (section 183). The prohibition may be made in relation to any animal or a stated type of animal and can be made for a stated period or permanently.

Where a person has been charged with an animal welfare offence but not yet convicted, the court may order an interim prohibition order pending completion of the proceedings for the alleged offences (section 181A). An interim prohibition order may prevent a person from possessing or purchasing or otherwise acquiring any animal or a stated animal.



Managing seized animals

Usually seized animals are kept by DAF or the RSPCA while court matters (including prosecutions and appeals against internal review decisions) are finalised.

The care of these animals during this time is important to ensure good animal welfare outcomes. Often the animals require veterinary treatment and specialised food to help them recover from injury or malnutrition.

If there is a reasonable belief that the welfare of an animal is no longer at risk, the animal may be returned to its owner. However, often animals cannot be returned to their owner and need to be kept for prolonged periods while court or administrative matters are finalised. DAF and the RSPCA are responsible for the costs associated with caring for animals they have seized. These costs can be significant, especially where large animals or many animals require care over prolonged periods.

Some of the costs associated with caring for a seized animal can be recovered from the owner or former owner of the animal through the court. However, in most cases the owner cannot afford to pay the costs. The animals may be sold or rehomed once all the court matters have been finalised. Often the proceeds of the sale of the animals do not cover the total cost for caring for them.

One option to reduce these costs is to introduce a provision that allows a court to order the owner of the animal to pay a bond or security for the care and maintenance of the animals. This approach is followed in Victoria⁷. The costs may be for the whole or any part of the period during which proceedings are being finalised. Often, however, people who have had their animals seized are not in a position to pay a bond, security or costs.

Another option is to introduce a provision that allows a court to make an order for the animal to be sold, rehomed or euthanased. This order could be before or at the end of proceedings. The United Kingdom has a similar provision in its Animal Welfare Act 2006. The rights of an animal owner can be preserved in this type of decision by allowing the owner to be heard before the court makes a decision.

⁷ Section 24X of the Victorian *Prevention of Cruelty to Animals Act 1986*

QUESTIONS

The introduction of a provision that would allow a court to make a decision to sell or rehome seized animals prior to court matters being finalised is reasonable.

- ☐ Strongly agree
- ☐ Somewhat agree
- ☐ Neither agree nor disagree
- ☐ Somewhat disagree
- ☐ Strongly disagree

The introduction of a provision that would allow a court to impose a bond or security on the owner of seized animals for the care of their animals prior to court matters being finalised is reasonable.

- ☐ Strongly agree
- ☐ Somewhat agree
- ☐ Neither agree nor disagree
- ☐ Somewhat disagree
- ☐ Strongly disagree

What other cost recovery arrangements should be considered?

13 Establishing appropriate penalties

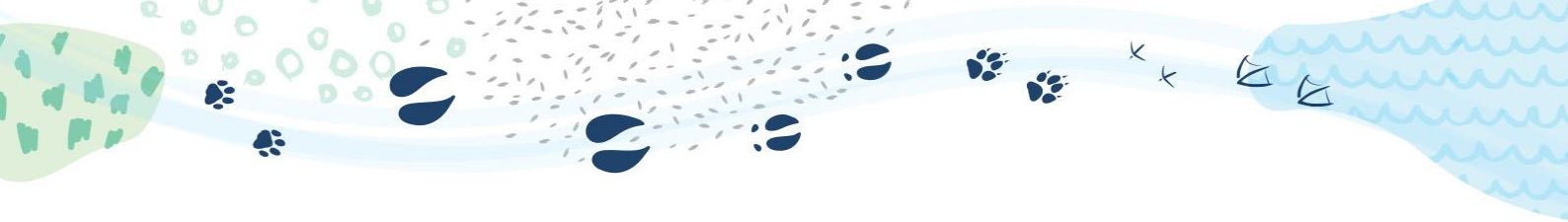
Setting maximum penalties in legislation involves consideration of a number of factors including the community's views about the seriousness of an offence, the need for general deterrence, the level of criminality involved, the impacts of society and the prevalence of the offending conduct.

Courts take into account a number of factors when considering an appropriate sentence and are not obliged to impose the maximum penalty. They have the discretion to impose any available Queensland sentencing order for offences against animals but must consider aggravating and mitigating factors. In deciding a sentence for an animal welfare offence, a magistrate considers the circumstances of the individual case, case law (law established through past cases) and sentences given in similar cases.

A complete list of offences under the ACPA is outlined in Table 3.

Table 3 - Current offences under the ACPA.

Section	Offence	Maximum penalty	
		Imprisonment	Penalty units*
15	Compliance with compulsory requirement of a code of practice	-	300
17	Breach of duty of care	1 year	300
18	Animal cruelty	3 years^	2000
19	Unreasonable abandonment or release	1 year	300
21	Participation in prohibited event	1 year	300
22	Presence at prohibited event	1 year	150
23	Cropping a dog's ear	-	100 ⁺
24	Docking a dog's tail other than in a way prescribed under a regulation	-	100
25	Debarking operations	1 year	300 ⁺
26	Removal of a cat's claw	1 year	300 ⁺
27	Docking tail of cattle or horse	1 year	300 ⁺
28	Restriction on supplying debarked dog	1 year	150
29	Other restrictions (on supplying animals that have undergone a regulated surgical procedure)	1 year	150
30	Causing a captive animal to be injured or killed by dog	1 year	300
31	Releasing animal for injury or killing by dog	1 year	300
32	Keeping or using kill or lure for blooding or coursing	1 year	300
33	Obligation to exercise closely confined dogs	-	20
34	Possession of prohibited trap or spur	-	100
35	Use of prohibited trap or spur	1 year	300
36	Baits or harmful substances	1 year	300
37	Allowing an animal to injure or kill another animal	1 year	300
51	Requirement for registration (scientific users)	1 year	300
63	False representations about registration	-	150
70	Effects of disclosure exemption	-	100
87	Reporting obligations of registered persons	-	150
91	Use for scientific purposes must comply with code	1 year	300
92	Use for certain scientific purposes unlawful	1 year	300
106	Return of identity card (authorised officers)	-	20
121	Return of identity card (inspectors)	-	20
133	Failure to comply with stop signal	-	100
135	Failure to comply with entry requirement	-	100
139	Failure to comply with help requirement	-	100



Section	Offence	Maximum penalty	
		Imprisonment	Penalty units*
141	Failure to comply with action requirement	-	100
147	Failure to comply with seizure direction	-	100
149	Offence to tamper with seized thing	-	100
161	Failure to comply with animal welfare direction	1 year	100
164	Failure to comply with personal details requirement	-	50
166	Failure to comply with information requirements	-	50
167	False or misleading statements	-	50
169	Failure to comply with document production requirement	-	50
170	False or misleading documents	-	50
187	Contravention of prohibition order unlawful	1 year	300
206	Obstruction of authorised officer or inspector	-	500
207	Impersonation of authorised officer or inspector	-	250
208	False or misleading entry in document kept under Act	-	50
209	Liability of executive officer – particular offences committed by corporation	Equal to the penalty for an individual for the particular offence	
210	Attempts to commit offence	Half the maximum penalty for the completed offence	
214B	Confidentiality of information	-	50

*1 penalty unit = \$133.45 (2020-21 financial year). The value of a penalty unit changes each financial year).

^ In addition, section 242 of the Criminal Code provides for a maximum penalty of 7 years for serious animal cruelty.

† These sections have separate offences for a person other than a veterinary surgeon performing the regulated procedure, and for a veterinary surgeon who performs the procedure other than in the interests of the animal's welfare.

Compared to other Australian jurisdictions, Queensland has the highest maximum animal welfare penalties (Table 4).

Table 4 – Comparison of maximum animal cruelty penalties across Australian states and territories.

Jurisdiction	Maximum jail term	Maximum fine	Legislation
Queensland	3 years	Individual \$266 900 Corporation \$1 334 500	<i>Animal Care and Protection Act 2001</i>
	7 years		<i>Criminal Code Act 1899</i>
New South Wales	2 years	Individual \$27 500 Corporation \$110 000	<i>Prevention of Cruelty to Animals Act 1979</i>
	5 years		<i>Crimes Act 1900</i>
Australian Capital Territory	2 years	Individual \$22 000 Corporation \$110 000	<i>Animal Welfare Act 1992</i>
Northern Territory	2 years	Individual \$31 400	<i>Animal Welfare Act 1999</i>
South Australia	4 years	Individual \$50 000	<i>Animal Welfare Act 1985</i>
Tasmania	1 year	Individual \$34 400 Corporation \$86 000	<i>Animal Welfare Act 1993</i>
Victoria	1 year	Individual \$41 305 Corporation \$99 132	<i>Prevention of Cruelty to Animals Act 1986</i>
Western Australia	5 years	Individual \$50 000	<i>Animal Welfare Act 2002</i>

QUESTIONS

The maximum penalties for animal welfare offences under the ACPA are appropriate.

- ☐ Strongly agree
- ☐ Somewhat agree
- ☐ Neither agree nor disagree
- ☐ Somewhat disagree
- ☐ Strongly disagree

If you disagree, how should they be changed?

