

1992

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

ANIMAL WELFARE BILL 1992

EXPLANATORY MEMORANDUM

**Circulated by Authority of the Minister For the Environment,
Land and Planning**

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Outline

The Animal Welfare Bill 1992 ('the Bill') is a new Bill which reflects modern attitudes to, and introduces efficient controls on, the keeping and use of animals.

The *Prevention of Cruelty to Animals Act 1959*, which the Bill repeals, is considered to no longer provide the degree of protection and control which the community requires.

The Bill is designed to promote the welfare of animals in a three-step process involving -

- . proscribing a range of behaviour which is considered to be cruel or otherwise is deleterious to the health and welfare of animals;
- . introducing a control system of licences, authorisations or permits for various specified activities concerning animals;
- . promoting an enhanced awareness and understanding of the proper treatment of animals by the adoption of approved codes of practice concerning animal related activities.

Activities for which a licence, authorisation or permit is required include -

- . research, teaching and breeding (Part IV). An institution or organisation which is engaged in these activities is to be licensed and a person employed by such an institution or organisation for this kind of work is to be authorised to do that work;
- . conducting a circus; and
- . using restricted animal traps.

A licensed research or teaching institution or organisation is required to establish an Ethics Committee to oversight its activities. The manner of its establishment as well as its constitution and functions will be detailed in regulations to be made under the Bill. The regulations will provide for the appointment of suitably qualified persons from outside as well as within the institution or organisation thereby ensuring a degree of independence of the Committee.

The Bill confers powers upon officers to act to provide treatment to a severely distressed or maltreated animal and, in extreme cases, to destroy the animal.

The Bill also makes provision for compensation for an animal's injury or death. Compensation is only payable where an officer's malice or negligence significantly contributed to the animal's injury or destruction.

Financial Considerations

It is not expected that the Bill will have any appreciable affect on revenue. Fees to be established under the Bill will be adequate to ensure the recovery of costs. Amounts involved for compensation are expected to be insignificant having regard to the expertise and professionalism of officers who will be appointed under the Bill.

Further Details of the Bill are included in the Attachment

ANIMAL WELFARE BILL**PART I - PRELIMINARY***Clauses 1-6*

This Part deals with various formal matters and also includes matters which are necessary for a proper understanding of the Bill. In particular -

- Clause 3** repeals the *Prevention of Cruelty to Animals Act 1959* and its amending Acts.
- Clause 5** has the effect of binding the Crown so that the Territory Government and its officers and employees must comply with the Bill.
- Clause 6** sets up the Animal Welfare Authority ("the Authority") which will undertake the administration of the legislation such as appointing inspectors and authorised officers and issuing licences and permits. A public servant of or above the Administrative Service Officer 6 level is to be appointed as the Authority.

PART II - ANIMAL WELFARE OFFENCES*Clauses 7-20*

Part II is a fundamental component of the legislation in specifying behaviour which could result in a prosecution. Generally, a person can rely on a reasonable excuse as a defence to a prosecution or, alternatively, must have knowingly or negligently committed the proscribed act. The offences are:

- Clause 7** - to be cruel to an animal. The penalty is \$10,000, or 1 year imprisonment, or both.
- Clause 8** - to cause an animal unnecessary pain. Subclause 8(2) further makes it an offence if a person in charge of an animal does not provide it with adequate food, water, shelter or exercise; fails to alleviate pain if the animal is suffering; unlawfully abandons the animal; neglects the animal; or kills the animal in a painful manner. The penalty is \$10,000, or 1 year imprisonment, or both.
- Clause 9** - to fail to adequately exercise a confined animal. Under this clause a person must not confine (see clause 4) an animal in a way that injures the animal, causes pain or unduly distresses the animal. The penalty is \$10,000, or 1 year imprisonment, or both.

Clause 10 - for a person who injures an animal to fail to take reasonable steps to alleviate any pain suffered by the animal. The penalty is \$10,000, or 1 year imprisonment, or both. A person who injures an animal must take reasonable steps to locate and inform the person in charge of the animal within 24 hours or, failing that, to inform the Authority or an inspector within 72 hours of the injury. Failure to do so attracts a penalty of \$1000.

Clause 11 - to release an animal from custody or control and to fail to take adequate precautions to prevent its release. This provision does not, however, apply to domestic cats, or to the lawful release of other animals. The penalty is \$10,000, or 1 year imprisonment, or both.

Clause 12 - to poison a domestic animal or wildlife unless authorised by a law of the Territory or to lay a bait for these animals. The penalty is \$10,000, or 1 year imprisonment, or both.

Clause 13 - to unlawfully give an electric shock to an animal. The provision, however, allows the use of certain electrical devices on an animal as listed in the regulations as an exception. The penalty is \$10,000, or 1 year imprisonment, or both.

Clause 14 - to use or possess spurs with sharpened or fixed rowels or to possess spur caps used in cockfighting. The penalty is \$500. However, it is not an offence if the devices are kept for display purposes or as a curio or form part of a collection.

Clause 15 - to convey or contain an animal in a way that causes it unnecessary injury, pain or suffering. The penalty is \$10,000, or 1 year imprisonment, or both.

Clause 16 - to knowingly or negligently work, ride, drive or use an animal which is unfit for that purpose. The penalty is \$10,000, or 1 year imprisonment, or both.

Clause 17 - to promote, participate in or be present at any competition or activity where an animal is released so it can be killed with a weapon; hunted, injured or killed by another animal; or used to train or exercise another animal. It is also unlawful to:

- . keep or assist in the management of a place which is used for animal fighting or baiting or maltreating an animal;
- . allow an animal in captivity to be harmed or killed by another animal;
or
- . keep or control an animal for use as a lure for blooding greyhounds or for the training and racing of coursing dogs.

The penalty is \$10,000, or 1 year imprisonment, or both.

This clause will make activities such as dog fighting, cock fighting and the use of live bait to train greyhounds, illegal. Subclause (3) provides that the above provisions do not apply to the release of wildlife into the wild under rehabilitation programs authorised under a Territory law; to the keeping of animals which usually eat live food; or to the mustering and working of stock.

Clause 18 - to promote, conduct or take part in a rodeo, or to promote or conduct a gamepark. A gamepark is a place where animals are confined and may be hunted and killed for sport or recreation on paying a fee. The penalty is \$10,000 or 1 year imprisonment, or both.

Clause 19 - to conduct a medical or surgical procedure on an animal unless it is conducted by a veterinary surgeon, or is in relation to veterinary treatment, or is in the course of usual activities associated with animal husbandry practice in connection with farming and grazing, and wildlife and zoo management, or where carried out in relation to a licence or authorisation as directed by the Ethics Committee. Other permitted procedures are the docking of a puppy's tail provided it is less than 10 days old and the removal of a dog's dew claws. The penalty is \$10,000 or 1 year imprisonment, or both.

Clause 20 - provides as a further defence to a prosecution under the Part, that the proscribed act took place in accordance with an approved code of practice. This defence cannot, however, be used in a prosecution under Clauses 14, 17 or 18.

PART III - CODES OF PRACTICE

Clauses 21-24

The Bill contemplates that codes of practice may be developed for persons who are engaged in a wide range of activities involving animals.

Part III specifies that codes of practice:

- may be approved by the Minister - **Clause 22;**
- are subject to disallowance by the ACT Legislative Assembly - **Clause 23;**
and
- must be publicised to the community by the publication of specified information concerning the Minister's approval and the approved code of practice and where the approved code may be inspected and purchased-
Clause 24.

PART IV - RESEARCH, TEACHING AND BREEDING

Clauses 25 - 50

Part IV is intended to ensure that animals used for research and teaching are protected, by licensing persons or organisations to undertake those activities and that Ethics Committees will be established to monitor those activities. The establishment, constitution and functions of Ethics Committees will be included in regulations to be made under the Act. (Clause 50)

Division 1 - Licences

Clauses 25-36

Under the licensing requirements it is envisaged that only persons or organisations with a proven record of propriety in relation to the care and treatment of animals, or which can demonstrate a capacity for such propriety, will be licensed to use or breed animals for research or teaching purposes.

It is an offence under clause 25 to use or breed an animal for research or teaching without a licence. The penalty is \$10,000 or 1 year imprisonment, or both.

An application for a licence is made to the Authority which must have regard to a number of factors in deciding whether to grant the licence (Clause 28). These include:

- . the applicant's experience and competency in handling and caring for animals;
- . the adequacy of the applicant's premises and equipment;
- . the availability of veterinary treatment; and
- . whether the applicant, within the previous 3 years, has been convicted of a defined offence (see Clause 4).

Clause 30 makes it a condition of a licence that the licensee establish an Ethics Committee or makes suitable arrangements with an existing Ethics Committee. In addition, the Authority may impose relevant conditions on the licence. An existing condition may be varied or revoked by the Authority or a new condition imposed (Clause 33).

A licence is valid for 3 years (unless sooner suspended, cancelled or surrendered) (Clause 31) and may be renewed for a further 3 years (Clause 32).

On reasonable grounds and after providing written notice to the licensee, including inviting the licensee to show cause why the licence should not be suspended or cancelled, the Authority can proceed to suspend or cancel, as the case may be (Clause 34).

The grounds for suspension or cancellation include:

- . the contravention of a licence condition;
- . the conviction of the licensee of a defined offence; and
- . the unfitness or impropriety of the licensee having regard to the factors in Clause 28 on which the licence was granted.

Division 2 - Authorisations

Clauses 37-49

A further protection against unacceptable animal use in research and teaching is that a person who is employed or contracted by an organisation to which a licence has been granted under Division 1 must be separately authorised to conduct research and teaching programs.

The authorisation of a person for research or teaching is given by an Ethics Committee having regard to various factors including:

- . the person's experience and competency in handling and caring for animals; and
- . whether the person, within the previous 3 years, has been convicted of a defined offence (Clause 40).

Also the Ethics Committee may include conditions on an authorisation which are similar to those which the Authority may include on the licence issued to the organisation, as well as the use to which the animals will be put (Clause 41).

An authorised person is to be issued with an identity certificate bearing a recent photograph of the authorised person (Clause 42).

An authorisation is valid for up to 2 years (unless sooner suspended, cancelled, surrendered or rendered ineffective under Clause 48) (Clause 43) and may be renewed for up to a further 2 years (Clause 44).

A condition on an authorisation may be varied or revoked by the Ethics Committee or a new condition imposed (Clause 45).

Similar powers exist to those in Clause 34 enabling an Ethics Committee, on reasonable grounds, to suspend or cancel an authorisation (Clause 46).

PART V - CIRCUSES

Clauses 51-58

Part V regulates the conduct of circuses using animals within the Territory. This is done by creating an offence, punishable by a penalty of \$10,000 or imprisonment for one year, or both, for conducting a circus without a permit (**Clause 51**).

The Authority may grant a circus permit having regard to any relevant factor but including:

- . the experience and competency of the applicant and his or her employees and agents in the care and handling of animals;
- . the adequacy of conditions for the animals' housing, training, transportation and use;
- . the facilities for the animals; and
- . whether the applicant, within the previous 3 years, has been convicted of a defined offence (**Clause 53**).

A permit may be issued subject to conditions relating to:

- . the welfare of the circus animals;
- . the facilities and equipment for the animals; and
- . compliance with an approved code of practice (**Clause 55**).

A circus permit is valid for the period specified unless sooner suspended or cancelled

A circus permit may be cancelled by the Authority on grounds similar to those on which a research or teaching licence or authorisation may be cancelled or suspended. Before suspending or cancelling the permit the Authority must provide written notice to the permit holder setting out the grounds and inviting the permit holder to show cause within 12 hours, why the permit should not be suspended or cancelled (**Clause 57**). The 12 hour time limit is necessary given that circuses are usually in the Territory for a short time only and any decision to ban the circus would have to be made quickly to be effective.

PART VI - ANIMAL TRAPPING

Clause 59-72

The main objectives of this part are to prevent the use of certain types of traps unless a permit is obtained, and to prohibit the use of steel jawed traps, which are defined in Clause 4, because of the extreme pain and suffering they inflict.

Division 1 - Offences

Clauses 59-62

This Division specifies the offences which apply in respect of types of traps and unauthorised trapping. These are:

Clause 59 - to set a steel-jawed or prohibited trap (which may be prescribed in the regulations) to catch an animal. The penalty is \$10,000 or 1 year imprisonment, or both.

-to possess a steel-jawed or prohibited trap otherwise than for display, as a curio or as part of a collection. The penalty is \$500.

Clause 60 - to set a restricted trap (which may be prescribed in the regulations) to catch an animal without a permit. The penalty is \$5000 or 6 months imprisonment, or both.

Clause 61 - to set a trap without the permission of the occupier of the premises, or unless otherwise allowed to do so by another Territory law. The penalty is \$5000 or imprisonment for 6 months, or both. An occupier, including his or her spouse, defacto spouse, relative or agent may set a trap on the occupier's premises.

Each of the foregoing offences allows for a defence of reasonable excuse.

Division 2 - Trapping Permits

Clauses 63-72

This Division recognises 2 kinds of trapping permit - a commercial trapping permit for persons or organisations undertaking this activity for business or work purposes and a private trapping permit for domestic and like purposes such as the trapping of pests or other animals by a farmer on his or her property. A permit system is necessary to ensure that restricted traps are used by competent and experienced persons.

The Authority may grant a trapping permit having regard to:

- the experience and competency of the applicant and the applicant's employees and agents;
- the adequacy of the trapping and other equipment; and
- the species of animals to be trapped;
- whether the applicant, within the previous 3 years, has been convicted of a defined offence (Clause 64).

The Authority can impose conditions on a permit including:

- the species of animals to be trapped;
- the areas where the trapping can occur;
- the traps and equipment which may be used;
- the welfare of any animals which may be affected; and
- compliance with an approved code of practice (Clause 66).

A commercial trapping permit is valid for 3 years and a private trapping permit is valid for the period specified (unless sooner surrendered, suspended or cancelled) (Clause 67) and may be renewed under Clause 68.

The Authority can, in the interests of animal welfare, vary or revoke a condition or impose a new condition on a permit (Clause 69).

A trapping permit may be suspended or cancelled by the Authority on grounds similar to those on which a research or teaching licence or authorisation may be suspended or cancelled (Clause 70).

PART VII - ENFORCEMENT

Clauses 73-105

This Part deals with the powers of inspectors, authorised officers and police officers to enforce the Bill including their power to enter premises and to alleviate the pain and suffering of distressed or maltreated animals. The powers reflect current criminal law policy and are mindful of the rights of individuals. This Part also deals with compensation for animal injury and death and court orders.

Division 1 - Preliminary

Clauses 73 and 74

Clause 73 explains various matters which are necessary for a proper understanding of Part VII. Under Clause 74 the Territory will indemnify any person against liability for damage or personal injury which arose in the course of the performance, in good faith, of duties under the Bill.

Division 2 - Inspectors and Authorised Officers

Clauses 75-78

Under this Division the Authority is empowered to appoint inspectors and to direct them in their duties. The Authority and a police officer have the same powers and can perform the same duties as an inspector. The Authority can also appoint veterinary surgeons as authorised officers and can direct them in their duties.

The Authority must issue each inspector and authorised officer with an identity card bearing that person's name, appointment and a recent photograph. An identity card must be returned - a penalty of \$100 applies - on the person ceasing to hold the appointment.

Division 3 - Powers of Inspectors

Clauses 79-81

An inspector may, on reasonable grounds, enter premises and inspect them or take action to alleviate the suffering of an animal on the premises. This power does not extend to the premises of research or teaching institutions which may be entered and inspected only in accordance with Division 4.

For a routine inspection, an inspector must give a person 7 days notice of an inspection. Notice is not required to be given if the inspector believes on reasonable grounds that there is, on the premises, an animal or thing connected with an offence.

An inspector can only enter premises:

- . with the consent of the occupier;
- . under a warrant; or
- . where the circumstances are of such seriousness and urgency as to require entry immediately and with such assistance and force as is reasonable (Clause 80).

An inspector cannot enter an abattoir unless he or she is a veterinary surgeon, or unless accompanied by a veterinary surgeon.

The powers which an inspector may exercise for the purposes of the Bill after entering premises include:

- . examine any animal;
- . take photographs of any animal;
- . seize any animal which is believed to be connected with an offence; and
- . ask questions and obtain answers where this is considered reasonable to enable the inspector to exercise his or her powers (Clause 81).

Division 4 - Powers of Authorised Officers

Clauses 82 and 83

The powers which an authorised officer may exercise mirror those which may be exercised by an inspector under **Division 3** but apply in respect of premises which are reasonably believed by the officer to be used for research or teaching using animals or for acquiring, breeding or keeping animals for those purposes.

Division 5 - Allevation of Suffering - Powers of inspectors, authorised officers and veterinary surgeons.

Clauses 84 and 85

This Division enables action to be taken to protect and attend to the needs of an animal which is in pain or is suffering and, in appropriate circumstances, to destroy an animal.

An inspector or authorised officer can seize and remove an animal which has not received proper food or drink in the previous 24 hours or is so injured, overworked, diseased or in such poor condition that it requires veterinary treatment.

Where the animal's condition is so adverse that it is cruel to keep it alive and it is not about to be destroyed or its destruction will be done in a way which will be unnecessarily painful, the inspector can destroy the animal. However the destruction of the animal can only be with consent of the person who has charge of it unless the person cannot be contacted or the inspector is a veterinary surgeon.

Instead of seizing and removing an animal requiring treatment an inspector or authorised officer may direct the person in charge of it to provide it with appropriate food and care, or to obtain veterinary assistance for the animal. It is an offence, without reasonable excuse, not to do as directed by the inspector or

authorised officer. A penalty of \$5000, or imprisonment for 6 months, or both, applies.

A veterinary surgeon also has the powers to seize and remove and if necessary, destroy an animal which is suffering badly.

The reasonable costs incurred by an inspector, authorised officer or a veterinary surgeon are recoverable from the owner.

Division 6 - Consent to Entry and Search Warrants

Clauses 86-89

Division 6 clarifies what is required in obtaining the consent of an occupier for an inspector or authorised officer to enter premises and in obtaining a search warrant.

The requirements are consistent with those in other ACT legislation containing powers of entry and search.

An inspector making an inspection on notice, who enters with the occupier's consent, premises used for the sale or transport of animals, or for other commercial purposes relating to animals and an authorised officer inspecting on notice, licenced premises, must provide a written report to the occupier within 30 days about the inspection and any action taken as a result of the inspection and about matters connected with the welfare of animals kept on the premises.

Division 7 - Offences in relation to investigations.

Clauses 90 and 91

Offences, punishable by a penalty of \$5000 or 6 months imprisonment, or both, are created for hindering or obstructing, without reasonable excuse, a person exercising his or her powers or performing his or her duties under the Bill, or for knowingly providing false information to such a person.

Division 8 - Compensation for the Injury and Destruction of Animals.

Clauses 92-95.

Division 8 enables the owner of an injured or destroyed animal to be compensated in appropriate circumstances. "Injury" is defined in Clause 4 to include sickness.

Compensation is only payable where an officer's negligence or malice contributed to a significant degree to the animal's illness, injury, death or destruction. (Clause 93).

The amount of compensation is assessed by the Authority based upon the value of the animal immediately prior to the officer's negligence or malice, any contributory malice or negligence by the owner or any other person and any reasonable costs incurred (Clause 94).

Civil actions are excluded only in so far as seeking compensation for the market value of the animal and the owner's costs are concerned. This is to prevent a person pursuing a court claim and a statutory claim at the same time, succeeding under both and recovering twice. Civil claims for damages under other heads eg loss of income are not excluded (Clause 95).

Division 9 - Evidence

Clauses 96-98

This Division deals with a number of matters relating to proceedings for an offence under the Bill including the use of evidentiary certificates and the involvement of directors, servants or agents of corporations and persons in relation to particular conduct dealt with in the Bill.

Division 10 - Court Orders and Corporate Penalties.

Clauses 99-105

Division 10 clarifies the powers of a court in relation to certain matters arising under the Bill and also provides that the penalty for an offence by a corporation is not more than five times the monetary amount specified for the offence in relation to a person.

A court may make an order about the disposal of an animal which was the subject of an offence by a person and also about any other animal in the person's charge. In addition it can prohibit the person's access to other animals for such period as the order specifies (Clause 100).

In relation to offences regarding spurs, cock-fighting spur caps or animal traps if a court believes a person could re-offend it can order the disposal of the item used in the offence and any other item of a similar kind. It can also order the person not to acquire such an item for such period as the order specifies (Clause 102).

PART VIII - ADMINISTRATIVE REVIEW

Clauses 106 and 107

Part VIII specifies all the matters in relation to which decisions can be made or directions can be given under the Bill which are appellable to the Administrative Appeals Tribunal and includes standard requirements in relation to the giving of notice of such decisions or directions.

PART IX - ANIMAL WELFARE ADVISORY COMMITTEE

Clause 108

The Minister is empowered to establish an Animal Welfare Advisory Committee to:

- . advise the Minister about animal welfare legislation and animal welfare matters generally;
- . assist in developing approved codes of practice;
- . advise the community about programs for improved animal welfare awareness; and
- . report annually to the Minister on its activities.

PART X - MISCELLANEOUS

Clauses 109-111

This Part contains standard provisions relating to the determination of fees under the Bill and matters which may be dealt with by regulation.

Exemptions from the Bill may be made by regulation relating to a person or a class of persons or relating to an animal or a species of animal (Clause 110).

PART XI - CONSEQUENTIAL PROVISIONS

Clauses 112-113

This Part ensures that a permit holder under the repealed *Prevention of Cruelty to Animals Act 1959* is not adversely affected by the Bill. A reference to the repealed Act in the *Dog Control Act 1975* has been changed.