



Animal Welfare Act

Review 2020

Report of the Independent Review of the
Animal Welfare Act 2002 of Western Australia



Supported by:

The Department of Primary Industries and Regional Development

Animal Welfare Act

Review 2020

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Animal Welfare Act – Report of the Independent Panel

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Chair's Foreword

The welfare of our nation's animals is of considerable importance to the members of the Australian community. The Panel selected to conduct this inquiry was a group of five strangers coming from different parts of the State with vastly different professional backgrounds and holding very different views. What the Panel members shared in common was a dedication and passion to seek to improve the welfare of animals in Western Australia.

The Panel consulted extensively throughout the State, meeting with communities, industry bodies and regulators who held diverse views on what changes to the *Animal Welfare Act 2002*, if any, were needed. The Panel travelled to Broome, Karratha, Katanning and then Perth and private and public consultations took place. The anticipated antagonism arising from vastly disparate views gave way instead to civilised and intelligent discussions, warm hospitality and a significant interest in improving the welfare of animals in our State.

The Panel met many challenges along the way, not least of which was the effects on the Panel's work when the COVID-19 pandemic reached our shores. The adaptability of all participants to this crisis including a willingness to engage through video conferencing facilities enabled the important work of the Panel to continue, albeit with some delays.

Our thanks especially to the RSPCA WA, DBCA, local government authorities, DPIRD and the WA Police for their submissions and input to the work of the Panel. We also extend our gratitude to industry bodies who made cogent and compelling submissions and engaged respectfully with the Panel. We single out Mr Kim Sparks, a Senior Ranger in the City of Karratha and thank him for the extensive input into the Panel's inquiry and for demonstrating the capacity of one individual to bring about positive changes in their community. The Panel is grateful for the interest and proactive participation of industry stakeholders and the general public, demonstrating how important animal welfare is to Western Australians even in the midst of a pandemic.

As Chair of the Panel I wish to personally acknowledge the extraordinary people who formed part of the team and who competently, studiously and enthusiastically worked to bring this lengthy report together. Dominique Blache, Diane Evans, David Marshall and Catherine Marriott are to be commended on their significant work and dedication to this task amidst their own busy lives and in the most trying of circumstances. An academic, a scientist, a vet, a strong woman from the farming community and a barrister who were strangers to each other was always going to lead to an interesting journey. We fought and debated and listened and ultimately became friends. This report is all the better for our differences.

My thanks to the incredible administrative team who provided so much support to the Panel in all respects noting Dr Sarah Kahn in particular. We extend our sincere thanks to Jane Godfrey, Shaye Bickers and Christine Tan. My ultimate acknowledgment is however, reserved for Dr Maïke Turnbull who performed her duties over and beyond what we could ever have hoped for. Her intelligence, knowledge, dedication and skills in guiding us through this process and helping us write this difficult report was critical to the Panel being able to deliver what we hope is, a considered and timely review of the *Animal Welfare Act 2002*.

The demonstration of the capacity of people with different views and different issues to work together toward a common goal of improving the welfare of animals in Western Australia has been an inspiring and encouraging experience for the Panel. We sincerely hope the time we have spent will assist our politicians in determining the best way forward in delivering to our community the standard of excellence in the Animal Welfare space that they expect and deserve. Our thanks to the Honourable Minister Alannah MacTiernan MLC for entrusting us with this important task. We hope we have done it justice.

Linda Black

CHAIR

Executive Summary

Background

In May 2019, the Government of Western Australia (WA) convened an independent Panel (the Panel) to conduct a Review of the operational effectiveness of the *Animal Welfare Act 2002* (AW Act).

The terms of reference of the Review were to:

- 1) Determine whether the objects of the Act reflect and promote contemporary best practice in animal welfare such as recognition of the ability of animals to express innate behaviours, and if necessary, recommend appropriate legislative amendments.
- 2) Identify any impediments to the effective enforcement of the Act and any related regulations, with specific attention to the powers of inspectors and the prosecution of offenders.
- 3) Consider amendments to policies, standards and legislation to achieve contemporary best practice in animal welfare regulation, including a compliance regime based on standards prescribed by regulation, and if necessary, recommend appropriate legislative amendments.
- 4) Make recommendations on how compliance with the Act can be promoted, including consideration of the prosecutorial framework, and if necessary, recommend appropriate legislative amendments.
- 5) Advise the Minister on any other matters relevant to the operation and effectiveness of the Act.

The Panel comprised five members with extensive legal, veterinary, animal welfare and industry experience. The original deadline for the Review (30 June 2020) was extended due to COVID-related delays to the consultation and Review processes.

Methodology of the Review

The Panel examined WA's animal welfare legislation in comparison with relevant laws of other Australian jurisdictions and overseas countries with comparable legal systems (Canada, New Zealand (NZ) and the United Kingdom (UK)). In its comparative analysis, the Panel focused on some particular issues, namely: inspectors' powers; provisions relevant to court

orders, directions, forfeiture, and seizure of animals and things; and other legal obligations, including those relating to duty of care.

In addition to reviewing certain aspects of the legislation, the Panel considered other documents, such as reports of enquiries relevant to animal welfare regulation and published animal welfare strategies from other jurisdictions.

Information considered by the Panel included the Easton Review (2015); the report of a Parliamentary Select Committee into the Operations of the Royal Society for the Prevention of Cruelty to Animals Western Australia (Inc) (2016); and the report on the Animal Welfare Amendment Bill 2017 published by the Standing Committee on Legislation of the Legislative Council of WA (2018). The Panel also read the official record of the debate on the Farm Trespass and Animal Welfare Bill 2020 (Farm Trespass Bill).

To ensure that a wide variety of perspectives were included in the Review, the Panel undertook a comprehensive public consultation process. This included a call for written submissions, four public forums in regional and metropolitan locations, and face-to-face meetings with key Western Australian stakeholders.

On 18 August 2020, summary reports on the written consultation and the public forums were published on the Department of Primary Industries and Regional Development (DPIRD) website.

Findings of the Panel

In the course of the Review, the Panel considered many gaps and uncertainties that affect (limit) the operational effectiveness of the AW Act. The Panel made 52 recommendations to address identified problems. Some recommendations require amendment of the AW Act or Regulations and some could be effected through policy decisions.

In the time available and in the context of the many topics to be addressed, the Panel could not give all issues the attention they deserved. The Panel identified several gaps and uncertainties that should be the subject of further and more detailed consideration by the government, including but not limited to: arrangements to protect the welfare of fish, the operation of the statutory defence provisions, organised animal fighting, animal hoarding, and the animal welfare investigative framework.

Some of the more significant matters considered by the Panel are set out below.

The animal welfare context – changes since 2002

Since the enactment of the AW Act in 2002, scientific understanding of animal welfare has grown, along with increasing public awareness and expectations regarding humane care of animals. Under the law, animals are considered to be property. Historically, mistreating an animal was an offence against the animal's owner. Animals are living beings, however, and science tells us that they experience some of the same feelings that humans do. While animals continue to be classified as property under the law, modern animal welfare legislation recognises that animals are not inanimate objects and their welfare should be protected.

The Panel saw the need for the AW Act to develop from the law enacted in 2002, which had the prohibition of cruelty as its primary objective, to a law that positively and proactively promotes animal welfare, while continuing to appropriately define and prohibit cruelty.

With this in mind, the Panel recommended several amendments to introduce modern and science-based concepts into the AW Act. Examples include a new legal obligation for a positive 'duty of care'; amendments to the definition of 'harm'; and a modified definition of 'animals' for the purposes of Part 2 (Scientific Licensing) of the AW Act. Noting that several other jurisdictions have Community Animal Ethics Committees providing ethical oversight of the scientific use of animals, the Panel recommended the introduction of a similar entity in WA funded by government.

The powers of Inspectors

In WA, proposals to increase Inspectors¹ powers have been the subject of vigorous debate, most recently in Parliamentary hearings on the Farm Trespass Bill. The Panel noted that some of the Regulators² had identified a need to increase the powers of entry of Inspectors but industry stakeholders generally opposed such proposals or considered an increase in powers could only be acceptable if their concerns were addressed. In addition to concerns about

the right to privacy, industry stakeholders raised doubts about Inspectors' experience with livestock, and the risks this could present to biosecurity and occupational safety.

The Panel reviewed the powers of animal welfare inspectors in other jurisdictions and concluded that Western Australian Inspectors have somewhat limited powers of entry when compared with some other jurisdictions, and when compared with compliance inspectors enforcing other Western Australian laws. The Panel was not able to identify any good reason why this should be so.

The Panel gave careful consideration to the question of what powers Inspectors need, both now and into the future. Noting that regulations for the transport of sheep and cattle have already been introduced under the AW Act, the Panel agreed that Inspectors need powers to access livestock premises to monitor compliance with the legal requirements arising from the AW Act. Requiring an Inspector to always obtain consent or a warrant before carrying out an inspection could, in the Panel's view, impair the Inspector's ability to ensure compliance with the AW Act and Regulations.

The Panel made several recommendations relating to the powers of Inspectors, including for the purpose of monitoring compliance with directions and court orders. Conditions for entry to a residence and other places or vehicles were proposed where an Inspector forms a reasonable belief that an animal has suffered a serious injury or is at imminent risk of death or injury, and there is insufficient time to obtain an urgent warrant. The Panel noted that an Inspector should only be able to use this power if the Inspector has taken reasonable steps to try to contact the owner/occupier without success.

Regarding powers of entry to monitor compliance with the AW Act and Regulations, the Panel agreed that Inspectors should provide reasonable notice of entry unless there was reason to suspect that the provision of notice would jeopardise the purpose of the entry.

The Panel also made recommendations relating to Inspectors' powers to give directions and seize animals, and regarding the forfeiture of seized animals.

¹ In this report, the term 'Inspector' means a general inspector as defined in s 5 of the AW Act. This definition includes police officers and inspectors appointed under s 33 of the AW Act. It does not include scientific inspectors.

² In this report, the term 'Regulator' is used to refer to the organisations that employ Inspectors who enforce the AW Act, which include DPIRD, RSPCA, DBCA, a number of local government authorities, and WA Police.

To address the concerns of stakeholders about training and competence of Inspectors, the Panel recommended a more rigorous approach to initial and ongoing training and the establishment of competency standards. The Panel believed that matters relating to Inspectors' competence should be under the purview of an independent body (see reference to Animal Welfare Advisory Committee below).

The Royal Society for the Prevention of Cruelty to Animals WA

Inspectors employed by the Royal Society for the Prevention of Cruelty to Animals WA (RSPCA) are responsible for the enforcement of the AW Act in relation to companion animals. A small part of the costs associated with this work is paid by government (DPIRD) through an annual grant to the RSPCA.

Although RSPCA Inspectors mainly work with companion animals, the AW Act does not restrict RSPCA Inspectors from enforcing the AW Act in relation to livestock. Some stakeholders argued that only DPIRD Inspectors should be responsible for the inspection of commercial livestock and that RSPCA Inspectors should be restricted to companion animals.

The Panel did not agree with this view. It considered that all appointed Inspectors should have broadly equivalent powers, similar to the current provisions in the AW Act. The Panel did, however, recommend that DPIRD better explain current arrangements to stakeholders, reinforce the training and competency of Inspectors, take steps to provide more Inspectors in rural and regional areas, and strengthen the approach to investigation and prosecution of offences.

Regarding any need to modify the roles and responsibilities of RSPCA Inspectors, the Panel agreed that this was best addressed through discussions on the DPIRD/RSPCA grant agreement that were in progress at the time of the Panel's Review and through a separate review of the effectiveness of the current investigative framework under the AW Act.

Investigation and prosecution of breaches of the Animal Welfare Act 2002

Stakeholders informed the Panel that there was confusion about the role of Inspectors employed by the regulatory organisations and expressed concern that the involvement of multiple organisations could lead to inefficient and inconsistent approaches to enforcement of the AW Act. To address this, the Panel recommended that DPIRD clarify the role and responsibilities of all organisations (including local government and the RSPCA) in the enforcement of the AW Act and communicate this to stakeholders and the public.

The Panel also recognised a need for a more consistent and standardised approach to the investigation of incidents and prosecution of offences. In addition to a separate inquiry into

the current investigative framework, the Panel recommended the establishment of an independent statutory prosecuting authority. Other recommended amendments to improve the effectiveness and efficiency of the prosecutorial function in relation to the AW Act address disclosure requirements, the limitation period for prosecutions, the creation of indictable offences, and lifetime prohibition orders for serious offences.

Resources to enforce the Animal Welfare Act 2002

The Panel was unable to make a detailed assessment of the adequacy of resources used in the enforcement of the AW Act because the Regulators (with the exception of the RSPCA) do not collect information on activities, expenditure or results in a manner that would facilitate such assessment. The Panel did, however, review information provided by DPIRD in relation to the number and location of appointed Inspectors and the activities and expenditures reported by organisations that employ Inspectors (not including the WA Police).

Based on this limited review, the Panel concluded there was a need to strengthen the animal welfare presence in rural and regional areas of the State.

The Panel saw a need for a better understanding of the adequacy of current arrangements and, to that end, encouraged the State Government to make a separate inquiry into the number and location of appointed Inspectors and to consider what is required for effective enforcement of the AW Act.

Animal Welfare Advisory Committee

Most of the jurisdictions considered in the course of the Review have an Animal Welfare Advisory Committee (AWAC) or similar body to advise the Minister responsible for animal welfare regulation. The Panel saw a need for a Western Australian AWAC and recommended that this be a statutory entity. In addition to the functions of other AWACs, the Panel saw benefit in giving the WA AWAC additional responsibilities, such as overseeing Inspector training and competency standards, advising the Minister on resource needs for effective enforcement of the AW Act, oversight and coordination of reviews relevant to animal welfare regulation, and the administration of a Penalties Revenue Account.

Recommendations of the Panel

The Panel made the following recommendations in the belief that the actions proposed would significantly improve the operational effectiveness of the AW Act.

The recommendations are listed in the order in which they appear in the Report.

List of Recommendations

Recommendation 1

The Panel recommends a 'duty of care' obligation be included in the *Animal Welfare Act 2002* and it be an offence to breach that obligation.

Recommendation 2

The Panel recommends that section 3 of the *Animal Welfare Act 2002* be amended to expressly recognise that animals are living beings, able to perceive, feel, and have positive and negative experiences.

Recommendation 3

The Panel recommends that section 3 of the *Animal Welfare Act 2002* be amended to expressly recognise that good animal welfare requires the satisfaction of an animal's physiological and behavioural needs and the provision for positive experiences.

Recommendation 4

The Panel recommends amending part (c) of the definition of 'harm' in the *Animal Welfare Act 2002* to take account of the fact that an animal may be experiencing distress before its observable physiological or behavioural reactions to such distress become 'severe'.

Recommendation 5

The definition of 'person in charge' in the *Animal Welfare Act 2002* should be modified to ensure that all persons who are responsible for the welfare of an animal are included in the definition, even though a person may not have 'actual physical' custody or 'actual physical' control of the animal.

Recommendation 6

The Panel recommends the inclusion of vertebrate fish and cephalopods in the definition of 'animal' for the purposes of Part 2 of the *Animal Welfare Act 2002*.

Recommendation 7

The Panel recommends that consideration be given to whether the welfare of vertebrate fish kept as domestic pets should be transferred to the *Animal Welfare Act 2002*.

Recommendation 8

The Panel recommends a review be conducted to investigate the effectiveness of current arrangements for protecting the welfare of fish.

Recommendation 9

The Panel recommends that Inspectors be authorised to enter a place or vehicle, including a residence, if the Inspector reasonably believes that it is not possible, or that there is insufficient time, to obtain an urgent warrant, and the Inspector reasonably suspects:

- (a) an animal at the place has sustained a severe injury and the injury is likely to remain untreated, or remain untreated for an unreasonable period; or
- (b) there is an imminent risk of death or injury to an animal at the place or in the vehicle,

whether or not an offence has occurred or is suspected.

This power is to be used only if reasonable steps, where practicable, have been made to contact the owner or occupier of the place or vehicle and he/she cannot be contacted.

Recommendation 10

The Panel recommends that Inspectors be able to enter a place other than a residence to monitor compliance with a direction or court order at any reasonable time.

In order to enter a residence to monitor compliance with a direction or court order, the Panel recommends that an Inspector be empowered to obtain a warrant for that purpose.

Recommendation 11

The Panel recommends Inspectors be able to enter any non-residential place or non-residential vehicle for the purpose of monitoring compliance with the *Animal Welfare Act 2002* and Regulations.

Before entering the place or vehicle, an Inspector must provide reasonable notice of entry, unless he/she reasonably suspects that to do so will jeopardise the purpose of the proposed entry or the effectiveness of any search of the place or vehicle.

Recommendation 12

Inspectors monitoring compliance with the *Animal Welfare Act 2002* and Regulations in relation to livestock must have met specified training standards and demonstrated competency relevant to the animal species/industry being monitored.

Recommendation 13

The Panel recommends that section 39 of the *Animal Welfare Act 2002* be amended to allow the use of notices to enter a vehicle.

Recommendation 14

The Panel recommends that the *Animal Welfare Act 2002* be amended so as to enable an expeditious review process of objections to notices of entry.

Recommendation 15

The Panel recommends:

- (a) to resolve any uncertainty, the *Animal Welfare Act 2002* be amended to expressly provide Inspectors with power to issue directions relating to animals the Inspector reasonably believes are present at a place and whose welfare, safety and health is at risk, without needing to sight and identify all individual animals or groups of animals; and
- (b) the *Animal Welfare Act 2002* be amended to enable Inspectors to issue directions in relation to any object, vehicle or place, where such directions are reasonably necessary to protect the health, welfare or safety of any animal or group of animals, including animals who have not been specifically identified by the Inspector who may come in contact with the object, vehicle or place.

Recommendation 16

The Panel recommends an Inspector be authorised to seize an animal under a warrant in circumstances where either the animal's welfare, safety and health is at risk, or there has been repeated non-compliance with a direction.

Recommendation 17

The Panel recommends that an Inspector be authorised to seize an animal when an Inspector reasonably suspects that the person who has custody or control of the animal is in contravention of a prohibition order.

The Panel recommends:

- (a) a person who is present at a place where an animal is present should be presumed to have the care or custody or control of the animal unless the person can prove the contrary on the balance of probabilities;
- (b) the decision by the Inspector to seize the animal should be a reviewable decision; and
- (c) if an animal is seized from its owner on the grounds that the person is prohibited from owning the animal an automatic forfeiture process should apply once the period for review has expired.

Recommendation 18

The Panel recommends that Inspectors should be able to:

- (a) seize any dependent animal of a seized animal; and
- (b) seize any animal that the animal itself depends on.

The usual provisions applicable under the *Animal Welfare Act 2002* for the return of a seized animal should apply to animals seized on this basis.

Recommendation 19

The Panel recommends the *Animal Welfare Act 2002* be amended to clarify that if a seized animal gives birth, the seized animal's offspring are taken to have also been seized under the *Animal Welfare Act 2002*. The usual provisions applicable under the *Animal Welfare Act 2002* for the return of a seized animal should apply to animals seized on this basis.

Recommendation 20

The Panel recommends that the length of time that must elapse before an Inspector is required to return seized animals or other property to an owner as detailed in section 44(5)(a) of the *Animal Welfare Act 2002* be extended to six months.

Recommendation 21

The Panel recommends that Inspectors be permitted to identify seized animals by means prescribed in the Regulations.

Recommendation 22

The Panel recommends that the *Animal Welfare Act 2002* should provide that, in order to return a seized animal, including an animal suspected of being abandoned and seized under s 42, or other property, it is sufficient to make it available for collection. The *Animal Welfare Act 2002* or Regulations should specify:

- (a) the means of notifying an owner (including owners who cannot be found) that the animal or other property is ready for collection;
- (b) if an animal or other property is not collected, the CEO or other relevant authority may forfeit the animal or other property to the Crown provided he/she is satisfied that reasonable attempts have been made to locate the owner; and
- (c) that the animal cannot be forfeited until at least 21 days has elapsed since the animal was seized.

Recommendation 23

The Panel recommends:

- (a) the *Animal Welfare Act 2002* be amended to clearly state that, in defined circumstances, assistance may be provided by a person who is not in the direct physical presence of an Inspector;
- (b) that any such authorisation may be facilitated by mobile phone, fax, email, video or other electronic means; and
- (c) that DPIRD, in consultation with stakeholders, develop policy setting out the appropriate constraints to such authorisation.

Recommendation 24

The Panel recommends that any necessary steps be taken to enable infringement notices issued by Inspectors to be enforced by the Fines Enforcement Registry.

Recommendation 25

The Panel recommends that failure to comply with a direction should be an offence for which an infringement notice can be issued.

Recommendation 26

The Panel recommends in relation to appointed Inspectors:

- (a) a specified standard of training and competency be overseen by an independent body;

- (b) the training and competency requirements must include practical and theory components;
- (c) an Inspector must meet the standard of competency set by the independent body;
- (d) Inspectors be required to participate in regular professional development to maintain their training and skills; and
- (e) a governance mechanism be established to ensure that the above points can be enforced for all appointed Inspectors.

Recommendation 27

The Panel recommends, in relation to Inspectors who monitor compliance with the *Animal Welfare Act 2002* and Regulations with respect to livestock (see Recommendations 11 and 12), their practical training must include direct experience with relevant animal species/industry.

Recommendation 28

The Panel recommends:

- (a) Training and professional development of Inspectors be prioritised and strengthened.
- (b) The government inquire into the sufficiency of resources relevant to the enforcement of the *Animal Welfare Act 2002* by all organisations (including local government and the RSPCA), including with respect to specific geographical locations or situations.

Recommendation 29

The Panel recommends:

- (a) the involvement of local governments in enforcing the *Animal Welfare Act 2002* throughout the State be encouraged and supported and, where necessary, additional State Government funding be provided; and
- (b) where local government is involved in enforcing the *Animal Welfare Act 2002*, centralised and coordinated training, resources and support be provided to appointed Inspectors.

Recommendation 30

The Panel recommends:

- (a) all organisations acting as Regulators in relation to the *Animal Welfare Act 2002* be required to regularly and adequately report to government on their relevant enforcement activities;

- (b) all appointed Inspectors be fully funded by the State in relation to their *Animal Welfare Act 2002* enforcement activities; and
- (c) the allocation of funds set out in (b) to each organisation be accompanied by an obligation to expend the funds on the enforcement of the *Animal Welfare Act 2002*, and to provide annual reports on this expenditure.

Recommendation 31

The Panel recommends that DPIRD take steps to clarify the role and responsibilities of all organisations (including local government and the RSPCA) in the enforcement of the *Animal Welfare Act 2002* and communicate this to stakeholders and the public.

Recommendation 32

The Panel recommends that a provision be inserted into the *Animal Welfare Act 2002* which provides that Inspectors employed by different organisations can share necessary information obtained in the course of their duties.

Recommendation 33

The Panel recommends the creation of a central register for recording all enforcement activities, including official warnings, infringement notices, and directions, and the provision of access to that register for all Inspectors and appropriately authorised personnel.

Recommendation 34

The Panel recommends that the *Animal Welfare Act 2002* be amended to allow for the exchange of information between relevant organisations where the information 'is, or is likely to be, relevant to the regulatory functions' of the other organisation.

Recommendation 35

The Panel recommends that an independent statutory prosecutorial authority be established by legislation. This entity is to:

- be created by statute;
- conduct all prosecutions under the *Animal Welfare Act 2002*;
- be composed of lawyers who are able to conduct prosecutions under the *Animal Welfare Act 2002*; and
- be funded by government.

Recommendation 36

The Panel recommends that a separate review be undertaken to inquire specifically into the effectiveness of the current investigative framework under the *Animal Welfare Act 2002* and the benefits and disadvantages of any alternatives to that framework.

Recommendation 37

The Panel recommends that WA legislation provide that all costs (including disbursements) ordered to be paid by the prosecutor in a matter brought under the *Animal Welfare Act 2002* be paid from the Consolidated Revenue Fund.

Recommendation 38

The Panel recommends the *Animal Welfare Act 2002* be amended to include indictable aggravated cruelty offences for acts of cruelty that:

- (a) If committed by an individual, are committed intentionally and which do in fact result in, or which are capable of resulting in, serious harm to, or death of, the animal.
- (b) If committed by a corporation, are committed intentionally or recklessly and which do in fact result in, or which are capable of resulting in, serious harm to, or death of, the animal.
- (c) Impact adversely upon a large number of animals, even where the resultant harm to each individual animal may not be individually described as 'serious harm'.

Recommendation 39

The Panel recommends the *Animal Welfare Act 2002* allow for the prosecution of an offence to be commenced within two years after the day on which evidence of the alleged offence first came to the attention of a person authorised to institute a prosecution under the *Animal Welfare Act 2002*.

Recommendation 40

The Panel recommends that a simple offence under the *Animal Welfare Act 2002* be added to Schedule 4 of the Criminal Procedure Regulations 2005.

Recommendation 41

The Panel recommends that, where an individual or corporation is convicted of an indictable offence, a permanent prohibition order be required to be made unless the accused can demonstrate exceptional reasons why such an order should not be made.

Recommendation 42

The Panel recommends that the *Animal Welfare Act 2002* provide for the recognition and enforcement of prohibition orders made under a corresponding law of another state or territory.

Recommendation 43

The Panel recommends that consideration be given to reviewing and consolidating the defence provisions in the *Animal Welfare Act 2002* to ensure they serve the purpose for which they were intended.

Recommendation 44

The Panel recommends the defence provisions be reviewed every 10 years, to ensure:

- (a) minimal overlap of defences;
- (b) the defence provisions continue to be consistent with prevailing contemporary standards taking into account relevant scientific and other developments in regard to how animals are treated, cared for and managed;
- (c) there continues to be a need for each defence; and
- (d) defences are clear and effective.

Recommendation 45

The Panel recommends that the *Animal Welfare Act 2002* set out the steps that must be followed, and conditions which must be satisfied, before a code of practice is adopted.

Recommendation 46

The Panel recommends that a Western Australian Animal Welfare Advisory Committee, with appropriate membership, be established as a statutory body under the *Animal Welfare Act 2002*.

Recommendation 47

The Panel recommends:

- (a) the WA AWAC provide advice on legislative and other relevant matters to the Minister and the Regulators to improve animal welfare in WA;
- (b) consideration be given to the WA AWAC overseeing the development and implementation of a WA Animal Welfare Strategy and Action Plan;

(c) consideration be given to the WA AWAC guiding the development and implementation of standards relevant to training and competency assessment of appointed Inspectors; and

(d) consideration be given to the WA AWAC overseeing and coordinating all reviews and activities in WA affecting or relating to the *Animal Welfare Act 2002*.

Recommendation 48

The Panel recommends that all penalty revenue from all sources under the *Animal Welfare Act 2002* go into a separate fund to be used for furthering the objects of the Act. The WA AWAC or DPIRD should administer this fund.

Recommendation 49

The Panel recommends that Part 2 of the *Animal Welfare Act 2002* be reviewed to:

- investigate the fitness for purpose of the Scientific Use Code as a legal standard; and
- confirm that Part 2 continues to be consistent with prevailing contemporary standards, taking into account relevant scientific and other developments in regard to how animals used for scientific purposes are treated, cared for and managed.

Recommendation 50

The Panel recommends that the government establish a Community Animal Ethics Committee.

Recommendation 51

The Panel recommends that section 32 be revised to improve the operational effectiveness of the *Animal Welfare Act 2002*, specifically, by making it an offence:

- (a) to possess certain items relating to animal fighting; and
- (b) to possess and share images and videos of animals being fought.

Recommendation 52

The Panel recommends that DPIRD and the RSPCA investigate options to improve the operational effectiveness of the *Animal Welfare Act 2002* with respect to responding to and managing cases involving animal hoarding. Action should be taken in relation to policy, operations and legislative reform.

Introduction

The Review

The appointment of an independent Panel to review the AW Act was announced in a parliamentary statement on 8 May 2019 by the Hon Alannah MacTiernan, Minister for Agriculture and Food³.

The Terms of Reference (TOR) of the Panel are set out below.

The Panel comprised five members, selected for their expertise relating to the animal welfare field and not as representatives of any particular organisation or sector. The members of the Panel were Ms Linda Black (chair), Dr Dominique Blache, Dr Dianne Evans, Ms Catherine Marriott and Dr David Marshall. The Panel held regular meetings, in person and by teleconference, in the 17-month course of the Review. Decisions were made by consensus. Secretariat support was provided by DPIRD.

In conducting the Review, the Panel considered a variety of inputs, including short background papers drafted by DPIRD, and reports on legislative amendments and related materials. Published articles and reports on animal welfare concepts, such as duty of care, provided helpful background to the Panel's deliberations. Other important inputs to the Review included documentation relevant to the Animal Welfare Amendment Bill 2017⁴ and the amendment of the AW Act in 2018, and the making of regulations giving effect to the Australian Animal Welfare Standards and Guidelines for livestock. In 2019, DPIRD commissioned Murdoch University to produce an internal report comparing Western Australia's AW Act with the relevant legislation of other jurisdictions in Australia and internationally (Canada, NZ and the UK).⁵ This report considered six aspects of direct relevance to the TOR of the Panel. These are: Inspectors' powers of entry, duty of care provisions, directions made by Inspectors, seizure provisions, forfeiture provisions, and the definition of a 'person in charge' of an animal. The Panel also considered animal welfare strategies published by other jurisdictions.

Terms of Reference of the Panel

- 1) Determine whether the objects of the Act reflect and promote contemporary best practice in animal welfare such as recognition of the ability of animals to express innate behaviours, and if necessary recommend appropriate legislative amendments.
- 2) Identify any impediments to the effective enforcement of the Act and any related regulations, with specific attention to the powers of inspectors and the prosecution of offenders.
- 3) Consider amendments to policies, standards and legislation to achieve contemporary best practice in animal welfare regulation, including a compliance regime based on standards prescribed by regulation, and if necessary recommend appropriate legislative amendments.
- 4) Make recommendations on how compliance with the Act can be promoted, including consideration of the prosecutorial framework, and if necessary recommend appropriate legislative amendments.
- 5) Advise the Minister on any other matters relevant to the operation and effectiveness of the Act.

³ Western Australia, *Parliamentary Debates*, Legislative Council, 8 May 2019, 2859 (Alannah MacTiernan, Minister for Agriculture and Food).

⁴ Animal Welfare Amendment Bill 2017 (WA).

⁵ Dunston-Clarke, E. J., Turnbull, M., Rendle, J., & Collins, T. (2019). *Jurisdictional review of animal welfare legislation relating to key issues of the Western Australian Animal Welfare Act 2002*, Perth, Murdoch University.

Recent reviews and inquiries

The Panel considered two independent reviews of animal welfare in WA.

Easton Review

The 2015 'Report on an independent review of the investment in and administration of the *Animal Welfare Act 2002* in Western Australia' (Easton Review)⁶ made 19 recommendations for improvement of animal welfare in WA, all of which were accepted by the government of the day.

Recommendations relevant to the current Review included:

- The establishment of a strategic plan and overarching policy framework for animal welfare.
- A review of the AW Act.
- Establishing a ministerial advisory council to provide strategic and policy advice to the Minister on animal welfare matters.
- Actions to strengthen the governance framework for inspectors.
- Actions to promote compliance with the AW Act.
- Support for local governments in regional areas.
- Actions in relation to funding and resourcing of animal welfare.
- Establishing processes for annual reporting of animal welfare activity by inspectors, for which KPIs should be developed.
- Considering the establishment of a community Animal Ethics Committee.

Select Committee into the Operations of the RSPCA WA (Inc)

In May 2016, a Select Committee convened by the Legislative Council of WA reported on the operations of the RSPCA, including an examination of its funding from government, its objectives, and the use of its powers. The committee did not reach consensus and instead tabled a majority report and a minority report.⁷ The government of

Western Australia at the time responded to the majority report, noting or supporting most of the recommendations, including a recommendation to review the AW Act to assess whether it adequately serves its intended purpose. The government noted that many of the other recommendations, such as those relating to aggravated offences, powers of RSPCA Inspectors, infringement notices, and authorisation and conduct of prosecutions, would be addressed in the review of the AW Act.

Public consultation

Reflecting the need to consider a wide variety of perspectives on animal welfare, the Panel established a comprehensive process of public consultation, which included a call for written submissions, four public forums in regional and metropolitan locations, and face-to-face meetings with key stakeholders.

Stakeholders and the public were invited to send written submissions to the Panel on any matters relevant to the TOR. The consultation was open from 14 October to 16 December 2019 and extended through January 2020 at the request of stakeholders. The Panel received 360 written submissions from diverse stakeholders (see Appendix 2). Some 97% of submissions called for changes to the AW Act or subsidiary legislation, or included other comments suggesting that the existing regulatory framework was inadequate. A summary report of the written consultation was published on the DPIRD website on 18 August 2020.⁸

Public forums took place in four locations around WA: Broome and Karratha (November 2019), Katanning (January 2020) and Perth (February 2020). They were attended by more than 150 individuals representing diverse stakeholders. Matters of key importance to the operation and effectiveness of the AW Act were discussed at the forums, with the content of discussion at each forum reflecting specific regional concerns and the threads of discussion that naturally developed. A summary report of the public forums was published on the DPIRD website on 18 August 2020.⁹

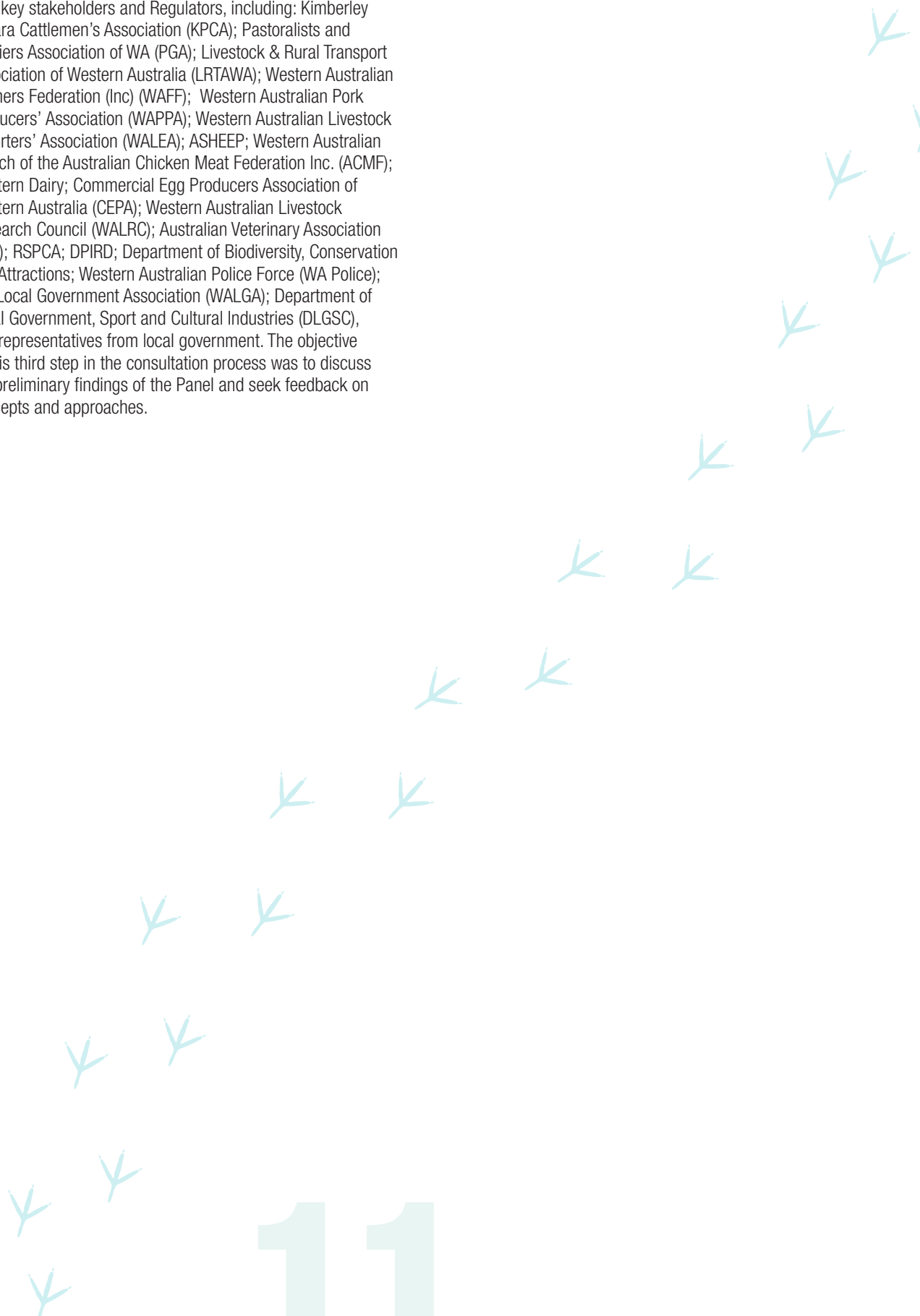
⁶ Easton, B., Warbey, L., Mezzatesta, B., & Mercy, A. (2015). *Report on an independent review of the investment in and administration of the Animal Welfare Act 2002* in Western Australia, Western Australia. [https://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3913698cfe1282fe57dbdfad48257f100012c4e4/\\$file/tp-3698.pdf](https://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3913698cfe1282fe57dbdfad48257f100012c4e4/$file/tp-3698.pdf)

⁷ Select Committee into the Operations of the Royal Society for the Prevention of Cruelty to Animals Western Australia (Inc). (2016). *Report*. Legislative Council of Western Australia. [\(Report of the Select Committee into the Operations of the RSPCA\).](https://parliament.wa.gov.au/Parliament/commit.nsf/(InqByName)/Select+Committee+into+the+operations+of+The+Royal+Society+for+the+Prevention+of+Cruelty+to+Animals+Western+Australia+(Inc))

⁸ *Review of the Animal Welfare Act 2002: Summary Report on the Public Consultation*. (2020). Review of the Animal Welfare Act 2002. <https://www.agric.wa.gov.au/animalwelfare/review-animal-welfare-act-2002> (Consultation Summary Report – Public Consultation).

⁹ *Review of the Animal Welfare Act 2002: Summary Report on the Public Forums*. (2020). Review of the Animal Welfare Act 2002. <https://www.agric.wa.gov.au/animalwelfare/review-animal-welfare-act-2002> (Consultation Summary Report - Public Forums).

The Panel held numerous meetings with the Regulators of the AW Act throughout the review process. In addition, on 1 July and 2 July 2020, the Panel held a series of meetings with key stakeholders and Regulators, including: Kimberley Pilbara Cattlemen's Association (KPCA); Pastoralists and Graziers Association of WA (PGA); Livestock & Rural Transport Association of Western Australia (LRTAWA); Western Australian Farmers Federation (Inc) (WAFF); Western Australian Pork Producers' Association (WAPPA); Western Australian Livestock Exporters' Association (WALEA); ASHEEP; Western Australian branch of the Australian Chicken Meat Federation Inc. (ACMF); Western Dairy; Commercial Egg Producers Association of Western Australia (CEPA); Western Australian Livestock Research Council (WALRC); Australian Veterinary Association (AVA); RSPCA; DPIRD; Department of Biodiversity, Conservation and Attractions; Western Australian Police Force (WA Police); WA Local Government Association (WALGA); Department of Local Government, Sport and Cultural Industries (DLGSC), and representatives from local government. The objective of this third step in the consultation process was to discuss the preliminary findings of the Panel and seek feedback on concepts and approaches.



2.

Legislative and Regulatory Overview

Animal Welfare Act 2002 and associated instruments

In WA, the principal law regulating animal welfare is the AW Act. When it was enacted, the AW Act replaced the Prevention of *Cruelty to Animals Act 1920*.

The AW Act provides for the protection of animals by:

- regulating the conduct of people in relation to animals, including the manner in which animals are treated, cared for and managed;
- regulating the people who may use animals for scientific purposes, and the manner in which they may be used;
- prohibiting cruelty to, and other inhumane or improper treatment of, animals.¹⁰

The AW Act applies to all live amphibians, reptiles, birds and mammals other than humans. It covers companion animals, native animals, livestock, and animals used in research and teaching. The AW Act is set out in six parts. Part 1 contains preliminary matters such as definitions of terms; Part 2 provides for animals used for scientific purposes; Part 3 deals with matters relevant to the welfare, safety and health of animals and sets out the cruelty offences, together with defences to a charge of cruelty; Part 4 sets out requirements for the appointment, powers and functions of Inspectors, Part 5 addresses the enforcement of the AW Act, and Part 6 provides for a number of miscellaneous matters.

Until 2011, the AW Act was administered by the Department responsible for local government. Since then, it has been administered by DPIRD (formerly the Department of Agriculture and Food Western Australia (DAFWA)). Most of the general inspectors appointed under the AW Act¹¹

are employed by DPIRD and the RSPCA. In addition, some are employees of the Department of Biodiversity, Conservation and Attractions (DBCA), and some local government authorities employ staff who are appointed as general inspectors. All officers of the WA Police are general inspectors under the AW Act.¹² Issues relating to Inspectors and the enforcement of the AW Act are covered in Chapters 6 and 7.

In the 18 years since the AW Act came into effect, there have been significant advances in scientific understanding of animal welfare and an increase in public awareness and expectations regarding the humane treatment of animals. One of the key developments concerns the understanding of animal consciousness and capacity for suffering: sometimes referred to as sentience. Although the word 'sentient' may not always appear in definitions of animal welfare, or the objectives of animal welfare laws, the concept of sentience underpins modern animal welfare legislation. The key consideration is that animals are not 'things'. Rather, they are living beings capable of having some of the same feelings that humans do, such as fear and anxiety. Modern animal welfare laws should recognise this distinction in an appropriate manner.

Science is important in setting standards, but the influence of ethical values and cultural beliefs on individual perceptions about animal welfare (and cruelty) must also be acknowledged. Opinions on what is 'right' and 'wrong' can differ significantly from one person to another, and this is compounded by variation in how people perceive and relate to different animal species. Animal welfare regulation is a complex matter, requiring consideration of scientific evidence and social, political, cultural, economic, religious and ethical perspectives when framing legal obligations and rights in relation to the ownership and management of animals.

¹⁰ AW Act s 3(1).

¹¹ Section 33 of the AW Act sets out the appointment of general inspectors.

¹² Section 5 of the AW Act defines 'general inspector' as meaning 'a police officer or a person appointed as a general inspector under section 33'.

The AW Act addresses cruelty and ‘other inhumane and improper treatment of animals’ with reference to ‘harm’, which is defined as including injury, pain, and distress evidenced by *severe* abnormal physiological or behavioural reactions¹³ (emphasis added). The AW Act describes actions that can be considered as cruel, followed by text in 11 sections (ss 20-30 inclusive) setting out defences that are potentially available to a person who is charged with cruelty.

The AW Act does not refer to sentience or other relevant concepts (such as the ‘Five Domains’)¹⁴ that can be used to define animal welfare in a holistic manner. In the AW Act, the emphasis is on defining cruelty and prosecuting a person for cruelty. The concept that a person has a ‘duty of care’ to ensure the welfare of an animal is not clearly present in the AW Act.

The Animal Welfare (General) Regulations 2003 (General Regulations) is one of five sets of regulations that support the AW Act. Regulation 6 of the General Regulations lists adopted codes of practice, which relate in particular to s 25 and s 84 of the AW Act. Compliance with an adopted code is not directly enforceable, but the codes must be considered by a court and may provide a defence when a person is charged with cruelty.¹⁵

Although its title refers to animal welfare this Western Australian law is, in reality, a law to prevent cruelty to animals. Due to limitations with the scope of the AW Act, it was necessary to amend it to provide for the regulation and promotion of animal welfare. The AW Act was amended in 2018 to broaden the regulation-making powers, providing for Regulations that set minimum animal welfare standards.

In recent years, Australia has moved to mandate evidence-based Australian Animal Welfare Standards and Guidelines for farm animals (S&G). At the time of writing this Report, endorsed S&G cover land transport of livestock, saleyards and depots, cattle, sheep, and animals in exhibitions. In 2019, DPIRD drafted regulations to give effect to the S&G for Land Transport and the S&G for Saleyards and Depots. The Animal Welfare (Transport, Saleyards and Depots) (Cattle and Sheep) Regulations 2020 (Transport Regulations) were gazetted on 2 October 2020. At the same time, the two S&Gs were adopted as codes of practice under the General Regulations, replacing outdated WA codes of practice that deal with transport, saleyards and related matters.

The amendment of the AW Act in 2018 addressed the need for broader regulation-making powers. The Panel’s Review of the operational effectiveness of the AW Act is a more fundamental and comprehensive process, which considers scientific advances and changing public expectations relevant to animal welfare since the enactment of the AW Act.

¹³ AW Act s 5(1).

¹⁴ Mellor, D. J. (2017). Operational Details of the Five Domains Model and Its Key Applications to the Assessment and Management of Animal Welfare. *Animals* 7(8): 60. doi:10.3390/ani7080060

¹⁵ AW Act ss 25, 84.

¹⁶ Department of Agriculture, Water and the Environment, *Australian Standards for the Export of Livestock 3.0* (2020) page xiv.

Other Western Australian legislation relevant to animal welfare

A number of other WA statutes intersect with the AW Act, including:

- the *Aquatic Resources Management Act 2016* and the *Fish Resources Management Act 1994* (FRM Act);
- the *Biosecurity and Agriculture Management Act 2007* (BAM Act);
- the *Biodiversity Conservation Act 2016* (BC Act); and
- the *Veterinary Surgeons Act 1960*.

Relevant parts of these Acts are discussed in this Report.

General inspectors appointed under the AW Act and police officers are subject to multiple laws and regulations, including the *Public Sector Management Act 1994*, *Official Prosecutions (Accused’s Costs) Act 1973*, *Criminal Procedure Act 2004*, *Freedom of Information Act 1992*, and *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

The extent to which Inspectors employed by the RSPCA, a non-government organisation, are bound by the provisions in these Acts is in some respects uncertain.

Arrangements for the enforcement of animal welfare legislation

In Australia, state or territory Departments of Agriculture working in collaboration with the RSPCA and other animal welfare organisations are primarily responsible for the administration and enforcement of animal welfare legislation. Details relating to the enforcement of the AW Act in WA are discussed in Chapter 7.

Australia’s Federal Government regulates the import and export of animals and their products. The Australian Standards for Export of Livestock ‘must be read in conjunction with Commonwealth, state and territory laws, regulations, standards and guidelines relevant to the health, welfare, handling, treatment, transport and carriage (sea and air) of livestock’.¹⁶

In NZ and the UK, national government departments responsible for agriculture, together with the RSPCA or equivalent non-governmental organisation, are primarily responsible for the implementation of animal welfare legislation.

In Canada, the Criminal Code (Federal) covers animal cruelty and the *Health of Animals Act 1990* contains provisions for the protection of animals, which are specified in the Health of Animals Regulations Part XII Transport of Animals.¹⁷ Animal protection laws more generally are the responsibility of provincial or territorial governments.

The Canadian police have a general role in the enforcement of legislation, including for animal welfare.

¹⁷ Health of Animals Regulations (C.R.C., c 296).

3.

A Modern Approach to the *Animal Welfare Act 2002*

Background

Since the AW Act was introduced, there has been a shift in community attitudes to the welfare of animals, in particular with respect to animals used for commercial purposes such as entertainment, research and farming.¹⁸ Consumer trends and commercial initiatives have revealed and reflected a growing concern for animal welfare.¹⁹ A report published in 2018 noted that, in Australia, 95% of people consider farm animal welfare to be a concern, and 91% want 'at least some reform' to address that concern.²⁰

This shift in mindset has been accompanied, and is in part driven, by scientific research providing a clearer picture of the capabilities and sentience of animals;²¹ that is, that they can perceive and feel things, which may be positive or negative.²² This does not mean that animals should be thought of as

'four-legged people'. It does, however, prompt consideration as to whether existing laws adequately provide for the welfare of animals, and raises questions such as whether it remains appropriate for animals to be classified as property under Australian law.²³ Since 'property' does not have experiences, positive or negative, the classification of animals as property, if taken to extremes, does not allow for animals' experiences to be considered in relation to their welfare.

It is important for the AW Act to reflect contemporary practices with respect to animal welfare regulation. An outdated AW Act may lead to poor outcomes for animals and a 'loss of faith' in the Regulators, which in turn may result in increased pressure on animal industries and provoke activism.²⁴ In recent years, ethical treatment of animals has emerged as a significant public concern.²⁵ In this regard, the oft-cited quote is that '[t]he greatness of a nation and its moral progress can be judged by the way its animals are treated'.²⁶

¹⁸ Futureye. (2018). *Australia's shifting mindset on farm animal welfare*, Department of Agriculture, Water and the Environment. <https://www.outbreak.gov.au/sites/default/files/documents/farm-animal-welfare.pdf> (Futureye Report); Taylor, N., & Signal, T. D. (2009). Lock 'em up and throw away the key? Community opinions regarding current animal abuse penalties. *Australian Animal Protection Law Journal*, 3, 33-52; Morton, R., Hebart, M. L., & Whittaker, A. L. (2020). Explaining the gap between the ambitious goals and practical reality of animal welfare law enforcement: A review of the enforcement gap in Australia. *Animals*, 10(3), 482; Department of Primary Industries and Regional Development. (2019) *Food Alliance – Trust in Primary Production Project. Workshop Reports*. <https://wafarmers.org.au/wp-content/uploads/2020/02/5.-FINAL-Food-Alliance-WA-DPIRD-Trust-in-Primary-Industries-2-Masterclass-WORKBOOK-Nov-2019-web.pdf>

¹⁹ Bruce, A. (2012). *Animal Law in Australia: An Integrated Approach*. LexisNexis Butterworths, 317; Bray, H. J., Buddle, E. A., & Ankeny, R. A. (2017). What are they thinking? Consumer attitudes to meat production in Australia. *Animal Production Science*, 57(12), 2345-2352. <https://doi.org/10.1071/AN17361>

²⁰ Futureye Report p 4.

²¹ The Panel notes that the problem of determining the boundaries of sentience persists amongst scientists, particularly with respect to some invertebrate animals: Veit, W., & Huebner, B. (2020). Drawing the boundaries of animal sentience. *Animal Sentience* 29(13).

²² Sentient. (n.d.). In *Lexico*. Oxford. <https://www.lexico.com/definition/sentient>

²³ Proctor, H. S., Carder, G., & Cornish, A. R. (2013). Searching for Animal Sentience: A Systematic Review of the Scientific Literature. *Animals*, 3(3): 882-906. doi: 10.3390/ani3030882

²⁴ Futureye Report p 15.

²⁵ See, for example: The Conversation, 'Japan resumes commercial whaling – researchers on how the world should respond', 1 July 2019, <https://theconversation.com/japan-resumes-commercial-whaling-researchers-on-how-the-world-should-respond-119573>>; The Guardian, 'Protesters in Israel call for end to Australian live exports', 29 April 2018, < <https://www.theguardian.com/australia-news/2018/apr/29/protesters-in-australia-and-israel-call-for-end-to-live-exports>>; ABC News, 'Australians join battle to stop brutal dolphin slaughter in Japan', 14 Feb 2019, <https://www.abc.net.au/news/2019-02-14/australians-join-battle-over-taiji-japanese-dolphin-killings/10807394>; Buddle, E. A., Bray, H. J., & Ankeny, R. A. (2018). I feel sorry for them: Australian meat consumers' perceptions about sheep and beef cattle transportation. *Animals*. 8(1). doi: 10.3390/ani8100171

The AW Act has undergone only one significant change since its introduction in 2002. This amendment, which occurred in 2018, broadened the regulation-making powers to enable the making of regulations that prescribe minimum animal welfare standards.

The Panel conducted an extensive and thorough review of the AW Act in order to not only correct recognised gaps and problems, but also ensure it reflects contemporary principles and will be able to accommodate the ongoing evolution of scientific understanding and public expectations.

In terms of modernising the AW Act, one of the more important themes is the need for the AW Act to evolve from a law that is primarily intended to prohibit cruelty to one that promotes the welfare of animals, while continuing to appropriately define and proscribe cruelty.

The recommendations in this chapter relate to changes to the scope and objectives of the AW Act, and definitions of key terms such as 'person in charge' and 'harm', in order to ensure the AW Act meets contemporary expectations. The chapter also discusses the concept of duty of care and the way in which the inclusion of such an obligation can encourage a modern, proactive approach to animal welfare. These recommendations underpin the findings in other chapters and are fundamental to the Panel's Report.

Giving effect to the *Animal Welfare Act 2002's* objective of promoting animal welfare

While not mentioned in the long title, two objects clauses within the AW Act confirm that one of its objectives is 'to *promote* and protect the welfare, safety and health of animals' (emphasis added).²⁷ Objects clauses describe the overarching objectives of an Act.

The goal of promoting animal welfare requires taking a proactive approach to improving the welfare of animals. Stakeholders were generally supportive of a proactive approach to animal welfare; that is, an approach that encourages people responsible for animals to identify welfare risks and take appropriate steps before serious

welfare problems occur. For example, several stakeholders, including pastoralists, raised the need to take a proactive approach to the management of pastoral properties in dry seasons, where early action could prevent animal suffering.

The AW Act, however, presently takes a primarily reactive approach to welfare by focusing on prohibiting cruelty to animals.²⁸ WA has taken some steps to implement a proactive approach to welfare by introducing the Transport Regulations. These Regulations contain some minimum standards to require that animals' basic needs be met, but their scope is limited; they apply only to sheep and cattle during transport and while at saleyards and depots.

Some of the regulations in the Transport Regulations are traditional 'rules-based' legislation, which set out requirements (rules) and focus on processes rather than outcomes.²⁹ While prescriptive rules provide certainty by specifying the particular standard to be met, they may be criticised by some for leading to gaps in the law, introducing unnecessary legal complexity, or encouraging 'box-ticking exercises' rather than compliance with the overall spirit of the law.³⁰ 'Principles-based' legislation, by comparison, is non-prescriptive, using guiding principles to set an overall objective, placing a positive emphasis on compliance, and encouraging members of society to 'do the right thing'.

Each model has its own strengths and weaknesses. When drafting new legislation, the best approach may be to combine the two regulatory theories in a law that not only sets out high-level principles that promote a best practice approach to regulation and can be applied flexibly to new situations, but also contains detailed rules, providing the required clarity.³¹

'Duty of care' obligations are a key feature of modern animal welfare legislation. In a legal context, a duty of care is an obligation to take reasonable steps to avoid reasonably foreseeable harm to others. In the specific context of animal welfare legislation, provisions based on the concept of duty of care impose a legal obligation to take reasonable steps to ensure the welfare or basic needs of an animal.³² They are non-prescriptive (principles-based) provisions that encourage members of society to 'do the right thing' by providing for an animal's basic needs (i.e. satisfying the overall objective).

²⁶ See, for example, Singer, P. (2011, July 14). Moral progress and animal welfare. *ABC Religion & Ethics*. <https://www.abc.net.au/religion/moral-progress-and-animal-welfare/10101318>

²⁷ AW Act ss 3(2)(a), 18A(a).

²⁸ Mellor, D. J., & Bayvel, A. C. D. (2008). New Zealand's inclusive science-based system for setting animal welfare standards. *Applied Animal Behaviour Science*, 113, 313-329 p 314.

²⁹ Australian Law Reform Commission. (2008). *For Your Information: Australian Privacy Law and Practice (Report 108)*. Australian Government. <https://www.alrc.gov.au/publication/for-your-information-australian-privacy-law-and-practice-alrc-report-108/>

³⁰ Australian Law Reform Commission. (2008). *For Your Information: Australian Privacy Law and Practice (Report 108)*. Australian Government. <https://www.alrc.gov.au/publication/for-your-information-australian-privacy-law-and-practice-alrc-report-108/> citing Pearce, C. (22 November 2004). *The future of governance regulation in Australia* [Conference paper]. 21st National Conference of Chartered Secretaries Australia.

³¹ Arjoon, S. (2006). Striking a Balance Between Rules and Principles-Based Approaches for Effective Governance: A Risks-Based Approach. *Journal of Business Ethics*, 68: 53, 58.

³² White, S. (2007). Regulation of animal welfare in Australia and the emergent Commonwealth: Entrenching the traditional approach of the states and territories or laying the ground for reform? *Federal Law Review*, 35(3), 347.

In Queensland (Qld), for example, a person in charge of an animal owes a duty of care to it and it is an offence to breach this duty.³³ A person breaches the duty only if he/she does not take reasonable steps to:

- (a) provide the animal's needs for the following in a way that is appropriate—
 - (i) food and water;
 - (ii) accommodation or living conditions for the animal;
 - (iii) to display normal patterns of behaviour;
 - (iv) the treatment of disease or injury; or
- (b) ensure any handling of the animal by the person, or caused by the person, is appropriate.³⁴

In deciding what is appropriate, the species, environment and circumstances of the animal, and the steps that a reasonable person would reasonably be expected to have taken in the circumstances, must be considered.³⁵

The Australian Capital Territory (ACT), Northern Territory (NT), Tasmania (Tas), NZ and the UK also have provisions that fall broadly within the category of 'duty of care provisions' in their animal welfare legislation.³⁶ The Government of Victoria recently proposed to introduce a requirement for people to provide a minimum standard of care for animals.³⁷

The Panel received many submissions supporting the inclusion of a duty of care provision in the AW Act³⁸ and, as stated above, stakeholders were generally supportive of a proactive approach to animal welfare.

The Panel acknowledged a need to include a duty of care provision in the AW Act. While animal welfare legislation initially focused on prohibiting harm to animals, modern legislation should recognise that society's responsibility to animals goes beyond refraining from cruelty.³⁹ Inclusion of a duty of care provision reflects that all Western Australians owe a duty of care to their animals and promotes a proactive approach to animal welfare. In the same way that an employer has a broad duty to be responsible for the safety of employees at a

workplace, such a provision makes clear to a person in charge of an animal that he/she has an 'all-embracing responsibility' to animals in his/her care, whether or not a particular matter of detail is covered by a specific animal welfare regulation.⁴⁰ Further, unlike laws such as the Transport Regulations that set out specific rules for specific situations, duty of care provisions are 'future-proof' in that they provide an overarching principle that can be applied flexibly as public expectations, available technology and scientific knowledge develop and change our understanding of what is 'reasonable' care for an animal.⁴¹

If a duty of care provision is inserted into the AW Act, consideration should be given to whether s 19 requires consequential amendment. For instance, s 19(1) of the AW Act provides that a person in charge of the animal is cruel to the animal if the animal 'is not provided with proper and sufficient food or water'.⁴² This would overlap with a duty of care provision. Consideration should be given to the need to resolve any overlap between s 19(1) and a new duty of care provision.

The Panel saw value in including the word 'promote' in the long title of the AW Act. Along with the objects clause, the long title of an Act may be used as an aid to the construction of an Act and can 'give colour to the meaning of other provisions'.⁴³ This would make the concept of promoting good animal welfare in the AW Act clear from the outset.

RECOMMENDATION 1

The Panel recommends a 'duty of care' obligation be included in the Animal Welfare Act 2002 and it be an offence to breach that obligation.

³³ *Animal Care and Protection Act 2001* (Qld) ss 17(1)-(2).

³⁴ *Animal Care and Protection Act 2001* (Qld) s 17(3).

³⁵ *Animal Care and Protection Act 2001* (Qld) s 17(4).

³⁶ *Animal Welfare Act 1992* (ACT) s 6B; *Animal Welfare Act 1999* (NT) s 8; *Animal Protection Act 2018* (NT) ss 6, 22, 23; *Animal Welfare Act 1993* (Tas) s 6; *Animal Welfare Act 1999* (NZ) s 10; *Animal Welfare Act 2006* (UK) s 9.

³⁷ Department of Jobs, Precincts and Regions. (2020). *Directions Paper – A New Animal Welfare Act for Victoria*. Government of Victoria. <https://engage.vic.gov.au/new-animal-welfare-act-victoria>

³⁸ For example, submission 5, submission 260, submission 261, submission 274 and submission 338.

³⁹ White, S. (2007). Regulation of animal welfare in Australia and the emergent Commonwealth: Entrenching the traditional approach of the states and territories or laying the ground for reform? *Federal Law Review*, 35(3), 347.

⁴⁰ The rationale underlying broad duties of care in the workplace also applies to a broad duty of care to an animal: Committee on Safety and Health at Work. (1972). *Report on Safety and Health at Work*, p 521.

⁴¹ See Australian Law Reform Commission. (2008). *For Your Information: Australian Privacy Law and Practice (Report 108)*. Australian Government. <https://www.alrc.gov.au/publication/for-your-information-australian-privacy-law-and-practice-alrc-report-108/> citing Black, J. (2007, March 28). *Principles based regulation: risks, challenges and opportunities*. Principles Based Regulation, Sydney, Australia, 7-8. <http://eprints.lse.ac.uk/62814/>

⁴² AW Act ss 19(1), 19(3)(d).

⁴³ Pearce, D. C., & Geddes, R. S. (2011) *Statutory Interpretation in Australia* (7th ed.). LexisNexis, [4.46].

Other contemporary concepts relevant to the *Animal Welfare Act 2002*

Animals are living beings and have intrinsic value

The concept of sentience⁴⁴ is central to consideration of animal welfare, because it addresses the question of whether animals experience suffering in life and death. While there is no universal definition of sentience,⁴⁵ a commonly cited definition is that an animal is sentient if 'it is capable of being aware of its surroundings, its relationships with other animals and humans, and of sensations in its own body, including pain, hunger, heat or cold'.⁴⁶

Research on farm animal cognition⁴⁷ and welfare suggests that recognition of farm animal cognition plays – and will continue to play – a vital role in consumer attitudes and ethical theory.⁴⁸

The scientific recognition that many animals, including livestock, are sentient can now be considered as an established fact, and research has turned to exploring the nature of sentience in a widening number of animal species. The fact that animals are sentient – they 'feel' and have 'feelings', in common parlance – underpins the public expectation that animals should be treated humanely. In view of this, the Panel considered whether the AW Act appropriately reflects the fact of sentience, with particular reference to ss 3 (Content and intent), 5 (Terms used), and 19 (Cruelty to animals).

As with the animal welfare laws of many Australian jurisdictions, sentience is not mentioned in the AW Act. In Australia, only the ACT makes specific reference to sentience in its animal welfare legislation. Inclusion of a reference to sentience in new animal welfare legislation was rejected by the NT legislature. In debate on the *Animal Protection Bill 2018* (NT), the Department of Primary

Industry and Resources advised that adding sentience as a specific statement did not add to the intent of the legislation or enhance compliance with the legislation.⁴⁹

Sentience is recognised in the Animal Welfare Action Plan of Victoria (Vic) and the State government is seeking feedback on a proposal to formally recognise sentience in a new Animal Welfare Act.⁵⁰

Science demonstrates that animals are sentient. This means they experience feelings and emotions such as pleasure, comfort, discomfort, fear and pain. Sentience is the primary reason that animal welfare is so important. All people and industries within Vic have a responsibility to treat all animals with care and respect.⁵¹

In NZ, the *Animal Welfare Act* (1999) was amended in 2015 to recognise that animals are sentient and to require owners and persons in charge of animals to attend properly to their welfare.⁵²

The World Organisation for Animal Health (OIE) does not mention sentience in its definition of animal welfare, but does refer to animal sentience as part of the context of the OIE Global Animal Welfare Strategy.⁵³

Regulators and some submissions to the Panel commented on the need to recognise animal sentience, for example:

Animals are sentient beings that are conscious, feel pain and experience emotions... Humans should strive to provide positive experiences to promote a life worth living for the animals in their care.⁵⁴

At the Panel's public consultation forums, people who work with commercial livestock used terms such as 'like', 'dislike', 'suffering' and 'pain' with reference to animals. These terms fall within the scientific concept of sentience. The Panel noted that sentience is a complex concept, and there does not appear to be a simple, universally accepted definition.

⁴⁴ Sentience: the ability to feel or perceive things: Sentient. (n.d.). In *Lexico*. Oxford. <https://www.lexico.com/definition/sentient>

⁴⁵ Proctor, H. S., Carder, G., & Cornish, A. R. (2013). Searching for Animal Sentience: A Systematic Review of the Scientific Literature. *Animals*, 3(3): 882-906. doi: 10.3390/ani3030882

⁴⁶ Turner, J. (2006). *Stop – Look – Listen: Recognising the sentience of farm animals*. *Compassion in World Farming Trust* (updated version). <<https://www.civf.org.uk/media/3816923/stop-look-listen.pdf>>

⁴⁷ Cognition: the mental action or process of acquiring knowledge and understanding through thought, experience, and the senses: (n.d.). In *Lexico*. Oxford. <https://www.lexico.com/definition/cognition>

⁴⁸ Nawroth, C., Langbein, J., Coulon, M., Gabor, V., Oesterwind, S., et al. (2019). Farm animal cognition—linking behavior, welfare and ethics. *Frontiers in Veterinary Science*. 6: 24. doi: 10.3389/fvets.2019.00024

⁴⁹ Department of Primary Industry and Resources. (2018). *Response to Written Questions*. Legislative Assembly of the Northern Territory - Animal Protection Bill. <https://parliament.nt.gov.au/committees/spsc/44-2018#TP>

⁵⁰ Department of Jobs, Precincts and Regions. (2020). *Directions Paper – A New Animal Welfare Act for Victoria*. Government of Victoria. <https://engage.vic.gov.au/new-animal-welfare-act-victoria>

⁵¹ Government of Victoria. (2017). *Animal Welfare Action Plan - Improving the Welfare of Animals in Victoria*. https://agriculture.vic.gov.au/_data/assets/pdf_file/0003/562386/Animal-Welfare-Action-Plan-Dec-2017.pdf

⁵² *Animal Welfare Act 1999* (NZ).

⁵³ World Organisation for Animal Health. (2017). *OIE Global Animal Welfare Strategy*. https://www.oie.int/fileadmin/Home/eng/Animal_Welfare/docs/pdf/Others/EN_OIE_AW_Strategy.pdf

While the Panel recognised the importance of sentience and its implications for animal welfare, the inclusion of the term in the AW Act was not seen as an essential step. The Panel was keen to avoid a lengthy and possibly unproductive debate about the meaning of 'sentience' and on whether the word is sufficiently understood by the wider community. Nonetheless, the Panel was convinced that the law should no longer reflect the outdated view that the primary value of animals is as property and that their welfare can be protected without regard to their experiences and perceptions.

RECOMMENDATION 2

The Panel recommends that section 3 of the Animal Welfare Act 2002 be amended to expressly recognise that animals are living beings, able to perceive, feel, and have positive and negative experiences.

Definition of good animal welfare

The term 'welfare' is used in many sections of the AW Act, including in the long title: 'An Act to provide for the welfare, safety and health of animals ...'. Most community members have an understanding of what 'safety' and 'health' mean, based on their life experiences and education. Welfare is a more nuanced matter.⁵⁴

Historically, the concept of animal welfare related primarily to meeting basic needs such as food, water, shelter, and avoiding negative physical outcomes, such as starvation. This is the basis for the 'Five Freedoms', a conceptual framework used to describe and assess the welfare of animals since the late 1970s.

The OIE's work on animal welfare standards is informed by a series of guiding principles, which include the 'Five Freedoms'.⁵⁵ It defines animal welfare as: 'the physical and mental state of an animal in relation to the conditions in which it lives and dies'. According to the OIE, an animal experiences good welfare if the animal is healthy, comfortable, well nourished, safe, is not suffering from unpleasant states such as pain, fear and distress, and is able to express behaviours that are important for its physical and mental state.

Contemporary discussions are increasingly focused on how to achieve a state of positive welfare and the concept of a 'life worth living'.⁵⁷ To this end, animal welfare scientists developed the 'Five Domains Model', which places more focus on the subjective experiences of an animal and can be used to assess animal welfare more holistically.⁵⁸

Australia's National Health and Medical Research Council (NHMRC) defines 'animal welfare' as 'an animal's quality of life, which encompasses the diverse ways an animal may perceive and respond to their circumstances, ranging from a positive state of wellbeing to a negative state of distress'.⁵⁹ Wellbeing is defined in the NHMRC Australian Code for the Care and Use of Animals for Scientific Purposes (Scientific Use Code) as 'an animal is in a positive mental state and is able to achieve successful biological function, to have positive experiences, to express innate behaviours, and to respond to and cope with potentially adverse conditions'.

As 'animal welfare' is the subject of multiple definitions and open to various interpretations, the Panel considered that courts and others applying the legislation may be assisted by a definition of the term. On the other hand, given the concept of 'welfare' has changed with time, and may continue to change, it is important that any proposed definition of the term remains relevant in future.

The Panel concluded that animal welfare is a complex concept, which is difficult to define and assess. However, modern animal welfare legislation should promote positive animal welfare outcomes. Establishing a definition of animal welfare could assist in ensuring that an animal's experiences and perceptions are recognised as important to its welfare.

RECOMMENDATION 3

The Panel recommends that section 3 of the Animal Welfare Act 2002 be amended to expressly recognise that good animal welfare requires the satisfaction of an animal's physiological and behavioural needs and the provision for positive experiences.

⁵⁴ Submission 338.

⁵⁵ See, for example, Carezzi, C., & Verga, M. (2009). Animal welfare: review of the scientific concept and definition. *Italian Journal of Animal Science*, 8:sup1, 21-30. doi: 10.4081/ijas.2009.s1.21

⁵⁶ World Organisation for Animal Health, *Terrestrial Animal Health Code* (2019).

⁵⁷ Mellor, D. J. (2019). Welfare-aligned sentience: Enhanced capacities to experience, interact, anticipate, choose and survive. *Animals*, 9, 440.

⁵⁸ Mellor, D. J., & Beausoleil, N. (2015). Extending the 'Five Domains' model for animal welfare assessment to incorporate positive welfare states. *Animal Welfare* 24(3): 241-253.

⁵⁹ Scientific Use Code.

Updating the definition of 'harm' in the *Animal Welfare Act 2002*

Animal cruelty offences typically criminalise particular acts (such as beating an animal⁶⁰) or particular consequences (such as causing an animal unnecessary pain⁶¹). In Australian states and territories, commonly prohibited 'consequences' of conduct include unnecessary or unjustifiable pain, injury and distress or suffering.

In WA, a person is prohibited from causing an animal unnecessary 'harm', which is defined to include:

- (a) injury;
- (b) pain; and
- (c) distress evidenced by severe, abnormal physiological or behavioural reactions.⁶²

The concept of injury is included in the animal welfare legislation of all Australian jurisdictions.⁶³

Pain is also included in the legislation of all Australian jurisdictions.⁶⁴ Pain research has demonstrated that animals, like humans, can experience different levels of pain. For example, animals such as mice,⁶⁵ rats,⁶⁶ sheep,⁶⁷ and horses⁶⁸ can express different grimace faces when exposed to different levels of pain. These results suggest that animals not only sense pain but that pain could also be a negative experience.⁶⁹

The definitions of pain in legislation vary, but some provide that pain includes suffering and distress: New South Wales (NSW) defines 'pain' as including suffering and distress,⁷⁰ and Qld defines 'pain' as including distress and mental or physical suffering.⁷¹ Other jurisdictions, including WA, include 'distress' within the definition of other terms such as harm. For example, SA provides that 'harm' includes 'suffering or distress'.⁷² WA is the only jurisdiction that requires distress to be 'evidenced by severe, abnormal physiological or behavioural reactions'.⁷³

The term 'distress' is defined by the NHMRC as follows:

An animal is in a negative mental state and has been unable to adapt to stressors so as to sustain a state of wellbeing. Distress may manifest as abnormal physiological or behavioural responses, a deterioration in physical and psychological health, or a failure to achieve successful biological function. Distress can be acute or chronic and may result in pathological conditions or death.⁷⁴

This definition suggests that distress may manifest in many ways and is not always accompanied by obvious changes in behaviour.

Scientific findings suggest that the experience of pain and distress in animals is not limited to the animal's physical condition but also contains a psychological element.⁷⁵

⁶⁰ For example, *Prevention of Cruelty to Animals Act 1986* (Vic) s 9(1)(a).

⁶¹ For example, *Animal Protection Act 2018* (NT) s 24(1).

⁶² AW Act s 5(1).

⁶³ *Prevention of Cruelty to Animals Act 1979* (NSW) s 4(3)(b), 15(1)(b); *Prevention of Cruelty to Animals Act 1979* (Vic) s 13(1B); *Animal Welfare Act 1985* (SA) s 3; *Animal Welfare Act 1992* (ACT) s 6A; *Animal Welfare Act 1993* (Tas) s 9(1)(c); *Animal Care and Protection Act 2001* (Qld) s 18(2)(h); AW Act s 5(1); *Animal Protection Act 2018* (NT) s 4.

⁶⁴ *Prevention of Cruelty to Animals Act 1979* (NSW) s 4(1); *Prevention of Cruelty to Animals Act 1979* (Vic) s 9(1)(b); *Animal Welfare Act 1985* (SA) s 3; *Animal Welfare Act 1992* (ACT) s 6A; *Animal Welfare Act 1993* (Tas) s 8(1); *Animal Care and Protection Act 2001* (Qld) s 18(2)(a); AW Act s 5(1); *Animal Protection Act 2018* (NT) s 4.

⁶⁵ Langford, D. J., Bailey, A. L., Chanda, M. L., Clarke, S. E., Drummond, T. E., et al. (2010). Coding of facial expressions of pain in the laboratory mouse. *Nature Methods* 7: 447.

⁶⁶ Sotocina, S.G., Sorge, R.E., Zaloum, A., Tuttle, A.H., Martin, L.J., et al. (2011). The Rat Grimace Scale: a partially automated method for quantifying pain in the laboratory rat via facial expressions. *Molecular Pain* 7, 1744-8069-1747-1755. doi: 10.1186/1744-8069-7-55

⁶⁷ McLennan, K.M., Rebelo, C.J., Corke, M.J., Holmes, M.A., Leach, M.C., & Constantino-Casas, F. (2016). Development of a facial expression scale using footrot and mastitis as models of pain in sheep. *Applied Animal Behaviour Science* 176, 19-26.

⁶⁸ Dalla Costa, E., Minero, M., Lebelt, D., Stucke, D., Canali, E., & Leach, M.C. (2014). Development of the Horse Grimace Scale (HGS) as a pain assessment tool in horses undergoing routine castration. *PLoS One* 9.

⁶⁹ Mogil, J.S., & Crager, S.E. (2004). What should we be measuring in behavioral studies of chronic pain in animals? *Pain* 112(1): 12-15.

⁷⁰ *Prevention of Cruelty to Animals Act 1979* (NSW) s 4(1).

⁷¹ *Animal Care and Protection Act 2001* (Qld), Schedule – Dictionary.

⁷² *Animal Welfare Act 1985* (SA) s 3.

⁷³ AW Act s 5(1).

⁷⁴ Scientific Use Code.

⁷⁵ Weary, D.M., Droegge, P., & Braithwaite, V.A. (2017). Behavioral evidence of felt emotions: approaches, inferences, and refinements. *Advances in the Study of Behavior*, 49: 27-48.

Regulators and many stakeholders supported broadening the definition of 'harm' in the AW Act. For example, one theme raised by multiple respondents was that the AW Act 'should be modified from the current model based on the prohibition of cruelty to one that promotes good animal welfare and positive life experiences for animals' and that, consistent with this thinking, the definition of 'harm' should be revisited.⁷⁶

Other themes expressed by some stakeholders were:

- a call for 'harm' to be considered in the context of species, breed, use (for example, working dog vs. family pet, commercial vs. companion animal), and factors relating to seasonal conditions and emergencies; and
- that any changes to the definition of 'harm' should not place a disproportionate emphasis on minor offences.⁷⁷

Several submissions to the Panel recommended the removal of 'severe' in reference to 'distress' under the definition of 'harm'.

Requiring proof of a 'severe' reaction creates evidentiary difficulties in respect of animals that are unlikely, by virtue of their species or nature, to show a severe response to distress. Further, the inclusion of the word 'severe' in part (c) of the definition is at odds with parts (a) and (b) of the definition, which are not qualified by reference to the severity of the animal's reaction to the pain or injury. Rather, pain or injury, no matter how minimal and irrespective of how the animal reacts, will amount to 'harm' for the purposes of the AW Act.

This is not to say that the severity of harm caused to an animal should be irrelevant; the extent of any harm caused to an animal will be relevant to a number of questions under the AW Act, such as whether any enforcement action is appropriate or, if such action is taken, to the penalty for the offence.

The Panel noted that scientific evidence supports the proposition that a distressed animal may not always exhibit a severe change in physiology or behaviour, and supported amending the definition of 'harm' in the AW Act to reflect this.

RECOMMENDATION 4

The Panel recommends amending part (c) of the definition of 'harm' in the Animal Welfare Act 2002 to take account of the fact that an animal may be experiencing distress before its observable physiological or behavioural reactions to such distress become 'severe'.

Definition of 'person in charge' in the *Animal Welfare Act 2002*

A key concept in animal welfare legislation is the definition of who is responsible for the welfare of animals. The concept 'person in charge' is used for this purpose. Section 5 of the AW Act identifies 'person in charge' as follows:

person in charge, in relation to an animal, means –

- the owner of the animal; or
- a person who has actual physical custody or control of the animal; or
- if the person referred to in paragraph (b) is a member of staff of another person, that other person; or
- the owner or occupier of the place or vehicle where the animal is or was at the relevant time.

The definition is not inclusive, as it is preceded by the term 'means' rather than 'includes' and DPIRD informed the Panel that it is often construed narrowly. Furthermore, the wording of paragraph (b) could be interpreted as not capturing a person who is responsible for the welfare of an animal but who does not have 'actual physical' custody or 'actual physical' control of the particular animal. This could, for example, mean that a farm manager who has overall responsibility for the welfare of animals on a property by virtue of his or her position, but is not directly involved with them on a daily basis, may be found to not be a 'person in charge' of the animals.

The Panel noted that s 28 of the AW Act provides a relevant defence to persons who did not have actual physical custody or control of an animal at the relevant time.

The definition of 'person in charge' in the animal welfare legislation in some other Australian jurisdictions is clearer and more comprehensive, as shown in the following examples:

Prevention of Cruelty to Animals Act (1979) (NSW)

person in charge, in relation to an animal, includes –

- the owner of the animal,
- a person who has the animal in the person's possession or custody, or under the person's care, control or supervision,
- where a person referred to in paragraph (b) is bound to comply with the directions, in respect of the animal, of any servant or agent of the owner of the animal, that servant or agent, as the case may be, and
- where the animal, being a stock animal, is confined in a sale-yard:
 - the owner of the sale-yard, or
 - where the sale-yard is the subject of a lease, the lessee of the sale-yard.

⁷⁶ Consultation Summary Report – Public Consultation p 3.

⁷⁷ Consultation Summary Report – Public Forums p 4.

⁷⁸ National Research Council. (1992). *Recognition and Alleviation of Pain and Distress in Animals*. Washington, DC: The National Academies Press. Chapter 3 Recognition and Assessment of Pain, Stress and Distress. <https://www.nap.edu/read/1542/chapter/5#45>

Prevention of Cruelty to Animals Act (1986) (Vic)

person in charge of in relation to an animal or thing, includes –

- (a) a person who has the animal or thing in the person's possession or custody, or under the person's care, control or supervision; and
- (b) any employee or agent of the owner of the animal or thing if a person referred to in paragraph (a) is bound to comply with the directions of that employee or agent in respect of the animal or thing.

DPIRD informed the Panel of practical challenges associated with the identification of a 'person in charge', such as complex ownership and property management structures that made it difficult to hold individuals or entities to account for serious animal welfare incidents.

The Panel recognised the need for a small but important amendment to the AW Act to clarify the definition of 'person in charge'.

RECOMMENDATION 5

The definition of 'person in charge' in the Animal Welfare Act 2002 should be modified to ensure that all persons who are responsible for the welfare of an animal are included in the definition, even though a person may not have 'actual physical' custody or 'actual physical' control of the animal.

Updating the definition of 'animal' in the Animal Welfare Act 2002

The AW Act defines an 'animal' as: (a) a live vertebrate; or (b) a live invertebrate of a prescribed kind, other than a human or a fish (as defined in the FRM Act⁷⁹).⁸⁰ No invertebrates are prescribed for the purposes of this definition.

This definition of 'animal' is inconsistent with that contained in the animal welfare legislation of other Australian jurisdictions and some other countries, which include fish – or at least vertebrate fish – in the definition of 'animal'. Some jurisdictions also define cephalopods and crustaceans as animals. The ACT, Qld, and Tas include cephalopods. In the NT, cephalopods and crustaceans are 'animals' for the purpose of the *Animal Protection Act 2018* if they are 'in the possession or under the control of a person'. Qld, SA, Tas, and WA exclude crustaceans. In the ACT and NSW crustaceans are included if they are a 'live crustacean intended for human consumption'.⁸¹

The exclusion of fish from the definition of 'animal' under the AW Act also creates internal inconsistency with Part 2, which deals with the licensing of the use of animals for scientific purposes. States and territories refer to the NHMRC Code for the Care and Use of Animals for Scientific Purposes⁸² (Scientific Use Code) as the standard relevant to the regulation of scientific use of animals. The Scientific Use Code defines an animal as 'any live non-human vertebrate (that is, fish, amphibians, reptiles, birds and mammals, encompassing domestic animals, purpose-bred animals, livestock, wildlife) and cephalopods'. Under the AW Act it is mandatory to comply with the Scientific Use Code when using animals for scientific purposes.

Some of the Regulators and stakeholders called for resolution of this inconsistency between the inclusion of vertebrate fish and cephalopods in the Scientific Use Code, and the lack of coverage of these species in the AW Act, specifically Part 2.

Thirty-three submissions to the Panel considered that the AW Act should cover fish, and there was also support for including invertebrates generally (16 submissions), cephalopods (22 submissions), decapods (18 submissions) and crustaceans (7 submissions). Several submissions noted that these species are sentient and feel pain. They should therefore be rendered insensible before being killed. The need for greater consistency with the animal welfare legislation of other jurisdictions was also mentioned.

One submission explicitly requested that fish not be included in the AW Act, citing their inability to be compared to livestock species, and the sufficiency of existing codes of conduct for recreational fishing.

⁷⁹ Section 4(1) of the FRM Act provides that 'fish' means 'an aquatic organism of any species (whether alive or dead) and includes —

- (a) the eggs, spat, spawn, seeds, spores, fry, larva or other source of reproduction or offspring of an aquatic organism; and
- (b) a part only of an aquatic organism (including the shell or tail); and
- (c) live rock and live sand,

but does not include aquatic mammals, aquatic reptiles, aquatic birds, amphibians or (except in relation to Part 3 and Division 1 of Part 11) pearl oysters'.

⁸⁰ AW Act s 5(1).

⁸¹ *Animal Welfare Act 1992* (ACT) Dictionary; *Prevention of Cruelty to Animals Act 1979* (NSW) s 4(1).

⁸² 8th edition, 2013.

The RSPCA has in the past five years received 108 reports regarding cruelty to ornamental fish in private and commercial settings. Inspectors are unable to investigate these reports, or to take action in relation to the neglect or ill treatment of fish observed during the investigation of other cruelty reports, due to fish being excluded from the AW Act.

DPIRD further informed the Panel that, as a consequence of fish being specifically excluded from the AW Act in 2002, amendments were made at the time to the FRM Act. These were to allow regulations to be made under that Act to prevent cruelty to fish and to provide for the health, safety and welfare of fish. No such regulations have been introduced to date. The power to make those regulations was included in the *Aquatic Resources Management Act 2016* and the making of regulations is under consideration.

The Panel did not specifically provide for the inclusion of aquatic industry stakeholders in the consultation process and did not, therefore, feel that it would be appropriate to make a specific recommendation on broadening the definition of 'animal', other than as discussed above in relation to Scientific Licensing.

RECOMMENDATION 6

The Panel recommends the inclusion of vertebrate fish and cephalopods in the definition of 'animal' for the purposes of Part 2 of the Animal Welfare Act 2002.

The Panel found that Inspectors are unable to take effective action under the AW Act to protect the welfare of fish in domestic settings.

RECOMMENDATION 7

The Panel recommends that consideration be given to whether the welfare of vertebrate fish kept as domestic pets should be transferred to the Animal Welfare Act 2002.

RECOMMENDATION 8

The Panel recommends a review be conducted to investigate the effectiveness of current arrangements for protecting the welfare of fish.

4.

Powers of Inspectors – Entry

Background

A general inspector, as defined in the AW Act, includes a person appointed by the Chief Executive Officer of DPIRD (CEO) and who is a staff member of either DPIRD, the RSPCA, local government, DBCA, or 'Fisheries Western Australia' (presently DPIRD), or any other person the CEO considers appropriate to appoint.⁸³

In this Report, unless otherwise stated, 'Inspector' means a general inspector as defined in s 5 of the AW Act. This definition includes police officers and Inspectors appointed under s 33.

The term 'appointed Inspector' is used in this Report to refer to general inspectors appointed under s 33 only and not police officers. The role of police officers in animal welfare regulation in WA is explained in Chapter 7.

Where reference in this Report is intended to include scientific inspectors appointed under s 34 of the AW Act, this is explicitly stated.

A key function of Inspectors is to enforce Part 3 of the AW Act, which contains the prohibition on being cruel to animals and which, more broadly, aims to promote and protect the welfare, safety and health of animals and ensure animals are properly and humanely treated, cared for and managed.⁸⁴ In order to carry out their functions effectively, an Inspector clearly requires access to certain powers. Necessary powers include the power to enter a place or vehicle, the power to take appropriate action to alleviate animal suffering, and the power to seize animals or items which might provide evidence of the commission of an offence.

The second TOR asked the Panel to identify any impediments to the effective enforcement of the Act and any related Regulations, with specific attention to the powers of Inspectors and the prosecution of offenders. The nature and adequacy of Inspectors' powers, which are critical to the proper enforcement of the AW Act, was raised by a wide range and large number of stakeholders.

In this Report, stakeholders' views regarding Inspectors' powers were divided into two categories: powers of entry, and other powers. This chapter focuses on the powers of Inspectors to enter places and vehicles. Other powers of Inspectors are addressed in Chapter 5.

Issues relating to Inspectors' powers of entry were previously raised in the Animal Welfare Amendment Bill 2017 (AW Bill). The Legislative Council referred the AW Bill to the Standing Committee on Legislation (Legislation Committee), which reported in June 2018.⁸⁵

One of the aims of the AW Bill was to create a new class of Inspector, the 'designated general inspector', appointed by the relevant Minister and with enhanced powers to enter premises other than a residence and vehicles without consent, notice or warrant. In its report, the Legislation Committee found that the majority was not persuaded of the need for the new category of designated general inspector at that point in time, nor for the enhanced powers of entry that such an inspector would enjoy. The report states:

No evidence was adduced that the role of monitoring compliance with legislated standards and guidelines could not be adequately undertaken by existing inspectors, under existing powers, and the provisions in this part of the Animal Welfare Amendment Bill 2017 should be held in abeyance pending the outcome of the full review [of the AW Act].⁸⁶

⁸³ AW Act s 33.

⁸⁴ AW Act s 19A.

⁸⁵ Standing Committee on Legislation. (2018). *Report 36 – Animal Welfare Amendment Bill 2017*. Legislative Council. [http://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/CEB11B0DC7F3EB3B482582BA0009CE8A/\\$file/ls.awa.180628.rpf.036.xx.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/CEB11B0DC7F3EB3B482582BA0009CE8A/$file/ls.awa.180628.rpf.036.xx.pdf)

⁸⁶ Finding 7 of Standing Committee on Legislation. (2018). *Report 36 – Animal Welfare Amendment Bill 2017*. Legislative Council [http://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/CEB11B0DC7F3EB3B482582BA0009CE8A/\\$file/ls.awa.180628.rpf.036.xx.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/CEB11B0DC7F3EB3B482582BA0009CE8A/$file/ls.awa.180628.rpf.036.xx.pdf)

The following findings led to the Legislation Committee's decision to reject clauses 9 to 13 of the AW Bill:

- The proposal that designated general inspectors be appointed by the Minister instead of, as is more usually the case, the administrative head of the relevant department, caused an unnecessary measure of uncertainty and mistrust.
- For the purposes of monitoring compliance with legislated animal welfare standards and guidelines, the comparatively unfettered powers of entry proposed for designated general inspectors were unnecessary. The powers that exist for inspectors generally under the AW Act were sufficient for those purposes.
- In the context of monitoring activities, no sufficient evidence was produced to justify a lack of any provisions allowing for notice to be given to owners or occupiers of premises prior to entry being effected. Consideration should be given to an amendment to s 38(3) of the AW Act, requiring the giving of 24 hours' notice before an entry to premises may be effected, or to an additional provision along the lines of that contained in s 65(3) and (4) of the BAM Act.

In February 2020, the release of the Farm Trespass and Animal Welfare Bill (Farm Trespass Bill) for public consultation generated discussion about Inspectors' powers of entry. The Farm Trespass Bill proposed reforms to three Acts, namely the AW Act, the *Criminal Code* and the *Restraining Orders Act 1997*.

In response to the release of the Farm Trespass Bill, there was considerable debate about whether Inspectors needed greater powers to enter premises where commercial livestock are held or managed. In the record of debate on 10 September 2020 in the Legislative Assembly, the Hon Peter Rundle, representing the WA Nationals, expressed concern about linkages being made between illegal activities, such as trespass, and the animal welfare inspection regime. He mentioned concerns about the definition of "designated Inspector" and how an Inspector could enter an agricultural production site with little evidence of welfare offences, resulting in owners being aggrieved at potential confrontations, and also criticised the timing of a proposal to amend the AW Act in advance of the Panel's Review process.⁸⁷

In view of the ongoing, highly polarised debate about the powers of Inspectors, the Panel gave careful consideration to the issue, and in particular to the powers to enter places and vehicles.

Powers to enter a place or vehicle

Powers to enter places impinge, to varying degrees, on individuals' rights to privacy. Accordingly, the conferral of those powers by legislation must be carefully considered. When deciding whether legislation should include a power of entry, it is necessary to weigh up the object to be achieved against the degree of intrusion involved, and in light of that balancing act, decide whether or not to grant the power and, if it is granted, how and when the power may be exercised.⁸⁸ A power of entry should only be granted where the matter in issue is of sufficient seriousness to justify its grant and the public interest is served by the existence of the power.⁸⁹

In order to effectively enforce, and fulfil the purposes of, the AW Act, there is a clear need for Inspectors to access private or commercial properties and vehicles in some circumstances. For example, Inspectors may need to enter a place or vehicle to investigate a cruelty complaint, collect evidence for a current investigation, attend to animals whose welfare is under threat, or check compliance with the AW Act.

The AW Act presently permits entry by an Inspector to places in limited circumstances (except in respect of scientific establishments, which a scientific inspector may enter at any time).⁹⁰ Section 38 of the AW Act details the powers of an Inspector to enter a place. In places other than scientific establishments, an Inspector may enter a place with the consent of the owner or occupier; by providing notice of not less than 24 hours (provided no objection to entry is made within the notice period); with a warrant; or, in the case of a non-residential place, if there is a reasonable suspicion that an offence under Part 3 of the AW Act has been, is being, or is likely to be committed at that place.

Section 39 of the AW Act details the power to enter vehicles. The power to enter a vehicle is similar to the power to enter a place, but without the option to provide notice. That is, an Inspector may enter a vehicle with consent, under a warrant, or if the Inspector reasonably suspects the vehicle has been, is being, or is likely to be used in the commission of an offence.

Warrants under the AW Act may be granted by a Justice of the Peace. In order to obtain a warrant, an Inspector must prepare an application to satisfy a Justice of the Peace that:

- there are reasonable grounds for suspecting that at the place or vehicle there is evidence of an offence under the AW Act or an animal whose welfare, safety or health is under threat; or
- entry is reasonably required to investigate a suspected offence.

⁸⁷ Western Australia, *Parliamentary Debates*, Legislative Assembly, 10 September 2020, 5753-5756 (Peter Rundle).

⁸⁸ Victorian Parliament Law Reform Committee. (2001). *The powers of entry, search, seizure and questioning by authorised persons – Discussion Paper*. https://www.parliament.vic.gov.au/images/stories/committees/lawreform/powers_of_entry/disc_paper.pdf

⁸⁹ Victorian Parliament Law Reform Committee. (2001). *The powers of entry, search, seizure and questioning by authorised persons – Discussion Paper*. https://www.parliament.vic.gov.au/images/stories/committees/lawreform/powers_of_entry/disc_paper.pdf

⁹⁰ AW Act s 38(1)(d).

It follows that, unless an Inspector has sufficient evidence to form a reasonable suspicion that an animal is under threat, or that an offence has occurred or is likely to occur at a place or in a vehicle, Inspectors effectively require the consent of the occupier or person in charge of a place prior to entry.

With the introduction of Regulations based on minimum animal welfare standards, Inspectors may need to enter livestock premises to monitor compliance with the Regulations. Routine inspections to monitor compliance would not reflect a suspicion of non-compliance; rather, they would be based on routine work planning. If an Inspector cannot obtain consent from the occupier or person, however, it is not possible to carry out routine inspections. This matter is discussed in detail in 5.4 below.

Stakeholders expressed a range of views regarding Inspectors' powers of entry.

Some stakeholders supported broader powers of entry, submitting that Inspectors should have sufficient powers of entry to ensure people are complying with direction notices and court orders under the AW Act, and to immediately assist distressed animals. Some stakeholders also supported Inspectors having the power to enter commercial/business properties unannounced for 'on the spot' inspections or audits,⁹¹ with some participants noting that it would be important for Inspectors to have sufficient training and experience if they had such a power.

Stakeholders who opposed increasing Inspectors' powers of entry contended that there was insufficient evidence that the current powers are inadequate to monitor animal welfare. One submission expressed the view that Inspectors' current powers are approximately equivalent to the powers held by other public inspectors, whereas another suggested that the right of access to non-residential premises is a common law enforcement tool that is lacking in the AW Act.⁹² There was also concern that unannounced inspections could present risks to biosecurity and occupational health and safety, or compromise on-farm animal welfare.⁹³ Some participants were concerned that increased powers would result in producers being unfairly burdened by malicious animal welfare complaints.⁹⁴

In relation to concerns regarding biosecurity and occupational health and safety, the Panel noted that various public officials in WA already have power under legislation other than the AW Act to enter places that are regarded as needing protection from disease risks (such as intensive

piggeries or chicken farms), and premises regarded as hazardous worksites (such as saleyards or mines).⁹⁵ The risks associated with entry to these places can be managed and, when appropriate management procedures are in place, do not preclude entry by duly authorised persons. In this regard, the Panel noted the importance of Inspectors receiving appropriate training, as discussed in Chapter 6. Inspectors must be adequately trained to ensure their entry to a place takes into account any relevant biosecurity risk and does not pose a risk to their own safety or the safety of other persons or animals at the premises. Given the various types of biosecurity risks and management plans implemented by different farming enterprises, it is important that Inspectors have a practical understanding of farming practices, risks, and appropriate risk management. The AW Act already requires inspectors performing a function under the AW Act to:

- take reasonable precautions to avoid the spread of disease;
- cause as little damage as is reasonably practicable to property; and
- cause as little disruption as is reasonably practicable to any business or activity that is being carried on in accordance with the AW Act.⁹⁶

Taking the above considerations into account, the Panel considered there were a number of circumstances in which the current powers of entry of Inspectors are inadequate. These include:

- where an animal requires urgent assistance and there is insufficient time to obtain a warrant;
- where an Inspector needs to monitor compliance with a direction or court order; and
- where an Inspector needs to monitor compliance with the AW Act and Regulations.

These shortcomings in the powers of entry, and the ways in which they can be addressed in a proportionate manner, are discussed below. Issues relating to the use of notices as a means of gaining entry to a place are also discussed.

⁹¹ Submission pro forma 2, 3 and 4.

⁹² Submission 343; submission 348.

⁹³ Submission 280; submission 345.

⁹⁴ Consultation Summary Report – Public Forums.

⁹⁵ BAM Act s 65(1)(b); OSH Act s 43(1)(a)-(b) (noting that many premises at which animals are located are also workplaces); MSI Act s 21(1)(a).

⁹⁶ AW Act s 48(6).

Urgent entry to assist severely injured or dying animal

Stakeholders emphasised that Inspectors should be able to enter a place to help distressed or injured animals.

At present, an Inspector may enter a place where there is an urgent need to assist an animal if the owner or occupier consents to the Inspector's entry, or if the Inspector has a warrant to enter. The warrant can be issued on the basis that there is, in the place or vehicle, an animal 'the welfare, safety or health of which is under threat'. Inspectors use this approach where it is not possible to contact the owner or occupier.⁹⁷

A warrant may be granted by telephone or other similar method if needed urgently. Some of the Regulators informed the Panel, however, that in emergency situations there is sometimes insufficient time to obtain an urgent warrant, or there may not be the means to do so (for instance, if an Inspector is in a particularly remote region). Depending on the circumstances, a delay in obtaining a warrant, even on an urgent basis, could lead to the animal suffering prolonged distress or injury.

If the place or vehicle is not a residence, an Inspector may enter without a warrant if the Inspector reasonably suspects that an offence has occurred, is occurring, or is likely to occur at the place or vehicle. However, not all situations where an animal is injured or at imminent risk of harm will necessarily be associated with an offence; some emergency situations will arise from accident or misadventure.

Feedback from the public forums and in written submissions supported the provision of increased powers of entry for Inspectors to provide urgent assistance to distressed animals.⁹⁸

Legislation within a number of other Australian jurisdictions allows an Inspector to enter a place without consent or a warrant under urgent circumstances.⁹⁹ For example:

- The *Animal Care and Protection Act 2001* (Qld) permits an inspector to enter a place if the inspector reasonably suspects an animal at the place has just sustained a severe injury and the injury is likely to remain untreated or untreated for an unreasonable period. An inspector may also enter a place if the inspector reasonably suspects

there is an imminent risk of death or injury to an animal at the place because of an accident or from an animal welfare offence.¹⁰⁰ Further, provided an animal is not at a part of a place at which a person apparently lives (such as inside a home), an inspector may enter a place to provide food or water to an animal, or to disentangle the animal.¹⁰¹

- The *Prevention of Cruelty to Animals Act 1979* (NSW) permits inspectors to enter land, including a dwelling, if the inspector believes on reasonable grounds that:
 - (a) an animal has suffered significant physical injury, is in imminent danger of suffering significant physical injury or has a life threatening condition that requires immediate veterinary treatment; and
 - (b) it is necessary for the inspector to enter to prevent further physical injury or to prevent significant physical injury to the animal or to ensure that it is provided with veterinary treatment.¹⁰²

In NZ, inspectors have a broad power to enter a place or vehicle (not including a dwelling or marae¹⁰³) at any reasonable time to inspect an animal.¹⁰⁴

The Panel recognised a need to ensure that Inspectors have adequate powers to enter a place to assist an animal but felt that these powers should be subject to appropriate checks and balances, as follows:

- The Inspector reasonably suspects an animal at the place has sustained a severe injury and the injury is likely to remain untreated, or remain untreated for a reasonable period, or there is an imminent risk of death or injury to an animal at the place or in the vehicle.
- Reasonable steps have been taken to contact the owner or occupier of the place or vehicle (for the purpose of alerting him/her to the welfare issue and seeking his/her consent to enter) and he/she cannot be contacted. What amounts to reasonable steps will depend on the urgency of the situation. If the animal needs urgent attention, it may involve merely knocking on the door or calling out for the owner.
- The Inspector reasonably believes that it is not possible, or that there is insufficient time, to obtain an urgent warrant.

The Panel considered the AW Act should be amended to allow Inspectors to enter a place in these limited circumstances in order to assist an animal.

⁹⁷ AW Act s 59(a)(i).

⁹⁸ For example: submission 27; submission 67; submission 254.

⁹⁹ *Animal Welfare Act 1992* (ACT) s 81(1), (2)(d); *Prevention of Cruelty to Animals Act 1979* (NSW) s 24E(1)-(2); *Animal Protection Act 2018* (NT) s 83(2)(e); *Animal Care and Protection Act 2001* (Qld) s 122(1)(e); *Animal Welfare Act 1985* (SA) s 30(1)(a), (2), (5)(b).

¹⁰⁰ *Animal Care and Protection Act 2001* (Qld) s 122(1)(e).

¹⁰¹ *Animal Care and Protection Act 2001* (Qld) s 123.

¹⁰² *Prevention of Cruelty to Animals Act 1979* (NSW) s 24E(1)-(2).

¹⁰³ 'Marae' is defined in s 2(1) of the *Animal Welfare Act 1999* (NZ). It includes, amongst other places, land which is set apart for the purposes of a marae or meeting place under s 338 or s 341 of *Te Ture Whenua Maori Act 1993* (*Maori Land Act 1993*) (NZ).

¹⁰⁴ *Animal Welfare Act 1999* (NZ) s 127(1), (3).

RECOMMENDATION 9

The Panel recommends that Inspectors be authorised to enter a place or vehicle, including a residence, if the Inspector reasonably believes that it is not possible, or that there is insufficient time, to obtain an urgent warrant, and the Inspector reasonably suspects:

- (a) an animal at the place has sustained a severe injury and the injury is likely to remain untreated, or remain untreated for an unreasonable period; or*
- (b) there is an imminent risk of death or injury to an animal at the place or in the vehicle, whether or not an offence has occurred or is suspected.*

This power is to be used only if reasonable steps, where practicable, have been made to contact the owner or occupier of the place or vehicle and he/she cannot be contacted.

Entry to places to monitor compliance with court orders and directions

Stakeholders also raised the need for Inspectors to have greater powers of entry to enable them to check compliance with a direction and court-issued prohibition orders.¹⁰⁵

Under the AW Act, Inspectors are able to direct a person in control of an animal to provide any food, water, shelter, care or treatment the Inspector considers necessary to ensure the welfare, safety and health of the animal.¹⁰⁶ Inspectors also have a broad power to give any direction to a person in control of an animal that an Inspector considers necessary to protect the welfare, safety and health of the animal.¹⁰⁷ It is an offence not to comply with these directions.¹⁰⁸

Courts may also make a range of orders under the AW Act. In particular, s 55(1) of the AW Act provides that a court convicting a person of an offence under the AW Act may, in addition to any penalty, make any other order the court considers appropriate to protect the welfare, safety and health of an animal, a group of animals, or animals in general. This power includes a power to forbid the convicted person from being in charge of, or having contact with, a specified animal or animals in general. These orders are

known as 'prohibition orders' and are discussed further in Chapter 8. Relevant to this chapter, it is an offence to not comply with a prohibition order or other court order made under s 55(1) of the AW Act.¹⁰⁹

Despite it being an offence under the AW Act to not comply with a direction or court order, Inspectors do not currently have any specific power to enter a place to check compliance with a direction or court order. This seems a surprising situation. At present, an Inspector may only enter a place to check that a direction or court order is being complied with if one of the usual powers of entry outlined above applies. There is, for instance, no express power to obtain a warrant to enter a place or vehicle in order to check compliance with a court order or direction. The result is that in many cases an Inspector is not able to effectively monitor compliance with a direction or court order.

This does not align with common sense nor contemporary community expectations and was highlighted with the Panel in written submissions, during the public forums, and in meetings with Regulators.

Other jurisdictions, including Qld,¹¹⁰ the NT,¹¹¹ and SA,¹¹² provide specific powers for inspectors to enter a place to monitor compliance with directions or court orders made under animal welfare legislation.

¹⁰⁵ For example: submission 254; submission 260 and submission 278.

¹⁰⁶ AW Act s 40(1).

¹⁰⁷ AW Act s 47(1)(j); see also AW Act ss 47(1)(d), (e).

¹⁰⁸ AW Act s 47(3).

¹⁰⁹ AW Act s 55(4).

¹¹⁰ *Animal Care and Protection Act 2001* (Qld) s 122(1)(d).

¹¹¹ *Animal Protection Act 2018* (NT) s 83(2)(d) (expected to commence in late 2020).

¹¹² *Animal Welfare Act 1985* (SA) ss 30(1)(a), (5), 31(2).

The need for such a power is clear; the efficacy of a court order or direction to do something is undermined if the Inspector is unable to check that the order or direction has been complied with. Further, the Panel considered it important for animals to be safeguarded from persons who have a history of contravening the AW Act in circumstances such that a court considered it necessary to impose an order under s 55(1), or in circumstances where a person failed to provide proper care to an animal requiring an Inspector to issue a direction.

For this reason, Inspectors should be able to enter a place to monitor compliance with a court order made under s 55(1) or with a direction given under the AW Act. The power should be subject to appropriate qualifications. With respect to non-residential places, the Panel considered an appropriate limitation to be that Inspectors should only exercise the power at 'any reasonable time'.

With respect to residential places, the Panel considers a person's right to privacy within his/her home requires more stringent protection. Accordingly, if the place is a residence, an Inspector should be required to obtain a warrant to enter that place. The AW Act should be amended to enable an Inspector to obtain a warrant on the ground that entry is reasonably required to monitor compliance with a direction or court order.

The Panel found that Inspectors' existing powers of entry do not allow them to adequately monitor compliance with court orders and directions.

RECOMMENDATION 10

The Panel recommends that Inspectors be able to enter a place other than a residence to monitor compliance with a direction or court order at any reasonable time.

In order to enter a residence to monitor compliance with a direction or court order, the Panel recommends that an Inspector be empowered to obtain a warrant for that purpose.

Entry to places to monitor compliance with the *Animal Welfare Act 2002* and Regulations

Another issue raised with the Panel was Inspectors' lack of power to enter a place (including a vehicle) for the purpose of monitoring compliance with the AW Act and Regulations. 'Monitoring compliance' means the entry is not related to the suspicion of an offence. At present, to enter a place to monitor compliance with the AW Act (rather than to investigate a suspected offence) an Inspector effectively requires the consent of the occupier or person apparently in charge of the place or vehicle.¹¹³

For example, assume an Inspector decided to conduct a routine inspection of commercial premises at which animals are present to check compliance with the AW Act. To gain entry to the premises, the Inspector could either contact the occupier to ask for consent, or provide the occupier with a notice under s 38(3) of the AW Act. If a notice of entry was provided, an inspection could not be conducted within less than 24 hours, and, if the occupier objected to the proposed entry, the Inspector could not enter the place at all.

This lack of power to enter non-residential places and vehicles to monitor compliance with the AW Act does not align with other similar WA legislation, or with contemporary community expectations of a proactive compliance regime.

Many stakeholders who provided written submissions supported Inspectors being given the power to enter commercial/business properties unannounced for 'on the spot' inspections or audits.¹¹⁴ At public forums, some stakeholders also supported increasing Inspectors' powers of entry so they could enter a property without prior notice to carry out 'on the spot' inspections, provided the Inspector had sufficient training and experience. As noted earlier, some stakeholders emphasised the need for care to be taken to avoid biosecurity and occupational health and safety risks if Inspectors were to enter premises without notice. Views on an appropriate notice period varied, ranging from one to two hours to an undefined period. There was support for Inspectors being able to enter a property without notice where an animal welfare offence had previously been committed.¹¹⁵

Some stakeholders strongly opposed any increase in Inspectors' powers to enter a place. Feedback from livestock producers and other industry participants at the public forums, however, was that inspections to monitor compliance with the AW Act and Regulations could be acceptable provided particular issues were addressed, including:

- any increase to the general powers of entry should not apply to a dwelling/residence;

¹¹³ While the AW Act also provides for entry to occur by notice, an occupier can object to entry and thereby prevent the Inspector entering the place or vehicle if he/she does not consent to their entry.

¹¹⁴ For example, submission 78, submission 262, submission 296.

¹¹⁵ Consultation Summary Report – Public Forums p 2.

- consideration must be given to the nature of any enterprise being conducted at the place and in particular to any associated risks to biosecurity and occupational health and safety; and
- Inspectors must have training and experience relevant to the livestock species/sector that is subject to the inspection.

Other points relating to the power to monitor compliance with the AW Act and Regulations raised with and considered by the Panel whilst investigating this issue included the following:

- Livestock producers who participate in the Meat and Livestock Australia (MLA) Livestock Production Assurance program (LPA) are subject to random or targeted audit including for animal welfare. The Panel noted that the requirements relevant to animal welfare are limited, and considered the LPA could not be considered sufficiently robust to demonstrate compliance with the AW Act and Regulations (including those based on minimum animal welfare standards) in WA.
- Monitoring based on random inspections could help to reassure domestic consumers and international trading partners that Australia is making concerted efforts to uphold its animal welfare standards.
- In recent years ethical treatment of animals has emerged as a significant public concern.¹¹⁶
- Views that Inspectors' powers are inadequate to enforce the law may lead to concerned citizens taking enforcement of the law into their own hands, including by undertaking unlawful surveillance or trespassing on property. In a recent case concerning video evidence of live-baiting to train greyhounds, the High Court of Australia observed that the video-recordings were made in 'deliberate contravention of the law with a view to assembling evidence which it was believed the proper authorities would be unable to lawfully obtain'.¹¹⁷

Guidance on the scope of appropriate powers to monitor compliance with legislation of this type can be taken from other WA legislation. For example:

- Under the BAM Act, inspectors may enter a place that is not a dwelling at any time for 'inspection purposes',

which include ascertaining whether the BAM Act, or a management plan, code of practice, direction, notice or other instrument issued under the BAM Act is being complied with.¹¹⁸ Notice of entry must be provided except in certain circumstances, such as where the inspector reasonably suspects that to provide notice would jeopardise the purpose of the proposed entry or effectiveness of any search of the place.¹¹⁹

- Under the FRM Act, fisheries officers may enter land or premises for a range of specified purposes relating to checking compliance with the Act.¹²⁰
- Under the *Food Act 2008*, authorised officers may enter any premises the authorised officer reasonably believes are used in connection with the handling of food intended for sale or the sale of food, or any food transport vehicle.¹²¹ An authorised officer may also enter any premises or food transport vehicle which the authorised officer reasonably believes contains records relating to the handling of food intended for sale or the sale of food.¹²²
- Under the BC Act, a wildlife officer may enter a place that is not a dwelling at any time for 'inspection purposes', which include ascertaining whether the BC Act or any instrument issued under it is being contravened.¹²³ As with the BAM Act, notice of entry must be provided prior to entering the property, subject to exceptions.¹²⁴
- Under the *Occupational Safety and Health Act 1984* (OSH Act), inspectors may, for the purposes of the OSH Act, enter any workplace at all reasonable times of the day or night and may also enter at any other time that the performance of the inspector's functions requires such entry.¹²⁵
- Under the *Mines Safety and Inspection Act 1994* (MSI Act), a district inspector or special inspector may, for the purposes of the MSI Act, at all times of the day or night, enter any mine (including any workplace that relates to but is not a mine or part of a mine).¹²⁶

It is also the case that the AW Act provides broader powers of entry to scientific inspectors than to (general) Inspectors.¹²⁷

¹¹⁶ Department of Primary Industries and Regional Development. (2019) *Food Alliance – Trust in Primary Production Project. Workshop Reports.*

<https://wafarmers.org.au/wp-content/uploads/2020/02/5.-FINAL-Food-Alliance-WA-DPIRD-Trust-in-Primary-Industries-2-Masterclass-WORKBOOK-Nov-2019-web.pdf>; Buddle, E. A., Bray, H. J., & Ankeny, R. A. (2018). I feel sorry for them: Australian meat consumers' perceptions about sheep and beef cattle transportation. *Animals*. 8(1). doi: 10.3390/ani8100171

¹¹⁷ *Kadir v The Queen* [2020] HCA 1 at [37]. See also *SAWA Pty Ltd v Australian Broadcasting Corporation* [2017] WASC 349 at [12]-[15], which discusses covert footage of dehorning cattle taken by a person 'with a concern about animal welfare' in contravention of the *Surveillance Devices Act 1998* (WA).

¹¹⁸ BAM Act ss 64, 65(1)(b).

¹¹⁹ BAM Act s 65(3)-(4).

¹²⁰ FRM Act s 182.

¹²¹ Not including a residence, subject to stated exceptions: *Food Act 2008* (WA) s 38(2).

¹²² *Food Act 2008* (WA) s 38(1).

¹²³ BC Act s 199(b).

¹²⁴ BC Act s 202; *Criminal Investigation Act 2006* (WA) s 31(2).

¹²⁵ OSH Act s 43(1)(a), (b).

¹²⁶ MSI Act s 21(1)(a), 6(a).

¹²⁷ AW Act s 38(1)(d).

Powers to enter non-residential places to monitor compliance with regulatory legislation are not unusual and are an important regulatory tool for identifying risks and encouraging compliance prior to harm being caused. The use of these powers in an animal welfare context is also not unusual.¹²⁸ The Panel considered that a power of entry similar to those outlined above should be included for Inspectors in the AW Act. As with the above powers, the power to enter a place to monitor compliance with the legislation should not be extended to residences. Further, in the same way as under the BAM Act and the BC Act, Inspectors should be required to give notice prior to entry, subject to exception (such as where the giving of notice would be likely to jeopardise the purpose of entry or effectiveness of the compliance check). When combined with training of Inspectors, this requirement for notice will ensure that any biosecurity and occupational health and safety risks associated with entry can be managed. The extent of notice required will depend on the type of place being visited.

The Panel was convinced of the need for Inspectors to be able to enter non-residential places to monitor compliance with the AW Act and Regulations. The Panel considered that Inspectors must have appropriate training. As regards livestock, Inspectors should be trained in the animal husbandry and biosecurity requirements of the relevant species/industry. Issues relevant to the training of Inspectors are addressed in Chapter 6.

RECOMMENDATION 11

The Panel recommends Inspectors be able to enter any non-residential place or non-residential vehicle for the purpose of monitoring compliance with the Animal Welfare Act 2002 and Regulations.

Before entering the place or vehicle, an Inspector must provide reasonable notice of entry, unless he/she reasonably suspects that to do so will jeopardise the purpose of the proposed entry or the effectiveness of any search of the place or vehicle.

RECOMMENDATION 12

Inspectors monitoring compliance with the Animal Welfare Act 2002 and Regulations in relation to livestock must have met specified training standards and demonstrated competency relevant to the animal species/industry being monitored.

Entry after giving notice

As explained above, the AW Act currently provides that an Inspector may enter a place if a notice has been given to the owner or occupier of the place, and the period within which objections to entry may be made has elapsed with no objection being made.¹²⁹ The notice must specify the purpose of entry and the period (being at least 24 hours) within which the owner or occupier may object to the Inspector entering the place.¹³⁰ If no objection is made within the time specified in the notice, the notice continues to have effect until the purpose for which entry was required has been effected, or seven days after the end of the objection period, whichever occurs first.¹³¹

The Panel considered two issues raised in connection with the power to enter after giving notice:

- The ability to enter after giving a notice does not apply to vehicles.
- There is no ability to review objections to entry.

The Panel was not made aware of any reason for the power to give a notice to not apply to vehicles. Accordingly, if this power is retained in the AW Act, the Panel considered it should also apply to vehicles.

The Panel found that, if the power to enter a place with notice is retained in the AW Act, an expeditious review process for objections to entry needs to be created.¹³² To allow for review of objections, the AW Act would also need to specify the bases upon which objections to entry can be made.

RECOMMENDATION 13

The Panel recommends that section 39 of the Animal Welfare Act 2002 be amended to allow the use of notices to enter a vehicle.

RECOMMENDATION 14

The Panel recommends that the Animal Welfare Act 2002 be amended so as to enable an expeditious review process of objections to notices of entry.

¹²⁸ See the *Livestock Act 2008* (NT) (under which the Australian Animal Welfare Standards and Guidelines for the Land Transport of Livestock are enforced) s 104(1)(b) and *Animal Welfare Act 1985* (SA) s 30. Routine inspection of commercial animal establishments is also permitted in NSW, the ACT, NZ and UK.

¹²⁹ AW Act s 38(1)(b).

¹³⁰ AW Act s 38(3).

¹³¹ AW Act s 38(4).

¹³² The existing method of review under the AW Act would be too slow for the purposes of facilitating entry to a place or vehicle: see AW Act Pt 5 Div 4.

5.

Powers of Inspectors – Other Powers

Background

Chapter 4 discussed Inspectors' powers of entry. A number of other powers are also required to enable Inspectors to ensure compliance with and to enforce the AW Act, including a power to give directions to protect the welfare, health and safety of animals, and a power to seize animals. These powers, and issues related to them such as the forfeiture and disposal of seized property, are the focus of this chapter.

Directions given to protect the health, welfare or safety of animals

Under the AW Act, Inspectors are empowered to issue a broad range of directions.¹³³ The issuance of directions is a useful regulatory tool, but the Panel identified a number of issues relating to these powers.

Directions are used to deal with immediate concerns for an animal's welfare, safety and health. Giving a direction to a person in control of an animal establishes a requirement that they provide for the animal's basic needs; for example, providing appropriate food, water, shelter or care. If the directions are obeyed, the Inspector does not need to seize the animal or resort to punitive measures, such as prosecution, which in some circumstances may not be deemed the best course of action.

In addition to the difficulties with monitoring compliance with a direction (see chapter 4 of this Report), the Panel has addressed two further difficulties arising from the current wording of ss 40(1)(b) and 47(1)(j) of the AW Act.

Animal identification

DPIRD informed the Panel that, due to the way in which the provisions conferring power to issue a direction are worded, to give a legally enforceable direction an Inspector must be able to identify and describe the animal or animals to which the direction applies. This is easily done in situations that involve an individual animal, such as a dog in a person's backyard. In some circumstances, however, identifying individual animals is difficult and impracticable. Animals managed on extensive pastoral properties, for example, are often dispersed over thousands of hectares. The animals may be at risk of a welfare problem, such as starvation, but due to the size and inaccessibility of the property it is often not feasible to sight every animal.

In circumstances such as this, despite not being able to individually sight each animal, an Inspector should be able to issue an enforceable direction to safeguard the welfare of the animals that are known or are reasonably suspected to be at risk of harm.

The direction must have a sound basis and the recipient must have a clear understanding of what is required. Accordingly, an Inspector must be able to describe the scope of the direction, and the animals the subject of the direction, with sufficient certainty (for example, it may be sufficient for the Inspector to identify the animals that are the subject of the direction by reference to their species and location), and the Inspector must have a reasonable basis for believing the direction is necessary to protect the welfare, safety and health of the animal/s. For example, an Inspector could, by taking into account seasonal and infrastructure conditions, make a recommendation based on an appropriate sample of the herd/flock.

The Panel considered New Zealand's *Animal Welfare Act 1999* provides a good example of a better adapted regulatory tool which achieves similar ends to the 'directions provisions' in ss 40 and 47 – that is, action without delay to address the welfare needs of animals.

¹³³ See AW Act ss 40(1)(b) and 47(1)(d), (e) and (j).

Directions relating to objects

It is not clear what powers Inspectors have to issue directions in relation to non-animals or objects such as vehicles or infrastructure. This is relevant when an Inspector determines that a transport vehicle or animal handling facility requires repair or modification to safeguard animal welfare. The Panel was informed that currently an Inspector can only direct that specific, identified animals must not be transported in that vehicle or handled in that facility, and cannot direct that the vehicle or structure be modified or repaired before being used for that purpose with other animals.

The compliance notice regime in the *Animal Welfare Act 1999* (NZ) addresses this issue.¹³⁴

The Panel also considered compliance notice regimes used in other contexts, including occupational safety and health compliance frameworks. Under the OSH Act, an inspector may issue a prohibition notice to cease certain activities if he/she considers the activity poses a risk of imminent and serious injury or serious harm to the health of a person.¹³⁵ The activity can recommence when the risk is remedied, and an inspector may include in a prohibition notice directions as to the measures to be taken to rectify any matters to which the notice relates.¹³⁶

To address the problems identified above, the Panel recognised a need to modify the powers of Inspectors in regard to the issuance of directions.

RECOMMENDATION 15

The Panel recommends:

- (a) to resolve any uncertainty, the Animal Welfare Act 2002 be amended to expressly provide Inspectors with power to issue directions relating to animals the Inspector reasonably believes are present at a place and whose welfare, safety and health is at risk, without needing to sight and identify all individual animals or groups of animals; and*
- (b) the Animal Welfare Act 2002 be amended to enable Inspectors to issue directions in relation to any object, vehicle or place, where such directions are reasonably necessary to protect the health, welfare or safety of any animal or group of animals, including animals who have not been specifically identified by the Inspector who may come in contact with the object, vehicle or place.*

¹³⁴ *Animal Welfare Act 1999* (NZ) ss 156A to 156I.

¹³⁵ OSH Act s 49(1).

¹³⁶ OSH Act s 50.

¹³⁷ Referred to as 'other property' in s 43 of the AW Act.

¹³⁸ AW Act s 42(1).

Power to seize animals and objects¹³⁷

The power to seize an animal and other property is essential to enforcement of the AW Act. Seizure powers enable Inspectors to protect the welfare of animals against whom an offence has been committed or is likely to be committed. These powers also facilitate the gathering of evidence to enable proper investigation of offences.

An Inspector may seize an animal:

- if the Inspector reasonably suspects that an offence under Part 3 is being committed or has been committed in respect of the animal; or
- under a warrant issued under s 60 of the AW Act.¹³⁸ To issue a warrant, a justice must be satisfied that there are reasonable grounds for suspecting that an offence under Part 3 is likely to be committed in respect of the animal if it is not seized.

An Inspector who seizes an animal must ensure that it is properly treated and cared for (including the provision of veterinary care if appropriate).¹³⁹

In terms of property other than animals, an Inspector may seize any other thing that the Inspector reasonably suspects is being, or has been, used to commit an offence under the AW Act or may afford evidence of the commission of an offence under the AW Act.¹⁴⁰ The Inspector must keep the seized thing in safe custody and, to the extent practicable to do so, maintain it in the condition it was in when it was seized.¹⁴¹

The Panel reviewed a number of issues relating to the scope of these powers of seizure, including:

- the lack of power to seize an animal in the absence of an offence or likely offence under Part 3 of the AW Act (even where animals are being held in contravention of a prohibition order); and
- the issue of dependency in relation to seizure of animals (typically, a female animal and her offspring).

No power to seize for welfare risk or failure to comply with direction

Inspectors' current powers to seize an animal only apply in circumstances where a Part 3 offence has been committed or is likely to be committed. In some circumstances, an animal's welfare may be at risk but it might be unclear whether a Part 3 offence has been committed (for instance, the harm to the animal might have arisen from misadventure).

Inspectors also do not have a specific power to seize animals where a person has failed to comply with a direction concerning that animal.

Inspectors should be able to seize an animal where the Inspector considers it necessary to do so in order to protect its welfare, safety and health. The Panel was strongly of the view that Inspectors should be able to seize an animal or animals in the situation where a person responsible for such animal/s has repeatedly failed to comply with a direction given to protect the welfare, safety and health of the animal/s. The Panel noted that compliance policies would need to specify the nature of evidence regarding 'repeated non-compliance'.

The *Animal Care and Protection Act 2001* (Qld) empowers Inspectors to seize any animal if the Inspector reasonably believes the 'interests of the welfare of the animal require its immediate seizure' or 'if the person in charge of the animal has contravened, or is contravening, an animal welfare direction or a court order relevant to the animal'.¹⁴²

The Panel considered that a similar approach should be adopted in WA.

To ensure appropriate oversight and accountability, the Inspector should be required to obtain a warrant before taking action to seize animals under these provisions.

RECOMMENDATION 16

The Panel recommends an Inspector be authorised to seize an animal under a warrant in circumstances where either the animal's welfare, safety and health is at risk, or there has been repeated non-compliance with a direction.

¹³⁹ AW Act s 42(2).

¹⁴⁰ AW Act s 43(1).

¹⁴¹ AW Act s 43(2).

¹⁴² *Animal Care and Protection Act 2001* (Qld) ss 144(1)(b), (2).

No power to seize animals being kept in contravention of a prohibition order

The Panel considered the lack of power to seize animals held by a person in contravention of a court-issued prohibition order.¹⁴³ For example, an Inspector may become aware that a person has purchased a dog in contravention of a prohibition order which forbids the person from owning an animal. The Inspector does not have the power to seize the dog being held in contravention of the order unless there is evidence that an entirely new offence under Part 3 of the AW Act has been or is likely to be committed.

A number of other Australian jurisdictions provide inspectors with either a specific power to seize animals held in contravention of a prohibition order, or a sufficiently broad seizure power that encompasses the seizure of such animals.¹⁴⁴ ACT Inspectors, for example, are able to seize any animal that the inspector believes on reasonable grounds is kept by, or in the care or control of, a person in contravention of a prohibition order.¹⁴⁵

The Panel considered that the AW Act should authorise Inspectors to seize animals if the Inspector believes on reasonable grounds that the animal is being kept or is owned by a person in contravention of a prohibition order. This seemed to the Panel to be a necessary power if prohibition orders are to have any real force and effect.

The Panel acknowledged that an Inspector may have difficulty ascertaining who owns or has custody of an animal at a property. The terms of the prohibition order are relevant to this – for example, the prohibition order may prevent the offender from owning or having custody of animals, and the offender might claim that an animal at his/her house is actually owned by somebody else who lives at the premises. The *Animal Welfare Act 1993* (Tas) addresses this difficulty by specifying that a person is taken to have custody of an animal if the animal is normally kept on premises owned or occupied by the person, whether or not the person has any care or charge of the animal.¹⁴⁶ The Panel considered a similar approach should be taken in WA.

Consideration should also be given to ensuring that corporations subject to prohibition orders cannot circumvent them by simply recommencing operations under a newly created corporation.

The AW Act should also ensure that owners are afforded an adequate opportunity to explain any apparent contraventions of prohibition orders for which there are reasonable explanations. It may be sufficient for this to occur through the usual review process outlined in Part 5, Division 4 of the AW Act.¹⁴⁷ Accordingly, the decision to seize an animal on this basis should be a reviewable decision. If an animal is seized from its owner on the grounds that the person is prohibited from owning the animal, and if an application for review is not made within the review period, the animal should be automatically forfeited to the State.

RECOMMENDATION 17

The Panel recommends that an Inspector be authorised to seize an animal when an Inspector reasonably suspects that the person who has custody or control of the animal is in contravention of a prohibition order.

The Panel recommends:

- (a) a person who is present at a place where an animal is present should be presumed to have the care or custody or control of the animal unless the person can prove the contrary on the balance of probabilities;*
- (b) the decision by the Inspector to seize the animal should be a reviewable decision; and*
- (c) if an animal is seized from its owner on the grounds that the person is prohibited from owning the animal an automatic forfeiture process should apply once the period for review has expired.*

¹⁴³ Also see the discussion of prohibition orders in Chapter 8.

¹⁴⁴ *Animal Welfare Act 1992* (ACT) s 81A(c); *Animal Protection Act 2018* (NT) s 88(2)(f) (expected to commence late 2020); *Animal Welfare Act 1985* (SA) s 30(1)(f); *Prevention of Cruelty to Animals Act 1986* (Vic) ss 12AA(1), 21C(1)(c), 24G(1)(d), (2)(d) and 3(c).

¹⁴⁵ *Animal Welfare Act 1992* (ACT) s 81A(c).

¹⁴⁶ *Animal Welfare Act 1993* (Tas) s 43(8).

¹⁴⁷ This is the process that currently applies if a person challenges a decision to seize under s 42(1)(a) of the AW Act.

Seizure of dependent animals

As outlined above, Inspectors are authorised to seize an animal if the Inspector reasonably suspects an offence under Part 3 is being or has been committed in respect of the animal, or under a s 60 warrant where an offence under Part 3 is likely to be committed if the animal is not seized. DPIRD informed the Panel of a problem relating to seizure of an animal where there is an inter-dependent relationship with other animals. A common example involves a bitch with young pups. The bitch may be emaciated yet the pups appear healthy. In that situation, an Inspector would only be authorised to seize the bitch; however, separation of the mother dog from her dependent puppies may compromise the welfare of the puppies.

The *Animal Welfare Act 1992* (ACT) provides that, in addition to seizing any animal connected with an offence, the inspector may seize any dependent offspring of the animal connected with an offence.¹⁴⁸ The *Animal Welfare Act 2006* (UK) also provides for the seizure and forfeiture of dependent offspring.¹⁴⁹

DPIRD informed the Panel of an additional problem in relation to offspring born to a mother animal after seizure. There is no specific power in the AW Act to allow an Inspector to retain the offspring should an owner demand possession, but their removal can result in compromised welfare for both mother and young.

A decision of the WA District Court, *Hunter v Moore* [2008] WADC 99, touched upon the issue of the status of animals born to a seized animal. In the course of dismissing an application for leave to appeal, Goetze DCJ said at [28]:

... [I]f animals are seized and if they subsequently give birth to pups, as has happened in this case, then the seizure order necessarily also applies to those newly born pups, notwithstanding that the Animal Welfare Act does not specifically provide for what is to happen to such newly born pups. It seems that this necessarily follows because the pups came from seized animals and although they developed their own life or being upon birth, they have been born following the seizure of their mothers, and therefore the application can include a prayer for forfeiture of those pups as well and the appropriate seizure order can be made ...

The Panel was of the view that the AW Act should expressly confirm that animals born to a seized animal are regarded as having been seized under the AW Act and also considered that a decision to seize an animal on this basis should be reviewable.

RECOMMENDATION 18

The Panel recommends that Inspectors should be able to:

- (a) *seize any dependent animal of a seized animal; and*
- (b) *seize any animal that the animal itself depends on.*

The usual provisions applicable under the Animal Welfare Act 2002 for the return of a seized animal should apply to animals seized on this basis.

RECOMMENDATION 19

The Panel recommends the Animal Welfare Act 2002 be amended to clarify that if a seized animal gives birth, the seized animal's offspring are taken to have also been seized under the Animal Welfare Act 2002. The usual provisions applicable under the Animal Welfare Act 2002 for the return of a seized animal should apply to animals seized on this basis.

¹⁴⁸ *Animal Welfare Act 1992* (ACT) s 81A(b).

¹⁴⁹ *Animal Welfare Act 2006* (UK) ss 18(7), 20(2).

Retention and disposal of seized animals and other property

Some of the Regulators informed the Panel about practical difficulties in the management of seized animals and other property, which is governed by s 44 of the AW Act.

Time limit for retention of seized animals and other property

Section 44(5) of the AW Act states that an Inspector must return seized property to the owner if four months has elapsed since the animal or item was seized and no-one has been charged with a relevant offence. An Inspector may decide to return the property at an earlier time,¹⁵⁰ or the owner may apply to the Magistrates Court for return of the seized property before the four month period has expired. If such an application is made, a court has discretion to order that the property be returned to the owner. An Inspector needing an extension of time may apply to the court for an order that the property remain under seizure, but this court process places a significant administrative burden on Inspectors.

DPIRD informed the Panel that four months is a relatively brief period in the context of a cruelty investigation. The statutory limit for commencing a prosecution is two years from the date of the offence.

The Panel reviewed the handling of this matter by other jurisdictions.

In the Northern Territory, the *Animal Protection Act 2018* (NT) provides for a seized animal connected to an offence to be retained until any necessary prosecution action is complete, unless a court orders that the animal be returned to the owner or otherwise disposed of.¹⁵¹ If an inspector seized an animal for the purpose of taking steps to alleviate its suffering rather than in connection with an offence, the CEO may retain the animal for as long as the CEO considers reasonably necessary for the purpose of alleviating its suffering.¹⁵²

In Queensland, the *Animal Care and Protection Act 2001* (Qld) permits an animal to be retained beyond the initial 28 day period if its continued retention 'is needed as evidence for a proceeding or proposed proceeding for an offence involving the animal', or, if 'an animal welfare direction given in relation to the animal has not been complied with and the inspector is taking, or proposes to take, action to ensure the direction is complied with'.¹⁵³

In Tasmania, the *Animal Welfare Act 1993* (Tas) provides for a six month seizure period.¹⁵⁴

¹⁵⁰ Subject to specified conditions: AW Act s 44(4).

¹⁵¹ *Animal Protection Act 2018* (NT) s 95.

¹⁵² *Animal Protection Act 2018* (NT) s 96.

¹⁵³ *Animal Care and Protection Act 2001* (Qld) s 152(2)(d) and (e). See s 152(a)-(c) and (f) for other circumstances in which the seized animal may be retained beyond the initial 28-day period.

¹⁵⁴ *Animal Welfare Act 1993* (Tas) s 20.

¹⁵⁵ *Animal Welfare Act 2006* (UK) s 18(8)(c).

The Panel found that the current approach to the return of seized animals or property is not practical or efficient. In particular, the timeframe should be sufficient to accommodate the appropriate conduct of an investigation. The approaches taken by other jurisdictions each have their own merits, with the most straightforward being a simple extension of the maximum time period, as provided in the *Animal Welfare Act 1993* (Tas).

RECOMMENDATION 20

The Panel recommends that the length of time that must elapse before an Inspector is required to return seized animals or other property to an owner as detailed in section 44(5)(a) of the Animal Welfare Act 2002 be extended to six months.

Identification of seized animals

DPIRD informed the Panel of difficulties with the identification and tracing of seized property. The AW Act does not permit Inspectors to brand, mark, tag or otherwise identify a seized animal or other property. This can make it difficult to manage and keep track of seized animals, such as litters of puppies, while in a shelter or other interim housing.

The Panel was not aware of any Australian animal welfare legislation that provides for the identification of animals after seizure. Animal welfare legislation in the UK, however, allows an inspector to mark an animal for identification purposes.¹⁵⁵ The advent of minimally invasive, permanent methods of animal identification, such as electronic microchips, provides a reliable option for identifying animals that does not alter their external appearance. This resolves what may be one primary objection to Inspectors being permitted to mark animals for identification purposes.

The Panel found that the effective implementation of the AW Act is impeded in that Inspectors lack the authority to individually identify seized animals where required. The Panel noted that this can be done efficiently and humanely through methods such as microchipping.

RECOMMENDATION 21

The Panel recommends that Inspectors be permitted to identify seized animals by means prescribed in the Regulations.

Disposal of seized property, including abandoned animals

Where an animal or other property is seized under the AW Act, it must ultimately be returned to the owner or forfeited to the Crown (that is, to the State). Upon being forfeited to the Crown, the animal or other property may be sold, destroyed or otherwise disposed of in the prescribed manner, which may include rehoming of animals.¹⁵⁶ At present, the only mechanism by which forfeiture of an animal or other property can occur is via a court order.¹⁵⁷

DPIRD and the RSPCA informed the Panel that the need to apply for a court order for an animal or other property to be forfeited to the Crown was unduly burdensome. Property seized in the course of an animal welfare investigation may sometimes include an item in respect of which the owner has little interest in its return, but does not give instructions for its disposal – for example, a dead animal.

In addition, Inspectors sometimes seize animals that appear to have been abandoned. If a person is not prosecuted for abandoning the animal (after which an order can be made forfeiting the animal to the Crown),¹⁵⁸ the Inspector is required to lodge an application with the Magistrates Court seeking forfeiture of the animal to the Crown. This must be done before the animal can be disposed of. This court process is lengthy and costly. Importantly, it delays placing seized animals in a new home, which is desirable to address animal welfare.

This issue could be resolved by stipulating that, after being notified that property is available for collection, there is a specified period within which owners must take possession of the property before it is forfeited to the Crown (either automatically or upon the decision of an appropriate person such as the CEO). If this approach is adopted, the AW Act should include procedural safeguards to ensure that, where the owner of the animal or property is unknown or cannot be found, reasonable attempts are made to identify and contact him/her. Where, for example, an animal has been seized due to suspected abandonment and reasonable attempts to contact the owner have been made, it seems appropriate that the onus be then placed on to the owner to claim the animal within a specified period before the animal is automatically forfeited to the Crown.

The *Animal Welfare Act 1985* (SA) provides that the Minister may sell, destroy or otherwise dispose of an animal or object that has been seized under the Act but is no longer required to be retained if:

- the whereabouts of the owner of the animal or object cannot, after reasonable inquiries, be ascertained; or
- the whereabouts of the owner are known but the owner has failed, within three clear working days of being given written notice that the animal or object may be collected from a specified place, to collect the animal or object.¹⁵⁹

The *Animal Care and Protection Act 2001* (Qld) permits the chief executive to decide to forfeit the animal or thing to the State in specified circumstances, such as where an inspector, after making reasonable inquiries, cannot find its owner or, for an animal, any other person in charge of it.¹⁶⁰

In WA, under the *Dog Act 1976*, a dog found wandering the streets may be picked up by a local government ranger and, if not claimed, may be destroyed or otherwise disposed of by an authorised person seven days after a prescribed notice has been given to the owner.¹⁶¹ It seems incongruous that forfeiture of the same animal abandoned in a backyard and seized by an Inspector can only occur through a time-consuming court process.

As another WA example, the FRM Act provides that if anything is seized and its owner cannot be found, the CEO is to give notice in the prescribed way that the thing is being held by the Department and may be claimed by its owner. If after the expiration of three months from the day on which notice has been given the thing has not been claimed by its owner, the thing is forfeited to the Crown.¹⁶²

The Panel was convinced of the need to simplify and streamline current provisions on the disposal of seized property and on dealing with abandoned animals. The key principles are to avoid unnecessary administrative burdens for Inspectors and facilitate appropriate placement of seized animals, while also safeguarding the property rights of individuals.

¹⁵⁶ AW Act s 87(1); Animal Welfare (General) Regulations 2003 (WA) reg 12.

¹⁵⁷ AW Act ss 44(8), 55(1), 57(3).

¹⁵⁸ AW Act s 55(1).

¹⁵⁹ *Animal Welfare Act 1985* (SA) s 31C; see also *Prevention of Cruelty to Animals Act 1986* (Vic).

¹⁶⁰ *Animal Care and Protection Act 2001* (Qld) s 154.

¹⁶¹ *Dog Act 1976* (WA) ss 29(8), (8A), (10).

¹⁶² FRM Act s 219.

RECOMMENDATION 22

The Panel recommends that the Animal Welfare Act 2002 should provide that, in order to return a seized animal, including an animal suspected of being abandoned and seized under s 42, or other property, it is sufficient to make it available for collection. The Animal Welfare Act 2002 or Regulations should specify:

- (a) the means of notifying an owner (including owners who cannot be found) that the animal or other property is ready for collection;*
- (b) if an animal or other property is not collected, the CEO or other relevant authority may forfeit the animal or other property to the Crown provided he/she is satisfied that reasonable attempts have been made to locate the owner; and*
- (c) that the animal cannot be forfeited until at least 21 days has elapsed since the animal was seized.*

The provision of assistance to Inspectors

Section 48 of the AW Act provides that, when performing a function under the AW Act, an Inspector may be ‘accompanied or assisted’ by a person requested by the Inspector to assist (an ‘assistant’). An assistant may exercise a function of the Inspector if, and to the extent, authorised by the Inspector.

DPIRD informed the Panel of conflicting views regarding the need, under s 48, for the assistant to be in the physical presence of the Inspector when assisting the Inspector and exercising any function he/she has been authorised to exercise. This significantly constrains the ability of an Inspector to obtain assistance, which may be critical under some circumstances, such as:

- Where welfare issues affect a large geographic area and/or a large number of animals, such as pastoral properties affected by drought at which appropriate management action to assure the health and welfare of the animals has not been taken.
- At road accidents involving livestock, where it may not be possible for an Inspector to reach the site in a timely manner and deal with animals suffering as required.
- Incidents involving the finding of a dog locked in a car in hot weather. In the short time before the dog dies of heat stroke, Inspectors may not be able to attend. Bystanders may break into the car to save the dog and be exposed to litigation for their actions.
- Natural disasters, where there is an urgent need for Inspectors to attend to injured animals on a large scale.

While the Panel recognised that these and other situations may justify allowing a person assisting an Inspector to exercise the powers of an Inspector while acting as an assistant, the Panel acknowledged the need to impose limits and safeguards on the exercise of powers by an assistant. Inspectors have significant powers and are required to satisfy training requirements before they are appointed. Assistants who exercise the powers of Inspectors will not have received the same training as Inspectors. Any person authorised to use powers under the AW Act should be identifiable and accountable for the use and any misuse of the powers.¹⁶³ Enforcement powers should not be extended to a particular recipient simply because it is the most administratively convenient or economically advantageous option.¹⁶⁴

For this reason, if the power to request and authorise assistance is extended to circumstances in which the Inspector is not present at the location at which the power is to be exercised, the power must be constrained. Appropriate constraints may be as follows:

- The assistant must, where practicable, be a public officer such as a local government ranger, or a person with relevant animal welfare knowledge and experience, such as a veterinarian.
- The Inspector must reasonably believe that an animal would suffer prolonged or other additional harm if the Inspector did not authorise the assistant to assist him/her.
- The Inspector must have a reasonable basis for believing it is necessary to authorise the assistant to assist him/her. The basis for that belief may be information provided to the Inspector via electronic means (such as by mobile phone or video).

¹⁶³ Victorian Parliament Law Reform Committee. (2001). *The powers of entry, search, seizure and questioning by authorised persons – Discussion Paper*. https://www.parliament.vic.gov.au/images/stories/committees/lawreform/powers_of_entry/disc_paper.pdf

¹⁶⁴ Victorian Parliament Law Reform Committee. (2001). *The powers of entry, search, seizure and questioning by authorised persons – Discussion Paper*. https://www.parliament.vic.gov.au/images/stories/committees/lawreform/powers_of_entry/disc_paper.pdf

- The Inspector must record and report to an appropriate person (such as the CEO of the Department administering the AW Act) the identity of the assistant, the reasons for authorising him/her to assist, and the assistance that was in fact provided.
- To support accountability, there should be an accessible system for lodging complaints against both Inspectors and authorised assistants. The Panel understood that the Department website currently provides information with respect to making a complaint about an Inspector.¹⁶⁵
- Powers are extended to the assistant for a specified period and revoked automatically after that time.

The Panel briefly considered the powers of Inspectors in the situation of natural disasters. The Panel was informed that under s 50 of the *Emergency Management Act 2005* (EM Act), the State Emergency Coordinator or Hazard Management Agency may make an emergency situation declaration for a prescribed hazard, such as fire or flood. This declaration authorises the appointment of Hazard Management Officers who have access to emergency powers under Part 6 of the *Emergency Management Act 2005*.

In the time available for the Review, the Panel decided not to make any specific recommendations regarding the powers of Inspectors in this context.

RECOMMENDATION 23

The Panel recommends:

- the Animal Welfare Act 2002 be amended to clearly state that, in defined circumstances, assistance may be provided by a person who is not in the direct physical presence of an Inspector;*
- that any such authorisation may be facilitated by mobile phone, fax, email, video or other electronic means; and*
- that DPIRD, in consultation with stakeholders, develop policy setting out the appropriate constraints to such authorisation.*

¹⁶⁵ Department of Primary Industries and Regional Development. (2019). *Animal welfare complaints*. https://www.agric.wa.gov.au/animalwelfare/animal-welfare-complaints?page=0%2C0#smartpaging_toc_p0_s0_h2

Infringement notices

Overview of infringement notices

Infringement notices are simple processes that provide an alternative to commencing a prosecution for an alleged offence. The AW Act empowers an Inspector to issue an infringement notice to a person the Inspector reasonably suspects to have committed a prescribed offence.

A person who receives an infringement notice can choose to pay a fixed amount (known as a 'modified penalty') or elect to have the matter dealt with by the courts. Infringement notices are typically used to deal with relatively minor offences where the facts that led to the alleged offence are straightforward. A person who pays a modified penalty does not obtain a criminal conviction and cannot be prosecuted for the alleged offence at a later date, whereas a person who chooses to have the matter dealt with by the courts will, if convicted, obtain a criminal conviction and be subject to a higher maximum penalty.

An infringement notice scheme is generally regarded as a valuable enforcement and regulatory tool as it can provide a timely and cost-effective outcome for the Regulator and for the person alleged to have breached the law.¹⁶⁶

Until 3 October 2020, there were no prescribed offences for which Inspectors could issue infringement notices, a fact that was identified in the report of the Select Committee into the Operations of the RSPCA (2016). In its report, this Committee recommended '... that the Department of Agriculture and Food enact regulations that immediately implement Part 5, Division 3 of the *Animal Welfare Act 2002* to enable infringement notices to be issued by general inspectors'.

The General Regulations and Transport Regulations introduced a number of prescribed offences, being new offences under regulations, on 3 October 2020. These prescribed offences relate to modified penalties for the purpose of an infringement notice scheme.

Ability to enforce unpaid infringement notices

In WA, the *Fines, Penalties and Infringement Notices Enforcement Act 1994* provides for the enforcement of unpaid infringement notices by the Fines Enforcement Registry (Registry).

Where an infringement notice is unpaid, a 'prosecuting authority' may register an infringement notice with the Registry. The prosecuting authority is 'the person who or which, under the principal enactment (in this case, the AW Act), administers the issuing of, and any subsequent proceedings in relation to, the notice'.¹⁶⁷

None of the Regulators of the AW Act are currently approved as prosecuting authorities with the Registry for the purpose of enforcing infringement notices given under the AW Act and Regulations.

Consequently, if a person fails to pay an infringement notice issued by an Inspector, the Inspector is unable to register the infringement notice for enforcement by the Registry. At that point, an Inspector's only options are to ignore the infringement notice (that is, to not pursue enforcement), or to prosecute the alleged offence by the usual route of issuing a prosecution notice and having the matter determined by a court. Such a result considerably undermines the effectiveness of infringement notices, which are intended to provide an expedient alternative enforcement mechanism to prosecution.

DPIRD is making enquiries to confirm whether amendments to legislation are required to enable the Regulators to be approved as prosecuting authorities with the Registry.

The Panel considered that, given the findings of previous reviews, and in light of the significant support from some Regulators and stakeholders and evidence of the usefulness of infringement notices in reducing administrative burden, any impediments to the enforcement of infringement notices by Inspectors should be resolved without delay.

RECOMMENDATION 24

The Panel recommends that any necessary steps be taken to enable infringement notices issued by Inspectors to be enforced by the Fines Enforcement Registry.

Infringement notices for failure to comply with a direction

As discussed above, infringement notices are a valuable regulatory tool. A breach of a direction is an offence in respect of which a timely outcome is important, since deterring non-compliance with directions is important in improving the welfare of animals to which the direction relates. Further, in some instances the breach of the direction is not particularly serious, but would nevertheless warrant enforcement action to deter more serious offending. Issuing an infringement notice for such a breach would in some cases be a proportionate, efficient response to such an offence. This approach is taken in SA.¹⁶⁸ Accordingly, the Panel considered that the offence of failing to comply with a direction (s 47(3)) should be a prescribed offence.

RECOMMENDATION 25

The Panel recommends that failure to comply with a direction should be an offence for which an infringement notice can be issued.

¹⁶⁶ Australian Border Force. (n.d). *Understanding the Customs Act Infringement Notice Scheme*. <https://www.abf.gov.au/trade-and-goods-compliance-subsite/files/understanding-customs-act-infringement-notice-scheme.pdf>

¹⁶⁷ *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA) s 11.

¹⁶⁸ *Animal Welfare Act 1985* (SA) s 31B.

6.

The Resourcing of Animal Welfare Regulation

Background

Since 1 July 2011, DPIRD (formerly DAFWA) has been responsible for the administration of the AW Act. Before 2011, the AW Act was administered by the Department of Local Government.

DPIRD Inspectors investigate reports of cruelty involving commercial livestock referred to them by the RSPCA (the referral process is described in Chapter 7), or otherwise received by an Inspector. DPIRD Inspectors also monitor the welfare of animals at commercial livestock aggregation points, such as saleyards and live export facilities, normally based on the consent of the owner/person in charge for Inspectors to carry out inspections.

The RSPCA has primary responsibility for enforcing the AW Act in relation to (but not limited to) companion animals and non-commercial livestock (for example, hobby farms). It provides education, compliance and enforcement functions. RSPCA Inspectors investigate reports of animal cruelty, conduct rescues, and educate the public on responsible ownership of companion animals. The Panel was informed by DPIRD that some RSPCA activities are supported by a State Government grant.

DBCA officers undertake compliance and enforcement of the AW Act in connection with their law enforcement responsibilities under the BC Act and the *Conservation and Land Management Act 1984*. Accordingly, Inspectors employed by DBCA typically only deal with enforcement of the AW Act with respect to wildlife. DBCA informed the Panel that DBCA Inspectors undertake AW Act related actions on an ad hoc basis, in response to complaints or in connection with enforcing legislation administered by DBCA.

All police officers are automatically recognised as Inspectors under the AW Act by virtue of their position as a police

officer. Police officers do not routinely investigate animal welfare matters, but may deal with animal welfare issues that arise in the course of investigating other possible offences (such as suspected violence against a family member). The Panel was advised by WA Police that police officers generally refer animal welfare matters to RSPCA or DPIRD Inspectors, and act as a back-up when there is no on-the-ground coverage by these organisations. This is particularly the case in regional WA.

Local governments may nominate their employees for appointment under the AW Act, but only 12 of the 139 local governments currently have appointed Inspectors on their staff. Subject to a few exceptions, local government Inspectors may only exercise their powers within the geographic boundaries of their respective local government region.

The conduct of routine inspections and response to cruelty complaints in WA depends on the capacity of the relevant organisations to mobilise Inspectors to various locations when needed. The number, location, skills and experience of Inspectors, and the support with which they are provided, contribute to the government's overall capacity to regulate animal welfare and enforce the AW Act.

Some of the Regulators informed the Panel that maintaining Inspectors in regional and remote areas of WA presents challenges due to cost and difficulty with recruitment.

The State Government is responsible for enforcing the AW Act. Government departments are funded to enforce a broad range of legislation. Regulators informed the Panel that DPIRD has a specific budget for animal welfare, but DBCA and the WA Police do not. The budgetary arrangements of local government authorities vary but, in most cases, there is no specific funding allocation for activities relating to the AW Act.

For the reasons explained in Chapters 7 and 8, which include concerns relating to perceived conflicts of interest, a lack of a consistent approach, and inadequate resourcing, the Panel considered that a separate review was required to inquire specifically into the current complicated investigative framework. Until a separate review could be conducted, the Panel looked into actions that could be taken to improve the investigative framework, including arrangements for training and ensuring the competency of Inspectors, resourcing and reporting of the activities of Inspectors, and measures to strengthen the involvement of local government.

Training and competency of Inspectors

The competence of Inspectors appointed under the AW Act depends on their previous experience, and initial and ongoing training to undertake inspections, investigations and collection of evidence. In addition to knowledge of investigative techniques, Inspectors need a sound understanding of the issues relevant to the normal management and welfare requirements of animals. This was previously noted by the Easton Review:

While an experienced regulatory officer may satisfactorily discharge their powers and obligations under this Act there is a considerable body of knowledge and skill needed which is beyond this minimum. These include matters such as a practical understanding of the application of the defence provisions and codes, a practical and consistent understanding of the terms and concepts used in the Act, training in investigative techniques for the purpose of preparing evidence for a prosecution and communication skills to allow the inspector to perform educative functions.¹⁶⁹

With respect to commercial livestock, an Inspector may have specialised expertise in one industry sector (such as pastoral livestock) but lack understanding of another (such as intensive pig production). Inspectors are required to monitor a broad range of industry sectors in the State, and achieving the right balance of knowledge and expertise is a challenge.

The training program should address regulatory practices, assessment of animal welfare and specific requirements of the main animal species in the State. Inspectors who monitor compliance with the AW Act and Regulations in relation to livestock (see Recommendations 11 and 12) must have appropriate practical training for the animal species/industry which they are monitoring. This training should involve relevant, direct experience at relevant places, such as farms, saleyards and abattoirs.

To be considered for appointment as an Inspector, applicants must provide a police clearance and successfully complete

online training relating to the provisions of the AW Act and basic regulatory requirements. There is no requirement for refresher training.

Police officers complete training to qualify for their employment as police officers. They are not required to complete training specific to animal welfare regulation as a prerequisite for appointment under the AW Act as they are not in fact appointed. Rather, by virtue of their position, police officers are recognised as Inspectors under the AW Act.

In past years, there has been some joint training of Inspectors subsequent to appointment. However, the training of appointed Inspectors is currently managed by the individual organisations employing them and there are no joint training activities. This lack of well-planned, coordinated training (including practical training), could lead to inconsistent application of the AW Act and undermine public confidence in the Regulators.

Local government authorities depend largely on the WA Technical and Further Education (TAFE) colleges for the training of employees in relation to their regulatory role, including for animal welfare regulation. Animal welfare regulation is not core business for local government authorities but responsibilities of rangers may overlap – for example, a local government Inspector dealing with unregistered dogs (breach of the *Dog Act 1976*) may discover potential breaches of the AW Act. Noting that DPIRD Inspectors do not normally attend to cruelty incidents involving companion animals, some representatives of local government authorities informed the Panel that they mainly look to the RSPCA for support in responding to potential cruelty incidents. Local government authorities who have employees appointed under the AW Act generally recognised a need for improved access to training and support in relation to enforcement of the AW Act.

Industry stakeholders expressed strong concerns about the training and industry experience of Inspectors, and emphasised the need for Inspectors to understand the normal operation and requirements (such as biosecurity) of different industry sectors. They recommended Inspectors receive specialised training on these matters and indicated a willingness to assist with the training process.

The AW Act does not contain any express requirements relating to the training of Inspectors. The Panel was informed by DPIRD that Tas, Qld, SA and NZ include reference to appropriate qualifications and/or training of Inspectors in their respective animal welfare legislation. In SA and Qld, specific training (including online and face-to-face) must be undertaken as part of an inspector's appointment. In Tasmania, in-house training is provided to inspectors prior to them undergoing an assessment and there is ongoing performance monitoring.

The Panel considered that there was much to be gained from establishing a separate, dedicated body to guide and oversee standards for training and competency assessments of appointed Inspectors. Such a body could bring a more balanced

¹⁶⁹ Easton Review p 30.

approach to training, recognising the specific requirements of all Inspectors, without putting undue emphasis on any single group. The key benefit would be to provide oversight of a standardised training program to promote consistent application of the AW Act by Inspectors, regardless of which organisation employs them. Whilst independent, the body should work closely with Regulators.

It may also be appropriate for some specialised training to be tailored to particular types of Inspectors. For instance, local government Inspectors and RSPCA Inspectors may benefit from additional training focused on investigations into companion animal welfare.

The role of overseeing Inspectors' training could be undertaken by an Animal Welfare Advisory Committee, should one be established (see Chapter 10).

Appointed Inspectors (which does not include police officers) should be required to undertake ongoing professional development to maintain their skills and knowledge.

Police officers undergo specialist training in investigative techniques. As such, the Panel did not consider that police should be required to undertake the same initial or ongoing training as appointed Inspectors. However, any training courses relevant to appointed Inspectors should be made available to the WA Police in case there is a desire to include components in police officer training.

Specialised training that addresses matters specific to the animal welfare regulatory context, such as respecting biosecurity requirements during inspections and appropriate care for different species, may be useful for police officers who occasionally deal with animal welfare issues.

Due to concerns that the variable policies and practices on the training of Inspectors by the various employing agencies could lead to inconsistencies and inefficiencies in animal welfare regulation, the Panel saw a need for a more standardised approach.

The Panel considered that Inspectors should complete a standardised training program before appointment, and participate in ongoing professional development. Where possible, training should include practical 'hands-on' components in addition to theory. Independent oversight of the training and competency standards could help to improve consistency across the entire Inspectorate. Where an Inspector has sufficient expertise in a particular subject area this could be recognised, but they should still be subject to a competency assessment to ensure their skill set is maintained.

The Panel found that standards of competency and training requirements should be enforceable for all appointed Inspectors, regardless of which organisation employs them.

RECOMMENDATION 26

The Panel recommends in relation to appointed Inspectors:

- (a) a specified standard of training and competency be overseen by an independent body;*
- (b) the training and competency requirements must include practical and theory components;*
- (c) an Inspector must meet the standard of competency set by the independent body;*
- (d) Inspectors be required to participate in regular professional development to maintain their training and skills; and*
- (e) a governance mechanism be established to ensure that the above points can be enforced for all appointed Inspectors.*

RECOMMENDATION 27

The Panel recommends, in relation to Inspectors who monitor compliance with the Animal Welfare Act 2002 and Regulations with respect to livestock (see Recommendations 11 and 12), their practical training must include direct experience with relevant animal species/industry.

Number and location of appointed Inspectors

This part of the Report deals with appointed Inspectors, being employees of DPIRD, RSPCA, DBCA and local government authorities; it does not include police officers.

The Panel examined the number and location of appointed Inspectors in WA, based on information provided by DPIRD. The CEO (Director General) of DPIRD is responsible for appointing Inspectors and DPIRD keeps a register of appointments. DPIRD provided the Panel with information on the number, location and date of the most recent appointment of Inspectors, as of 31 August 2020. The information from the register of appointments was collated as accurately as possible, but DPIRD noted that the number and location of appointed Inspectors changes quite often, due to DPIRD, RSPCA, DBCA and local government employee movements and the need to renew appointments every 5 years.

It was not possible for the Panel to make a more detailed enquiry in the time available for the Review. As of 31 August 2020, the DPIRD register showed 98 people appointed as Inspectors. The employing organisation and commencement date of the appointment currently held by Inspectors is shown in Table 6.1.¹⁷⁰

As noted below, not all appointed Inspectors are currently active or primarily working in animal welfare regulation.

- 37 of the 98 (38%) appointed Inspectors were appointed in 2019 or 2020. At least nine of these were re-appointments (Inspectors previously appointed).
- DPIRD employees comprised 38 of the total number of 98 appointed Inspectors (39%). There was one vacant DPIRD position (Kalgoorlie).
- 19 of DPIRD's 38 Inspectors (46%) had been appointed in 2019 or 2020 (including two Inspectors who had been re-appointed).

- 11 of the appointed DPIRD Inspectors had two or more years of experience working in the field of animal welfare regulation.
- Ten of the 11 (91%) RSPCA Inspectors had two or more years of experience working in the field of animal welfare regulation.
- Local government authorities employed 37 appointed Inspectors, 11 (30%) of whom had been appointed in 2019 or 2020 (some may have been reappointments).
- All 12 DBCA Inspectors had been appointed prior to 2019.

Both DPIRD and the RSPCA recently went through organisational restructures that saw the departure of the Chief Inspector and a Senior Inspector of DPIRD, and the Chief Inspector of the RSPCA. The Panel considered what could be done to recover the required level of expertise. As an immediate measure, the Panel saw a need for DPIRD and RSPCA to prioritise and strengthen arrangements for the training and professional development of its Inspectors.

The Panel also considered the regional distribution of Inspectors by examining DPIRD records of the location of the 71 Inspectors who were employed by DPIRD, RSPCA, DBCA and local governments and working in animal welfare regulation as of 31 August 2020 (Table 6.2).

As shown in Table 6.2, DPIRD had 11 Inspectors (12 full time equivalent positions, including a vacant position in Kalgoorlie) working in the field of animal welfare regulation. The Panel noted that DPIRD could draw upon other appointed DPIRD Inspectors if needed, as appropriate to their knowledge and experience.

An issue raised with the Panel was the lack of consistent coverage of animal welfare compliance and enforcement work across the State.¹⁷¹ A lack of Inspector coverage in regional areas was identified in the Easton Review (2015) and by the Select Committee into the Operations of the RSPCA (2016).

Table 6.1 Number of appointed Inspectors and date of current appointment

Organisation	Number appointed	Date of most recent appointment					
		Total	2020	2019	2018	2017	2016
DPIRD	38	11	7	12	5	3	0
RSPCA	11	1	3	1	3	2	1
LGA	37	8	3	9	8	2	6
DBCA	12	0	0	3	1	8	0
Total	98	20	13	26	17	15	7

¹⁷⁰ The information in Tables 6.1 to 6.6 was current as at 31 August 2020. All information was provided by DPIRD, except Table 6.5 – RSPCA reports on enforcement – related activities, and Table 6.6 – Local government authorities – animal welfare responses and estimated costs.

¹⁷¹ See, for example, submission 284; submission 307; submission 332; and submission 334.

Table 6.2 Distribution of appointed Inspectors

Organisation	Total	Region									
		Perth	G/E	K	Pil	G	MW	W	Peel	SW	GS
DPIRD	(+1)	5	(1 vacant)	2		0	0	0	0	1	3
RSPCA	11	7	1	0	0	0	1	0	0	2	0
LGA	37	11	2	0	10	0	0	0	5	7	2
DBCA	12	6	1	0	1	0	1	2	0	1	0
Total	71	29	4	2	11	0	2	2	5	11	5

LGA – local government authorities; G/E – Goldfields/Esperance; K – Kimberley; Pil – Pilbara; G – Gascoyne; MW – Midwest; W – Wheatbelt; SW – Southwest; GS - Great Southern.

Note: For DPIRD, Table 6.2 covers the 12 full-time equivalent positions of Inspectors working in animal welfare regulation.

Distribution of appointed Inspectors (shown in Table 6.2)

- Of 71 appointed Inspectors, 29 (41%) were based in Perth.
- For DPIRD and RSPCA, 12 of 22 Inspectors (55%) were based in Perth as of 31 August 2020. The RSPCA recruited an additional three Inspectors in September 2020, bringing the percentage of DPIRD and RSPCA Inspectors located in Perth to 60%.
- For DBCA, the distribution of Inspectors in Perth and regional locations was 50:50.
- 26 of 42 Inspectors based outside Perth were employed by local government authorities.
- The regional areas with the largest number of Inspectors were the Pilbara (11) and the Southwest (11).

Using the State’s transport systems, staff based in Perth have relatively direct access to many regional and remote locations. However, it is difficult to establish an ‘animal welfare presence’ if an Inspector is physically present only when an incident occurs.

Basing Inspectors in regional locations can be a challenge, due to factors relating to cost and recruitment. Inspectors appointed in regional locations are responsible for significant

geographical areas, limiting their ability to undertake consistent enforcement activities and to actively promote the welfare, safety and health of animals in those areas.

As discussed in the next section, the provision of additional support and funding could encourage more local government authorities to have rangers appointed as Inspectors under the AW Act. Local government Inspectors appear well-placed to improve the enforcement of the AW Act in rural and regional areas.

The Panel found that in some regional and rural areas, an animal welfare presence is lacking. Consideration should be given to options such as co-location and cost-sharing of Inspectors in regional towns. This could help to manage costs and strengthen communication and coordination between the various Inspectorates.

The Panel acknowledged the need for the WA Government to investigate the adequacy of current arrangements to enforce the AW Act, specifically the number and location of appointed Inspectors. If the government establishes an Animal Welfare Advisory Committee (as recommended in Chapter 10), this body could undertake this task. This issue should also be considered in the course of the separate review of the investigative framework (recommendation 36).

RECOMMENDATION 28

The Panel recommends:

- (a) *Training and professional development of Inspectors be prioritised and strengthened.*
- (b) *The government inquire into the sufficiency of resources relevant to the enforcement of the Animal Welfare Act 2002 by all organisations (including local government and the RSPCA), including with respect to specific geographical locations or situations.*

Role of local government

Local government authorities employ compliance officers (often called rangers), who are responsible for implementing the *Dog Act 1976* and the *Cat Act 2011* (among other laws), and may be well placed to enforce the AW Act in rural and regional areas. As illustrated in Table 6.2 above, local government authorities have the largest number of appointed Inspectors in regional areas. There is considerable variation, however, in the interest and involvement of local government authorities in animal welfare regulation.

Some officers, especially in regional areas, are relatively active in terms of responding to animal cruelty complaints. At least one regional council regularly conducts prosecutions under the AW Act.¹⁷²

DPIRD advised the Panel that only 12 of the total 139 Western Australian local governments have appointed Inspectors. This situation may be explained by the generally limited resources available to local governments, and competing priorities. The Panel formed the view that the lack of funding to employ and train Inspectors, and the financial risks of losing a prosecution, may be significant disincentives to local governments becoming more actively involved in enforcing the AW Act.

Comments made by participants at regional forums and during further discussions with local government staff revealed the potential for local government officers, particularly in regional areas, to become more involved in animal welfare-related activities. This would, however, depend on local governments having sufficient funding for the training and deployment of appointed Inspectors to carry out these activities.

The Panel found that providing additional support to local government authorities to assist them in appointing and training Inspectors could greatly improve the 'animal welfare presence' in regional and rural areas.

RECOMMENDATION 29

The Panel recommends:

- (a) *the involvement of local governments in enforcing the Animal Welfare Act 2002 throughout the State be encouraged and supported, and, where necessary, additional State Government funding be provided; and*
- (b) *where local government is involved in enforcing the Animal Welfare Act 2002, centralised and coordinated training, resources and support be provided to appointed Inspectors.*

¹⁷² City of Karratha.

Financial allocations and activity reporting

There is no established system for monitoring or evaluation of activities, expenditure and trends associated with the overall enforcement of the AW Act. The Panel was able to obtain some relevant information via specific requests to Regulators. In the time available, however, the Panel could not carry out as detailed an analysis as would have been preferred. The authors of the Easton Review (2015) similarly noted that they did not have access to whole-of-sector statistical data on activity and outcomes in the animal welfare sector.

A number of stakeholders suggested an increase in funding for animal welfare regulation.¹⁷³ Conversely, one stakeholder queried whether the RSPCA needs the amount of funding it receives.¹⁷⁴

DPIRD

The implementation of the AW Act is a State Government responsibility and DPIRD receives an annual budget allocation for this purpose (Table 6.3).

Details of animal welfare compliance activities are not published, but DPIRD advised the Panel of activity levels in the four years 2016/2017 through 2019/2020 (Table 6.4).

In FY 19/20, the animal welfare Inspectorate was moved from Animal Welfare Regulation to the Operations and Compliance Directorate. DPIRD advised that this was not expected to lead to a reduction in overall funding for the implementation of the AW Act.

The DPIRD budget includes a grant, paid annually to the RSPCA, which historically covers approximately 21% of the RSPCA's activities under the Grant Agreement and Memorandum of Understanding (MOU) as reported by the RSPCA.

Previous reviews relating to the administration of the AW Act identified a need for additional funding. The Select Committee into the Operations of the RSPCA recommended that funding to the RSPCA be increased,¹⁷⁵ and the Easton Review recommended that the government consider providing additional budget appropriation to fund DAFWA (now DPIRD) for an additional five general inspectors.¹⁷⁶

The DPIRD budget for animal welfare regulation was significantly increased following the Easton Review (2015). DPIRD advised that an additional \$4.009M was allocated to animal welfare regulation in the three years 2016/17 to 2019/20, which enabled DPIRD to appoint additional Inspectors, develop a training curriculum, and commence work on companion animal policy. In FY2019/20, DPIRD's total expenditure on animal welfare related activities was \$3.91M.

The FY2020/21 animal welfare budget for DPIRD had not been finalised as of 31 August 2020.

Table 6.3 DPIRD financial allocations

DPIRD Directorate	FY17/18	FY18/19	FY19/20
Animal welfare (Biosecurity)	\$3.58M	\$2.93M	\$2.75M
Operations and Compliance	NA	NA	\$1.15M
Total	\$3.58M	\$2.93M*	\$3.91M

*This apparent 'reduction' in budget reflects an internal administrative process.

Table 6.4 DPIRD reports on enforcement – related activities

Reported activity	FY 16/17	FY 17/18	FY 18/19	FY19/20
Inspections	328	328	363	281
Investigations commenced	131	221	259	49
Investigations completed	97	223	222	93
Prosecutions	1	1	7	2

¹⁷³ Submission 261; submission 304; submission 307; submission 332.

¹⁷⁴ Submission 88.

¹⁷⁵ Report of the Select Committee into the Operations of the RSPCA, Recommendation 22.

¹⁷⁶ Easton Review, Recommendation 18.

RSPCA

DPIRD informed the Panel that since 2011, the Western Australian Government has provided a grant of approximately half a million dollars per year to the RSPCA. In FY 2019/20, DPIRD adjusted the grant to allow for increases in the consumer price index (CPI) since the inception of the Grant Agreement, and paid the RSPCA a grant of \$572,000 (plus GST). An additional ('one off') payment of \$200,000 (plus GST) was made in 2019 and again in 2020 for the purpose of regional recruitment of Inspectors.

DPIRD informed the Panel that the purpose of the grant is to make a financial contribution to the RSPCA relating to:

- public education and promotion of responsible companion animal ownership;
- training of RSPCA Inspectors;
- enforcement of the AW Act in relation to companion animals; and
- a 24-hour complaint receipt, assessment and response service for public reports of cruelty with the aim of improving animal welfare outcomes in WA.

To meet its reporting requirements under the Grant Agreement, RSPCA submits annual project reports to DPIRD each financial year. The information in Table 6.5 is derived from these reports.

The RSPCA informed the Panel that it estimates its total expenditure on activities associated with the Grant Agreement and MOU to be approximately \$2.5M per annum. Despite the increases in the grant described above, this amount substantially exceeds the grant provided by the government through DPIRD. As set out in the RSPCA Annual Reports, public donations comprise the main contribution to the RSPCA's annual operating budget.¹⁷⁷

As at 31 August 2020, the renegotiation of the Grant Agreement and MOU was under discussion.

The Panel considered that the activities of the appointed Inspectors employed by the RSPCA, with a focus on but not limited to companion animals, represent good value for money in terms of the results obtained for a relatively small amount of public funding. Table 6.5 shows that there has been a consistent increase in the number of RSPCA Inspector responses to cruelty reports in the past four years, during which time the annual grant has not increased significantly. The Panel saw a possible need to increase the annual grant to the RSPCA and encouraged DPIRD to address this through the current renegotiation of the Grant Agreement and MOU.

Department of Biodiversity, Conservation and Attractions

The DBCA Inspectorate includes 12 officers who are appointed as Inspectors under the AW Act. DBCA informed the Panel that it does not have a specific budget for enforcing the AW Act. However, DBCA provided a broad estimate of the current cost of providing an investigative and prosecution service for breaches of the AW Act involving fauna (\$53,000 and \$212,000 respectively per annum). DBCA advised the Panel that in the past five years, it has managed eight prosecutions of offences under the AW Act. The cost per Inspector was estimated to be between \$4,000 and \$16,000 per year, excluding travel and overtime.

Local government authorities

Local government authorities employ officials to enforce a wide range of legislation. As at 31 August 2020, 37 local government officials were appointed Inspectors under the AW Act.

Local government authorities' estimates of annual costs incurred in the enforcement of the AW Act varied from 'zero' (all animal welfare matters are referred to the RSPCA for follow-up) to \$48,000 (estimate provided by a local government authority that undertakes prosecutions under the AW Act). See information in Table 6.6.

Table 6.5 RSPCA reports on enforcement – related activities

Reported activity	FY 16/17	FY 17/18	FY 18/19	FY19/20
Calls to cruelty hotline	16,052	19,061	21,131	17,949
Inspector response	5,879	6,057	6,417	6,866
Plus revisit/follow up	1,325	1,297	1,556	1,811
Prosecutions	13	17	12	11

¹⁷⁷ Royal Society for the Prevention of Cruelty to Animals Western Australia. *Annual Report 2018-19*. <https://www.rspcawa.asn.au/perch/resources/1571725143-rspca-annual-report-2018-19final-web.pdf>; Royal Society for the Prevention of Cruelty to Animals Western Australia. *Annual Report 2019-20*. <https://www.rspcawa.asn.au/perch/resources/1602814531-rspcawa-annualreport19-20-final-web.pdf>

Table 6.6 Local government authorities – animal welfare responses and estimated costs

Shire/town	No. of animal welfare responses	Cost/period	Comments
Port Hedland	119	\$4.6K/2 years	From Nov 2018
Busselton	Approx. 35 per year	\$15-20K/year	From 2017/18
Murray and Waroona	\$370,000-410,000 per year		From 2017/18 Total Animal Control
Nungarin	None	Nil	From July 2018
Moora	All matters referred to RSPCA	Nil	Past 5 years
East Pilbara	Not provided	\$9.1K in FY2018/19; \$8.4K in FY2019/20	2018/19 and 2019/20
Karratha	Animal welfare is approx. 3% of rangers' job; 35% animal related	\$48K animal welfare; \$560K animal control	Past 5 years

The Panel was unable to obtain a clear understanding of activity levels and associated expenditure relevant to the implementation of the AW Act. Apart from the reports of the RSPCA, there is no systematic collection of information on activity or expenditure in relation to animal welfare regulation. The Panel was concerned that this could lead to inefficiencies passing unnoticed and lack of timely action to ensure the effective implementation of the AW Act.

The Panel noted that the Easton Review (2015) recommended that DPIRD (then DAFWA) establish an overall monitoring and evaluation system for activities under the AW Act. Noting that this recommendation was still valid, the Panel urged DPIRD to develop such a system.

As a minimum, the Panel considered that the Department responsible for supporting the Minister in the administration of the AW Act (currently DPIRD) should collate basic information on financial expenditure and key activities such as inspections, investigations and prosecutions under the AW Act, and report on these matters annually. This would allow the State Government to make informed decisions about the resources required to implement the AW Act.

Creation of a central database or register of enforcement information, as discussed in Chapter 7, would assist this task.

RECOMMENDATION 30

The Panel recommends:

- (a) *all organisations acting as Regulators in relation to the Animal Welfare Act 2002 be required to regularly and adequately report to government on their relevant enforcement activities;*
- (b) *all appointed Inspectors be fully funded by the State in relation to their Animal Welfare Act 2002 enforcement activities; and*
- (c) *the allocation of funds set out in (b) to each organisation be accompanied by an obligation to expend the funds on the enforcement of the Animal Welfare Act 2002, and to provide annual reports on this expenditure.*

7.

Enforcement Roles and Processes

Clarification of roles

The personnel empowered to enforce the AW Act are employed by a variety of organisations. This circumstance has led to an apparent lack of understanding in the wider community regarding whose job it is to enforce the AW Act. Five groups of Inspectors are involved in enforcing the AW Act in WA. These are employees of DPIRD, RSPCA, DBCA, the WA Police, and a limited number of local governments that employ appointed Inspectors (12 of 139 local governments as of 31 August 2020). Inspectors employed by these organisations have the same powers under the AW Act, except that local government Inspectors' powers are limited to their local government district (subject to some exceptions).¹⁷⁸

As outlined in Chapter 6, DPIRD Inspectors have primary responsibility for enforcing the AW Act in relation to commercial livestock. RSPCA Inspectors have primary responsibility for enforcing the AW Act in relation but not limited to companion animals and horses, and non-commercial livestock (for example, hobby farms). This division of responsibility reflects the Grant Agreement and Memorandum of Understanding between DPIRD and RSPCA; it is not a function of the legislation. There is no legislative obstacle to DPIRD Inspectors enforcing the AW Act in relation to companion animals or to RSPCA Inspectors enforcing the AW Act in relation to commercial livestock.

Regarding the DPIRD/RSPCA Grant Agreement, the Panel noted the following explanation in the Easton Review:

The RSPCA receives an annual funding grant of \$500,000 from DAFWA [now DPIRD] to support its role in state animal welfare... This has been formalised in a Grant Agreement and a Memorandum of Understanding (MOU) between DAFWA and RSPCA executed in January 2014 for a two-year period. The MOU expresses the intention of the two organisations to work cooperatively on legislative responsibilities and obligations and to ensure regulatory consistency in the general operations of inspectors.

Under the Grant Agreement, one of the key functions of the RSPCA is to receive cruelty complaints from the public. The RSPCA process for assessing and categorising complaints was explained in the Easton Review:

Reports of suspected animal welfare incidents in livestock are graded as follows:

- **Level 1** – the welfare of the animal/s is compromised but the management of the situation is consistent with what would be expected of a reasonable person in the circumstances.
- **Level 2** – the welfare of the animal/s is compromised and the situation is not consistent with (is less than) what would be expected of a reasonable person in the circumstances.
- **Level 3** – the person in charge of an animal is considered to have intentionally or recklessly caused harm or failed to take action that is consistent with what would be expected of a reasonable person in the circumstances.

... RSPCA Inspectors transfer Level 1 and 2 matters concerning livestock to [DPIRD] in accordance with the MOU ...

Level 3 commercial livestock¹⁷⁹ complaints relate to animal welfare concerns where the seizure of the animals could occur and a prosecution may result. When a seizure takes place the animals may require removal, transportation, agistment and/or veterinary treatment pending surrender, forfeiture or prosecution. The RSPCA has established processes and resources to respond to Level 3 incidents, however with mutual agreement, RSPCA may transfer to [DPIRD] reports involving commercial livestock defined as a Level 3 complaint.¹⁸⁰

DBCA Inspectors enforce the AW Act in relation to their responsibilities under the BC Act. The RSPCA may provide information to DBCA in relation to cruelty reports involving wildlife, or DBCA Inspectors may become aware of a cruelty issue in the course of other duties.

¹⁷⁸ See AW Act s 35(1)(b).

¹⁷⁹ The Memorandum of Understanding between DAFWA and RSPCA states 'commercial livestock' is defined as 'any livestock present at an aggregation point and in relation to livestock at any place other than an aggregation point means animals of the species and number set out in Schedule 1, excepting equines'. Aggregation point includes saleyard, export depot, wharf side loading area, lairage, rodeo, processing plant and abattoir.

¹⁸⁰ Easton Review pp 15-16.

Local government employees are responsible for the enforcement of a range of laws, including the *Dog Act 1976* and the *Cat Act 2011*. These two laws establish obligations for the owners of dogs/cats, with the main objective of preventing animals from presenting a risk or nuisance. Local government authorities may decide to have their officers (usually rangers) appointed under the AW Act. Once appointed, these officers have the same powers as other Inspectors, except that their powers are generally limited to the area their employer covers (for example, the relevant shire). DPIRD advised the Panel that 12 of the 139 local governments in WA employed 37 Inspectors as of 31 August 2020 (see Chapter 6). The Panel surmised that the low number and inconsistent distribution of appointed Inspectors employed by local governments relates to local governments having other legislative enforcement priorities, the lack of specific funding for animal welfare and availability of training and support for Inspectors, and individual preferences of management. Inspectors employed by local government authorities tend to work in collaboration with RSPCA or the police. They enforce local government laws, and may undertake prosecutions for non-compliance with them, but these Inspectors do not generally undertake prosecutions under the AW Act.

Police officers have all the powers of a general inspector and enforce the AW Act from time to time, mainly incidental to their core work. They do not have any specific responsibility in relation to the enforcement of the AW Act. Police officers may work cooperatively in situations where the welfare of both people and animals is at risk; a particular example being the cooperation between RSPCA and the police in relation to domestic violence. The Panel was informed that in the four years 2015/16 to 2019/20 WA Police commenced 323 charges for cruelty under the AW Act. The Panel understood that this relatively high number, when compared to other organisations who prosecute under the AW Act, was likely explained by the fact that the police investigate a large number of criminal offences and that many of these have ancillary animal cruelty complaints.

The Panel was concerned about the potential for police officers to overlook animal welfare considerations due to their obligation to also focus on a variety of other matters required of them. An example of this is responding to livestock vehicle road accidents that often result in the driver and a large number of animals being injured. The Panel understands Police have high level priorities relevant to the site of an accident, and potential and/or actual crime scenes. Nevertheless, the Panel was troubled by anecdotal information that suggested animals involved in road transport accidents may be left injured or dying for more than 24 hours, in public view, during which time Inspectors cannot take steps to prevent suffering as they are not permitted to enter the scene of the police investigation. While the Panel fully respects police priorities, it did see a need for Regulators to establish a standardised approach to the management of animal welfare in the case of road accidents.

The Panel was informed that some members of the public do not have a clear understanding of the Regulators' respective roles, and that some do not know who to contact to report a possible offence under the AW Act, especially in regional areas.

Lack of certainty about the correct process for reporting cruelty concerns has also been reported in other jurisdictions.¹⁸¹

While Inspectors generally understand their respective roles and responsibilities, DBCA informed the Panel that:

Improved clarity is required regarding who has carriage and responsibility for investigations and whether DPIRD has an expectation that there will be a separation of responsibilities, for example RSPCA responsible for companion animals, DPIRD responsible for livestock and DBCA responsible for fauna. DPIRD should clearly communicate roles and responsibilities or have carriage of all AW Act matters. Without this clarity there is a risk matters may not be appropriately followed through, be overlooked or the public may become confused on who to report complaints to. For example, WA police prosecuted several AW Act matters in 2019 relating to fauna.¹⁸²

Confusion about the correct method for reporting cruelty may be exacerbated in areas where no RSPCA or DPIRD Inspector is stationed. In this situation, concerns about animal welfare (for example, dry seasonal conditions) may be reported to the nearest government office, which may be DPIRD, police, local government or some other office. This situation may be difficult to prevent; however, there is clearly a need for the correct approach to reporting to be communicated to the public.

Accordingly, the Panel felt that DPIRD and the RSPCA should increase efforts to educate stakeholders and the general public about who is responsible for enforcing the AW Act and how cruelty or other animal welfare issues should be reported to authorities. The Panel also saw a need for Regulators to establish a standardised approach to the management of animal welfare in the case of a road accident.

RECOMMENDATION 31

The Panel recommends that DPIRD take steps to clarify the role and responsibilities of all organisations (including local government and the RSPCA) in the enforcement of the Animal Welfare Act 2002 and communicate this to stakeholders and the public.

¹⁸¹ Morton, R., Hebart, M. L., & Whittaker, A. L. (2020). Explaining the gap between the ambitious goals and practical reality of animal welfare law enforcement: A review of the enforcement gap in Australia. *Animals*, 10(3), 482.

¹⁸² Submission 343.

Inspectors do not enforce the *Animal Welfare Act 2002* in a consistent manner

Stakeholders expressed concern that the involvement of multiple organisations could lead to inefficient and inconsistent approaches to enforcement of the AW Act.

As discussed in Chapter 8, the Panel considered that a separate review should be undertaken to inquire specifically into the effectiveness of the current investigative framework under the AW Act and the benefits and disadvantages of any alternatives to that framework.

Inspectors need to be able to share information relevant to animal welfare enforcement

This section deals with the sharing of information collected by Inspectors of one organisation with those of another. For example, a DPIRD Inspector should be able to access records of all prohibition orders made under the AW Act, regardless of which Regulator employed the Inspector who investigated the matter giving rise to the prohibition order. Information sharing has a number of benefits. In the regulatory context, information sharing can improve efficiency and save resources by avoiding the situation where multiple Regulators or Inspectors are collecting the same information.¹⁸³ In addition, information sharing facilitates better outcomes by allowing Regulators to access relevant information held by another organisation.

At a more general level, information sharing is also critical to effective monitoring and evaluation of activities carried out under legislation.¹⁸⁴ An effective monitoring and evaluation framework improves accountability and consistency in service delivery, allows deficiencies and high risk areas to be identified, and facilitates strategic decision-making to address those deficiencies and high risk areas.¹⁸⁵

The benefits of information sharing in this context have been raised in other jurisdictions. For example, the Select Committee on Animal Cruelty Laws in NSW recently commented:

[I]nformation sharing between the approved charitable organisations and the police is both beneficial and pertinent, given the likely link between the animal cruelty offences and those individuals who may become violent to other humans. Therefore, the committee recommends that the NSW Government institute greater information sharing links between the approved charitable organisations and the police. The committee notes evidence by some inquiry participants on risks to inspectors in dealing with aggressive behaviour during the completion of their investigations.¹⁸⁶

The Panel was informed that information sharing between Regulators generally occurs on an ad hoc basis.¹⁸⁷ There is no system allowing Regulators to share precedents, legal advice or 'lessons learned'. RSPCA provides information about its enforcement activities in its annual reports,¹⁸⁸ but DPIRD, DBCA, WA Police and local government authorities do not provide similarly detailed information in their annual reports. DPIRD and RSPCA Inspectors exchange some information about the status of investigations and results of prosecutions on a case by case basis. The Panel was informed that information sharing is largely dependent on relationships between individuals in the various organisations, but noted that turnover of Inspectors tends to disrupt these relationships.

The Panel was also informed that there are legal obstacles to sharing some information, particularly information obtained by an Inspector under a power conferred by the AW Act. Inspectors have an implied duty of confidentiality in respect of such information.¹⁸⁹ The AW Act does not displace this implied duty because there is no specific authorisation in the AW Act to disclose information.

The Panel considered that the AW Act should authorise information sharing between Inspectors employed by different Regulators for the purpose of administering and enforcing the AW Act. Guidance should be taken from information sharing provisions contained in other regulatory legislation.¹⁹⁰ Authority

¹⁸³ Australian Government Information Management Office. (2009). *National Government Information Sharing Strategy: Unlocking Government information assets to benefit the broader community*. Department of Finance and Regulation.

¹⁸⁴ The Easton Review recommended the Department establish a monitoring and evaluation framework for animal welfare activities supported by appropriate reporting and information management mechanisms.

¹⁸⁵ Easton Review p 26.

¹⁸⁶ Select Committee on Animal Cruelty Laws in New South Wales. (2020). *Animal cruelty laws in New South Wales*. <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=263#tab-reportsandgovernmentresponses> (Select Committee on Animal Cruelty Laws in NSW).

¹⁸⁷ One exception to this general rule is that the RSPCA provides DPIRD with an annual project report outlining activities undertaken by the RSPCA that were funded by government.

¹⁸⁸ See, for example, Royal Society for the Prevention of Cruelty to Animals Western Australia. *Annual Report 2018-19*. <https://www.rspcawa.asn.au/perch/resources/1571725143-rspca-annual-report-2018-19final-web.pdf>

¹⁸⁹ According to the principle enunciated in *Johns v Australia Securities Commission* (1993) 178 CLR 408, 423-4.

¹⁹⁰ For example, the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA) s 10A; *FRM Act* s 250; *Legal Profession Act 2008* (WA) s 533(1); *BC Act* s 274; *Greyhound Racing Act 2017* (NSW) s 90; *Animal Care and Protection Act 2001* (Qld) s 215B.

to share information must be subject to appropriate limits to avoid undue infringement of individuals' privacy, and information should only be shared to the extent that the information is reasonably necessary to assist in the exercise of Inspectors' functions under the AW Act.

Standardised procedures should be developed to ensure that information sharing occurs in a reliable, systematic and appropriate manner. As discussed below, there is merit in establishing a central register of enforcement action undertaken by Inspectors.

RECOMMENDATION 32

The Panel recommends that a provision be inserted into the Animal Welfare Act 2002 which provides that Inspectors employed by different organisations can share necessary information obtained in the course of their duties.

The need for a centralised collection of enforcement information

Some of the Regulators informed the Panel that, other than contacting other organisations directly, an Inspector cannot find out if another Regulator has taken, or is taking, enforcement action against a person of interest for breaching animal welfare legislation. The sole means of obtaining this information is if the action resulted in a conviction recorded on the person's criminal record.

Inspectors should have a complete record of enforcement action taken against a person for purposes such as sentencing in a prosecution or enforcing prohibition orders. Further, Inspectors should be aware of any other investigations or prosecutions underway in relation to a person of interest, to ensure an offender is not simultaneously investigated or prosecuted by Inspectors of more than one organisation.

To improve the operational effectiveness of the AW Act, the Panel recognised a need for all Inspectors and appropriately authorised personnel to have access to a record of enforcement activities conducted by Regulators. This could be achieved by having a centralised database of information (similar to that available to police officers) that Inspectors

can access. It is important to establish strict security protocols in relation to persons accessing the database and to ensure that it is properly managed and maintained.

RECOMMENDATION 33

The Panel recommends the creation of a central register for recording all enforcement activities, including official warnings, infringement notices, and directions, and the provision of access to that register for all Inspectors and appropriately authorised personnel.

Sharing of information between Inspectors and officials who administer other legislation

A further issue relating to information sharing raised with the Panel was the capacity of Inspectors to share information with regulators who enforce legislation other than the AW Act, where that information is relevant to the other organisation's regulatory activities.

For example, the Western Australian Veterinary Surgeons Board (VSB) is the professional body responsible for registering veterinarians and enforcing standards of professional conduct. Matters dealt with by the VSB and Inspectors sometimes overlap. For example, a report of animal cruelty relating to an unqualified person performing acts of veterinary surgery on an animal may also be a contravention of the *Veterinary Surgeons Act 1960*.

Matters dealt with by Inspectors sometimes also overlap with matters dealt with by wildlife officers under the BC Act. For example, the killing of a kookaburra at a Perth tavern in late 2019 resulted in a fine being issued under the BC Act and also prompted an investigation under the AW Act.

In addition, there may be instances in which information gathered by Inspectors is relevant to the enforcement of interstate animal welfare legislation. For example, the media recently reported that a Perth pet shop was selling puppies suspected to have come from a puppy farm in NSW. Cooperation between RSPCA WA and RSPCA NSW may assist enforcement of either the AW Act or the *Prevention of Cruelty to Animals Act 1979* (NSW).

DPIRD informed the Panel that the legal obstacles outlined earlier in this chapter also apply to Inspectors sharing information with external agencies (that is, agencies that regulate legislation other than the AW Act). As stated above, it would be necessary to amend the AW Act to facilitate information sharing with agencies that administer legislation other than the AW Act. Given the potential factual overlap between matters dealt with by Inspectors and some other agencies, the Panel supported amendment of the AW Act to allow information sharing in certain circumstances, subject to appropriate checks and balances.

The Panel noted that government would need to determine an appropriate and lawful means by which information can be accessed and shared between relevant organisations. Information should only be shared to the extent that the information is reasonably necessary to assist in the exercise of a Regulator's functions, and where appropriate checks and balances are in place.

RECOMMENDATION 34

The Panel recommends that the Animal Welfare Act 2002 be amended to allow for the exchange of information between relevant organisations where the information 'is, or is likely to be, relevant to the regulatory functions' of the other organisation.

Framework for Prosecutions

Background

A principal objective of the AW Act is to prohibit cruelty to, and other inhumane and improper treatment of, animals. An effective prosecutorial framework is central to the achievement of this objective. TOR 4 related to how compliance with the AW Act can be promoted, including consideration by the Panel of the prosecutorial framework and, if necessary, recommending appropriate legislative amendments.

A number of deficiencies in the prosecutorial framework have been identified by the Panel and the Review participants. The lack of a central body to coordinate all prosecutions conducted under the AW Act gives rise to inefficiencies and inconsistencies, particularly given the wide range of separate organisations that are empowered to perform investigative functions under the AW Act. These bodies will often also conduct their own prosecutions. Where advice is needed it is sought from different sources which has, on occasion, resulted in contradictory advice being delivered in relation to the same issue.

The current structure also leads to strong perceptions in industry and in the community of conflicts of interest, and that it does not promote a cohesive approach to prosecutions. There is a need to promote greater utilisation of the AW Act to ensure that those who breach it are brought to account, including in the courts, for their actions. Without a centralised agency funded by the State to conduct all prosecutions, however, the costs of conducting prosecutions (including the court-ordered costs of an unsuccessful prosecution) will often fall to be absorbed by the organisation conducting the prosecution. Addressing these issues would promote compliance with the AW Act, and achievement of its objectives.

The Panel carefully considered other legislative amendments that would promote the principle of general deterrence within the community in order to achieve the objects of the AW Act. For instance, unlike in other jurisdictions, the AW Act does not presently include aggravated cruelty offences for intentional acts which cause death or serious harm to an

animal. The AW Act fails to distinguish in this way between relatively minor breaches of the Act, and the egregious actions of individuals or corporate entities engaged in high level and/or systematic cruelty to animals. Creation of this type of offence would have the capacity to better reflect community expectations that acts of intentional cruelty of a serious type should be subjected to a higher level of scrutiny and punishment by the courts.

The other proposed legislative amendments comprise changes to the time limit for commencing prosecutions; changes to evidential disclosure requirements for both prosecution and accused, which would increase the efficiency and fairness of prosecutions; and the introduction of available orders that would impose a lifetime ban on a person from owning (or otherwise being in charge of) an animal upon being convicted of an indictable cruelty offence, unless the offender can demonstrate exceptional reasons for why such an order should not be made.

Responsibility for conduct and funding of prosecutions

Current framework for prosecutions

As discussed elsewhere, the organisations involved in the enforcement of the AW Act are DPIRD, the RSPCA, DBCA, local government authorities and WA Police. Inspectors employed by each of these organisations are authorised to commence prosecutions under the AW Act,¹⁹¹ although local government Inspectors' powers are limited to their local government district.¹⁹²

Regulators informed the Panel of their arrangements for conduct of prosecutions.

In practice, police officers bring the largest number of prosecutions under the AW Act, followed by RSPCA Inspectors and DPIRD Inspectors. WA Police informed the Panel, however, that its role in enforcing the AW Act is very limited in practice and that police officers do not routinely investigate animal welfare matters. Prosecutions are also

¹⁹¹ AW Act s 82(1)(b).

¹⁹² AW Act s 35(1).

occasionally commenced by DBCA Inspectors with respect to wildlife.¹⁹³ Representatives of local governments informed the Panel that many local government Inspectors either never or rarely commence prosecutions under the AW Act. Some of the reasons for this include whether there is RSPCA support that is accessible to the local government in the region, as well as issues connected to funding, training, experience and understanding. The City of Karratha is a notable exception, not only proactively investigating breaches of the AW Act but also often conducting its own prosecutions. This exception appears to be due to the experience and interest of the Inspector employed by this Shire.

The current arrangements for the preparation and assessment of prosecution briefs and the management of prosecutions differ between organisations.

DPIRD informed the Panel that on completion of an investigation by a DPIRD Inspector a brief of evidence is sent to the State Solicitor's Office (SSO) for legal advice as to the prospects of success of the proposed prosecution. If the SSO advises that a prima facie case exists and there are reasonable prospects of conviction, a DPIRD Inspector may decide to commence the prosecution (provided the prosecution is otherwise considered to be in the public interest, based on factors set out in the Office of the Director of Public Prosecutions for Western Australia (DPP) Statement of Prosecution Policy and Guidelines).¹⁹⁴ An SSO lawyer then manages the prosecution and attends any required court appearances, including the trial. If the prosecution is unsuccessful, any costs ordered to be paid by the prosecution to the acquitted person are funded by government (from the Consolidated Account). If the prosecution is successful, any fines are paid to the State's Consolidated Account.¹⁹⁵ This is the case for all prosecutions unless prosecuted by a local government Inspector, in which case the fines are paid to the local government.¹⁹⁶

Given the RSPCA's charitable status, its Inspectors are in the unique, or at least very rare, position of being authorised to commence prosecutions.¹⁹⁷ The Panel was not aware of any other non-government organisation in WA whose employees perform such a role. The RSPCA Chief Inspector (or equivalent) and in-house lawyer review any matter that is considered appropriate for prosecution. The RSPCA also receives pro bono assistance from solicitors and barristers, who provide advice to the Chief Inspector (or equivalent) and in-house lawyer, and who may be asked to provide advice on the prospects of more

complex prosecutions. The decision of whether to prosecute is made in accordance with the RSPCA Compliance Enforcement and Prosecution Policy (RSPCA Prosecution Policy), which is designed to be consistent with the DPP Statement of Prosecution Policy and Guidelines.

In terms of funding for prosecutions, the RSPCA receives an annual government grant but the costs of inspectorial and prosecutorial functions substantially exceed the grant amount and are largely community funded.¹⁹⁸ Unlike most other prosecutions under State legislation, which are ordinarily conducted by State prosecutors (including police prosecutors) or barristers paid for by the State, prosecutions brought by RSPCA are generally conducted by private barristers or solicitors on a pro bono basis. While these solicitors and barristers have varying levels of prosecutorial experience the success rate of RSPCA prosecutions has been very high.

In the event that a prosecution is unsuccessful, RSPCA may be ordered to pay the accused's legal costs.¹⁹⁹ On the other hand, if a prosecution conducted by the RSPCA is successful, the RSPCA might recover some of its externally incurred costs but does not receive and has not sought to receive any part of the fine imposed;²⁰⁰ the AW Act requires that this be credited to the State's Consolidated Account.

In terms of prosecutions conducted by the remaining prosecuting authorities, DBCA uses its own legal officers to manage its prosecutions, but transfers prosecutions to the SSO if a matter proceeds to trial. The Panel understood that prosecutions conducted by WA Police under the AW Act are generally commenced alongside other concurrent offences, such as assault in a family setting. WA Police advised these prosecutions are generally managed by police prosecutors. As with DPIRD prosecutions, DBCA and WA Police prosecutions are wholly government funded.

With respect to prosecutions conducted by local government Inspectors, representatives of local governments informed the Panel that local governments bear the costs of those prosecutions. As mentioned above, unlike with other prosecuting authorities, fines imposed by a court for an AW Act offence successfully prosecuted by a local government Inspector are directly credited to the local government.

¹⁹³ DBCA Inspectors have undertaken 1-2 prosecutions under the AW Act each year for the past 5 years: Submission 343.

¹⁹⁴ Office of the Director of Public Prosecutions. (2018). *Statement of Prosecution Policy and Guidelines 2018*. <https://www.dpp.wa.gov.au/files/publications/Statement-of-Prosecution-Policy-and-Guidelines.pdf>

¹⁹⁵ AW Act s 86.

¹⁹⁶ AW Act s 86.

¹⁹⁷ Report of the Select Committee into the Operations of the RSPCA [4.43].

¹⁹⁸ Royal Society for the Prevention of Cruelty to Animals Western Australia. *Annual Report 2018-19*. <https://www.rspcawa.asn.au/perch/resources/1571725143-rspca-annual-report-2018-19final-web.pdf>

¹⁹⁹ AW Act s 58(1).

²⁰⁰ AW Act ss 58(1), 86.

Concerns regarding the current framework

Stakeholders voiced a number of concerns regarding the current arrangements for enforcement of the AW Act. The concerns were commonly expressed by reference to DPIRD or the RSPCA, but often apply equally to other prosecuting authorities. The issues raised are discussed below.

Lack of consistent approach

The current arrangements result in some inconsistent practices between organisations responsible for prosecutions. The Panel noted that on occasion DPIRD and RSPCA receive conflicting legal advice from their respective legal advisers and, being separate organisations, might not become aware of the conflict for some time. This result is unsatisfactory – there should be a consistent approach to prosecutions. Moreover, the existence of multiple prosecuting organisations results in inefficiencies; it is, for example, inefficient for several legal opinions to be provided on the same point to different authorities, particularly where those opinions contain divergent views as to the application of the law. There is also no sharing of ‘lessons learned’ from prosecutions between the different organisations, which hampers the development of expertise and the identification of important issues in need of legal reform. As discussed in Chapter 7, information is shared from time to time (within legal bounds), but this is limited, and dependent upon relationships between individuals in the different organisations.

The Panel had concerns about the potential for inconsistent practices and divergent views and noted that this could contribute to a public perception that the law is enforced in a haphazard manner. Consistency is important: the likelihood of a person being prosecuted, and the approach to the conduct of the prosecution, should not depend on the views or resources of the particular prosecuting body.²⁰¹

Inappropriate for a private organisation to bear prosecution costs

Stakeholders also queried the appropriateness of the current funding model for RSPCA prosecutions.²⁰² The RSPCA informed the Panel that, apart from the annual government grant, the RSPCA bears the cost of prosecutions, including fees for legal counsel (when not provided on a pro bono basis), witness expenses (including costly expert reports and testimony), filing fees and, if a prosecution is unsuccessful, payment of the accused’s legal costs. RSPCA also meets

the cost of caring for any seized animals that relate to the prosecution, which requires significant resources and infrastructure in terms of veterinary costs, vehicles for transportation, boarding facilities and staff trained in animal care. All or part of the costs, such as the cost of caring for seized animals, may be reimbursed under the AW Act.²⁰³

The RSPCA has been fortunate to receive considerable public support and pro bono assistance, but a regulator of this kind of State legislation should not have to depend on donations of time and money to fulfil its responsibilities.

Consistent with other areas of WA criminal law, it would seem reasonable for the State to be responsible for the conduct and funding of prosecutions under the AW Act, and to ensure that funding is sufficient to meet community expectations.²⁰⁴

In the 2018-2019 financial year, the RSPCA recorded 6417 Inspector responses and conducted 10 prosecutions for offences under the AW Act, and two civil forfeitures.²⁰⁵ The RSPCA consistently has a very high prosecution success rate. This might be attributed to high quality investigations and the prosecutor’s sound advocacy. It could also suggest that only the most clear-cut cases are commenced. By way of comparison, the DPP aims to achieve convictions in at least 50% of prosecutions that proceed to trial.²⁰⁶

A recent review of the RSPCA Vic Inspectorate observed ‘[t]he RSPCA is not indemnified for costs in the event of a failed prosecution and this situation no doubt weighs heavily on deliberations about prosecution’.²⁰⁷

It is possible that, due to the burdensome costs of conducting a prosecution and the risk of an adverse costs order if a prosecution is unsuccessful, RSPCA Inspectors might be reluctant to commence prosecutions that are not highly likely to succeed. The large number of cruelty complaints and limited funding available to employ Inspectors may also be a factor. If Inspectors’ workloads allow insufficient time to prepare briefs for prosecution, they may decide to focus on preparing those that are most likely to succeed.

The RSPCA informed the Panel that the relatively small numbers of prosecutions reflect its focus on resolving cruelty complaints by providing education and assistance to animal owners, and that this leads Inspectors to generally limit prosecutions to cases of serious animal mistreatment or to where a person has not responded adequately to attempts to improve the welfare of their animals.

²⁰¹ Wooler, S. (2014). *The independent review of prosecution activity of the Royal Society for the Prevention of Cruelty to Animals*. Royal Society for the Prevention of Cruelty to Animals (United Kingdom), p 13. <https://www.rspca.org.uk/webContent/staticImages/Downloads/WoolerReviewFinalSept2014.pdf>

²⁰² Submission 28; submission 261; submission 304; submission 307.

²⁰³ AW Act s 56.

²⁰⁴ Caulfield, M. (2009). *Handbook of Australian Animal Cruelty Law*. Animals Australia.

²⁰⁵ Royal Society for the Prevention of Cruelty to Animals Western Australia. *Annual Report 2018-19*. <https://www.rspcawa.asn.au/perch/resources/1571725143-rspca-annual-report-2018-19final-web.pdf>

²⁰⁶ Office of the Director of Public Prosecutions. (2019). *Annual report 2018-19*, p 16. <https://www.dpp.wa.gov.au/files/annual-reports/ODPP-Annual-Report-2018-2019.pdf>

²⁰⁷ Comrie, N. (2016). *Independent Review of the RSPCA Victoria Inspectorate – Final Report*, p 55. https://www.rspcavic.org/documents/RSPCA_IndependentReview_final.pdf

These observations should not be read as in any way critical of RSPCA. In light of the limitations it faces with funding, and other inefficiencies referred to elsewhere in this Review, the Panel considered it has more than satisfactorily undertaken the many functions allocated to it in relation to the AW Act.

Animals Australia submitted that it would be fair and reasonable for RSPCA to receive the proceeds of any fines imposed as penalties under the AW Act in the cases it prosecutes (as is the case for prosecutions conducted by local government Inspectors).²⁰⁸ An RSPCA Australia Position Paper states '[if a] prosecution derives from an investigation conducted by an inspector employed by the RSPCA or other approved charitable organisation, a 50 per cent moiety of any fine imposed should be directed to the RSPCA or other approved charitable organisation'.²⁰⁹ The Panel noted that such an approach was unlikely to resolve the funding issue, because the costs of prosecutions, and related costs such as care for seized animals, are likely to exceed any fine imposed.

DPIRD advised the Panel that it was difficult to provide a total number of investigations carried out each year, based on records kept to date and the organisational redesign, which resulted in many changes to management arrangements. DPIRD Inspectors conduct from one to seven prosecutions each year.²¹⁰ Unlike the RSPCA, routine inspections of livestock at aggregation points, such as saleyards, is a significant part of a DPIRD Inspector's role. In past years, some 300 – 400 such inspections were performed each year, accounting for a significant percentage of the DPIRD Inspectors' workload. The adequacy of budget and staff resources available to DPIRD may also be relevant (see Chapter 6).

The Panel noted that a relatively large number of DPIRD officers are appointed as general Inspectors as compared with a smaller number of Inspectors who are actively working in the animal welfare regulation field. It is likely that all Inspectors, whether employed by the RSPCA or DPIRD, deal with minor incidents and 'first time offenders' by education rather than enforcement action.

It is important that the bar for commencing prosecutions is not set too high. Commencing only the clearest of cases may prevent a worthy prosecution from occurring and hinder the continuing evolution of our understanding of the AW Act. Prosecutions which test the boundaries of the AW Act

(whilst still having a reasonable prospect of success) are critical to clarify the law and improve the prospects of future convictions.²¹¹

The WA DPP Statement of Prosecution Policy and Guidelines provides an appropriate test for commencing and continuing a prosecution, namely:

- (a) there must be a prima facie case, meaning that the available evidence appears on its initial assessment to prove the offence that has been, or may be, charged; and
- (b) the prosecution must be in the public interest. A prosecution will not be in the public interest if it does not have reasonable prospects of conviction. Other relevant considerations include the age, health or vulnerability of the victim or a witness, and the degree of culpability of the accused.²¹²

This policy should guide the commencement and conduct of all prosecutions under the AW Act. In addition, the requirement that there be 'reasonable prospects of success' should not be applied with excessive caution; there must be reasonable prospects, not almost certain prospects, of success. Further, bringing only the prosecutions almost certain to succeed inevitably means that fewer prosecutions are commenced, which may reduce the deterrent effect of the AW Act. The deterrent effect of a law depends on a wrongdoer believing there is a realistic prospect that they will be caught and convicted.²¹³ Since vigorous enforcement of the law is critical to the prevention of crime,²¹⁴ it is essential that Regulators are properly resourced.

Actual or perceived conflicts of interest

Some stakeholders also voiced concerns that one or both of RSPCA and DPIRD have a conflict of interest in relation to animal welfare regulation. The Panel did not receive sufficient evidence to show that either organisation has in fact been affected by a conflict of interest. However, perceived conflicts of interest must be taken into account as justice must not only be done but also be seen to be done.

Some stakeholders submitted that RSPCA's role in law enforcement was inconsistent with its advocacy against certain industry practices.²¹⁵ For example, the RSPCA national office have criticised the keeping of chickens in conventional ('battery') cages.²¹⁶ Some stakeholders considered that the

²⁰⁸ Submission 307.

²⁰⁹ Royal Society for the Prevention of Cruelty to Animals Australia. (2012). *Position Paper H1 – Animal Welfare Legislation* [16.1]. <https://kb.rspca.org.au/wp-content/uploads/2019/01/PP-H1-Animal-Welfare-Legislation.pdf>

²¹⁰ Table 6.4.

²¹¹ Australian Law Reform Commission. (2010). *Family Violence – A National Legal Response (Report 114)* [26.47]. <https://www.alrc.gov.au/publication/family-violence-a-national-legal-response-alrc-report-114/26-reporting-prosecution-and-pre-trial-processes-2/the-prosecution-phase-2/> citing Heath, M. (2010). Women and criminal law: Rape. In P. Eastale (Ed.), *Women and the Law in Australia* 88, 92. LexisNexis; Morton, R., Hebart, M. L., & Whittaker, A. L. (2020). Explaining the gap between the ambitious goals and practical reality of animal welfare law enforcement: A review of the enforcement gap in Australia. *Animals*, 10(3), 482, 9-10.

²¹² Office of the Director of Public Prosecutions. (2018). *Statement of Prosecution Policy and Guidelines 2018*. <https://www.dpp.wa.gov.au/files/publications/Statement-of-Prosecution-Policy-and-Guidelines.pdf>

²¹³ Bagaric, M. (2001). *Punishment and Sentencing: A Rational Approach*. Cavendish Publishing Limited, p 147.

²¹⁴ Hall, J. (3 December 2018). *Animal Welfare Act – Sentencing* [Forum Paper]. Crimes Against Companion Animals Forum.

²¹⁵ Submission 88; submission 346; submission 352.

²¹⁶ Royal Society for the Prevention of Cruelty to Animals WA. *Campaigns*. <https://www.rspcawa.asn.au/campaigns/#end-the-battery-cage>

reliance of the RSPCA on donations could compromise its independence and lead to actual or perceived conflicts of interest.²¹⁷

In relation to prosecutions, the RSPCA Prosecution Policy states 'RSPCA WA will not consider issues such as media impact or the ability to promote the Society through prosecutions' and '[i]t will, at all times, act impartially and in the public interest'. Further, while the lawyers who conduct RSPCA prosecutions are not government prosecutors, any lawyers conducting a prosecution in WA must comply with the prosecutor's duties detailed in rule 44 of the *Legal Profession Conduct Rules 2010* (WA). The rule requires, amongst other things, that a prosecutor 'seek to have the whole of the relevant evidence placed before the court in an impartial and intelligible manner'. In light of stakeholder feedback to the Panel, it appears these policies and rules have not overcome the perception held by some Review participants about the impartiality of the RSPCA.

DPIRD has a strong focus on industry and regional development and some participants submitted that regulation of animal welfare is in direct conflict with DPIRD's role as a supporter and promoter of the animal agriculture industry.²¹⁸

The potential conflict facing Departments of Agriculture as regulators of animal welfare has been discussed in both public and academic domains for some time.²¹⁹ Goodfellow suggests that this conflict of interest has led Departments of Agriculture to support animal welfare measures only to the extent they contribute to industry productivity. If, on the other hand, a proposed welfare measure correlates negatively with productivity, it is 'dismissed or severely compromised'.²²⁰ A recent report commissioned by the Federal Government found that 'distrust of the industry and government regarding animal welfare [brought] into question the effectiveness of current regulation', and that some participants mentioned that a conflict of interest existed because the body responsible for promoting and supporting industry growth was also responsible for regulating animal welfare standards.²²¹ As one stakeholder participating in this Review observed, diminished public confidence can

give rise to an escalation in activist strategies as members of the public lose faith in authorities' ability to enforce the law.²²² In contrast, other Review participants suggested that the progression of agricultural industries goes hand-in-hand with improvements in animal welfare, and that DPIRD's expertise (at least with respect to livestock) allows more effective and efficient regulation.²²³

This issue was recently raised with the Select Committee on Animal Cruelty Laws in NSW. The Select Committee weighed the competing views and ultimately recommended that, given the Department of Primary Industries' role in supporting agricultural industries, the NSW Government should move responsibility for animal welfare matters out of the Department of Primary Industries to avoid any conflicts of interest.²²⁴

Although DPIRD Inspectors are currently guided by SSO advice when deciding whether or not to commence a prosecution, and there is no reason to consider that SSO has any conflict of interest, submissions received by the Panel confirm that community members remain concerned about possible bias or political influence over the DPIRD Inspectors' decisions to prosecute. These concerns might only be alleviated by shifting the ultimate decision to prosecute from a DPIRD Inspector to an independent authority (accepting, as discussed below, that independence in the investigative framework would also be required to completely alleviate this concern, given that Inspectors would have control over whether or not to send a brief to the prosecuting authority in the first place).

The Panel considered that concerns regarding actual or perceived conflicts of interest should be addressed. Prosecuting organisations must be equipped to resist the pressures of interest groups and the fickleness of public opinion, whilst remaining responsive and sensitive to the public interest.²²⁵ Enforcement of the law, and community confidence in that enforcement, will be impaired until the regulator is, and is seen to be, independent and impartial.

²¹⁷ Submission 327; Select Committee on Animal Cruelty Laws in NSW, Finding 2. See also the discussion in House of Commons – Environment, Food and Rural Affairs Committee. (2016). *Animal welfare in England: domestic pets*. <https://publications.parliament.uk/pa/cm201617/cmselect/cmenvfru/117/117.pdf>

²¹⁸ Submission 26; pro forma 3 (submissions 79-87, 90, 93, 180, 238, 259, 277, 281-283, 285-287, 290, 295, 297, 301, 305-306, 319, 337); submission 304; submission 307; submission 316; submission 327; submission 332; submission 333.

²¹⁹ For a recent discussion of the issue, see Morton, R., Hebart, M. L., & Whittaker, A. L. (2020). Explaining the gap between the ambitious goals and practical reality of animal welfare law enforcement: A review of the enforcement gap in Australia. *Animals*, 10(3), 482, 7-8.

²²⁰ Goodfellow, J. (2016). Regulatory capture and the welfare of farm animals in Australia. In D Cao and S White (Eds.), *Animal Law and Welfare - International Perspectives* (pp 195-235). Springer Nature.

²²¹ Futureye Report p 12.

²²² Submission 26 p 12.

²²³ See, for example, submission 346.

²²⁴ Select Committee on Animal Cruelty Laws in NSW p xi.

²²⁵ Wooler, S. (2014). *The independent review of prosecution activity of the Royal Society for the Prevention of Cruelty to Animals*. Royal Society for the Prevention of Cruelty to Animals (United Kingdom), p 22 [70]. <https://www.rspca.org.uk/webContent/staticimages/Downloads/WoolerReviewFinalSept2014.pdf>

Alternative framework: an independent statutory prosecution authority

Stakeholders expressed a range of views regarding the way forward for enforcement of the AW Act. Some proposed that an independent office for animal welfare be created to administer and enforce the AW Act²²⁶ and others suggested that the prosecutorial function be moved to a new independent agency or to a different existing agency, or be managed solely by the RSPCA.²²⁷ At the public forums, many stakeholders agreed that prosecutions under the AW Act should be managed by an independent body to overcome the problem of 'regulatory capture'. The conferral of advisory functions (as opposed to enforcement functions) on an independent body is discussed in Chapter 10, which recommends the establishment of an Animal Welfare Advisory Committee (AWAC).

DPIRD informed the Panel about the arrangements in other Australian jurisdictions, some of which feature, or may soon feature, specialist animal welfare prosecutors or a central prosecuting agency:

- In the ACT, all prosecutions commenced under the *Animal Welfare Act 1992* (ACT) are assessed and conducted by the Office of the Director of Public Prosecutions.
- In Victoria, an independent review of the RSPCA Vic Inspectorate in 2016 resulted in a proposal to place a legally qualified prosecutor within the Police Prosecutions Unit. The prosecutor was to be responsible for all *Prevention of Cruelty to Animals Act 1986* (Vic) matters initiated by the RSPCA Vic Inspectorate that came before the Magistrates Court in Vic. The Panel understood that this proposal did not eventuate but that RSPCA Vic has employed a legally qualified prosecutor who conducts most of their prosecutions.
- The Select Committee on Animal Cruelty Laws in NSW recently recommended that the NSW Government 'establish and fully fund a specialist unit within the NSW Police Force to investigate and prosecute animal cruelty offences'.²²⁸ At the time of writing this Report, the NSW Government had not responded to this recommendation.

Internationally, the Animal Welfare Institute reports that, as at 2018, numerous district attorneys' offices in the United States of America have created specialised animal cruelty units to prosecute animal cruelty crimes.²²⁹ At state level, the Office of the Attorney General for Virginia has a specialist animal law unit 'designed to help assist with the prosecution of violations of the Commonwealth's animal fighting, abuse, neglect and other animal-related criminal laws and advise on legal matters relating to animals'.²³⁰

The Panel considered that the issues raised by Review participants could be at least partially resolved by the creation of an independent statutory prosecuting authority. The authority would comprise legal practitioners and suitable support staff, and it would be responsible for conducting all prosecutions under the AW Act. The authority would also be responsible for assessing briefs of evidence prepared by Inspectors and determining whether a proposed prosecution ought to proceed. Similar to the DPP, the authority should have the discretion to brief external barristers where the prosecution workload cannot be met by the authority's own legal practitioners. Funding of the legal services for prosecutions should be entirely provided by government.

The concerns expressed with respect to the RSPCA and DPIRD's perceived lack of impartiality could be largely addressed by the creation of this independent authority. While RSPCA and DPIRD would continue to conduct investigations, the decision to prosecute would ultimately be made by an independent authority. Independent criminal prosecuting agencies were formed in Australia for this exact purpose.²³¹ There was a recognition that it was in everybody's interest, including that of politicians, for a person independent of the political process to be responsible for what are often 'very difficult and contentious decisions'.²³²

Provided the authority was adequately funded, its creation would help to ensure that concerns about the cost of a prosecution would not be given undue weight. Rather, the decision would be made by reference to the central considerations of whether the case has reasonable prospects of success (not guaranteed success), and whether it is otherwise in the public interest to commence the prosecution.

The creation of an independent prosecuting authority would also facilitate the collation of legal advices, relevant cases and other materials for use in prosecutions, which would in turn improve the knowledge and efficiency of prosecutors. Unlike police prosecutors or pro bono lawyers, who conduct prosecutions under the AW Act whilst also undertaking a range of prosecutions under other legislation, the prosecutors of the authority would develop specialist expertise in prosecutions under the AW Act. Development of such expertise may result in an increased number of prosecutions whilst maintaining a suitably high rate of conviction. The authority should also be responsible for creating and maintaining a register of prosecutions and court orders to ensure the authority and investigators are aware of any relevant previous convictions or court orders.

²²⁶ Submission 91; pro forma 3 (submissions 79-87, 90, 93, 180, 238, 259, 277, 281-283, 285-287, 290, 295, 297, 301, 305-306, 319, 337); submission 278; submission 304; submission 307; submission 308; submission 311; submission 326; submission 332.

²²⁷ Submission 26; submission 27; submission 91; submission 313.

²²⁸ Select Committee on Animal Cruelty Laws in NSW p xii.

²²⁹ Animal Welfare Institute. (2018). *Law enforcement agencies ramp up efforts to address animal cruelty*. <https://awionline.org/awi-quarterly/spring-2018/law-enforcement-agencies-ramp-efforts-address-animal-cruelty>

²³⁰ Attorney General of Virginia. (n.d.). *Environmental Section*. https://www.oag.state.va.us/index.php?option=com_content&view=article&id=387

²³¹ Office of the Director of Public Prosecutions. (n.d.). *History*. ACT Government. https://www.dpp.act.gov.au/about_the_dpp/history

²³² Office of the Director of Public Prosecutions. (n.d.). *History*. ACT Government. https://www.dpp.act.gov.au/about_the_dpp/history

In addition to conducting prosecutions, the independent prosecuting authority would be available to provide legal advice to investigating organisations. This would both simplify the process of obtaining advice and ensure that investigating organisations do not receive inconsistent legal advice, leading to more cohesive enforcement of the AW Act.

In exploring alternative prosecutorial frameworks, the Panel directly consulted with all organisations affected by this potential change, including the RSPCA, WA Police, DPIRD, DBCA and local government. WA Police informed the Panel that it would support the creation of a centralised prosecuting authority to deal with animal welfare matters.

The RSPCA expressed some reservations about the creation of an independent prosecuting authority. Its concerns included:

- (a) Whether the independent agency would be adequately funded and the extent of any cost savings. This included the fact that the RSPCA receives considerable assistance from barristers who provide their services on a pro bono basis.
- (b) The lengthy time required to complete prosecutions, which is affected by delays in the court system or by accused persons who seek adjournments or otherwise delay the court process, will not be remedied by the creation of an independent prosecuting authority.

RSPCA, however, indicated it could support such a proposal if it could be clearly demonstrated to improve the welfare of animals in WA, and if legislation was enacted to ensure the ongoing operation of such an authority.

DPIRD, DBCA and local government representatives did not raise specific concerns about this proposal with the Panel.

The Panel considered that the government should consider the question of funding as part of the process of deciding whether to establish an independent prosecuting authority.

If the recommendation to establish an independent prosecuting authority is accepted by government, additional, specific consultation with DPIRD and the RSPCA on appropriate arrangements, including the provision of resources to the authority, will be required. The Panel also noted that the management of issues related to the prosecutorial functions, such as caring for seized animals and enforcing court orders, would require careful consideration.

RECOMMENDATION 35

The Panel recommends that an independent statutory prosecutorial authority be established by legislation. This entity is to:

- *be created by statute;*
- *conduct all prosecutions under the Animal Welfare Act 2002;*
- *be composed of lawyers who are able to conduct prosecutions under the Animal Welfare Act 2002; and*
- *be funded by government.*

A separate review of the investigative framework

If accepted by government, the establishment of an independent prosecuting authority will very likely improve investigations by acting as a centralised and informative source of legal advice and guidance for Inspectors. However, the Panel acknowledged that the current investigative framework also requires some attention.

The concerns described above regarding perceived conflicts of interest, lack of consistent approach and funding issues apply equally to the investigative framework. The large number of separate organisations with investigative functions and the lack of centralised training and communication between organisations exacerbates these problems. The creation of an independent prosecuting authority will resolve these problems insofar as they apply to the prosecution process, but will not address them to the extent that they apply to the investigative process, and an independent prosecuting authority will be limited by the briefs of evidence it receives. Given that decisions as to which cruelty complaints to investigate and which briefs to forward to a prosecuting authority are made by Inspectors at the investigative stage, it is critical that Inspectors are well-funded and competent investigators.

As discussed in Chapter 6, enforcement of the AW Act is a public responsibility and must be funded accordingly. The question as to who should investigate breaches of animal welfare laws requires careful consideration and extensive consultation, however, since animal welfare investigation is 'multi-faceted, risky and challenging work that should be undertaken by experts'.²³³ Inspectors must be equipped with knowledge of investigative techniques whilst also having knowledge of the welfare requirements of various animal species. The training of Inspectors is discussed in Chapter 6. Inspectors must also be equipped to enter situations which are sometimes confronting and/or dangerous.²³⁴ Careful consideration should be given to whether multiple organisations should be involved in the enforcement of the AW Act and, if so, how that can best be managed.

Frameworks developed in other jurisdictions will be informative. For instance, the New York Police Department (NYPD) has an Animal Cruelty Investigation Squad, which is a specialised police unit with sole responsibility for investigating incidents of suspected animal abuse or neglect.²³⁵ The squad is assisted by the American Society for the Prevention of Cruelty to Animals, which concentrates its efforts on caring for seized animals and providing other support to the NYPD, such as expert advice and forensic evaluations by veterinarians.²³⁶

The Panel also recommended that consideration be given to whether a single independent authority would provide the most appropriate and efficient means for administering and regulating animal welfare in WA. The existence of such a body may be more effective and efficient than the current model of multiple investigative agencies, a separate prosecuting agency and (proposed) separate advisory body (see Chapter 10). It would also address concerns relating to conflicts of interest.

The Select Committee on Animal Cruelty Laws in NSW recently recommended that the NSW Government establish 'an independent statutory body, the Independent Office of Animal Protection' to oversee the animal welfare framework and 'that the NSW Government consult stakeholders on the appropriate functions of the new body'.²³⁷ The Select Committee explained:

A new, statutory agency – the Independent Office of Animal Welfare – to oversee the animal welfare framework, and in particular the compliance and enforcement functions of the ACOs [Approved Charitable Organisations], would go a long way to ensuring appropriate scrutiny of the ACOs and other relevant agencies. This new agency would address concerns about potential conflicts of interest within the ACOs, and indeed the Department of Primary Industries, and be a mechanism for far greater scrutiny and transparency of their operations. . . .²³⁸

The Panel was of the view that until a separate review could be conducted, the existing investigative structure could continue and would be assisted by additional funding and the creation of an independent prosecution agency.

RECOMMENDATION 36

The Panel recommends that a separate review be undertaken to inquire specifically into the effectiveness of the current investigative framework under the Animal Welfare Act 2002 and the benefits and disadvantages of any alternatives to that framework.

²³³ Coulter, K. (2019, March 26). Why animal cruelty should become a matter for dedicated police units. *The Conversation*. <https://theconversation.com/why-animal-cruelty-should-become-a-matter-for-dedicated-police-units-114158>

²³⁴ See, for example, McNeill, H. (2017, April 11). RSPCA inspector 'assaulted' during animal cruelty investigation. *WA Today*. <https://www.watoday.com.au/national/western-australia/rscpa-inspector-assaulted-during-animal-cruelty-investigation-20170411-gvizlg.html>

²³⁵ New York City Police Department. (n.d.). *Detectives*. <https://www1.nyc.gov/site/nypd/bureaus/investigative/detectives.page>

²³⁶ American Society for the Prevention of Cruelty to Animals. (n.d.). *Addressing and Preventing Animal Cruelty in NYC*. <https://www.aspc.org/animal-protection/nypd-partnership>

²³⁷ Select Committee on Animal Cruelty Laws in NSW, Recommendation 14.

²³⁸ Select Committee on Animal Cruelty Laws in NSW [4.61].

Payment of costs for unsuccessful prosecutions

Irrespective of whether an independent prosecuting authority is established, the Panel considered that, for the reasons described above, all costs orders in prosecutions under the AW Act should be paid by government (irrespective of which authority commenced the prosecution). This change can be achieved by an amendment to the AW Act or, if an independent prosecution authority is established, by providing in the Act that establishes that authority for the payment of costs from the Consolidated Account.

RECOMMENDATION 37

The Panel recommends that WA legislation provide that all costs (including disbursements) ordered to be paid by the prosecutor in a matter brought under the Animal Welfare Act 2002 be paid from the Consolidated Revenue Fund.

Classification of offences

Animal cruelty is classified as a simple offence

In WA, there are two main kinds of offences: indictable offences and simple offences.²³⁹ Simple offences are regarded as less serious offences than indictable offences and are dealt with in the Magistrates Court; they cannot be transferred to the District Court or Supreme Court.²⁴⁰ Indictable offences carry higher penalties than simple offences and they must be tried in the District Court or Supreme Court unless the offence provision also provides for a summary conviction penalty. In that case the offence is known as an 'either way' offence and can be dealt with in either the Magistrates Court (as a simple offence) or in the District Court (on indictment).

All offences under the AW Act, including animal cruelty, are simple offences. Accordingly, even the most serious cases of deliberate, malicious cruelty to an animal, or large scale animal abuse cases, are dealt with in the Magistrates Court. This may give rise to a perception in the community that even the most heinous animal cruelty offences are not regarded as serious offences.

A number of stakeholders supported the introduction of indictable cruelty offences with higher available penalties. Suggestions included that indictable offences would be appropriate in cases of animal cruelty committed with recklessness or intention that cause serious harm to, or death of, the animal; in cases where large-scale or systemic cruelty has occurred (such as organised dog fighting); and in cases where the accused is a business or corporation.²⁴¹ Harsher penalties were also supported for repeat offenders and offences against police animals.²⁴²

All Australian jurisdictions except WA have introduced aggravated animal cruelty offences (or similar) to address the most serious cases of cruelty. These aggravated animal cruelty offences generally require proof that the accused's conduct resulted in specified types of serious harm to, or the death of, an animal, and that the accused intended, or was reckless in relation to, that result. The types of serious harm captured by aggravated cruelty offences include deformity or serious disablement,²⁴³ harm endangering the life of the animal,²⁴⁴ injury or disease so severe that it would be cruel to keep the animal alive,²⁴⁵ and serious and protracted impairment of a physical or mental function.²⁴⁶ The legislation sometimes also provides that, if the aggravated cruelty offence is not proved but the court is satisfied that the lesser offence of animal cruelty is established, the accused may be convicted of the lesser offence.

Of these aggravated animal cruelty offences, the ACT, NSW, Qld, Tas and SA offences are indictable offences, with some able to be tried summarily in specified circumstances. The aggravated cruelty offence in the *Animal Protection Act 2018* (NT), which is expected to come into effect in late 2020, will also be an indictable offence.

In 2016, the Select Committee into the Operations of RSPCA recommended the AW Act be amended to provide for indictable aggravated cruelty offences.²⁴⁷

Creation of indictable or either-way offences for serious animal cruelty offending

The Panel considered that the AW Act should include an indictable aggravated cruelty offence for acts of cruelty that are committed intentionally (or recklessly, if the accused is a corporation) and which result in, or which are capable of resulting in, serious harm or death to the animal. Further consideration will need to be given to what types of serious harm should fall within the scope of the indictable aggravated cruelty offences. Guidance may be taken from the types of harm covered by aggravated cruelty offences in other jurisdictions.

²³⁹ *Interpretation Act 1984* (WA) s 67(1).

²⁴⁰ Magistrates Court of Western Australia. (2020). *Criminal Matters*. https://www.magistratescourt.wa.gov.au/C/criminal_matters_print.aspx

²⁴¹ See, for example, submission 26; submission 307; Consultation Summary Report - Public Forums.

²⁴² Consultation Summary Report – Public Consultation pp 11-12; submission 261.

²⁴³ *Prevention of Cruelty to Animals Act 1979* (NSW) s 4(3); *Prevention of Cruelty to Animals Act 1986* (Vic) s 10(1); *Animal Welfare Act 1993* (Tas) s 9(1)(a).

²⁴⁴ *Animal Welfare Act 1993* (Tas) s 9(1)(b).

²⁴⁵ *Prevention of Cruelty to Animals Act 1979* (NSW) s 4(3); *Animal Welfare Act 1999* (NT) s 10(2)(b).

²⁴⁶ *Animal Welfare Act 1999* (NT) s 10(2)(c); see also *Animal Welfare Act 1993* (Tas) s 9(1)(c) ('longstanding injury').

²⁴⁷ Report of the Select Committee into the Operations of the RSPCA, Recommendation 3.

To distinguish between the seriousness of conduct that causes harm to one animal as opposed to conduct that causes large-scale suffering (for example, failing to provide adequate feed to one animal versus a herd of cattle), the AW Act should also include an indictable offence for harm that is intentionally or recklessly caused to a large number of animals even where the resultant harm to each individual animal may not be individually described as 'serious harm'.

The Panel considered that indictable offence provisions should impose significantly higher penalties than the existing penalty for being cruel to an animal contrary to s 19(1) of the AW Act. The offence provisions should also contain a fallback provision similar to that in s 13(4) of the *Animal Welfare Act 1985* (SA): a person who is proved to have committed a cruelty offence should not escape responsibility for his or her actions simply because the additional elements (such as intention to do the act) were not able to be proved beyond a reasonable doubt in court. The maximum penalty for these indictable offences should be significantly higher than the current simple offence penalty for breaching s 19(1) of the AW Act. A term of imprisonment should be an available sentencing option for individuals convicted of any of these indictable offences.

RECOMMENDATION 38

The Panel recommends the Animal Welfare Act 2002 be amended to include indictable aggravated cruelty offences for acts of cruelty that:

- (a) If committed by an individual, are committed intentionally and which do in fact result in, or which are capable of resulting in, serious harm to, or death of, the animal.*
- (b) If committed by a corporation, are committed intentionally or recklessly and which do in fact result in, or which are capable of resulting in, serious harm to, or death of, the animal.*
- (c) Impact adversely upon a large number of animals, even where the resultant harm to each individual animal may not be individually be described as 'serious harm'.*

Time limit for commencing prosecutions

Another issue considered by the Panel was the time limit (also known as the limitation period) for commencing a prosecution. Section 82 of the AW Act provides that prosecutions must be commenced within two years of the date the offence was allegedly committed.

Evidence of an offence under the AW Act is sometimes discovered by or reported to authorities after this limitation period has elapsed or with insufficient time to conduct an investigation before its expiry.²⁴⁸ A number of WA statutes address this issue by providing limitation periods which start to run at the time evidence of the alleged offence first came to the attention of a person authorised to commence a prosecution under the statute.²⁴⁹ For example, s 233 of the BC Act provides:

- (1) A prosecution for an offence under this Act must be commenced within 3 years after the day on which the offence is alleged to have been committed.
- (2) Despite subsection (1), if a prosecution notice alleging an offence under this Act specifies the day on which evidence of the alleged offence first came to the attention of a person who has authority to commence the prosecution —
 - (a) the prosecution may be commenced within 3 years after that day; and
 - (b) the prosecution notice need not contain particulars of the day on which the offence is alleged to have been committed.
- (3) The day on which evidence first came to the attention of a person who has authority to commence the prosecution is, in the absence of proof to the contrary, the day specified in the prosecution notice.

The Panel considered that a similar approach should be adopted in the AW Act. It strikes an appropriate balance between competing factors, such as the need to encourage prompt enforcement of the law as against the public interest in ensuring unlawful acts are punished.²⁵⁰

RECOMMENDATION 39

The Panel recommends the Animal Welfare Act 2002 allow for the prosecution of an offence to be commenced within two years after the day on which evidence of the alleged offence first came to the attention of a person authorised to institute a prosecution under the Animal Welfare Act 2002.

Disclosure of evidence

In WA, statutory obligations to disclose evidence to the opposing party in a prosecution and by the defence are primarily governed by the *Criminal Procedure Act 2004* (CP Act). Under the CP Act, a court may order a prosecutor to disclose to an accused evidence relevant to the prosecution of a simple offence before trial (such as witness statements and any evidence that may assist the accused's defence).²⁵¹ This process is known as prosecution disclosure and serves multiple purposes, including:

- (a) ensuring the accused is aware of the case that may be made against him/her at trial;
- (b) enabling the prosecution and accused to resolve non-contentious issues in advance of the trial (such as agreeing certain facts relevant to the case), which ensures more efficient use of court time; and
- (c) encouraging the resolution of cases, including where appropriate the entering of guilty pleas at an early stage in the proceedings.²⁵²

In addition to disclosure obligations imposed under the CP Act, prosecutors are also subject to a common law obligation to disclose relevant evidence to the accused.²⁵³

On the other hand, in prosecutions of simple offences a court is not able to order an accused to disclose evidence to the prosecutor, unless the simple offence is classified as a 'listed simple offence'.²⁵⁴ Listed simple offences are set out in Schedule 4 of the Criminal Procedure Regulations 2005 and include (amongst other things) any simple offence under the BC Act, *Environmental Protection Act 1986* and FRM Act. Despite being of a similar kind to this legislation, an AW Act simple offence is not currently included as a listed simple offence.

²⁴⁸ See, for example, Fowler, C. (2020, February 17). Investigation into WA animal cruelty allegations aired on Israeli TV ends with no charges. *ABC Rural*. <https://www.abc.net.au/news/rural/2020-02-17/wa-cattle-station-cruelty-footage-probe-closed-no-charges/11963910>

²⁴⁹ *Adoption Act 1994* (WA) s 128; BC Act 2016 s 233; BAM Act s 105; *Contaminated Sites Act 2003* (WA) s 85; *Environmental Protection Act 1986* (WA) s 114A; *Medicines and Poisons Act 2014* (WA) s 123; *Swan and Canning Rivers Management Act 2006* (WA) s 120; *Waste Avoidance and Resource Recovery Act 2007* (WA) s 87; *Water Services Act 2012* (WA) s 192.

²⁵⁰ Ochoa, T., & Witstrich, A. (1997). The puzzling purposes of statutes of limitation. *Pacific Law Journal* 28, 453.

²⁵¹ CP Act ss 60(5)(a)-(b), 61.

²⁵² Director of Public Prosecutions. (1991). *Prosecution Policy and Guidelines of the Director of Public Prosecutions New South Wales*, p 17. Available at <https://www.childabuseroyalcommission.gov.au/sites/default/files/EXH.015.034.0018.pdf>

²⁵³ *D v State of Western Australia* [2007] WASCA 272 [4].

²⁵⁴ CP Act s 60(4).

If an offence is a 'listed simple offence', the court has a discretion to order an accused to disclose a limited set of evidence to the prosecution (not all of the evidence the accused might choose to rely on). In particular, if the court makes an order for accused disclosure, the accused is only required to disclose to the prosecutor any alibi evidence, any expert evidence, written notice of factual elements of the offence that the accused may argue the prosecution cannot prove, and written notice of any objections to evidence and the grounds for the objection.²⁵⁵

This type of limited disclosure appropriately balances the overriding objective of the criminal justice system (being the pursuit of truth) with the fact that an accused, particularly an individual, may have more limited access to legal representation and other resources than the prosecutor.²⁵⁶ Further, by requiring the accused to identify what will be in dispute (for instance, that the defence case will be that the prosecution cannot prove the animal suffered harm), it also removes the inefficiencies of the prosecution anticipating, investigating and disproving matters at trial which are not truly in dispute.²⁵⁷

Prosecutions under the AW Act are often complex and generally involve expert evidence from witnesses such as veterinarians. Accordingly, providing a court with a discretion to order accused disclosure would assist the efficient and fair determination of such cases (as is presently done for cases under similar legislation such as the BC Act).

With respect to prosecution disclosure, the effect of an AW Act offence becoming a listed simple offence is that, rather than the statutory obligation to provide disclosure only arising if a court makes an order requiring it, the obligation will automatically arise at the time the accused pleads not guilty. Accordingly, accused persons will automatically have the benefit of a clear, statutory entitlement to the disclosure of the evidence relevant to the prosecution.

The Panel was not made aware of any reason for simple offences under the AW Act not being included in Schedule 4 of the Criminal Procedure Regulations 2005 and considered that their omission may have been a mere oversight. The AW Act contains simple offences of a broadly similar type to those already included in Schedule 4 (such as BC Act simple offences) and their classification as listed simple offences would promote the fair and efficient resolution of prosecutions under the AW Act. Accordingly, the Panel considered that offences under the AW Act should be added to Schedule 4 of the Criminal Procedure Regulations 2005.

²⁵⁵ CP Act s 62(4).

²⁵⁶ Law Reform Commission of Western Australia. (1999). *Project 92 – Review of the criminal and civil justice system in Western Australia*, [24.16]-[24.17]. https://www.lrc.justice.wa.gov.au/files/P92_FR.pdf

²⁵⁷ Law Reform Commission of Western Australia. (1999). *Project 92 – Review of the criminal and civil justice system in Western Australia*, [24.18]. https://www.lrc.justice.wa.gov.au/files/P92_FR.pdf

²⁵⁸ AW Act ss 55(1)-(2)(a).

²⁵⁹ AW Act s 3(2)(a).

²⁶⁰ Australian Competition & Consumer Commission. (2018). *Consumer law penalties set to increase*. <https://www.accc.gov.au/media-release/consumer-law-penalties-set-to-increase>; Henning, P. J. (2015, May 20). Guilty pleas and heavy fines seem to be cost of business for Wall St. *The New York Times*. <https://www.nytimes.com/2015/05/21/business/dealbook/guilty-pleas-and-heavy-fines-seem-to-be-cost-of-business-for-wall-st.html>

RECOMMENDATION 40

The Panel recommends that a simple offence under the Animal Welfare Act 2002 be added to Schedule 4 of the Criminal Procedure Regulations 2005.

Prohibition orders

Background

Issues relevant to the seizure and forfeiture of animals are discussed in Chapter 5. Prohibition orders are relevant to seizure and forfeiture.

A court may make orders convicting a person of an offence under the AW Act and, upon conviction, a 'prohibition order', which forbids the offender from being in charge of, or having contact with, a specified animal or animals in general either absolutely or unless specified conditions are met. A court may make a prohibition order if the court considers such an order is appropriate to protect the welfare, safety and health of an animal, a group of animals or animals in general.²⁵⁸ The court determines the duration of the order, which may be permanent.

Prohibition orders are critical to achieving the AW Act's objective of protecting the welfare of animals.²⁵⁹ While fines will discourage wrongdoing, prohibition orders are a more direct means of preventing harm to animals or regulating the care of animals owned by offenders. For example, a conditional prohibition order might limit the animals a person can own to a manageable number if he/she has previously failed to care for a larger number. Further, unlike fines, prohibition orders do not face the possible issue of being seen by those who use animals for commercial purposes as simply the cost of doing business.²⁶⁰

Stakeholders raised with the Panel two issues related to prohibition orders: that some serious instances of cruelty should trigger lifetime prohibition orders, and that the AW Act does not currently allow for the enforcement of similar orders made in other Australian jurisdictions. These issues are discussed on the following page.

Permanent prohibition orders for indictable offences

Some stakeholders submitted that persons found guilty of mistreating or otherwise being cruel to animals in their care should be permanently banned from owning or caring for an animal.²⁶¹

The *Animal Welfare Act 1992* (ACT) provides for a permanent prohibition order to be made if a person has been convicted of aggravated cruelty and the court believes that it is reasonably likely the person will commit another animal welfare offence if the person were to own, keep, care for, or control an animal.²⁶² The Act provides for the person subject to the order to apply to set aside the order. When determining the application the court must consider factors such as any relevant rehabilitation or remedial action undertaken by the person.²⁶³

The Panel did not consider that a permanent prohibition order should be made upon every conviction for animal cruelty. Where an offender has been convicted of a particularly serious instance of cruelty to one or more animals or to a large number of animals, however, the community would expect that the offender would not be entrusted with the ownership and care of animals in the future except in exceptional circumstances. As these particularly serious instances of cruelty should be dealt with as indictable offences (as recommended above), it would often be appropriate for a permanent prohibition order to be made upon conviction for an indictable cruelty offence.

As the circumstances of offenders and the crimes committed will inevitably vary, permanent prohibition orders might not be appropriate in all cases where a person commits an indictable offence. Accordingly, in the case of indictable offences, a court should have the discretion to not make a permanent prohibition order if an offender demonstrates exceptional reasons why such an order should not be made. In addition, given an offender's circumstances will change with time, it may be appropriate for the AW Act to provide for an offender to apply to a court for review of the order after a specified period (for example, 10 years).²⁶⁴

In summary, the Panel considered that where a person or corporation is convicted of an indictable offence under the AW Act, the AW Act should provide that a court must impose upon the person or corporation a lifetime prohibition order in relation to being in control of any animal unless the accused is able to persuade the court to the contrary. The accused should bear the onus of satisfying the court that there are exceptional reasons why such an order ought not be made.

The Panel suggested that consideration be given to making the decision reviewable once sufficient time has passed since the order was made.

²⁶¹ Consultation Summary Report – Public Consultation p 12; submission 20; submission 63.

²⁶² *Animal Welfare Act 1992* (ACT) s 101A.

²⁶³ *Animal Welfare Act 1992* (ACT) s 101B.

²⁶⁴ See, for example, *Animal Welfare Act 1999* (NZ) s 169A and *Animal Care and Protection Act 2001* (Qld) s 188.

²⁶⁵ Royal Society for the Prevention of Cruelty to Animals South Australia. (2019). *Media releases – Statement: RSPCA South Australia v Ross & Fitzpatrick*. <https://www.rspcasa.org.au/update-rspca-border-collie-seizure/>

²⁶⁶ *Prevention of Cruelty to Animals Act 1986* (Vic) s 12A; *Animal Welfare Act 1993* (Tas) s 43AAB; *Prevention of Cruelty to Animals Act 1979* (NSW) s 31AA.

RECOMMENDATION 41

The Panel recommends that, where an individual or corporation is convicted of an indictable offence, a permanent prohibition order be required to be made unless the accused can demonstrate exceptional reasons why such an order should not be made.

Recognition of interstate prohibition orders

The current provisions on prohibition orders do not allow for the enforcement of equivalent orders made by other jurisdictions. Recognition in WA of such orders would ensure that the movement of a person into the State would not allow a person to circumvent an order made in another jurisdiction. The Panel was informed regarding a recent scenario where a dog breeder pleaded guilty to animal welfare offences in Vic and was prohibited from owning animals for nine years. The breeder moved to SA, where the order did not have effect, and continued to breed dogs. The breeder is alleged to have since committed further animal welfare offences, this time under the *Animal Welfare Act 1985* (SA).²⁶⁵ If the breeder was to move to WA, it would not currently be possible to enforce the prohibition order made in Vic or any prohibition order that might be made in SA.

Victoria's *Prevention of Cruelty to Animals Act 1986*, Tasmania's *Animal Welfare Act 1993* and NSW's *Prevention of Cruelty to Animals Act 1979* have addressed this issue by providing for the recognition and enforcement of prohibition orders made under corresponding laws of other jurisdictions.²⁶⁶ The result is that, once the necessary steps for recognition are followed as set out in each Act, prohibition orders made in another jurisdiction (such as WA) must also be obeyed in NSW, Vic and Tas. The Panel considered that a similar provision should be inserted in the AW Act.

RECOMMENDATION 42

The Panel recommends that the Animal Welfare Act 2002 provide for the recognition and enforcement of prohibition orders made under a corresponding law of another state or territory.

9.

Defences

Background

The AW Act broadly defines 'cruelty to animals' in s 19 and provides defences to charges of cruelty in ss 20 to 30. Many of these defences relate to measures routinely undertaken for the purpose of animal husbandry and management, pest control and other practices. Some of these practices reflect practical imperatives, including limited access to veterinarians, medications or methods that could achieve more humane outcomes.

There have been significant advances in animal husbandry, science and technology since enactment of the AW Act, and livestock industry bodies are actively promoting responsible management of livestock. The Panel saw a need to ensure that the defences do not inadvertently present barriers to the uptake of new techniques and contemporary best practices, or provide a 'safe harbour' for people who are not inclined to meet minimum animal welfare standards.

The Panel noted that public submissions showed a significant level of community concern regarding the extent to which defences under the AW Act allow for inhumane practices. DPIRD acknowledged that the defences should be reviewed, and the RSPCA recommended that some defences be removed. Some stakeholders, however, did not consider there was a need to modify any defences.

The Panel also gave consideration to the structure of the defence provisions in the AW Act and the risk of legal uncertainty where more than one defence can apply to the same set of circumstances.

As adopted codes of practice determine what is or is not acceptable animal husbandry practice in WA, a transparent and rigorous process should apply to their adoption under the AW Act. The Panel noted that the Government of Victoria is considering including in a new Animal Welfare Act guidance on how science and expert opinion should be considered in the development of Regulations and codes of practice under the Act, similar to existing provisions in the *Animal Welfare Act 1999 (NZ)*.²⁶⁷

Appendix 1 sets out the Panel's analysis of issues relevant to the following defences:

- Section 23 – normal animal husbandry
- Section 24 – killing pests
- Section 25 – code of practice
- Section 26 – stock fending for itself

The Panel recognised the need to keep the defences up to date, in particular with reference to advances in science and technology. This would help to ensure community confidence and, importantly, give the sectors that make use of the defences more confidence that they are 'doing the right thing' by the animals under their responsibility.

²⁶⁷ Department of Jobs, Precincts and Regions. (2020). *Directions Paper – A New Animal Welfare Act for Victoria*. Government of Victoria. <https://engage.vic.gov.au/new-animal-welfare-act-victoria>

RECOMMENDATION 43

The Panel recommends that consideration be given to reviewing and consolidating the defence provisions in the Animal Welfare Act 2002 to ensure they serve the purpose for which they were intended.

RECOMMENDATION 44

The Panel recommends the defence provisions be reviewed every 10 years, to ensure:

- (a) minimal overlap of defences;*
- (b) the defence provisions continue to be consistent with prevailing contemporary standards, taking into account relevant scientific and other developments in regard to how animals are treated, cared for and managed;*
- (c) there continues to be a need for each defence; and*
- (d) defences are clear and effective.*

RECOMMENDATION 45

The Panel recommends that the Animal Welfare Act 2002 set out the steps that must be followed, and conditions which must be satisfied, before a code of practice is adopted.

Animal Welfare Advisory Committee

Background

An independent Animal Welfare Advisory Committee (AWAC) can play an important role in providing expert advice concerning the welfare of animals to the Minister and/or Department to achieve strategic improvements, advising on proposed and revised welfare codes/standards and legislation, and advising on emerging or contemporary welfare issues.

Shortly after the transfer of the AW Act to the Department of Agriculture and Food in July 2011, the government of the day announced the formation of an AWAC. The last formal meeting of the AWAC was held in December 2013 and membership lapsed in 2014. In 2015 a decision was made not to reappoint members to the AWAC and it ceased to exist. All Australian jurisdictions have an AWAC except WA.

New Zealand has a very active AWAC which develops an annual work programme,²⁶⁸ and has conducted reviews including on the use of pig farrowing crates in NZ²⁶⁹ and greyhound racing.²⁷⁰ It has also facilitated workshops, including one that was jointly hosted with the NZ National Animal Ethics Advisory Committee (NAEAC) on animal sentience.²⁷¹ The NZ AWAC provides a good model for achievements in improving communication and collaboration and overall advancement of animal welfare.

The Easton Review recommended:

A Ministerial Advisory Council is established to provide strategic and policy advice to the Minister on animal welfare matters, with an independent Chair and a small membership comprising representatives of key stakeholder groups and animal welfare experts. [Recommendation 3]

The Easton Review also recommended:

Director General DAFWA work with stakeholders to develop a strategic plan and overarching policy framework for animal welfare under the Act to be endorsed by the Minister. [Recommendation 1]

Status and membership of AWAC

The AWACs in the ACT, NT, SA, Qld and Tas are statutory bodies under relevant animal welfare legislation. The NZ NAWAC is also a statutory body. Victoria and NSW have non-statutory bodies.

Appointing an AWAC as a statutory body confers a formal standing and contributes to credibility and continuity. In terms of continuity, a statutory AWAC is essential to help ensure that successive governments commit to and prioritise animal welfare rather than establishing a non-statutory AWAC, which can be easily abolished.

The following table summarises key benefits and risks of a statutory versus a non-statutory AWAC.

²⁶⁸ National Animal Welfare Advisory Committee. (2019). *National Animal Welfare Advisory Committee*. Ministry for Primary Industries. <https://www.mpi.govt.nz/dmsdocument/15289-nawac-work-programme>

²⁶⁹ National Animal Welfare Advisory Committee. (2016). *NAWAC review of the use of farrowing crates for pigs in New Zealand*. Ministry for Primary Industries. <https://www.mpi.govt.nz/dmsdocument/11959-nawac-review-of-the-use-of-farrowing-crates-for-pigs-in-new-zealand>

²⁷⁰ National Animal Welfare Advisory Committee. (2016). *NAWAC report on New Zealand Greyhound Racing Association Incorporated's implementation of greyhound welfare reforms to date*. Ministry for Primary Industries. <https://www.mpi.govt.nz/dmsdocument/16759-nzwac-report-on-new-zealand-greyhound-racing-association-incorporated-implementation-of-greyhound-welfare-reforms>

²⁷¹ Groundwork Associates Ltd. (2017). *Animal Sentience Workshop Report*. Ministry for Primary Industries. <https://www.agriculture.govt.nz/dmsdocument/30191-report-on-the-animal-sentience-workshop-wellington-2017-pdf>

Statutory AWAC	Non-statutory AWAC
Benefits	
<ul style="list-style-type: none"> • Formalises the role • Increases weight of advice • Enhances clarity of functions • Secures continuity of the committee • Promotes accountability • Greater independence from political influence 	<ul style="list-style-type: none"> • Greater flexibility in functions
Risks	
<ul style="list-style-type: none"> • Less flexibility in changing functions or membership 	<ul style="list-style-type: none"> • Functions, membership, and ongoing existence subject to the government/minister of the day • Less accountability

Selecting appropriate members is a key issue as achieving balanced membership is very important. In general, committees will comprise nominees with expertise in a range of fields including animal welfare, animal production, veterinary science, sport and recreation, research and government. Ideally, members should be nominated by key stakeholders for their expertise but not represent an organisation as they may be bound to their policies and positions on specific issues. Key stakeholder organisations should be encouraged to nominate individuals with relevant expertise in their field as well as having some animal welfare knowledge. In general, members serve a three-year term, with the membership number ranging from 7 to 13 for different jurisdictions. The committee would need to be appropriately resourced, with adequate funding for member remuneration and committee secretariat support.

Support for an AWAC was indicated from public submissions and stakeholder meetings.

The Panel found that an effective AWAC can take a lead role in guiding improvements in animal welfare through successful collaboration and consultation. In other jurisdictions AWACs play an important role in advising the Minister and the Regulator on legislative and other relevant matters pertaining to improving animal welfare. Western Australia is the only state/territory which does not have an AWAC. The AWAC in five states/territories and in New Zealand is a statutory body under animal welfare legislation. There are several advantages to an AWAC being a statutory body.

Roles of a WA AWAC

The primary role of an AWAC is to advise the Minister on matters relating to care, use and treatment of animals in any context ranging from companion animals, to livestock, to pest animals, to animals used in research.

The terms of reference of AWACs in other jurisdictions include the following:

- Advise the Minister on any matter relating to existing or proposed legislation affecting the welfare of animals.
- Advise the Minister on any matter relating to the administration or enforcement of the Act.
- Advise the Minister on any matter, policy or practice affecting the welfare of animals.
- Investigate and report to the Minister on any matters referred by the Minister to the Committee for advice.
- Participate, in conjunction with the regulator, in the development of codes of practice relating to animals and their welfare and in reviewing and recommending existing codes where appropriate.
- Provide advice to government and non-government bodies on programs to improve community awareness about animals and their humane treatment.
- Provide expert scientific advice to support the delivery of Animal Welfare Action Plans.

RECOMMENDATION 46

The Panel recommends that a Western Australian Animal Welfare Advisory Committee, with appropriate membership, be established as a statutory body under the Animal Welfare Act 2002.

The NZ AWAC also provides advice on new research initiatives to improve animal welfare.

AWACs also have a responsibility to provide minutes for each meeting and an annual report on activities and achievements of the committee to the Minister. Secretariat support is usually provided by the government Department responsible for administering the relevant legislation.

In WA, an AWAC could play a lead role in developing a WA Animal Welfare Strategy and Action Plan, as well as guide the development of and oversee standards for the training and periodic competency assessment of Inspectors.

Animal Welfare Strategy and Action Plan

A commitment to and guidance on animal welfare is integral to ensuring continuous improvement in how animals are considered, used and treated. In 2005, the Australian Animal Welfare Strategy, which was overseen by the Federal Government, brought a diverse range of stakeholders together at a national level to collaborate on activities to provide tangible resources to improve animal welfare. Under the Strategy, an implementation plan was also developed.

Unfortunately, the Strategy was not funded after 2012, resulting in a loss of momentum and progress on projects which had been initiated. A strategy helps to enable industry, government, scientists, ethicists, animal advocates and the community to work together to address key issues, identify opportunities, and develop an action plan to improve the lives of animals. In 2017, Vic launched the Animal Welfare Action Plan which identifies four key strategic areas including policy and legislation, collaboration, education and compliance/enforcement.²⁷² Through this action plan, Vic is now able to prioritise reforms and other improvements, as well as evaluate progress in achieving strategic goals and objectives. The action plan creates tangible opportunities for collaboration to achieve efficient use of resources and shared ownership.

Training and competency assessment of Inspectors

A potential role for the AWAC would be to oversee the standard of training and periodic assessment of competency of appointed Inspectors as part of the processes of initial and ongoing appointment. Currently, Inspectors employed by different organisations are provided with various levels of training. This is unsatisfactory, inequitable and inefficient. To address these issues, the AWAC, which would comprise representatives from various sectors, would be well placed to guide the development of robust and comprehensive training and competency assessment frameworks, to help ensure that all appointed Inspectors receive equivalent training, regardless of the organisation that employs them. This issue is further discussed in Chapter 6.

Penalties Revenue Account

All fines imposed as a penalty for an offence against the AW Act are credited to the Consolidated Account. The exception to this is where an offence is prosecuted by an Inspector who is a member of staff of a local government, in which case it is paid to that local government. Before the end of 2020 an infringement notice scheme will be operating for some penalties under the AW Act, which may result in an increase in penalty revenue.

The AW Act allows for penalties that are paid in relation to prosecutions to be retained by local government but not by the RSPCA, a non-government organisation. The grant provided to the RSPCA by DPIRD has been estimated to cover approximately 20% of the cost of the RSPCA's activities to implement the AW Act.

The Panel considered that revenue from penalties imposed under the AW Act should be made available for furthering the objects of the AW Act. This model is used by the BAM Act, which provides that monies received as payment for modified penalties are credited to a Modified Penalties Revenue Account and can be used for purposes set out in s 149 of the BAM Act. The purposes set out in s 149 of the BAM Act are:

- the enforcement of the BAM Act;
- the training of inspectors;
- the cost of measures to control declared pests;
- the cost of programs to promote public awareness of the requirements of the BAM Act;
- purposes approved by the Minister.

Should the government establish an AWAC, one option is for the revenue obtained from penalties to be provided to the AWAC for furthering the objects of the AW Act.

If the government does not support the formation of an AWAC, the revenue should be paid into a penalties revenue account and managed by the CEO of the Department assisting the Minister in administering the AW Act (currently DPIRD), similar to the BAM Act.

²⁷² Government of Victoria. (2017). *Animal Welfare Action Plan – Improving the Welfare of Animals in Victoria*. https://agriculture.vic.gov.au/data/assets/pdf_file/0003/562386/Animal-Welfare-Action-Plan-Dec-2017.pdf

RECOMMENDATION 47

The Panel recommends:

- (a) the WA AWAC provide advice on legislative and other relevant matters to the Minister and the Regulators to improve animal welfare in WA;*
- (b) consideration be given to the WA AWAC overseeing the development and implementation of a WA Animal Welfare Strategy and Action Plan;*
- (c) consideration be given to the WA AWAC guiding the development and implementation of standards relevant to training and competency assessment of appointed Inspectors; and*
- (d) consideration be given to the WA AWAC overseeing and coordinating all reviews and activities in WA affecting or relating to the **Animal Welfare Act 2002**.*

RECOMMENDATION 48

*The Panel recommends that all penalty revenue from all sources under the **Animal Welfare Act 2002** go into a separate fund to be used for furthering the objects of the **Animal Welfare Act 2002**. The WA AWAC or DPIRD should administer this fund.*

Other Deficiencies in the *Animal Welfare Act 2002*

Background

During the course of the Review, the Panel identified other significant issues which require further attention but due to insufficient time was unable to consider these in depth. These include the use of animals for scientific purposes, animal fighting and animal hoarding, and the use of specific devices.

Review of Part 2 – Use of animals for scientific purposes

Part 2 of the AW Act deals with the use of animals for scientific purposes, including in research and teaching activities conducted by universities, research organisations, government agencies and schools. The use of animals in research has been and continues to be of public interest and concern. In WA, the scientific use of animals is the subject of licensing by DPIRD and ethical oversight by animal ethics committees (AEC) comprising members in four categories: veterinarian; researcher; animal welfare advocate and member of the community. The scientific use of animals must comply with the Scientific Use Code. The NHMRC periodically reviews the Scientific Use Code in consultation with state and territory governments and key research and welfare stakeholders. The current edition is dated 2013.

The Panel received several submissions addressing the use of animals for scientific purposes. Sixteen submissions called for a ban on the use of animals in scientific experimentation.

Some of the issues identified in the submissions included:

- The definition of 'scientific purpose' needs to be clearer regarding requirements for informal teaching which occurs on farms and in veterinary practices, where animals are not specifically kept for scientific purposes.
- The definition of 'veterinary skills' should be clarified to confirm whether a registered veterinarian is required to perform certain tasks, or whether an investigator deemed to be competent can perform what might be considered 'veterinary' interventions, for example, specific anaesthesia or surgical procedures of laboratory animals.
- To be consistent with the Scientific Use Code, the definition of 'animal' in the AW Act should include fish and cephalopods.
- A need for more oversight of activities conducted outside licensed institutions.
- A need to clarify the obligations of persons using animals for scientific purposes.
- The effectiveness of the current enforcement regime.
- The level of protection afforded to animal welfare.

In the time available, the Panel was not able to give sufficient consideration to all the issues raised in connection with Part 2. The Panel considered that a separate review should be conducted to resolve the issues listed in Recommendation 49. The Panel was also informed of the need for a community AEC, which would provide for entities that are not large scientific organisations or government departments to obtain ethical oversight for scientific activities using animals. It is not feasible for individuals or most small companies to establish their own AEC and may not be practical for them to obtain approval from AECs at universities or government departments, which may refuse to accept external applicants or impose high fees on them. DPIRD informed the Panel that many organisations

who work with native animals in nature conservation and biodiversity operate on a not-for-profit basis.

The Panel noted the following recommendation of the Easton Review:

Government consider establishing a community Animal Ethics Committee to deal with submissions from institutions which do not have the resources to establish their own Animal Ethics Committee. (Recommendation 12)

This recommendation received in principle support from the Select Committee into the Operations of the RSPCA (2016).

The Panel considered a community AEC should be established without delay.

RECOMMENDATION 49

The Panel recommends that Part 2 of the Animal Welfare Act 2002 be reviewed to:

- *investigate the fitness for purpose of the Scientific Use Code as a legal standard; and*
- *confirm that Part 2 continues to be consistent with prevailing contemporary standards, taking into account relevant scientific and other developments in regard to how animals used for scientific purposes are treated, cared for and managed.*

RECOMMENDATION 50

The Panel recommends that the government establish a Community Animal Ethics Committee.

Organised animal fighting

Organised animal fighting, involving animals being placed somewhere for the purpose of fighting with another animal or person, is prohibited under the AW Act. The AW Act provides significant penalties for organised animal fighting, whether or not an animal is harmed. The AW Act also provides significant penalties for persons that spectate, organise, take part in, promote, keep animals for the purpose of fighting, and own or operate a place where it occurs (s 32).

Animal fighting is an ongoing welfare issue where animals, primarily dogs and roosters, are subjected to inhumane treatment causing significant injury, pain, suffering and death. Suspect cases of animal fighting have been investigated by the RSPCA and WA Police, individually or through collaboration.

Some of the Regulators informed the Panel that it can be difficult to obtain evidence to prove the offence due to animal fights being held covertly, attendees being scrutinised heavily, and animal fight premises being not easily found. The AW Act is limited in its capacity to prosecute those participating in animal fighting, as it does not include offences for possession of paraphernalia or other evidence such as video footage. Other jurisdictions contain comprehensive offences relating to possession of certain items. For example, s 14A of the *Animal Welfare Act 1985* (SA) provides:

14A—Possession of certain items prohibited

- (1) A person must not, without the approval of the Minister, have in his or her possession or control—
 - (a) a cock-fighting spur; or
 - (b) an implement, article or other thing made or adapted for attachment to an animal—
 - (i) for the purpose of training the animal to fight another animal; or
 - (ii) for the purpose of inciting or assisting the animal to fight another animal or to inflict injury on another animal during a fight; or
 - (iii) for the purpose of protecting the animal in a fight with another animal; or

- (c) a drug (not being a drug supplied on the prescription of, and given to an animal in accordance with the directions of, a veterinary surgeon) to be administered to an animal for the purpose of inciting or assisting the animal to fight another animal, or to inflict injury on another animal during a fight; or
- (d) a lure or bait (however described) consisting of or including the carcass or any part of an animal and used, or intended to be used, for the purpose of live baiting (within the meaning of section 14).

The AW Act provides significant penalties for the possession of things intended to inflict cruelty (s 31). However, this offence provision requires proof that the person intended to use the thing to inflict cruelty on an animal.

Individuals should also be legally liable for possessing and distributing images and video footage of animals being trained for fights, participating in fights, and where injuries incurred consistent with fighting are displayed. Section 8(3) of the *Animal Welfare Act 2006* (UK) contains an offence of this nature:

- (3) A person commits an offence if, without lawful authority or reasonable excuse, he—
 - (a) knowingly supplies a video recording of an animal fight,
 - (b) knowingly publishes a video recording of an animal fight,
 - (c) knowingly shows a video recording of an animal fight to another, or
 - (d) possesses a video recording of an animal fight, knowing it to be such a recording, with the intention of supplying it.

The Panel found that animal fighting causes serious pain and suffering to animals used for that purpose.

The Panel found that obtaining evidence for prosecuting individuals involved in dog fighting is difficult due to the covert nature of these activities, and that the AW Act needs to be broadened to contain offences regarding possession of animal fighting paraphernalia, and associated imagery.

RECOMMENDATION 51

The Panel recommends that section 32 be revised to improve the operational effectiveness of the Animal Welfare Act 2002, specifically, by making it an offence:

- (a) *to possess certain items relating to animal fighting; and*
- (b) *to possess and share images and videos of animals being fought.*

Animal hoarding

Animal hoarding has been defined as the compulsive collecting of an excessive number of animals who are not provided with even minimally acceptable or appropriate food, shelter and veterinary care.²⁷³

The animals in hoarding cases often suffer neglect and cruelty over long periods of time. Many animals are severely emaciated, have numerous health and behavioural problems, and suffer chronic deprivation.²⁷⁴ In many cases dead animals are also found on the premises of hoarders.²⁷⁵ The deplorable condition of the animals is denied by the hoarder and little if any veterinary help is sought.

The problems inherent in animal hoarding cases involve many agencies, such as police, building safety, animal management, animal welfare, public health, mental health, child safety, adult protective services, environmental services, fire safety, and so on.²⁷⁶ It is often difficult to locate premises where hoarding is occurring because of the reclusive nature of hoarders and the reluctance of friends and family, or other visitors to the premises, to report their concerns. There also appears to be reluctance by various human and animal agencies to cross-report.²⁷⁷

In 2016, the WA Health Department conducted a survey on hoarding and squalor. A total of 88 agency responses to an online survey were received, comprising responses from four state government, 68 local government, and 16 non-government agencies. This survey estimated the number of cases of hoarding and squalor in WA to be 1183, with 56 cases of animal hoarding (5%). The costs involved in resolving hoarding and squalor cases is significant, and has been estimated to be about \$56,000 per affected household compared with \$3,000 where there is early intervention.²⁷⁸ Animal hoarding cases may involve numbers in the order of 30 to more than 100 animals, with most requiring treatment, thereby placing enormous strain on animal welfare agencies. Unfortunately, without appropriate human services support, the majority of animal hoarders will repeat their behaviour.

Where all avenues of negotiation and supported intervention with animal agencies has been refused or there is no or minimal mental health support provided to animal hoarders, the only other option is to impose a prohibition order. This can only be achieved through a successful conviction; however, where animal hoarders suffer mental impairment, no criminal responsibility can be taken.²⁷⁹

The WA Health Department has produced a toolkit for local government environmental health officers to assist them with hoarding and squalor cases.²⁸⁰ This is a positive step, but more interagency collaboration is needed.

The lack of interagency collaboration was identified in 2016 by the Select Committee into the Operations of the RSPCA and included a recommendation on this issue:

Recommendation 18: The Minister for Agriculture and Food liaise with the Ministers for Health and Mental Health to develop and implement an inter-agency protocol, involving RSPCA WA to respond to the mental health, social, environmental and animal welfare issues in cases of animal hoarding.

The Panel found there is an opportunity to improve awareness, leadership and collaboration between agencies (government and non-government), particularly regarding mental health services relating to hoarding and squalor cases, including those which involve animals.

The Panel found that some legislative reform may be helpful regarding animal hoarding cases, including the following aspects (some of which have been identified in previous chapters):

- provision of a bond for seized animals, and if the bond cannot be met, forfeiture of the animals;
- seizing animals held in contravention of a prohibition order; and
- cross-reporting requirements between human and animal services.

²⁷³ Patronek, G., Loar, L., & Nathanson, J. (Eds.). (2006). *Animal hoarding: structuring interdisciplinary responses to help people, animals and communities at risk*. Hoarding of Animals Research Consortium. <https://vet.tufts.edu/wp-content/uploads/AngellReport.pdf>

²⁷⁴ Vaca-Guzman, M., & Arluke, A. (2005). Normalizing passive cruelty: the excuses and justifications of animal hoarders. *Anthrozoös*, 18(4): 338-357.

²⁷⁵ Berry, C., Patronek, G., & Lockwood, R. (2005). Long-term outcomes in animal hoarding cases. *Animal Law*, 11, 167-194.

²⁷⁶ Bratiotis, C. (2011). *The hoarding handbook: a guide for human service professionals*. Oxford University Press, USA.

²⁷⁷ Nathanson, J. (2009). Animal hoarding: slipping into the darkness of comorbid animals and self-neglect. *Journal of Elder Abuse & Neglect*, 21, 307-324.

²⁷⁸ Catholic Community Services NSW/ACT. (2014, June 29-30). *Pathways to dealing effectively with hoarding & squalor in Australia*. Pathways through the maze: National Hoarding and Squalor Conference. Sydney.

²⁷⁹ Ockenden, E. M., De Groef, B., & Marston, L. (2014). Animal hoarding in Victoria, Australia: An Exploratory Study. *Anthrozoös*, 27(1), 33-47.

²⁸⁰ Department of Health. (2013). *Hoarding and severe domestic squalor – A toolkit for local government*. https://ww2.health.wa.gov.au/~/_/media/Files/Corporate/general%20documents/Hoarding-and-severe-domestic-squalor/PDF/HSDS-Guideline_for-WA.ashx

Other potential legal reforms include:

- Mandated psychological treatment of the hoarder.
- Checking compliance with court-ordered treatment.
- Prohibition of animal ownership in the future unless deemed appropriate by a mental health professional.

RECOMMENDATION 52

The Panel recommends that DPIRD and the RSPCA investigate options to improve the operational effectiveness of the Animal Welfare Act 2002 with respect to responding to and managing cases involving animal hoarding. Action should be taken in relation to policy, operations and legislative reform.

Prescribed acts and devices

An important aspect of the AW Act is the provision to prohibit specific devices and acts (by deeming them to be cruel). As community awareness and concerns regarding the use and treatment of animals increases, there is greater scrutiny of the impact, necessity and acceptability of some acts and arguably inhumane devices. Concerns relating to specific acts and devices arise in contexts including the treatment of pest animals, animals used in sport and entertainment, farm animals, and companion animals. The Panel received a number of submissions that highlighted concerns regarding devices and practices such as jawed traps and glue traps, hunting practices, electric shock collars, and home slaughter of animals for consumption.²⁸¹

Some acts and devices currently permitted²⁸² under the AW Act, such as the use of jawed traps,²⁸³ are not consistent with contemporary views and animal welfare science.²⁸⁴ Review of these acts and devices, to determine whether their impact on animals is reasonable or necessary, is justified.

On brief examination of this topic, the Panel identified two key issues: first, the robustness of the process by which decisions are made as to whether certain acts and devices should be permitted or prohibited; and second, the enforcement of offences relating to prescribed acts and devices.

With respect to prescribing acts and devices that are potentially inhumane as permissible (by creating defences for their use), the Panel found that the process should require consideration of contemporary scientific knowledge, community expectations, and the advice of the AWAC. The Panel considered that s 73 of the NZ AWA, whilst dealing with the establishment of codes of welfare, nevertheless provides a useful guide for how such a process for prescribing acts and inhumane devices could be legislated.

On enforcement of offences relating to prescribed acts and devices, the Panel found that further investigation is required to determine if enforcement is being hindered and, if so, the reasons for it.

²⁸¹ Consultation Summary Report – Public Consultation p 11.

²⁸² 'Permitted' in this context means that a defence is available under the AW Act. For example, if a person uses a jawed trap, he/she commits an offence but has a defence if the person can prove the trap was used in accordance with reg 8 of the Animal Welfare (General) Regulations 2003.

²⁸³ Regulation 8 of the Animal Welfare (General) Regulations 2003.

²⁸⁴ See, for example, Meek, P. D., Brown, S. C., Wishart, J., Heath, M., Aylett, P., et al. (2019). Efficacy of lethal-trap devices to improve the welfare of trapped wild dogs. *Wildlife Research* 46, 89-95; Sharp, T., & Saunders, G. (2011). *A model for assessing the relative humaneness of pest animal control methods*. (2nd ed.). Australian Government Department of Agriculture, Fisheries and Forestry, p 112.



Glossary

Defined Terms

ACCC	Australian Competition and Consumer Commission
ACMF	Australian Chicken Meat Federation
ACT	Australian Capital Territory
AEC	Animal Ethics Committee
appointed Inspector	General inspectors appointed under s 33 of the AW Act. The term does not include police officers
ASHEEP	Association for Sheep Husbandry, Excellence, Evaluation and Production
AVA	Australian Veterinary Association
AW Act	<i>Animal Welfare Act 2002</i>
AWAC	Animal Welfare Advisory Committee
AW Bill	Animal Welfare Amendment Bill 2017
BAM Act	<i>Biosecurity and Agriculture Management Act 2007</i>
BC Act	<i>Biodiversity Conservation Act 2016</i>
CEO	Chief Executive Officer
CEPA	Commercial Egg Producers Association of Western Australia
CPI	Consumer Price Index
CP Act	<i>Criminal Procedure Act 2004</i>
DAFWA	Department of Agriculture and Food, Western Australia
DAWE	Department of Agriculture, Water and the Environment (Commonwealth)
DBCA	Department of Biodiversity, Conservation and Attractions, Western Australia
DLGSC	Department of Local Government, Sport and Cultural Industries, Western Australia
DOJ	Department of Justice, Western Australia
DPIRD	Department of Primary Industries and Regional Development, Western Australia
DPP	Office of the Director of Public Prosecutions for Western Australia
Easton Review	Report on an independent review of the investment in and administration of the <i>Animal Welfare Act 2002</i> in Western Australia published in 2015
FRM Act	<i>Fish Resources Management Act 1994</i>
General Regulations	Animal Welfare (General) Regulations 2003
GST	Goods and Services Tax
Inspector	A general inspector as defined in s 5 of the AW Act. This definition includes police officers and inspectors appointed under s 33. It does not include scientific inspectors.
KPCA	Kimberley Pilbara Cattlemen's Association
LGA	Local Government Authorities
LPA	Livestock Production Assurance program
LRTAWA	Livestock and Rural Transport Association of Western Australia

MLA	Meat and Livestock Australia
MOU	Memorandum of Understanding
MSI Act	<i>Mines Safety and Inspection Act 1994</i>
NAEAC	NZ National Animal Ethics Advisory Committee
NHMRC	National Health and Medical Research Council
NSW	New South Wales
NT	Northern Territory
NYPD	New York Police Department
NZ	New Zealand
OSH Act	<i>Occupational Safety and Health Act 1984</i>
Panel	Independent Panel appointed to review the operational effectiveness of the <i>Animal Welfare Act 2002</i>
PCO	Parliamentary Counsel's Office, Western Australia
PGA	Pastoralists and Graziers Association of Western Australia
Qld	Queensland
Regulators	The organisations that employ inspectors who enforce the AW Act including DPIRD, RSPCA, DBCA, LGA and WA Police.
Report	The 2020 report of the Panel on their review of the operational effectiveness of the <i>Animal Welfare Act 2002</i> (this report)
RSPCA	Royal Society for the Prevention of Cruelty to Animals, Western Australia
RWWA	Racing and Wagering Western Australia
S&G	Australian Animal Welfare Standards and Guidelines
SA	South Australia
Scientific Use Code	NHMRC Australian Code for the Care and Use of Animals for Scientific Purposes (2013, 8th edition)
SSO	State Solicitor's Office, Western Australia
Tas	Tasmania
TOR	Terms of Reference
Transport Regulations	Animal Welfare (Transport, Saleyards and Depots) (Cattle and Sheep) Regulations 2020
UK	United Kingdom
Vic	Victoria
WA	Western Australia
WA CMA	Western Australia Chicken Meat Association
WAFF	Western Australian Farmers' Federation
WALEA	Western Australian Livestock Exporters Association
WALGA	Western Australian Local Government Association
WALRC	Western Australian Livestock Research Council
WA Police	Western Australian Police
WAPPA	Western Australian Pork Producers Association
WA TAFE	WA Technical and Further Education

Appendix 1

Review of defences in the *Animal Welfare Act 2002*

Lack of clarity, overlapping defences and structure

Anyone caring for or interacting with animals needs to clearly understand what their responsibilities are to those animals. It is important that defences do not create legal uncertainty and lack of clarity. The operation of the existing defences is, however, sometimes unclear and inconsistent. The Panel has been made aware that in many cases a number of different defences can apply in relation to a charge of cruelty. For example, using an electric stock prodder on an animal is an offence. However, stock prodders are routinely used in some circumstances on some animals and potential defences exist under s 22 (authorised by law), s 23 (normal animal husbandry), s 25 (code of practice) and s 29 (use of prescribed inhumane devices).

Having multiple defences which overlap, but which set out different standards, causes significant confusion for persons relying on the defence, hinders enforcement of the AW Act, and discourages (or may discourage) adherence to contemporary welfare standards. If a defence sets out a lower standard and would apply in all of the circumstances in which another defence applies, the lower standard would prevail. There is little justification for retaining a regulatory scheme where defences can act in this way.

The 11 defence provisions operate to enable a person charged with cruelty under the AW Act to assert in response to the prosecution that one of the defence provisions applies in the circumstances of the particular case. Consideration should be given to whether any conduct toward an animal that is properly protected by a defence provision should, rather, be expressly exempted from the relevant offence provision. This will seek to ensure that people who do in fact fall within the defence provisions are not charged and prosecuted in the first place.

The *Animal Welfare Act 1992* (ACT), *Animal Welfare Act 1993* (Tas) and *Animal Care and Protection Act 2001* (Qld) generally rely on exceptions to offences rather than true defences.²⁸⁵ Some of these exceptions are contained within the offence provision itself,²⁸⁶ while others are set out in stand-alone provisions.²⁸⁷ The animal welfare legislation of other jurisdictions (NSW, NT, SA and Vic) contains a combination of defences and exceptions to offences.

Section 23 – Generally accepted husbandry practice defence

The AW Act contains a defence against a charge of cruelty if an act has been carried out in accordance with a generally accepted animal husbandry practice used in:

- farming or grazing activities;
- the management of zoos;
- wildlife parks or similar establishments;
- the management of animal breeding establishments; or
- the training of animals; and
- where the act has been done in a humane way.

The defence provides the option of excluding practices from the defence by way of regulation. To date, no practices have been prescribed for this purpose.

Section 23 is a broad, 'catch-all' defence for routine animal husbandry practices.

As mentioned in Chapter 2, S&G have been endorsed by all jurisdictions in relation to land transport of livestock, saleyards and depots, cattle, sheep, and animals in exhibitions, and new S&G for processing establishments (abattoirs), poultry and pigs are under development.

²⁸⁵ As to the difference between exceptions and defences, see Australian Law Reform Commission. (2010). *Secrecy Laws and Open Government in Australia* (Report 112), [7.2]-[7.9]. <https://www.alrc.gov.au/publication/secrecy-laws-and-open-government-in-australia-alrc-report-112/7-general-secrecy-offence-exceptions-and-penalties/exceptions-and-defences/>

²⁸⁶ For example *Animal Care and Protection Act 2001* (Qld) s 36(2).

²⁸⁷ For example *Animal Care and Protection Act 2001* (Qld) s 45.

Industry has substantial input into the review and development of S&G and, therefore, what is considered to be acceptable husbandry practice. The S&G promote humane and considerate treatment of animals, set minimum standards for husbandry practices, and inform all people responsible for animals about their responsibilities. They take into account scientific knowledge, recommended industry practices, and broad community expectations.

The Panel noted that other Australian jurisdictions do not contain a broad defence for 'generally accepted husbandry practices' as currently set out in s 23 of the AW Act. Defences for particular husbandry practices do exist in other jurisdictions but they are generally defined in terms of the action and, in some cases, the characteristics of the animal (for example, age).

Given the move towards national endorsed animal welfare standards, the need to retain a broad, undefined defence for 'normal animal husbandry' is questionable and not supportive of contemporaneous and progressive animal welfare legislation. Where defences for husbandry practices are required that are not provided for in codes of practice, such defences should be specific, defined and regularly reviewed.

Section 24 – Killing pest animals

Some animal species cause significant damage to the environment (including landscape, ecosystems, animals and plants), social amenity or agricultural enterprises. This includes feral animals (pigs, goats, dogs, cats, foxes and rabbits) and some native animals such as dingoes and corellas. The survival of many native Australian animals is threatened by such animals and the community recognises the need to protect vulnerable animals, whether native wildlife or farm animals.

Section 24 provides a defence against a charge of cruelty when killing animals defined as pests. Pests are defined as a prescribed animal, fish or invertebrate and are set out in Regulation 5 of the Animal Welfare (General) Regulations 2003. This defence is only relevant where a person is killing or attempting to kill pest animals. It does not apply to other non-lethal methods of pest animal control such as mustering or capture.

Section 24 requires the killing to be done in a manner that is 'generally accepted as usual and reasonable'. No guidance is provided in the legislation as to what is generally accepted as usual and reasonable.

Seventeen submissions received by the Panel raised concerns that animals defined as pests are not adequately protected by the AW Act.

Defining pest animals

Pests are defined, for the purposes of the AW Act, in Regulation 5 of the Animal Welfare (General) Regulations 2003. The Regulation, however, does not itself specifically define 'pests' but defers the definition to the BAM Act,²⁸⁸ subject to some limitations that are set out in Regulation 5.²⁸⁹

In the BAM Act, 'organisms' are 'declared' with the intention of protecting the State from the entry of exotic organisms or the spread of organisms that are present in the State. Currently declared organisms include common feral animals, such as wild dogs, rabbits and pigs; almost all exotic species, such as ferrets, elephants, chimpanzees and zebras; and some species that are native to Australia but not native to WA.

Using an automatic definition for 'pest' in the AW Act which is controlled by separate legislation (the BAM Act) is problematic for several reasons:

- Pests may be declared for only a part of the State under the BAM Act or for purposes that do not require them to be killed. Only the name of the pest that is declared is linked to the meaning of 'pest' in the AW Act. The incongruous consequence of this is that, if a person kills a pest in a part of the State where the animal is not declared or where the killing of the animal is not required according to its definition under the BAM Act, the person would nevertheless have a defence under the AW Act.
- The BAM Act declares as pests all sorts of animals for which a defence of killing a pest under the AW Act will never be required, such as elephants, chimpanzees and other exotic animals kept in zoos.
- The BAM Act does not declare as pests other animals such as rats, mice and pigeons, which are commonly regarded as pests for which lethal pest control is sometimes necessary. This means that, for example, killing these animals by poison is technically not defensible under the AW Act.
- It is not the purpose of the BAM Act to regulate animal welfare. Furthermore, animal welfare is not a consideration when determining which animals will be declared as pests. This means there is no scientific or ethical obligation to consider whether cruelty to a species of animal being killed as pests is necessary and justified.

²⁸⁸ It covers, subject to some circumstances, all the pests declared as a prohibited organism (s 12) and those pests declared as a declared pest (s 22(2)) of the BAM Act. Organisms are declared by the Minister for Agriculture and Food.

²⁸⁹ For example, an animal is not a pest if it is being kept as a domestic pet: Animal Welfare (General) Regulations 2003 reg 5(2)(a).

Control methods

Many different methods are used to control pest animals, including the use of poisonous products, trapping and shooting. The methods used to control pest animals and some native species are coming under increasing scrutiny. Some methods are deemed to be significantly less humane than others. There are heightened community concerns about the impact of poisonous products on the welfare of target and non-target species,²⁹⁰ and some stakeholders raised concerns about pest control methods.

The Panel recognised the need for control of pest animals. However, pest control methods such as poisoning and trapping cause pain and suffering and should be refined wherever possible to make them as humane as possible. There has been significant research highlighting the need to improve the humaneness of pest animal control.^{291, 292} Public concern has led to the development of a Model for Assessing the Relative Humaneness of Pest Animal Control Methods, which allows the ranking of control methods for various pest animal species on the basis of humaneness.²⁹³ The model considers the impact (physical and experiential) on animals prior to death, as well as the mode of death. The model has led to the development of relative humaneness matrices, codes of practice and standard operating procedures.

The s 24 defence requires a person to prove that they were 'attempting to kill pests in a manner that is generally accepted as usual and reasonable for killing pests of the kind the person was attempting to kill'. The problem is that the AW Act and subsidiary legislation provide no guidance or requirements with respect to which methods may be regarded as 'usual and reasonable'.

Only one code of practice adopted by the AW Act touches on how some 'feral animals' should be treated, being the code of practice for the capture and marketing of feral livestock in WA.²⁹⁴ This code was published in 2003 and does not appear to have been reviewed since that time.

While there are recommended policies, processes and procedures for killing pest animals published by government departments and other bodies such as Invasive Species Solutions CRC, compliance with these policies is not mandatory for the purposes of the AW Act. In addition, many of these policies are not based on optimal welfare outcomes but instead simply describe currently used methods.²⁹⁵

There is significant uncertainty about how a court would decide if a particular method of killing a pest would meet the s 24 defence. For example, a particular method used to kill a target pest animal may be considered usual and reasonable in a commercial agricultural setting, but not in an urban, domestic setting. This defence causes considerable uncertainty for pest controllers and regulators, compromises the welfare of pest animals and fails to meet community expectations.

A further problem is that the wording of this defence is not an effective driver for improved practices. There is a risk that the defence, by focusing on methods that are 'generally accepted as usual and reasonable', would discourage the adoption of new and novel methods that may be more humane because they are not 'usual'.

Conclusion

The Panel found that it was necessary to retain the intent of s 24 as a defence. The Panel noted, however, a number of issues with the application of the defence.

Declaration under the BAM Act is not an effective means of defining pests for the purpose of establishing a defence to a charge of cruelty under the AW Act. Animals should be prescribed as pests specifically for the purpose of the AW Act where there is a demonstrable need to control or attempt to control them in a manner that conflicts with s 19, whether the method is intended to cause death or not.

Irrespective of how pests are defined, these animals are capable of experiencing pain and suffering and there is an obligation to ensure that they are treated humanely. This means the law must ensure the most humane methods possible are used to kill pest animals.

The s 24 defence risks allowing inhumane practices to be used for which more humane alternatives are available. In fact, the defence discourages newer, innovative and more humane practices from being used. It is also important to ensure clarity as to what is an accepted method and what is not, rather than relying on the courts to determine on a case-by-case basis what is generally acceptable as usual and reasonable.

The Panel noted that the relative humaneness matrix²⁹⁶ provides useful information and is underpinned by adoptable national welfare codes of practice and standard operating procedures for pest animal control.

Finally, the defence should also cover non-lethal control methods for pests.

²⁹⁰ Consultation Summary Report – Public Consultation p 11; Littin, K.E., Mellor, D.J., Warburton, B., & Eason, C. T. (2004). Animal welfare and ethical issues relevant to the humane control of vertebrate pests. *New Zealand Veterinary Journal*, 52(1), 1-10; Mankad, A., Kennedy, U., & Carter, L. Biological control of pests and a social model of animal welfare. *Journal of Environmental Management*, 247, 313-322.

²⁹¹ Littin, K.E., Mellor, D.J., Warburton, B., & Eason, C. T. (2004). Animal welfare and ethical issues relevant to the humane control of vertebrate pests. *New Zealand Veterinary Journal*, 52(1), 1-10.

²⁹² Hampton, J.O., & Hyndman, T.H. (2019). Underaddressed animal welfare issues in conservation. *Conservation Biology*, 33, 803-811.

²⁹³ Sharp, T., & Saunders, G. (2011). A model for assessing the relative humaneness of pest animal control methods. (2nd ed.). Australian Government Department of Agriculture, Fisheries and Forestry.

²⁹⁴ The code is listed in Schedule 1 of the *Animal Welfare (General) Regulations 2003*.

²⁹⁵ Hampton, J.O., Hyndman, T.H., Laurence, M., Perry, A. L., Adams, P.J., & Collins, T. (2016). Animal welfare and the use of procedural documents: Limitations and refinement. *Wildlife Research*, 43, 599-603.

²⁹⁶ Sharp, T., & Saunders, G. (2011). *A model for assessing the relative humaneness of pest animal control methods*. (2nd ed.). Australian Government Department of Agriculture, Fisheries and Forestry.

Section 25 – Codes of practice

A person who is cruel to an animal has access to a defence if they can demonstrate that their actions were in accordance with an adopted code of practice.²⁹⁷

Codes of practice for farm animals were first developed in the 1980s and were designed to provide guidance on the care and management of particular species including sheep, cattle, pigs and poultry. Other welfare codes have been developed for animals used for specific purposes, including circuses, rodeos and exhibited animals.

At the time of writing this Report, there are 20 codes of practice adopted under the Animal Welfare (General) Regulations 2003 (see Regulation 6) for the purpose of s 25 of the AW Act.

As noted above in the discussion of overlapping defences, there are circumstances in which a number of different codes can apply at the same time, resulting in varying standards of welfare.

Many of the codes adopted under the AW Act have not been updated for many years, and the recommendations in many codes do not reflect advances in animal welfare science or community expectations. The use of outdated provisions as a defence against a charge of cruelty may provide a defence for the use of practices that are less humane than practically available options, which is inconsistent with the objectives of the AW Act.

In 2005, the Commonwealth Government commissioned a review of the effectiveness of the national codes of practice due to the apparent inconsistencies in the way they had been incorporated into state legislation and increasing concerns regarding their usefulness as an enforcement tool²⁹⁸. The Neumann report resulting from this review was critical of the national codes, finding that they generally just document existing management practices rather than setting standards to prevent or minimise harm to animals.

The Neumann report stated that regulators and livestock producers alike found the content of the national codes confusing due to their tendency to mix provisions that required certain action to be taken (based on what was considered minimum accepted practice) with provisions that simply described or provided commentary on current industry practice.²⁹⁹ This was reflected in the mixed use of references to 'must do' and 'should do' when describing the obligations of producers.³⁰⁰

To improve national consistency and enhance public confidence in Australian livestock industries, governments accepted Neumann's recommendation to convert the national codes of practice into clear and definitive standards in the form of 'Australian Animal Welfare Standards and Guidelines' (defined above as S&Gs).

S&Gs, which distinguish between mandatory standards and voluntary guidelines on good practice, have been and continue to be developed to replace the codes of practice. To date, S&Gs have been developed for land transport of livestock, sheep, cattle, saleyards and depots and exhibited animals.

Twelve submissions received by the Panel stated that the codes of practice do not reflect contemporary best practice for the welfare of animals, or a specific species of animal, and are not appropriate. Livestock industry submissions supported retaining s 25. Some Regulators expressed concerns about the currency of the codes and submitted that they have not been regularly reviewed, particularly with regard to them being 'fit for purpose'.

As codes of practice adopted under the AW Act determine what is or is not acceptable animal husbandry practice in WA, a transparent and rigorous process should apply to their adoption under the AW Act. The Government of Victoria is considering that a new Animal Welfare Act for the state should include guidance on how science and expert opinion should be considered in the development of Regulations and codes of practice under the Act, similar to provisions in the *Animal Welfare Act 1999* (NZ). In NZ, the *Animal Welfare Act 1999* sets out steps that must be followed before a code of practice may be issued. The necessary steps include public notification of draft codes of practice, and consideration of specified matters by the New Zealand National Animal Welfare Advisory Committee.³⁰¹ In particular, the National Animal Welfare Advisory Committee must be satisfied that the proposed standards 'are the minimum necessary to ensure that the purposes of [the] Act will be met' and the matters it must have regard to include good practice and scientific knowledge in relation to the management of animals and available technology.³⁰² Enshrining this process in legislation ensures it will be followed, which in turn ensures that the process will be rigorous and transparent. Given the critical role played by codes of practice in animal welfare regulation, the Panel suggested that consideration be given to mandating a similar process for the adoption, and review, of codes of practice.

²⁹⁷ Adopted codes of practice are listed in Schedule 1 of the Animal Welfare (General) Regulations 2003.

²⁹⁸ Neumann, G. (2005). *Review of the Australian model codes of practice for the welfare of animals*. Geoff Neumann and Associates. (Neumann Report).

²⁹⁹ Neumann Report p 11.

³⁰⁰ Neumann Report pp iii, 11.

³⁰¹ *Animal Welfare Act 1999* (NZ) Pt 5.

³⁰² *Animal Welfare Act 1999* (NZ) s 73(2).

Conclusion

The Panel acknowledged the need for the code of practice defence but agreed that most of the current adopted codes of practice are outdated. The current legal position has the capacity to result in conduct towards animals that the community would deem unacceptable to be permitted by law. Consideration should be given to ensuring that codes of practice are consistent with contemporary science and improvements in expectations of animal welfare.

Section 26 – Stock fending for themselves

Section 26 of the AW Act provides a defence to cruelty charges that relate to a failure to provide an animal with proper and sufficient food and water; a failure to provide an animal with shelter, shade or other protection from the elements as is reasonably necessary to ensure the animal's welfare, safety and health; or abandonment of an animal.

For this defence to apply, the animal must be of a kind normally left to roam at large on a pastoral property to fend for itself. The property that the animal was roaming on must have been reasonably capable of sustaining all the animals roaming on it (see s 26(1)(a) to (c) for full details).

Section 19(3) of the AW Act relates to the provision of proper and sufficient food, water and shelter to animals, including livestock on pastoral properties. Section 26 has the effect of limiting the application of s 19(3). However, the correct interpretation of this defence is uncertain because there is no clear definition of 'capable of sustaining' in the context of free-roaming animals and no guidance on this in the AW Act. It is also unclear whether 'sustaining' refers only to sustaining life rather than to such things as meeting the physiological needs of animals to grow, to maintain good health and sustain a normal pregnancy, or to prevent animals experiencing prolonged hunger and thirst.

This defence exists to allow management of livestock under pastoral conditions. The S&G for sheep and cattle, however, are intended to apply to all sheep and cattle farming enterprises in Australia. The purpose of these documents is to inform all those responsible for the care and management of sheep and cattle in Australia, including for provision of appropriate food and water. They reflect available scientific knowledge, current practice and community expectations. The S&G for cattle was adopted as a code of practice in October 2020.

During discussions at the public forums, particularly in pastoral areas, the issue of some property owners who do not plan effectively to ensure sufficient food and water is provided or to remove animals from the property to prevent suffering and death due to thirst and starvation, was a significant concern.

Conclusion

Section 26 provides a defence to a charge of cruelty in relation to stock fending for themselves on a pastoral property. Animals, specifically cattle, starving to death on pastoral properties due to lack of management and/or a lack of or inappropriate action being taken in a timely manner to provide or ensure appropriate feed and water, has been an issue in Western Australia in the past two years.³⁰³

As shown by the community and industry reaction to recent events in pastoral areas, this defence is not reflective of community expectations, nor is such a defence reflective of contemporary animal welfare legislation.³⁰⁴

Once the S&G for sheep and cattle have been prescribed as adopted codes of practice, it will become unnecessary for the s 26 defence to apply. If s 26 were to remain in its present form, it would overlap with the defence afforded by s 25 (code of practice defence) and the Regulations, potentially setting an outdated and lower animal welfare standard. The Panel saw little justification for retaining s 26 following the adoption of the S&G for sheep and cattle as codes of practice.

³⁰³ See, for example, Stanley, M., Borello, E., O'Connor, K., & Logan, T. (2019, January 31). Yandeyarra Reserve investigated with more than 1,000 cattle expected to die. *ABC Rural*. <https://www.abc.net.au/news/rural/2019-01-31/yandeyarra-cattle-station-investigation-after-mass-cattle-deaths/10768280>

³⁰⁴ See for example, Nadge, R., Bamford, M., & Stanley, M. (2019, January 4). Noonkanbah Station investigated for neglect after hundreds of cattle found dead. *ABC Kimberley*. <https://www.abc.net.au/news/2019-01-04/mass-cattle-deaths-spark-investigation-into-historic-station/10685858>; Smith, A. (2019, February 8). Cattle death count rises in the Pilbara. *Farm Weekly*. <https://www.farmweekly.com.au/story/5893427/unacceptable-disaster-prompts-call-for-action/>; de Kruijff, P. (2019, March 19). Aboriginal community groups cop \$500k bill for mass cattle deaths. *The West Australian*. <https://thewest.com.au/business/agriculture/aboriginal-community-groups-cop-500k-bill-for-mass-cattle-deaths-ng-b881136630z>

Appendix 2

List of Submissions

The Panel received written submissions from the following respondents.

No.	Submitter
001	HIGGS, Christine
002	SMITH, Hunter K
003	MCDONALD, DK & AA
004	WA POLICE UNION
005	HING, Stephanie
006	GARRETT, Claire
007	HENRY, Noah
008	FISHER, Allan
009	GATH, Peter
010	VOSS, Jennifer
011	DUFFY, Janine
012	LAMB, Stephanie
013	CROSS, Joan
014	PIETSCH, Mary-Anne
015	DREWITT, J
016	LAVELL
017	CULVERHOUSE, Glenn
018	NORTHCOTT, Sharon
019	NOBLE, Susan
020	RUBY BENJAMIN ANIMAL FOUNDATION
021	ING, Teresa
022	KINKEAD, Jeanette
023	DUYSTER, Suzanne
024	GREYHOUND ADOPTIONS WA
025	MORANDINI, Hugo
026	BAKER, Lisa
027	ANIMAL JUSTICE PARTY
028	YARNALL, Melanie
029	WEST AUSTRALIAN DINGO ASSOCIATION
030	EGG FARMERS AUSTRALIA
031	CONFIDENTIAL

No.	Submitter
032	MARDEWI, Yoke
033	ANIMALS' ANGELS
034	MURDOCH UNIVERSITY ANIMAL ETHICS COMMITTEE
035	SINCLAIR-IVEY, Kim
036	COMMERCIAL EGG PRODUCERS ASSOCIATION
037	WA FARMERS DAIRY COUNCIL
038	RAKELA, Peta
039	ANDERSON, Martina
040	DOWNES, Lyn
041	HARTRIDGE, Anita
042	COOK, Shirley
043	ROSSI, Lisa
044	KING, Viktoria
045	LOPEZ, Kenneth
046	MEHTA, Ruki
047	CONFIDENTIAL
048	ERROL, Vanessa
049	EDWARDS, Lana
050	MIRCO, Sue
051	CURTIN UNIVERSITY ANIMAL ETHICS COMMITTEE
052	HENSON, Debbie
053	Kylie
054	BRUCE, Lisa
055	REID, Pamela
056	TREHARNE, Patricia
057	MCCULLOUGH, Rennie
058	HOSKING, Richard
059	BOYLAND, Susan
060	VITALICH, Vanessa
061	WINTERBOTTOM, Jennifer
062	GAUNTLETT, Lynn

No.	Submitter
063	COUPAR, Kerry
064	PARSONS, Jaclyn
065	WILLIAMS, Jo
066	WALTON, Gay
067	HYNES, Franklin
068	SCOTT, John
069	JONES, Ron
070	DOOGUE, Shelly
071	WILKINSON, Mel
072	PASS, Wendy
073	GODKIN, Sarah
074	ST QUENTIN, Marian
075	FELIX, Kyley
076	SMITH , Aimee
077	NO NAME PROVIDED
078	WINTERBOTTOM, Jason
079	HARRISON, Mel
080	ALLEN, Dale
081	LIDBURY, Emma
082	BOUTLON, Callum
083	DAGLEISH, Claire
084	HAMBLEY, Mika
085	FITZGERALD, Sasha
086	MARRIOT, Tanya
087	Ricky
088	PASTORALISTS AND GRAZIERS ASSOCIATION, WESTERN AUSTRALIA
089	YEEDA, Robin
090	SMITH, Madeline
091	HYNES, Franklin
092	NO NAME PROVIDED
093	CURCIARELLO, Bruce
094	HOWARD, Garry
095	FLEMING, Pamela
096	COATES, Sarah
097	MANDERSON, Roz
098	LILLEE, Helen
099	KNIGHT, Julie
100	BANCROFT, Judith

No.	Submitter
101	HARRISON, Marilyn
102	HO, Anne
103	Jan
104	GIANCONO, Kaitlin
105	KING, Gillian
106	ADAMSAU, Linda
107	MULCAHY, Wayne
108	TARRANT, Stephanie
109	WILSON, Jacki
110	AMBROSIUS, Gai
111	EATON, Chris
112	ROBINSON, Roz
113	BIGBIRD, Jan
114	ROSE, Garry
115	WINTERS, Jane
116	HILL, Jennifer
117	LAWTON, Michelle
118	WALLACE, Noel
119	INGHAM, Janet
120	EDWARDS, Lana
121	Marlene
122	Stephi
123	MULEY, Marlene
124	BROWN, Kellie
125	BEELITZ, Tarryn
126	ERROL, Vanessa
127	DICANDILO, Zhana
128	CONSTABLE, Pippa
129	COMI, Connie
130	ARMSTRONG, James
131	MCKEIVER, Sonia
132	Anthony
133	JACKSON, Vicki
134	JACKSON, Vicki (Same submitter as #133)
135	BEST, Julie
136	NO NAME PROVIDED
137	COOKE, Alexandra
138	ALLEN, Ciara
139	MAJID, Irene

No.	Submitter
140	HUNTER, Bev
141	REHFELDT, Liz
142	LIM, Laurence
143	KRASENSTEIN, Leon
144	NO NAME PROVIDED
145	YOUNG, Paul
146	NO NAME PROVIDED
147	CATER, Adam
148	HUTTON, Maureen
149	STERGIOU, Matthew
150	ABBONDANZA, Naomi
151	NO NAME PROVIDED
152	MARTINEZ, Cheyenne
153	HANNELLY, Toni
154	MCDONALD, Lyn
155	Paul
156	HART, Iris
157	CARR, Andrew
158	SIMPSON, Jennifer
159	CREVARO, Julie
160	MCLEAN, Caron
161	WATSON, Winella
162	ANDERSON, June
163	BRINKWORTH, Joanne
164	BRONOWICKA, Marta
165	TAN, Lee Jin
166	PEARCE, Wendy
167	MOIR, Alex
168	DAVIES, Robyn
169	MCKENNA, Alison
170	JOWETT, Susan
171	Christine
172	KARPINSKI, Andrej
173	COBLE-NEAL, Fiona
174	LUNDY, Judy
175	PAYNE, Kailey
176	JACKSON, Jacqueline
177	MCCALL, Gill
178	PARKIN, Alice

No.	Submitter
179	HARRIS, Lyn
180	GILLIS, Joan
181	CARDER, Caroline
182	PARKES, Nigel and Alison
183	MAUDE, Florence
184	NORGAARD-PEDERSEN, Sue
185	Heidi and Glen
186	RAWNSLEY, Sandie
187	DYBALL, John and Sharon
188	NO NAME PROVIDED
189	OGDEN, Lisa
190	KOFFEL, Peter
191	THOMAS, Susannah
192	WEAVER-SAYER, Tracy
193	ALLEN, Jenny
194	MCGILL, Rhona
195	MOYLE, Julie-Anne
196	DIAS, Adam
197	SANDELL, Caroline
198	EGERTON, Charles
199	FORBES, Rowena
200	KENNEDY, Patricia
201	BROWN, Maureen
202	OWEN, Tracy
203	KINGSTON, TK
204	BEATON, Desmond
205	MACDONALD, Jennie
206	WINER, Hugh
207	RAWLINGS, Susan
208	JONES, Sue
209	SLOAN, Michaela
210	FITZMAURICE, Allison
211	BROWN, Janet
212	POTTER, Cherie
213	CLENDENNING, Diane
214	HOLLAND, Shana
215	HUMBLE, Alexander
216	DUVDEVANI, Nili
217	MERA, Sheryl

No.	Submitter
218	DRAPER, Hollie
219	TERNENT, Katie
220	CONSTANT, Roseanne
221	JONES, Barbara
222	NO NAME PROVIDED
223	CRANSWICK, Sally
224	MORLEY, Jan
225	Jarrah
226	HOLLONDS, Angie
227	HAMID, Carol and Sadak
228	DELAVALLE, Elizabeth
229	TURNLEY, Jean
230	LUCAS, Carel
231	FRANKLIN, Susan
232	SHERIDAN, Colleen
233	MELLOR, Julie
234	MOORE, Josie
235	BRENKMAN, Janet
236	FIRTH, Lesley
237	AINSWORTH, Hazel
238	COLE, Tiffany
239	HENDERSON, Lucibel
240	COWBOY, Ronnie
241	WA HORSE COUNCIL
242	LUO, Emily
243	GREENAWAY, Kallum
244	DEPARTMENT OF EDUCATION SCHOOLS ANIMAL ETHICS COMMITTEE
245	VETERINARY SURGEONS' BOARD OF WA
246	HALBERT, Pam
247	STAERKER, Fiona
248	PECK, Kymette
249	WHITFIELD, Leonie
250	TALBOT, Lily
251	MARTIN, Vera
252	RUUL, Wendy
253	JACKSON, Neil and Sandy
254	Steve and Tina
255	WALSH, Christina

No.	Submitter
256	CRASKY, Olwyn
257	FEELY, Geraldine
258	PAVY, Erin
259	WORNER, Suzanne
260	LAND, Vanessa
261	CAT HAVEN
262	TORLACH, Sue
263	BRIEDEN, Cornelia
264	BRIEDEN, Katharina
265	BRIEDEN, Thomas
266	BRIEDEN, Thomas (Same submitter as #265)
267	BENAISE, Karen
268	MARKOVICH, David
269	JONES, June
270	CAINE, Cindy
271	Cheryl
272	GLANFIELD, Margaret
273	EILS, B
274	ALLAN, Michele
275	OATES, Kara
276	WALKER, Richard
277	MORRIS, Bethani
278	FIRTH, Sophie
279	Eily
280	AUSTRALIAN FEDERATION FOR LIVESTOCK WORKING DOGS
281	SHEARN, Harrison
282	PETIT, Louis
283	SALTMARSH, Leanne
284	ROBERTS, Wendy
285	Cal
286	MORRIS, Bethani (Same submitter as #277)
287	SALTMARSH, Leanne (Same submitter as #283)
288	ROBERTS, Wendy (Same submitter as #284)
289	ROBERTS, Wendy (Same submitter as #284)
290	CRISTIANSSEN, Alanna
291	HALL, Pamela
292	BUCKLAND, Karen and Ray
293	WIGUNA, Annette

No.	Submitter
294	UNIVERSITY OF WESTERN AUSTRALIA
295	WILSON, Clarissa
296	FARMAN, Sam
297	FITZGERALS, Jason
298	CONFIDENTIAL
299	ANIMALS' ANGELS
300	CONFIDENTIAL (Same submitter as #298)
301	LOCKHART, Deborah
302	HUMANE SOCIETY INTERNATIONAL
303	KIEFER, Kimberly
304	FREE THE HOUNDS INC
305	MASS, Nina
306	PRICE STEPHEN MLA
307	ANIMALS AUSTRALIA
308	DAVID, Bronwyn
309	CAMPBELL, Linda
310	ROBERTS, Wendy (Same submitter as #284)
311	ADLEY, Isabel
312	SAKLANI, Ruchita
313	ARMSTRONG, Marji
314	RSPCA WA (CONFIDENTIAL)
315	MADLE, Emma
316	ANIMAL WELFARE COALITION WA
317	CAINE, Cindy (Same submitter as #270)
318	BOLIVER, Chanelle
319	OSBORNE, Deborah
320	VINES, Deanne
321	BROWN, Gillie
322	GUY, Lisa
323	TALLENTIRE CHRIS MLA
324	MATTHEWS, Peter
325	BLACKERS, Christine
326	VANSTEIN, L
327	DIRECT ACTION EVERYWHERE
328	EHLERS, Cooper
329	RSPCA AUSTRALIA
330	TUTEN, Simone
331	RICHARDSON, Theresa
332	XAMON ALISON MLC ON BEHALF OF GREENS WA

No.	Submitter
333	ISAAC, Rory
334	ANIMAL MANAGEMENT IN RURAL AND REMOTE INDIGENOUS COMMUNITIES
335	CLARKE, Lisa
336	ROTH, Shelley
337	KITCHING, Pauline
338	AUSTRALIAN VETERINARY ASSOCIATION
339	KILMINSTER, Marlene
340	RECFISHWEST
341	ROGERSON, Christine
342	WADDINGTON, Kevin and Katherine
343	DEPARTMENT OF BIODIVERSITY, CONSERVATION AND ATTRACTIONS
344	PET INDUSTRY ASSOCIATION AUSTRALIA
345	NATIONAL FARMERS FEDERATION
346	KIMBERLY PILBARA CATTLEMENS' ASSOCIATION
347	WA FARMERS FEDERATION
348	WESTERN AUSTRALIAN PORK PRODUCERS ASSOCIATION INC
349	LIVESTOCK AND RURAL TRANSPORT ASSOCIATION OF WESTERN AUSTRALIA INC
350	CONFIDENTIAL
351	LAY, Belinda
352	AUSTRALIAN LIVESTOCK EXPORTERS' COUNCIL and WEST AUSTRALIAN LIVESTOCK EXPORTERS ASSOCIATION
353	BISHOP, Dennis
354	DIGGINS, Fiona
355	ANIMAL JUSTICE PARTY
356	NATIVE ARC
357	RSPCA WA (CONFIDENTIAL)
358	DEPARTMENT OF PRIMARY INDUSTRIES AND REGIONAL DEVELOPMENT (CONFIDENTIAL)
359	CONFIDENTIAL
360	Evans, Mikayla