



**Submission:  
Draft Animal Welfare Act  
Amendment Bill 2022**

**July 2022**

# 1. Overview

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There is no doubt that animals play a central role in the lives of many Tasmanians. We have the highest rate of pet ownership in the nation. Most Tasmanians, whether they live in suburbia, rural properties, or in regional towns, say animal welfare is important or extremely important to them.

Most of us are more aware than ever before of the animal welfare issues faced in our country by animals in all environments: farming, recreational, companion, wild, captivity, and scientific research. And we know that community expectations of animal welfare within our society are changing rapidly, with people clearly expecting better welfare outcomes for all animals.

Yet our legislative environment does not reflect these expectations. This is confirmed by the fact that Australia has fallen to an embarrassing 'D' ranking in the World Animal Protection's Animal Protection Index.

The 2020 report ranks 50 countries on their commitment to protect animal welfare in legislation, on a scale from 'A' being the highest, to 'G' for countries showing no legislated care for animal welfare. Australia's ranking of 'D' places us behind New Zealand, Mexico and Malaysia's 'C' ratings and the United Kingdom, Sweden, and Switzerland's ratings of 'B'. No countries scored an outstanding 'A'.

A key reason for Australia's decline into a 'D' ranking related to the lack of national frameworks for animal welfare and the glacial pace at which Australia is reviewing legislative requirements for industries such as racing.

The drop in rank is also a result of the Australian Government's previous *Australian Animal Welfare Strategy* not being renewed, as well as the minimal budgets being allocated by most jurisdictions to improving animal welfare outcomes.

It is clear that high standards of animal welfare are one of the hallmarks of a civilised society.

In the last two decades, new scientific information has changed community attitudes. Most people now understand that animals have emotions, feelings and needs, and deserve a good life. Most people now understand that animal welfare is important in itself, and that animals also enrich our lives. And at the heart of it all, there has been a dawning realisation of the inextricable and circular link between people, planet, animals, food, and health.

Australians - and Tasmanians - want to be known as a fair and compassionate country, and this ranking does not reflect today's community expectations.

The state's key animal welfare legislation was enacted in 1993. Apart from a review undertaken in 2008, there has been little change since then.

On that basis, it is also clear that Tasmania is falling well behind what most people would consider to be 'high standards' of animal welfare and the regulatory environment governing animal welfare no longer reflects the reasonable expectations of our community.

Clearly, the majority of Tasmanians expect improved animal welfare outcomes should be a high priority for the state government.

The RSPCA considers that the welfare of an animal includes both physical and mental states. Ensuring good animal welfare goes beyond preventing pain, suffering or distress and minimising negative experiences, to ensuring animals can express their natural behaviour in an enriching environment, feel safe, have healthy positive experiences and a good quality of life. Thus providing good animal welfare means providing animals with all the necessary elements to ensure their physical and mental health and a sense of positive individual wellbeing.

We therefore welcome - and support - these proposed amendments to the Animal Welfare Act 1993.

Having said that, we believe that these changes are just the beginning of a long-overdue process of aligning animal welfare regulatory framework with contemporary community expectations.

## 2. Responses to proposed amendments

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*In these responses, reference is made to the actual wording of the proposed amendments, as set out in Appendix A.*

### 2.1 Expanded meaning of ‘disposal’ and consequential amendments

*Refers to Section 3 of the Principal Act*

**Amend the Act to clarify the meaning of ‘disposal’, to include euthanasia, sale or rehoming.**

*It is useful to include the options available for disposal in the legislation, from euthanasia to sale or transfer of ownership to the RSPCA or the Crown. Equivalent legislation in other jurisdictions (for example, the ACT, Victoria and Queensland) include provisions regarding disposal. Consequential expansion of disposal options under the Section 17 power to take possession of animals will allow a more efficient functioning of the legislation.*

The meaning of ‘disposal’ is not currently defined in the Act, and is often incorrectly interpreted to mean euthanasia when, in fact, it may also include sale or rehoming.

Clearly outlining that the options available for disposal in the legislation include euthanasia, sale, or transfer of ownership to the RSPCA or the Crown will overcome this misconception.

**The RSPCA supports this amendment.**

### 2.2 Onus of proof of animal ownership facilitated

*Refers to Section 3A of the Principal Act*

**Amend the Act to reverse the onus of proof so that an animal is assumed to belong to the person named as the owner in any animal welfare complaint unless proven otherwise.**

*Currently a person in charge of an animal can simply deny ownership, making investigations and prosecutions difficult. It has been dealt with under section 3A ‘Care of Charge of Animals’.*

Successful prosecution of an animal cruelty offence requires that the prosecution proves all elements of the offence to a criminal standard (beyond reasonable doubt).

In cases of neglect, this includes proving that the defendant had ‘care or charge’ or possession and custody of the animal and therefore had a duty of care. Section 3A of the Act deems that a range of people may have ‘care or charge’ of an animal and that more than one person may have ‘care or charge’. In the typical case, the owner maybe one of those persons.

However, it can be difficult to prove care and charge or possession and custody of an animal beyond reasonable doubt, despite obtaining credible evidence.

Reversing this onus of proof will ensure that people are required to take responsibility for their own animals, whilst still ensuring that genuine ownership issues can be addressed.

If there is a genuine belief that a person has care and charge or possession and custody of an animal, it is up to them to prove that they are not. They do not need to prove this beyond reasonable doubt – they only need to prove that it is more likely than not that they do not own the animal in question (on the balance of probabilities).

**The RSPCA supports this amendment.**

### 2.3 Animal research clarifications

*Refers to Section 4.3 and Section 27 of the Principal Act*

**Amend the Act to clarify the provisions relating to animal research with respect to which activities require Animal Ethics Committee approval.**

*It is intended to add, for consistency, the non-application of section 10 (baiting and shooting) and section 11 (use of animals to train other animals) of the Act to approved animal research activities.*

*It is also proposed that authorised disease surveillance and monitoring programs (using accepted methodologies) be added to the current exemptions from animal research licensing requirements under section 27.*

*The current exemptions are: observational studies, normal animal management operations and veterinary treatment administered for the welfare of the animal.*

*Further, it is proposed to include provision that it is an offence to threaten, intimidate or abuse an inspector (animal research) appointed under the Act, as exists for an officer.*

Currently, animal research conducted in accordance with the Act and under approval from the relevant Animal Ethics Committee is exempt from the operation of two of the cruelty provisions of the Act – section 8 Animal Cruelty and 9 Aggravated Animal Cruelty.

There are some activities which are, or may be, undertaken in the course of valid animal research which would constitute an offence under provisions of the Act other than section 8 or 9.

For example, research might be undertaken to identify a biological control for carp. It would be an offence under section 10 of the Act to expose the carp to a potential predator during research.

It is important to note, though, that Animal Ethics Committee approval does not exempt the researcher from the operation of this provision.

**The RSPCA supports this amendment.**

## **2.4 Animal cruelty and aggravated cruelty – correction and alternative verdict option**

*Refers to Section 8 and Section 9 of the Principal Act*

**Amend the Act to provide for an alternative conviction under section 8 of the Act (cruelty) if a person is not found to have been intentional or reckless in causing suffering under section 9 (aggravated cruelty).**

*This will allow a person charged with an offence under section 9 (aggravated cruelty) to instead be convicted of the less serious offence under section 8 in cases where the court finds cruelty has occurred but is not satisfied beyond reasonable doubt that it was intentional or reckless. This will remove the current need for duplicitous charging under both section 8 and section 9 of the Act to allow for alternative verdicts.*

*Include a provision for consideration of “reckless behaviour” leading to animal suffering by expanding section 9 (aggravated cruelty) of the Act to include ‘reckless behaviour’ leading to animal suffering. Advice was received that this consideration is already embedded in section 9.*

*Amend section 8 (cruelty to animals) of the Act by inserting the word ‘may’ in subsection 8(2)(c) to fix a drafting error. Currently subsection 8(2)(c) of the Act states that a person is guilty of an offence if that person ‘drives, conveys, carries or packs an animal in a manner or position or in circumstances that subjects or (may) subject it to unreasonable and unjustifiable pain or suffering’. The bracketed word ‘may’ was omitted in error.*

This amendment removes the need for duplicate charging and corrects a previous drafting error.

Similar provisions currently exist in legislation in other states:

- ACT: (s7B);
- NSW: s6(2);
- NT: s74A;
- SA: s13(4).

**The RSPCA supports this amendment.**

## **2.5 Ban on pronged collars**

*Refers to Section 8 of the Principal Act*

**Amend section 8 (2) of the Act to specifically ban the use of pronged collars as defined, on all species. The known use is currently on dogs.**

Pronged collars (also known as pinch or constriction collars) are made of metal and are designed to tighten around a dog's neck whenever pressure is applied. These collars have a series of fang-shaped metal links, or prongs, with blunted points which pinch a dog's neck when pulled.

These collars are used to correct unwanted behaviour through punishment. Unfortunately, some dog trainers recommend these collars, even though more humane training methods are available, including rewards based training.

Importation of such collars to Australia is prohibited, but they are not illegal to use on dogs, except in Victoria.

The RSPCA is opposed to the use of pronged collars due to the potential risk of injury, pain and suffering they cause and because other more humane training methods are available.

**The RSPCA supports this amendment.**

## 2.6 Expanded officer powers of entry

*Refers to Section 16 of the Principal Act*

**Amend section 16 of the Act to provide authorised officers with the power to enter premises (other than dwellings) to provide immediate assistance to animals in urgent need.**

*It is important that officers are able to enter a property if they have reasonable grounds to believe an animal is suffering and they can provide assistance or take the animal to a veterinary surgeon. Suffering should not be prolonged or exacerbated because an officer is not able to access an animal until further evidence is presented.*

The Act makes no provision for:

- Entry to property to assist animals whose welfare is compromised or at risk (eg bushfire, floods)
- Removing animals whose welfare is at risk from a property (eg livestock trapped by rising floodwaters)
- Removing an animal that requires care from a property (eg injured wildlife)

In some circumstances, it will be possible to obtain permission from the property owner to enter.

However, provision should be made for occasions when contacting the owner is not possible or will unreasonably prolong the pain or suffering of the animal (eg the owner is absent, or the location is remote).

Similar provisions currently exist in legislation in other states:

- ACT: s81(2)(d);
- NSW: s24E(2);
- NT: s62(4)(c);
- SA: s30(5)(a).

**The RSPCA supports this amendment.**

**Also amend the Act to allow authorised officers to obtain a warrant to enter dwellings to assist animals in urgent need.**

*Refers to Section 16 of the Principal Act*

We cannot identify where this change is included in the proposed amendments.

The proposed amendment to Section 16.1 still precludes officers from entering a dwelling and makes no reference to allowing officers to seek a warrant to enter a dwelling.

We believe this change is vital to enable officers to ensure that animals at risk are able to be removed from a dangerous situation.

## **Section 16 amended (Power to enter, search and inspect premises)**

Section 16 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) An officer may, without warrant, enter, search and inspect any premises, other than premises or a part of premises being used as a dwelling, if the officer reasonably believes that there is on the premises –
  - (a) an animal in respect of which an offence under this Act has been, or is being, committed; or
  - (b) an animal that is suffering or in need of assistance.

**The RSPCA supports this amendment.**

## **2.7 Expanded officer power to take possession of animals**

*Refers to Section 17 of the Principal Act*

**To allow an officer to seize an animal where the officer has a reasonable belief an offence against the Sections 7 and 8 of the Act has been or is being committed, without the additional need to show that unless possession of the animal is taken its life will be endangered or any pain or suffering it is undergoing will be unreasonably or unjustifiably prolonged, as is currently the case.**

*Under section 17(1), seizure is currently allowed only if there is an offence, and endangerment of life or present pain or suffering.*

This amendment will make it possible for an authorised officer to use informed judgement to remove animals from a situation where they are deemed to be at risk of harm. This discretion will enable officers to pre-empt possible pain and suffering being inflicted on an animal and allow for necessary medical treatment.

Similar provisions currently exist in legislation in other states:

- ACT: s81(2)(d) (serious and urgent circumstances);
- NSW: s24E(2) (animal is in imminent danger of suffering significant physical injury, necessary to exercise power to prevent significant physical injury or ensure provision of veterinary treatment);
- NT: s66(e) (seize animals...that the authorised person believes on reasonable grounds to be connected with an offence);
- QLD: s144(1) (animal under an imminent risk of death or injury, requires veterinary treatment...and interests of the welfare of the animal require its immediate seizure);
- SA: s30(1)(f) (seize and retain any animal that the inspector reasonably suspects has been used in, or may constitute evidence of, a contravention of this Act; also s31A(1): an inspector may examine an animal...and if the inspector suspects on reasonable grounds that the animal is suffering or may if urgent action is not taken suffer unnecessary harm, (may) seize and retain the animal).
- VIC: s24J(c) (inspector may seize a thing (defined to include an animal) that the inspector reasonably believes has been used in connection with the commission of an offence).
- WA: s42(1) (inspector may seize an animal if the inspector reasonably suspects that an offence...is being or has been committed in respect of the animal).

**The RSPCA supports this amendment.**

## 2.8 Additional magistrates' orders – seizure and disposal of animals at risk

*Refers to Section 17 of the Principal Act*

**Amend section 17 to provide magistrates with the power to order the seizure and immediate disposal (by way of sale, rehoming, euthanasia, etcetera) of any animal at risk of suffering abuse or neglect in accordance with the proposed officer powers above.**

*There is significant precedent for this in other State's animal welfare legislation where the responsible Department reasonably believes it is necessary to prevent the animal from becoming the subject of an animal welfare offence.*

This amendment is designed to provide the courts with a greater range of options to provide for the care of animals which are the subject of an offence or whose welfare is at risk.

In the course of animal cruelty investigations, officers may take possession of an animal because its welfare is at risk or the animal itself is evidence in proceedings. The enforcement agency (Biosecurity Tasmania, RSPCA or the police) may subsequently have to retain and care for the animal until the matter is finalised. In some cases, the animal may not be required as evidence, but it may be believed that returning the animal to its owner would place its welfare at risk.

Section 22 of the Act currently provides for the court to order the sale of an animal if the owner has been convicted of a cruelty offence relating to the animal. As it may take years for a case to be tried, this provision does not adequately address this issue. This is particularly the case with respect to livestock or when large numbers of animals are involved.

In cases such as this, the RSPCA has been required to care for large numbers of animals for several years – with no chance of recouping the significant costs involved.

If no offence has been committed, the options to legally intervene and provide for the care of animals at risk are even more limited. This amendment would allow for at risk animals who have not been seized under section 17 to be rehomed, euthanised, or sold.

**The RSPCA supports this amendment.**

## 2.9 Faster disposal of carcasses

*Refers to Section 24 of the Principal Act*

**Amend section 24 to reduce the time for which carcasses of animals euthanised by authorised officers must be kept from 7 days to 48 hours.**

*Section 24 of the Act provides for officers or vets to kill animals for humane reasons. It also requires that the carcass of an animal killed in this manner is made available to the owner if the owner so requests within 7 days of the animal being killed. The time within which the carcass must be made available to the owner was increased from 24 hours to 7 days by a 2002 amendment to permit the prosecution adequate time to undertake post-mortem laboratory examination and testing.*

*An unintended consequence of the amendment was that, in the absence of a request for its return, the carcass must be held for 7 days even if no tests are to be performed. This can provide difficulty in cases where appropriate storage may not be available (particularly for large animal carcasses). Carcasses from animal welfare cases usually have no commercial value and are disposed of by deep burial in a municipal land fill.*

This amendment addresses the unforeseen consequences of an earlier amendment to the Act. It will allow disposal of carcasses after 48 hours rather than requiring them to be held for seven days. This will only apply if the carcass:

- is not to be held for use as evidence,
- is not required for tests or investigations, and
- the owner has not requested return of the carcass.

**The RSPCA supports this amendment.**

## 2.10 Extraterritorial application for the purposes of requiring information.

*Refers to Section 26 of the Principal Act*

*It is proposed to modify section 26 to include an express provision for being able to require information from people who are interstate (not in Tasmania). It is further proposed to explicitly state that records or documents held by the person or persons are included in the information that may be required. This will ensure animal welfare compliance investigations are not prevented or impeded by key witnesses and evidence simply leaving Tasmania.*

This amendment is self-explanatory.

With greater access to interstate transportation, and more regular movement of people (and animals) into and out of the state, the risk of people of interest or witnesses absconding increases. Similarly, there is an increased likelihood of evidence being removed from the jurisdiction.

The amendment allows for the requirement of documents in addition to information, an essential requirement during evidence gathering.

**The RSPCA supports this amendment.**

## 2.11 Early cost recovery for care of seized animals

*Refers to Section 41 and Section 45 of the Principal Act*

**Amend the Act to provide for early (pre-trial) cost recovery from animal owners for care of seized or treated animals and to remove doubt that this applies to costs incurred by the Crown.**

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

*It is intended that a court will be able to provide cost orders so that the owner can be required to pay any costs and expenses properly incurred by a person providing care or treatment to an animal under the Act. This will allow a more efficient functioning of the legislation by alleviating financial burdens for animal care.*

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

*The Department is aware that there is public interest in the inclusion of the concept of ‘sentience’ for animal welfare. This term can be defined as ‘the ability to feel, or perceive, or be conscious, or have subjective experiences as distinct from the ability to reason, and that these qualities can be attributed to many animals.’*

*Inclusion of ‘sentience’ in New Zealand and the ACT in the title or the objects of their animal welfare acts is largely symbolic and not enforceable. Tasmania intends to include the concept in the animal welfare guidelines.*

This amendment provides clarity as to the process by which costs can be recovered.

Enforcement agencies (Biosecurity Tasmania, the RSPCA and the police) can incur significant costs in caring for seized animals. Where these animals are the subject of court cases, they might remain in care for many years. During that time, they must be cared for – housed and fed, provided with enrichment and other stimulation, and provided with veterinary care and other professional care where needed.

As the Act currently stands, such costs can only be recovered on the order of the court made when the case is finalised. Often, even with a costs order, the people involved are unable to pay costs. This leaves the agency significantly out of pocket. The proposed amendment will allow interim cost claims to be lodged over the duration of a matter, thus limiting potential losses to the enforcement agency.

**The RSPCA supports this amendment.**



### 3. Where to from here?

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When the Animal Welfare Act was introduced in 1993, it reflected community attitudes at the time. However, community attitudes to animal welfare have changed significantly over the almost 30 years since then, and it is important that the Act is regularly reviewed to ensure that it keeps pace with those changes and also that the Act is operating as intended.

The Act was last amended in 2008 following a major review. In 2011, the government requested that the Tasmanian Animal Welfare Advisory Committee (AWAC) work with the Department of Primary Industries, Parks, Water and the Environment (DPIPWE – now NRE) to undertake a review of the Act.

AWAC subsequently made sixty five recommendations as to amendments to the Act. The government adopted 23 of the recommendations and incorporated them into a Bill that was tabled in 2014. It passed in the Legislative Council but was not supported in the Lower House.

This current tranche of amendments were all included in the AWAC recommendations – and will be the first changes to the Act since 2008.

In the past two decades, we have seen attitudinal changes from the public, underpinned by new scientific information that has driven government policy; that animals have emotions, feelings and needs and deserve a good life. That their welfare is important in itself, and that they also enrich our lives. And at the heart of it all, there has been a dawning realisation of the inextricable and circular link between people, planet, animals, food and health.

For many years, the ‘Five Freedoms’ framework provided the lens through which animal welfare was considered: freedom from hunger and thirst, discomfort, pain, injury or disease, fear and distress, and freedom to express normal behaviour.

However, since the Freedoms were first defined in the 1970s, there has been increasing recognition that simply eradicating negative experiences isn’t enough. Good welfare means an animal has the opportunity to positively enjoy their environment and diet, have the ability to express normal behaviour, and have good health.

We will continue to revisit the sixty five recommendations proposed almost a decade ago to ensure these concepts are incorporated into the current legislation.

At the same time, we are working on a ‘clean sheet’ contemporary animal welfare framework that we hope will become the basis for a replacement Act and a broadened regulatory scope for animal welfare in this state.

This framework will include sentience as a foundation concept. When coupled with the Five Domains model which includes guidance on the evaluation of positive and negative impacts of human behaviour on animal welfare, the concept of sentience provides a framework that enables a basic, fundamental recognition of animals’ requirements to achieve a decent life, or a humane death.

And animal welfare issues spread far beyond what might generally be considered as part of this framework.

We’ve seen legislation in other states updated to regulate issues like puppy farming and online pet sales - things we’ve yet to address here – and to begin to recognise the concept of sentience.

The COVID-19 pandemic has reminded us of the really important roles our pets play in maintaining and improving our mental health. Over recent years, we’ve seen an increase in reports of pets being used as leverage in domestic violence situations. Tenancy laws make it hard for people with pets to find accommodation. Research undertaken following bushfires shows that people often stay when they should go because they won’t leave their pets. And the toll taken on our wildlife by disasters like bushfires is devastating. The use of animals for entertainment in the racing industry is increasingly problematic.

The list goes on.

The ultimate success for an organisation like the RSPCA would be to have no work left to do. However, no matter how much we do, animal cruelty continues to occur - and it is vital to ensure our regulatory environment provides a better world for all animals and for those who love and care for them.

## 4. About RSPCA Tasmania

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### Who we are

The Royal Society for the Prevention of Cruelty to Animals Tasmania (RSPCA) is a not-for-profit non-government organisation. We've been working to improve the lives of animals in this state since 1878.

The RSPCA is the only Tasmanian organisation named in animal welfare legislation and we enjoy the continued support of all levels of government.

The community respects our knowledge of animal welfare, which is grounded in science and based on experience. In the 143 years since the RSPCA was established in the state, we have helped hundreds of thousands of animals in need in all kinds of situations: in homes, backyards, on farms, in the wild, and at sporting arenas.

As a charity, we strive to maintain an open-door policy, so no abandoned, neglected, injured or surrendered animal is turned away or forgotten. Along with cats and dogs, the RSPCA provides assistance to a wide range of other animals, including horses, rabbits, guinea pigs, birds, goats and sheep.

During the past three years, RSPCA Tasmania has:

- Investigated over 25,000 reports of animal cruelty;
- Provided care for more than 6,670 animals; and
- Delivered information to thousands of people on animal welfare, responsible animal care and pet ownership through school, community and online education.

Our role is to act as a conduit for the community's concerns about animal welfare, to ensure those concerns are heard by our state's decision makers. So our advocacy activities are a vitally important part of our work

Animals play a central role in the lives of many people. Most Tasmanians, whether they live in suburbia, rural properties, or in regional towns, say animal welfare is important or extremely important to them.

Clearly, the majority of Tasmanians expect improved animal welfare outcomes should be a high priority for the state government.

With an ultimate goal of improving animal welfare outcomes, we acknowledge the crucial role of humans in keeping our animals safe.

So we not only serve animals in need, but also owners and carers who require guidance and support through education and assistance in relation to domestic violence, aged care, homelessness, mental health, and more.

### What we do

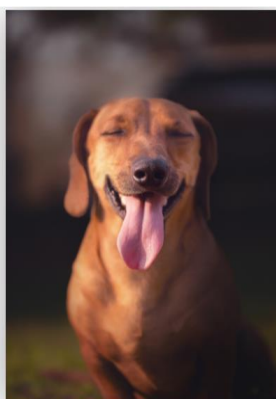
To prevent cruelty to animals by ensuring the enforcement of animal welfare laws.



Through advocacy, to promote the amendment or creation of new animal welfare legislation as necessary.



To develop and promote modern policies using scientific knowledge.



To educate the community with regard to the humane caring for animals humanely.



To engage with relevant stakeholders that enable the improvement of animal welfare.



To sustain an intelligent public opinion in regards to animal welfare.

### How we work

- Our Animal Care Centre (ACC) at Devonport is dedicated to caring for, rehabilitating and rehoming animals.

- Our Adoption and Retail Centres (ARCs) in Latrobe, Launceston, and Hobart are our bases in the community. Animals are surrendered and rehomed through these centres; owners can access advice and supplies for their companion animals; and our ARC teams assist with local microchipping and education activities in their communities.
- Our Inspectorate operates under delegated powers from the state government to investigate and prosecute instances of alleged animal cruelty. Inspectors are co-located with DPIPW in Hobart, Launceston, and Devonport, and operate across the state. This team is supported by a call centre equipped to handle reports.
- Our team of dedicated volunteers assists across all our activities. They serve on our board; they care for animals in our ACC and ARCs; they organise fundraising events; and they support us in many other activities. We could not do what we do without these wonderful people.
- Our State Contact Centre is located on the UTAS campus in Mowbray. Supporting our frontline teams, a group of dedicated professionals work here across many areas – including fundraising and marketing, policy and advocacy, volunteer organisation, project delivery and – last but not least – our administration team who answer the phones and keep the lights on.

# Appendix A: Draft Amendments

Drafted in the Office of  
Parliamentary Counsel

## TASMANIA

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### ANIMAL WELFARE AMENDMENT BILL 2022

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Version v03  
11 May 2022

Consultation Copy

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## **ANIMAL WELFARE AMENDMENT BILL 2022**

*(Brought in by the Minister for Primary Industries and Water,  
the Honourable Joanne Lesley Palmer)*

### **A BILL FOR**

**An Act to amend the *Animal Welfare Act 1993***

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

#### **1. Short title**

This Act may be cited as the *Animal Welfare Amendment Act 2022*.

#### **2. Commencement**

This Act commences on the day on which this Act receives the Royal Assent.

#### **3. Principal Act**

In this Act, the *Animal Welfare Act 1993*\* is referred to as the Principal Act.

#### **4. Section 3 amended (Interpretation)**

Section 3 of the Principal Act is amended by inserting after the definition of *conveyance* the following definition:

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\*No. 63 of 1993

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*Act No. of 2022*

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*dispose*, in relation to an animal, includes, but is not limited to –

- (a) the sale or rehoming of the animal; or
- (b) euthanising the animal;

**5. Section 3A amended (Care or charge of animals)**

Section 3A of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) For the purposes of subsection (1)(b), an allegation contained in a complaint for an offence under this Act that states that a specified person had, or has, control, possession or custody of a specified animal is admissible as evidence in any legal proceedings as evidence of the matter stated.

**6. Section 4 amended (Non-application of Act)**

Section 4(3) of the Principal Act is amended by omitting “Sections 8 and 9” and substituting “Sections 8, 9, 10 and 11”.

**7. Section 8 amended (Cruelty to animals)**

Section 8 of the Principal Act is amended as follows:

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- (a) by inserting in subsection (2)(c) “may” after “subjects or”;
  - (b) by inserting the following paragraph after paragraph (j) in subsection (2):
    - (ja) uses a pronged collar, or a similar collar, on an animal; or
  - (c) by omitting “section 8A.” from the definition of *pest register* in subsection (3) and substituting “section 8A.”;
  - (d) by inserting the following definition after the definition of *pest register* in subsection (3):

*pronged collar* means a collar, designed for use on animals, that consists of a series of links or segments with prongs, teeth or blunted open ends turned towards the animal’s neck so that, when the collar is tightened, it pinches the skin around the animal’s neck.

**8. Section 9 amended (Aggravated cruelty)**

Section 9 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) If a person is charged with, but not found guilty of, an offence under this section, the person may be convicted of an



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offence under section 8 if the evidence in the proceedings on the charge under section 9 establishes that the person committed an offence under section 8.

**9. Section 16 amended (Power to enter, search and inspect premises)**

Section 16 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) An officer may, without warrant, enter, search and inspect any premises, other than premises or a part of premises being used as a dwelling, if the officer reasonably believes that there is on the premises –
- (a) an animal in respect of which an offence under this Act has been, or is being, committed; or
  - (b) an animal that is suffering or in need of assistance.

**10. Section 17 amended (Power to take possession of animals)**

Section 17 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) In addition to subsection (1), an officer may take possession of an animal and

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detain it in a safe place if the officer is satisfied that –

- (a) an offence under section 7 or 8 has been, is being, or is likely to be committed in respect of the animal; or
- (b) the animal requires medical treatment by a veterinary surgeon.

**11. Section 17A inserted**

After section 17 of the Principal Act, the following section is inserted in Part 3:

**17A. Court may order seizure or disposal of animals**

- (1) In any proceedings under this Act in respect of an animal or on the application of an officer, a magistrate may make an order in respect of one or more of the following:
  - (a) that the animal be removed from the person who has care or charge of the animal;
  - (b) that the animal be placed in the care of, or returned to, another person specified in the order;
  - (c) that the animal –

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- (i) be sold, and any proceeds of the sale be distributed in accordance with section 46; or
  - (ii) be otherwise disposed of;
  - (d) any other order, or direction, in respect of the animal that the magistrate considers appropriate in the circumstance.
- (2) A magistrate may only make an order under subsection (1) in respect of an animal if the magistrate is satisfied that, without the order, the welfare of the animal is at risk.

**12. Section 24 amended (Power to kill animals)**

Section 24(3)(a) of the Principal Act is amended by omitting “7 days” and substituting “48 hours”.

**13. Section 26 amended (Power to require information)**

Section 26 of the Principal Act is amended by inserting after subsection (5) the following subsection:

- (6) For the avoidance of doubt, an officer may perform a function, or exercise a power, under this section in respect of a person, regardless of whether –

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- (a) the person is in Tasmania or elsewhere; or
  - (b) compliance with a requirement under this section requires information, or documents, that are in Tasmania or elsewhere.

**14. Section 27 amended (Animal research)**

Section 27 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following subsections:

- (1) A person must not carry out animal research unless it is carried out –
  - (a) by an institution licensed under this Part; and
  - (b) in accordance with the licence issued, under this Part, to the institution.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
  - (b) a natural person, a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 12 months, or both.
- (2) Subsection (1) does not apply to –

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- (a) an observational study of an animal that is conducted by the owner of the animal; or
- (b) disease surveillance and monitoring, of an animal, that is conducted –
  - (i) by a person for the purposes of disease identification or disease management; and
  - (ii) in accordance with recognised methodologies and practices; or
- (c) the administration of a veterinary treatment to an animal by a person if that treatment is administered for the welfare of the animal; or
- (d) normal animal management practices, conducted by a person in respect of an animal, if those practices are conducted for the welfare of the animal.

**15. Section 41B inserted**

After section 41A of the Principal Act, the following section is inserted in Part 7:

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**41B. Offences against inspector**

A person must not intimidate, threaten or abuse an inspector.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) a natural person, a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 6 months, or both.

**16. Section 45 amended (Costs and expenses)**

Section 45 of the Principal Act is amended as follows:

- (a) by inserting the following subsections after subsection (1):
  - (1A) An order made under subsection (1) may be made to recover costs and expenses in respect of an animal, whether or not proceedings under this Act, in respect of the animal, have been completed.
  - (1B) For the avoidance of doubt, more than one order may be made under subsection (1) in respect of an animal, if –

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- (a) additional costs and expenses are reasonably incurred in respect of the animal after an order under subsection (1) has already been made in respect of that animal; and
  - (b) those additional costs and expenses are not covered by an existing order under subsection (1).
- (b) by inserting the following subsection after subsection (2):
- (3) In this section, a reference to a person includes a reference to the Crown.

**17. Repeal of Act**

This Act is repealed on the first anniversary of the day on which it commenced.



**Contact for submissions:**

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#### **CONTACT DETAILS**

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