

Animal Welfare Amendment Act 2022
Act No. of 2022

s. 5

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.

IN RELATION TO UTILIZING AN ALLEGATION AS EVIDENCE THAT A PERSON HAS CUSTODY OF AN ANIMAL, PLEASE BE ADVISED THAT EVIDENCE THAT A PERSON HAS CUSTODY OF AN ANIMAL WAS INSERTED INTO THE ACT IN 2001, 21 YEARS AGO (SEE NEXT PAGE: DRAFTING INSTRUCTION FROM THE DEPARTMENT TO THE OPC).

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INSERTED

2001

Animal Welfare Amendment

No.

Section 43 amended (Custody of animals)

18. Section 43 of the Principal Act is amended as follows:

AS TO THE STATEMENT "ANY" CARE OR CHARGE OF THE ANIMAL, I HAVE PROVIDED TWO EXAMPLES WHICH CLARIFY WHAT "ANY" REFERS TO (SEE NEXT TWO PAGES).

(8) A person has 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.



Tasmania

DEPARTMENT of
PRIMARY INDUSTRIES,
WATER and ENVIRONMENT

12 December 2002

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Mrs Diane Burkhalter
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Dear Mrs Burkhalter,

I refer to my letter of 27 November 2002 and our subsequent telephone conversation regarding the process that resulted in the recent amendment to the *Animal Welfare Act 1993*.

I have looked into the matter as you requested, and have found a copy of the instructions given to the Office of Parliamentary Counsel regarding the amendment. The instructions were as follows:

"Section 43 - Amend by inserting the evidentiary provision stating the circumstance under which a person is to be taken, for the purposes of Section 43 (7), to have custody of an animal.

Yours sincerely

John Pauley
GENERAL MANAGER
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RECOGNIZIING THIS SENTENCE AS AN EVIDENTIARY PROVISION IS NOT POSSIBLE UNLESS ONE HAS A RECORD OF IT AS STATED.

3/a

Division 2—Animal Ethics Committees

23—Establishment of animal ethics committees by licensee

- (2) Where a licensee is required, as a condition of the licence, to establish an animal ethics committee, the licensee must establish an animal ethics committee in accordance with this section.
- (3) An animal ethics committee will consist of at least 5 members appointed by the licensee, of whom—
 - (a) at least 1 will be a veterinary surgeon; and
 - (b) at least 1 will be a person who is engaged in teaching or research activities involving animals; and
 - (c) at least 1 will be a person who is responsible for the daily care of animals kept for use in teaching or research activities; and
 - (d) at least 1 will be a person with an established commitment to the welfare of animals;

THIS RECORD COMES FROM THE **SOUTH AUSTRALIAN ANIMAL WELFARE ACT 1985** (STILL CURRENT) IN RELATION TO 3(C), "ANY" WOULD REFER TO A PERSON WHO HAS "RESPONSIBILITY FOR" THE DAILY CARE OF ANIMALS" WITHIN A FACILITY THAT CONDUCTS EXPERIMENTS ON ANIMALS, EG. A LABORATORY. (SEE NEXT PAGE FOR SIMILAR WORDING.)

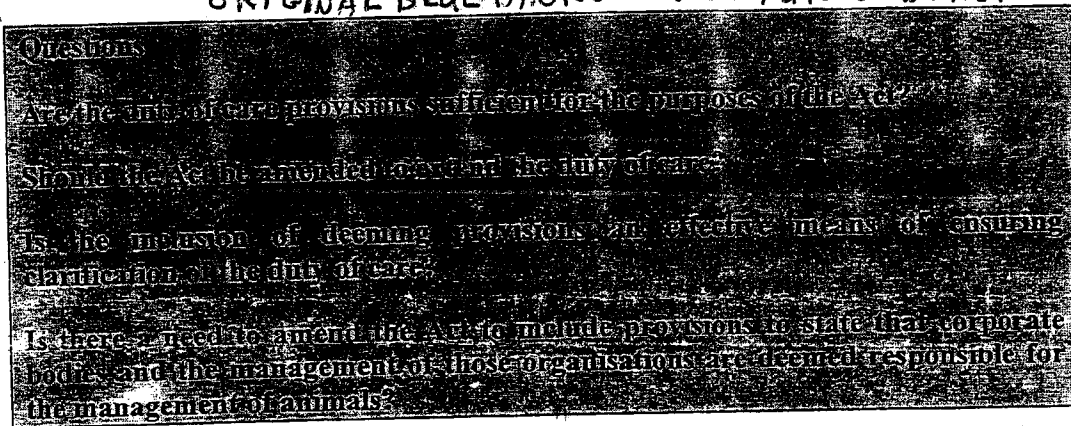
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FROM DISCUSSION PAPER 2005

In a recent court case, the owner of farm animals was acquitted when the Magistrate found he did not have care or charge of the animals within the meaning of Section 6 of the Act. The ownership of the animals was not in dispute – merely the duty of care. The material ownership of animals could be said, in general, to embrace a degree of responsibility for their welfare, regardless of who is responsible for the day to day management of the animals. One way to ensure this responsibility is captured adequately is to include in the Act a provision to the effect that the owner of animals is deemed to be in care or charge of them, unless he or she proves to the contrary.

There may also be a need to cover situations where animals are agisted on another person's property.

ORIGINAL BLUE BACKGROUND: TURNS BLACK



5.2 Method of Management [S. 7]

The intention of this section was that it would cover situations in farming and elsewhere where whole herds or groups of animals may be mismanaged, and this mismanagement may lead to cruelty.

The Working Group considers that the wording makes it difficult to sustain a charge as there is a need to identify which animal or animals were being mismanaged.

This could be addressed by broadening the scope of this provision to include groups, herds, flocks etc.

A MAGISTRATE FOUND IN A RECENT COURT CASE THAT A FARMER DID NOT HAVE RESPONSIBILITY FOR THE DAY TO DAY MANAGEMENT OF THE ANIMALS. (SEE NEXT PAGE SECTION 6 AND 7.)

“officer” means a person (by whatever name called) who is concerned in, or takes part in, the management of a body corporate or scientific establishment, including —
(a) in the case of a body corporate, a director, secretary or executive officer of the body

5/a

PART 2 - Welfare of animals

6. Duty of care to animals

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

7. Management of animals

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

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; or
- (b) a natural person, a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 6 months, or both.

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13A. Functions of officer

An officer has the following functions:

- (a) to protect, and secure the welfare of, animals;
- (b) to advise and instruct persons with the care or charge of animals;
- (c) to investigate whether this Act has been contravened and, if so, take appropriate action.

14. Instructions by officers

(1) An officer may give to one or more of the following persons such instructions as may be necessary to enable the officer to assess or ensure the welfare of an animal:

- (a) a person who has the care or charge of the animal;
- (b) a person who usually has the care or charge of the animal;
- (c) a person who the officer has reasonable grounds for believing will have the care or charge of the animal in the future.

(2) An instruction under subsection (1) is to be in writing unless –

- (a) it is not practicable to give the instruction in writing at the time the instruction is given; or
- (b) the officer giving the instruction considers that is in the interest of animal welfare to issue an immediate oral instruction.

(3) If an officer gives an oral instruction to a person under this section, the officer is to give the person written confirmation of the instruction as soon as practicable after giving the oral instruction.

(4) A person must comply with an instruction given to the person under subsection (1).

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 200 penalty units; or
- (b) a natural person, a fine not exceeding 40 penalty units.

I would like to propose some amendments regarding sections 13 and 14.

Re section 13(b): omit "with the care or charge of animals" and substitute: "who have the responsibility for the day to day management of animals", thus being in accordance with the magistrate's interpretation.

this being the case, persons 14(1)(b) and (1)(c) do not meet the criteria established by the magistrate, in particular a person (1)(c) who will have the responsibility for the day to day management of animals at some indefinite point in the future.

Therefore, persons 14(1)(b) and (1)(c) cannot be subject to an instruction by an officer.

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abandons, in relation to an animal, includes the relinquishing of the care or charge of the animal without ensuring that another person has, or will immediately take, care or charge of the animal;

Comparison between Magistrate's interpretation "care or charge" within "abandoned" as substituted:

The relinquishing of the "responsibility for the day to day management of an animal" without ensuring that another person has or will immediately take "the responsibility for the day to day management of the animal", as there is clearly a discrepancy re word usage, I would like to propose some amending (see next page).

That "abandon" be referred to the OPC to determine what wording would be most appropriate to serve as a replacement which may or may not be similar to Collins Australian English Dictionary.

	<p>abalone (,æbə'loʊn) <i>n.</i> an edible sea creature with an ear-shaped shell lined with mother-of-pearl. [American Spanish]</p> <p>abandon (ə'bændən) <i>vb.</i> 1. to leave (someone or something): <i>he abandoned his wife.</i> 2. to give up completely; <i>abandon hope.</i></p>	<p>what is right, </p> <p>aberration (,æbər'reɪʃən) <i>n.</i> a deviation from what is normal; a mental lapse: <i>a mental aberration.</i></p> <p>abet (ə'bet) <i>v.</i> to assist or encourage (someone) to do something wrong. [Old French <i>ab</i></p>
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In relation to 3A(1), I would like to suggest that all parties listed (a) through (f) be omitted save for those parties who are actively engaged in the day to day (daily) management of an animal.

¹¹ Animal Welfare Act 1993 (Tas) subsections 3A(1) and (2) read:

- (1) For the purposes of this Act, a person is taken to have the care or charge of an animal if the person -
- (a) is the owner of the animal; or
 - (b) has control, possession or custody of the animal; or
 - (c) is the operator or manager of the premises where the animal is held for commercial purposes; or
 - (d) is the owner, operator or manager of the land where the animal is being agisted, unless there is a written agreement to the contrary between the owner of the land and the owner of the animal; or
 - (e) has a share, as a share farmer, in the business in which the animal is owned or farmed; or
 - (f) is the chief executive officer or manager (by whatever title known), or a director, of a body corporate that owns the animal.
- (2) One or more persons may have the care or charge of an animal.

Given that the matters I have raised occurred over a decade ago, I can appreciate the fact that the committee would not be aware of the inconsistencies contained within these three sections.

At any rate, I am hoping that Parliament will agree to pass all proposals which would strengthen powers of officers, perhaps a proposal long overdue.

Lastly, what I am wanting to know is: is the committee willing to refer "abandon" to the OPC as noted on page 8? Please advise at your convenience and please acknowledge receipt of these submissions.

Thank you.
Regards, Diane F. Burkhalter