Animal Welfare Amendment Bill

SUMMARY OF ONLINE CONSULTATION

Department of Natural Resources and Environment Tasmania

Tasmanian Government

Online consultation

The Department of Natural Resources and Environment Tasmania (NRE Tas) has undertaken consultation on the draft Animal Welfare Amendment Bill 2022 (draft Bill) to amend the *Animal Welfare Act 1993* (the Act). The draft Bill is focussed on the following 11 areas in the Act:

1. Expanded meaning of 'disposal' and consequential amendments.
2. Onus of proof of animal ownership facilitated.
3. Animal research clarifications.
4. Animal cruelty and aggravated cruelty – correction and alternative verdict option.
5. Ban on pronged collars.
6. Expanded officer powers of entry.
7. Expanded officer powers to take possession of animals.
8. Additional Magistrates orders – seizure and disposal of animals at risk.
9. Faster disposal of carcasses.
10. Extraterritorial application for the purposes of requiring information.
11. Early cost recovery for care of seized animals.

The consultation period was open for 30 days from 20 June to 20 July 2022, with an online submissions form and a dedicated email address. A total of 89 submissions were received, although four of these were blank. The order of headings is established on the order used for consultation and does not reflect the order in the final Bill for adoption.

Feedback on each proposal

Below is a summary of responses to each proposal. Apart from those responses specifically outlined, the remainder of submissions were either silent or in favour of each proposal.

There are recommendations for three changes to the consultation Bill. One is a simple withdrawal of the proposal and two relate to additional powers to protect an animal in an emergency such as a flood, fire or entanglement.

1. Expanded meaning of 'disposal'

It was proposed to amend the Act to clarify the meaning of 'disposal', to include euthanasia, sale or rehoming.

Two submissions supported the proposal but said it should be stated that euthanasia is a last resort. This position is accepted as a long-standing operational policy. In some cases euthanasia is the most relevant option if disease conditions are not treatable within reason and/or the animal has a poor quality of life and/or rehoming will place other animals at risk of disease. The power to kill animals has always existed under S24.

The Australian Veterinary Association (Tas Branch) expressed concern at the use of the term "disposal" as it believes this implies "after death". A more appropriate word could not be identified and it is re-

emphasised that policy options resulting in death are a last resort and decisions are always made under veterinary advice if the disposition of the case is not obvious to an officer.

It was recommended to adopt the proposed amendment as worded.

Section 3 of the Principal Act will be amended by inserting after the definition of conveyance the following definition:

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;

The options available for disposal in the legislation now include euthanasia as well as sale or transfer of ownership to the RSPCA or the Crown, in line with equivalent legislation in other jurisdictions (for example, the ACT, Victoria and Queensland) which include provisions regarding disposal.

There are no consequential amendments as initially indicated but expansion of disposal options under the S17 power to take possession of animals will allow a more efficient functioning of the legislation by clarifying that euthanasia is a valid disposal option. The power to kill animals has always existed under S24.

2. Onus of proof of animal ownership facilitated

It was proposed to 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.

The actual words proposed state: "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."

Admissibility as evidence requires that the question of control, possession or custody has to be proven to the court.

One submission submitted that S3A(1A) could be amended as follows to strengthen this provision:

"For the purposes of subsections (1)(a) or (1)(b), an allegation contained in a complaint for an offence under this Act that states that a specified person had, or has, ownership, control, possession or custody of a specified animal will be accepted as proved in the absence of proof to the contrary."

While this wording would appear to strengthen the provision, it has been determined as going too far in reversing the onus of proof.

Four submissions raised concerns in relation to the reversal of onus of proof, with one of the submissions being strongly opposed on the basis of legal principles.

Another submission strongly opposes any amendments to the Act to reverse the onus of proof on the basis of practical considerations relating to stock control and identification resulting in assumed ownership of stray animals (especially sheep) and a potential for miscarriage of justice.

However, it is not intended that this amendment will change the standard of proof that is needed to convict a person of any offence under the Act. A court will still need to be satisfied beyond reasonable doubt of a defendant's guilt to convict. The prosecuting authority will also need to be able to prove

beyond reasonable doubt all elements of an animal welfare offence with admissible evidence – and that will always require a great deal more evidence than simply making an allegation in a complaint.

Sheep identification is an ongoing issue and reforms are proposed in this area for sheep and other species to enable improved livestock traceability. These reforms – once adopted - will likely significantly assist in providing an establishing and legally recognised basis for proving ownership. Apart from the legal protection, an added benefit for livestock owners is enhanced animal traceability, which supports a rapid and effective response to a disease outbreak. The recent detections of Foot and Mouth Disease in Indonesia have highlighted the reality that we cannot afford to be caught unprepared for such an animal biosecurity emergency.

It is important to note that it is unlikely that large scale commercial livestock farmers will be prosecuted for a single animal unless there is manifest evidence of cruelty. It is primarily an issue with small holders, and any others that often deny ownership of unidentified animals on their premises. Prosecution is a resource intensive exercise, and a case is not likely to proceed if there are legitimate concerns around its propriety.

Four submissions explicitly supported the reversal of the onus of proof.

It is recommended that no change be made to the consultation Bill.

Section 3A 'Care of Charge of Animals' 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.

3. Animal research clarifications

It was proposed to amend the Act in three places, firstly to clarify the provisions relating to animal research with respect to which activities require Animal Ethics Committee (AEC) approval by expanding the non-application of S10 Baiting and shooting and S11 Use of animals to train other animals to an AEC under S4 (3).

It was also proposed that authorised disease surveillance and monitoring programs (using accepted methodologies) be added to the current exemptions from animal research licensing requirements under S27. 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.

Nineteen submissions opposed the proposal in relation to including S10 and S11 of the Act in relation to exemptions for research activities. These submissions raised strong concerns about allowing activities such as S10 Baiting and shooting as a research exemption. It should be noted that baiting has a specific meaning under S10. This section relates to using animals to bait other animals (live baiting), not baiting with food. Shooting refers to 'canned hunting'. Section 11 deals with the use of animals to train other animals where

an animal is likely to suffer including live baiting. It is difficult to conceive of any circumstances in which it would be appropriate for live baiting or shooting of captive animals to be undertaken as part of research. Animal ethics arrangements have functioned under the Act to this time with S4 non-application of S8 Cruelty to animals and S9 Aggravated cruelty without these further inclusions.

It was therefore recommended to abandon this draft amendment to S4 (3) and no further action is proposed. This means that an AEC will continue to not be allowed to approve any research that involves S10 or S11 activities.

To expand the allowed activities not requiring AEC approval, S27 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 –

(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.

This addition means that authorised disease surveillance and monitoring programs (using accepted methodologies) are not regarded as research with an animal welfare impact requiring AEC approval. An example could be the taking of blood samples for disease status determination. This amendment is an important clarification for disease surveillance and control programs. In addition to this exemption, fishing and hunting of animals done in a usual and reasonable manner and without causing excess suffering is already exempted under S4.

The proposal to include a provision that it is an offence to threaten, intimidate or abuse an inspector (animal research) appointed under the Act, as exists for an officer, was recommended.

After S41A of the Principal Act, the following section will be inserted in Part 7:

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.

The Inspector (of research activities) is a key officer with extensive powers under S38 in relation to the functionality of Part 4 Animal Research of the Act that is now afforded the same appropriate protections as an officer under S41A.

4. Animal cruelty and aggravated cruelty – correction and alternative verdict option

It was proposed to amend S9 of the Act to provide for an alternative conviction under S8 of the Act (cruelty) if a person is not found to have been intentional or reckless in causing suffering under S9 (aggravated cruelty).

It was proposed to amend S8 (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.

Six submissions supported alternative sentencing, four with the proviso "as long as this doesn't encourage prosecutors to use the lesser charge", and this is not the intention of this amendment, in fact the reverse will apply as appropriate – the use of a S9 charge is facilitated by having an established fall-back option to the lesser charge under S8.

One submission strongly opposed alternative sentencing.

There were calls to include a provision of "reckless behaviour" leading to animal suffering by expanding S9 (aggravated cruelty) of the Act to include 'reckless behaviour' leading to animal suffering. Advice was received prior to consultation that this consideration is already embedded in S9 by virtue of the words - *if the person knows that, or is reckless as to whether, the act or omission will, or is reasonably likely to, result in…..*

It is recommended that no change be made to the consultation Bill.

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 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.

This will allow a person charged with an offence under S9 (aggravated cruelty) to instead be convicted of the less serious offence under S8 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 S8 and S9 of the Act to allow for alternative verdicts.

Section 8 of the Principal Act is amended for the purposes of correction as follows:

(a) by inserting in subsection (2)(c) "may" after "subjects or";

This correction clarifies the intent that applies to someone who 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, before the pain and suffering occurs.

5. Ban on pronged collars

It was proposed to amend S8 (2) of the Act to specifically ban the use of pronged collars as defined, on all species. The known use is currently on dogs.

This section had the largest number of responses. Pronged dog collars are an issue with strong beliefs on both sides of the debate. A ban on the collars has been considered in the past but was not progressed after debate in the Legislative Council.

In relation to the current draft Bill, 36 submissions opposed the ban on pronged collars. Many of these respondents were professional dog trainers or those who use the collars in training their own dogs. Several of the submissions questioned the basis of the ban and the bias of those who oppose the collars. They also raised concerns in relation to lack of consultation and a Regulatory Impact Statement.

One respondent who uses the collars pointed out that any obvious injuries from a collar would be covered by the general provisions of the Act without the collars being banned. He went on to state that injuries can also be caused by a variety of other pieces of equipment (choker collars, flat collars etc) that are not banned, and he considered that it doesn't make sense to single out one device because of emotive reactions to how it looks.

Supporters of the collars also argued that they should be viewed as an effective tool for use when other training methods have failed. Positive or reward training techniques are usually preferred for dog training today, but some trainers believe this does not suit all dogs and other methods should be available to trainers. Many of the submissions stated the opinion that dogs would otherwise be euthanised if pronged collars were not available but this statement is not substantiated. Users of the collars also commented that dogs were able to live more varied and fulfilled lives because they were able to be taken out in public in the collars, rather than kept locked up at home due to lack of control.

Thirty-three submissions supported the proposed ban on pronged collars and many also called for electric dog collars to be banned. The Australian Veterinary Association (AVA Tasmanian Branch) stated that the Association has a policy that pronged collars must never be used under any circumstances due to their highly aversive nature. The AVA noted that there is a ban on importation of the collars into Australia and that some other jurisdictions, such as Victoria, have prohibited their use.

Some of the submissions supporting a ban on pronged collars suggested an exemption to allow professional trainers to use them. However, there is no industry agreement on professional standards or any overarching representative body for dog trainers. There are various organisations that represent dog trainers but they have differing ethos regarding training methods. Some organisations specifically support the use of pronged collars while others will only accredit trainers who do not use aversive methods.

Further deliberations were undertaken in relation to establishing an administrative arrangement or a qualification mechanism, including under the *Dog Control Act 2000* to allow limited approved use of pronged collars. A likely successful arrangement could not be identified that did not result in additional administrative burden or was verifiable, noting that there are no professional dog training qualifications or professional licensing associations. Any administrative arrangement would be required to be subject to full cost recovery.

It was recommended to adopt the current proposed amendment as worded, possibly with an amnesty period for current users of the collars to retrain their dogs.

Section 8 (2) of the Act is amended as follows:

(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.

This means that a person is guilty of an S8 offence if the person uses a pronged collar, or a similar collar, on an animal. The other changes relate to a correction in punctuation to allow the insertion of the definition of 'pronged collar' in S8 (3).

6. Expanded officer powers of entry S16

It was proposed to amend S16 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.

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

This proposal is to extend powers of entry to a premises beyond only being available when there is reasonable belief an offence is being committed, to include situations where an animal is suffering or in need of assistance. This could be an emergency situation.

Fourteen submissions supported this proposal with some calling for officers to be able to access dwellings without a warrant in emergency situations. This further amendment, along with the current proposal, would represent a significant extension of powers and was considered to have merit. There are significant precedents for such a provision, with the animal welfare legislation in New South Wales, Queensland, Northern Territory, South Australia and the Australian Capital Territory all providing for emergency access to dwellings without warrant for officers to assist animals in immediate need.

It was then further proposed post-consultation that S16 of the Act be amended to include the emergency entry of dwellings to achieve the following:

An officer may, without warrant, enter, search and inspect any premises or dwelling, if the officer reasonably believes that there is on the premises or dwelling –

(a) an emergency; and

(b) an animal that is suffering or in need of assistance.

Three submissions opposed greater power of entry of officers. One of these called for the S16 to be completely overhauled.

One submission did not support the proposed amendment on the basis of likely burdensome inspections on farms and the attendant biosecurity risk. It is noted that farms that adjoin road access are subject to

mis-informed reports of animal welfare issues in their stock from time to time. However, the biosecurity risk of an inspection visit is effectively mitigated by the standing requirement of all officers entering and leaving premises to adequately decontaminate.

It was recommended to not progress the proposed amendment and instead include a power for emergency access to a dwelling without warrant by officers to assist animals in immediate need in an emergency situation.

Discussions occurred with the Office of Parliamentary Counsel to achieve the optimum wording for the new power of entry to dwellings in an emergency to best achieve the intended purpose for improved animal welfare outcomes. The accepted everyday definition of 'emergency' is to be relied upon.

Consequently, S16 of the Act is amended by inserting after subsection (1) the following subsection:

(1A) Despite subsection (1), an officer may, without warrant, enter, search and inspect any premises, including premises or a part of premises being used as a dwelling, if the officer reasonably believes that –

(a) an emergency exists that –

(i) causes, or threatens to cause, injury, illness or distress to an animal on the premises; or

(ii) places, or is likely to place, the premises at risk; and

(b) there is on the premises, or in the dwelling, an animal that is in need of assistance.

It is important that officers are able to enter a premise or a dwelling if they have reasonable grounds to believe there is an emergency situation and 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 for a warrant. In non-emergency an officer can still apply for a warrant under S16(3), (3A) & (3B).

7. Expanded officer power to take possession of animals S17

It was proposed to amend the Act to allow an officer to take possession of an animal where the officer has a reasonable belief an offence including against S7 (animal management) and S8 (cruelty) 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 S17(1), seizure is currently allowed only if there is an offence, and endangerment of life or present pain or suffering will be. The proposed amendment removes the need for an officer to believe that an offence is being committed before being able to take possession of an animal whose life may be endangered, or who may be suffering unreasonably or unjustifiably prolonged.

Ten submissions supported this proposal. One submission suggested that S9 offences (aggravated cruelty) should also be included in this expanded section. This is in fact the case as all offences under the Act are relevant (including Ss 7, 8, 9, 10 & 11).

One submission did not support the proposed amendment on the basis of likely over-zealous application by an officer and unintended consequences for animal welfare.

With judgement and procedural fairness, it is reasonably unlikely that any animal will be wrongly seized. Seizure and prosecution is a resource intensive exercise and a livestock case is not likely to proceed if

there are legitimate concerns around its success. There are further regulatory checks and balances including that prospective cases are reviewed internally within NRE Tas and RSPCA and further by the Office of the Director of Public Prosecutions.

One submission sought clarification on the basis for 'reasonable belief'. This will be a matter of judgement by an officer based on their knowledge, experience, professional consultations (vets) and written guidance available and the facts being dealt with. There will always be a matter of professional judgement tempered by the resources available and the perceived needs of the animal. There are, however, legal precedents relating to 'reasonable belief.' A reasonable belief requires the existence of facts that are sufficient to induce the belief in a reasonable person. Belief requires something more than suspicion.

In any case, under S26B - Decision of officer subject to review, a person who is aggrieved by a decision of an officer under this Act may apply to the Magistrates Court (Administrative Appeals Division) for a review of that decision.

It was recommended to adopt the proposed amendment with some alteration.

Discussions occurred with the Office of Parliamentary Counsel to achieve the optimum wording for the new power of possession to best achieve the intended purpose for improved animal welfare outcomes. Three changes are recommended.

Section 17(1) of the Principal Act is amended as follows:

(a) by omitting from paragraph (a) "been or is being" and substituting "been, or is being or is likely to be,".

(b) by omitting from paragraph (a) "and" and substituting "or";

(c) by inserting the following paragraph after paragraph (a):

(ab) the animal requires medical treatment by a veterinary surgeon to relieve, or reduce, the pain or suffering of the animal; or

The end result of this amendment is that the dependency between clauses is removed (by changing 'and' to 'or') and an officer can now take possession of an animal for four separate significant reasons including the likelihood that an offence may be committed. These reasons are;

- Reasonable belief that an animal welfare offence has been or is being or is likely to be committed;
- the animal requires medical treatment by a veterinary surgeon to relieve, or reduce, the pain or suffering of the animal;
- An animal's life is endangered; and
- An animal's pain or suffering will be unreasonably or unjustifiably prolonged.

These changes complement the extension of powers under S16 which allow entry to a premise or dwelling in the case of an emergency. It is worth noting that once an animal has been taken into possession for any of the reasons above – there are then a full range of options to deliver the best animal welfare outcome.

8. Additional Magistrates orders – seizure of animals at risk S17

It was proposed to amend S17 to provide magistrates with the power to order (pre-trial), 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.

It should be noted that euthanasia is considered a last resort and a decision to euthanise is only undertaken after due process followed and options considered.

Few specific comments were received on this proposal. One submission did not support the proposed amendment on the grounds of likely over-zealous application by an officer. Clarification was sought concerning the basis for 'reasonable belief' that an animal is at risk of suffering abuse or neglect.

It was recommended to adopt the proposed amendment as worded.

Consequently, after S17 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 –

(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.

This amendment allows the efficient management of cases where removal of animals is necessary for their welfare and operational costs can be contained. It avoids the need to accrue expenses prior to any future court hearing if a magistrate can be satisfied that, without the order, the welfare of the animal is at risk.

9. Faster disposal of carcasses S24 (3) (a)

It was proposed to amend S24 to reduce the time for which carcasses of animals euthanised by authorised officers must be kept from 7 days to 48 hours.

One submission misunderstood the amendment and opposed it on the grounds that animals should not be euthanised within 48 hours if found stray. The amendment only relates to the amount of time carcases are to be held, it does not impact on the decision to euthanise or on time animals are kept before euthanasia.

Three submissions opposed the change.

Two submissions supported the change but suggested alternative wording of little consequence.

It was recommended to adopt the proposed amendment as worded.

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

Holding carcases can provide difficulty in cases where appropriate storage may not be available (particularly for large animal carcasses). Carcases from animal welfare cases usually have no commercial value and are disposed of by deep burial in a municipal land fill. This amendment has no direct bearing on animal welfare but enables better management of carcases with faster disposal if required. It will reduce the costs of responding to animal welfare cases where animals are euthanised as a last resort.

10. Extraterritorial application for the purposes of requiring information

It was proposed to modify S26 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.

Ten submissions supported this proposal. One submission opposed S26 (power to require information) in its entirety.

It was recommended to adopt the proposed amendment as worded.

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 –

(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.

The benefits of this amendment to the investigation and prosecution of welfare cases where the plaintiff may reside elsewhere are obvious.

11. Early cost recovery for care of seized animals S45

It was proposed to 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.

Two submissions opposed the proposal in relation to cost recovery. One of these strongly opposed the principle and stated that costs should be borne by the State.

One submission did not support the proposed amendment on the basis of possible undeserved costs being attributed to an owner before a fair trial. The amendment does, however, still require a court to make the cost recovery order. A miscarriage of justice is an unlikely outcome. The plaintiff can appeal under S26B of the Act.

It was recommended to adopt the proposed amendment as worded.

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 –

(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.

The amendment allows the court to be able to provide cost orders so that the owner can be required to pay any costs and expenses properly incurred by a person, including government, in 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.

This power is particularly important in cases including large numbers of animals and/or protracted periods of care. At present, S22 of the Act provides for cost recovery by court order, but this follows a final determination of court proceedings, which can take years.

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 was 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 amendment will remove all doubt that the Crown can recover costs in this fashion.

OTHER ISSUES RAISED

Sentience

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.

Twenty-two submissions called for such a statement to be included. Some also suggested the inclusion of mental suffering as an offence under the Act. This proposal has been considered in the past, but it was decided at the time that this was already adequately covered by the offences under the Act and that a specific offence of mental suffering was unnecessary.

One submission raised concerns about any proposal to include sentience in the Act and requested that it be consulted if any such proposal is considered.

It is proposed that any statements regarding sentience be considered for inclusion (on a case-by-case basis) in future animal welfare guidelines, not as part of the amendment Bill.

In addition to sentience and the proposed amendments, submissions raised a number of other issues:

- General calls for tougher laws and higher penalties.
- Amend S8 to apply to electric devices at all times, not just in sports or public performances.
- Calls for mental suffering to be included.
- Request to ban electro-immobilisation devices.
- Concerns about standard farming practices.
- Calls for ban on racing.
- Remove the exemption regarding hunting practices that allow dogs to worry wildlife.
- Calls for ban on rodeos.
- Calls for banning of confinement of animals, 'convenience killing', puppy farming, mulesing, cosmetic surgery of animals and cruelty on the grounds of religion or custom.
- Separate the regulatory aspects of animal welfare from the Department that supports agriculture.
- Calls for an independent animal welfare authority and more transparent reporting of animal welfare issues.
- Calls for CCTV in abattoirs.
- Calls for improvement of the standards and guidelines development processes.
- Calls for a ban on duck hunting.
- Suggestions for changes to Animal Welfare Advisory Committee.
- Calls for inclusion of changes not implemented after 2013 review of the Act.

These are not supported for inclusion in these proposed amendments to the Act, as they related to lawful activities, are administrative in nature, have been considered and not supported previously, or would require further policy consideration and consultation.

Department of Natural Resources and Environment Tasmania