

AgForce Submission to the Review of the *Animal Care and Protection Act 2001 (ACPA)*

28 May 2021

Relevant section within the Discussion paper	Questions posed within the Discussion paper	Submission
<p>3. Purposes of the <i>Animal Care and Protection Act 2001</i></p>	<p>Qu. 1 One the purpose of the ACPA is to "...achieve a reasonable balance between the welfare needs of animals and the interests of people whose livelihood is dependent on the animals...".</p> <p>This purpose is still suitable with increased animal welfare expectations and consumer preferences.</p>	<p>AgForce strongly agrees that the purposes of the Act remain suitable but recommends that they should not be amended.</p> <p>AgForce considered that the Act’s purposes are sufficient. However, AgForce is cognisant that the attitudes and beliefs of extreme animal activists are such that these types of community groups will never believe that a “reasonable balance between the welfare of animals and the interests of persons whose livelihood is dependent on animals” will ever exist.</p> <p>The agriculture industry continually strives to improve animal welfare outcomes through best practice husbandry practices and procedures. There is a corresponding need for the community to recognise that welfare expectations cannot continue to increase, without advancements in science and technology and therefore there should be recognition that industry “maintains” best practice animal welfare standards.</p> <p>While AgForce does not recommend amending the Purposes of the Act, the ability exists to amend existing codes of practices, when needed, based on advancements in scientific knowledge and subsequent change in community expectations.</p>
<p>4. Prohibited events</p>	<p>Qu. 2 The current prohibited event provisions are appropriate.</p>	<p>AgForce strongly agrees that the current prohibited event provisions are appropriate.</p> <p>AgForce supports the current prohibited event provisions, including Part 3 of the Act on Prohibited Events, section 20.2, stating rodeo being an important exemption: <i>‘conducting a rodeo is not a prohibited event merely because of action taken in the rodeo to protect a competitor or other person from an animal being used in the rodeo.’</i></p> <p>AgForce would like to emphasize that the Act should be clearer for Campdraft events to be exempt as well.</p>

<p>5. Reporting of animal welfare concerns by veterinary professionals</p>	<p>Qu. 3 Veterinary professionals should have obligations under the ACPA to report suspected incidents of animal cruelty or neglect to authorities.</p>	<p>AgForce strongly disagrees with veterinarians being obligated under the ACPA to report suspected incidents of animal cruelty or neglect to authorities.</p> <p>AgForce has discussed this question with the Australian Veterinary Association (AVA) and supports the positions taken by the AVA.</p> <p>Similar to processes used by Government Authorised Officers and Inspectors, compliance begins with an educative approach. Veterinarians play a pivotal role in ensuring good animal welfare through the treatment of animals and the education of their clients.</p> <p>Veterinarians sometimes play a direct role in animal welfare investigations, where they are asked to provide expertise through a veterinary recommendation/assessment or where an animal welfare direction refers the animal's owner to seek veterinary advice. Imposing mandatory reporting obligations on veterinarians may compromise this system particularly in areas where veterinarians are limited which devalues the critical role veterinarians play in rectifying animal welfare concerns.</p> <p>In severe cases, veterinarians already voluntarily report abuse if they believe it to be necessary; but to make reporting mandatory for veterinarians risks de-stabilising the relationships between veterinarians and their clients, potentially becoming detrimental for local veterinary businesses and most importantly, will do little to improve the welfare outcomes of animals.</p>
<p>6. Regulated surgical procedures</p>	<p>Qu. 4 The current list of surgical procedures restricted to veterinary surgeons is appropriate.</p>	<p>AgForce strongly agrees that the current list of surgical procedures restricted to veterinary surgeons is appropriate.</p>
	<p>Qu. 5 The current provision on tail docking of dogs is appropriate.</p>	<p>AgForce strongly agrees that the current provision on tail docking of dogs is appropriate.</p>

	<p>Qu. 6 The current provisions for the supply of animals that have undergone a regulated surgical procedure are appropriate.</p>	<p>AgForce strongly agrees that the current provisions for the supply of animals that have undergone a regulated surgical procedure are appropriate.</p>
<p>7. Possession or use of certain traps and spurs</p>	<p>Qu. 7 The current provisions for traps and spurs are appropriate.</p>	<p>AgForce strongly agrees that the current provisions for traps and spurs are appropriate.</p>
<p>8. Dogs</p>	<p>Qu. 8 The current offences relating to the use of dogs to kill or injure another animal are appropriate.</p>	<p>AgForce strongly agrees that the three (3) current offences relating to the use of dogs to kill or injure another animal are appropriate.</p> <p>Relevant to Chapter 3, Part 5 of the Act, AgForce urges consideration to clarifying and/or amending Division 4 Allowing animal to injure or kill another animal, Section 37 Unlawfully allowing an animal to injure or kill another animal:</p> <p>(1) A person in control of an animal (the first animal) must not unlawfully allow it to injure or kill another animal (the second animal). Maximum penalty—300 penalty units or 1 year’s imprisonment. <i>Note</i>—If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 209A, to have also committed the offence.</p> <p>(2) The person unlawfully allows the first animal to injure or kill the second animal if immediately before the injury or killing happens—</p> <p>(a) the first animal was under the person’s immediate supervision; and <i>Example of immediate supervision for paragraph (a)</i>— The first animal is within the person’s sight.</p> <p>(b) the person—</p> <p>i. was aware of the second animal’s presence; and</p> <p>ii. ought reasonably to have suspected that the second animal was immediately vulnerable to the first animal and was likely to be injured or killed by it; and</p> <p>iii. did not take reasonable steps to prevent the injury or killing. <i>Examples of reasonable steps for subparagraph (iii)</i>—</p>

		<ol style="list-style-type: none"> 1. If the first animal is a dog, putting the dog on a lead while the second animal is vulnerable to it. 2. If the first animal is a cat, caging the cat while the second animal is vulnerable to it. <p>AgForce recommends that consideration be given to exemptions where a person may use, for example, Fox Terrier dogs or similar to hunt out rodents and rabbits.</p> <p>AgForce also recommends that consideration be given to exemptions where a person uses a dog for feral pig hunting purposes. Queensland’s feral pig population causes significant economic and environmental impact, where pigs can damage almost all crops from sowing to harvest, feeding on seed, sugar cane and grain crops, fruit and vegetable crops. Research has shown feral pigs can kill up to 40% of lambs. Feral pig activity degrades water quality and the habitat for small terrestrial and aquatic animals. Predation of native fauna does occur and examination of faeces has shown remains of marsupials, reptiles, insects, and ground-nesting birds and their eggs.</p> <p>More recently, African Swine Fever has decimated commercial production across Europe and Asia, where the risk of spread into Australia is high. Australia’s commercial pork industry would be placed at significant risk.</p> <p>Effective control of feral pigs, and other pest animals, requires an integrated, collaborative approach with all stakeholders participating in planning, implementing and evaluating control programs.</p>
	<p>Qu. 9 The current offence relating to confining a dog is appropriate.</p>	<p>AgForce strongly agrees that the current offence relating to confining a dog is appropriate.</p>

	<p>Qu. 10 Transporting an unrestrained dog in the back of an open utility, tray of a truck or from an open window should be made a specific offence under the ACPA.</p>	<p>AgForce strongly disagrees that transporting an unrestrained dog in the back of an open utility, tray of a truck or from an open window should be made a specific offence under the ACPA. AgForce considers it appropriate to include such an offence within the Act subject to a restriction that the offence apply to public roads only; and with exemptions inserted for gazetted roads through private rural lands and for working dogs used by drovers along public roads.</p> <p>Working dogs do not need to be restrained in the back of an open utility or tray of a truck when working on properties in rural areas.</p> <p>AgForce does not support the proposed offence to prohibit dogs putting their heads out of an open window of a vehicle.</p>
<p>9. Using animals for scientific purposes</p>	<p>Qu. 11 The scope of when an animal is used for scientific purposes should be aligned with the Scientific Use Code.</p>	<p>AgForce strongly agrees that the scope of when an animal is used for scientific purposes should be aligned with the Scientific Use Code.</p>
	<p>Qu. 12 Other provisions in the APCA relating to the scientific use of animals are appropriate.</p>	<p>AgForce strongly agrees that the other provisions in the APCA relating to the scientific use of animals are appropriate.</p>

<p>10. Inspectors</p>	<p>Qu. 13 The powers of inspectors under the ACPA are sufficient to allow inspectors to effectively deal with animal welfare incidents and do not require strengthening.</p>	<p>AgForce strongly agrees that the powers of inspectors under the ACPA are sufficient to allow inspectors to effectively deal with animal welfare incidents and do not require strengthening. AgForce recognises that the powers of inspectors are sufficient.</p> <p>Whilst AgForce would prefer the Government to fund all inspector roles with public servant personnel, it is accepted that the Government is required to deputise non-government organisations as inspectors due to resourcing limitations.</p> <p>It is expected however, that any non-government organisation engaged by the Government to fulfil an inspector role will have sound governance processes and maintain credible accountability.</p> <p>It is also considered that because staff from non-government organisations are used to act as inspectors, and where many situations were an inspector is required to undertake their duties as an inspector can be highly emotive, that the powers of inspectors under the Act are not strengthened.</p>
	<p>Qu. 14 It is appropriate for the Queensland Government to authorise non-government organisations, such as the RSPCA, to undertake investigations and conduct prosecutions under the ACPA.</p>	<p>AgForce strongly agrees that it is appropriate for the Queensland Government to authorise non-government organisations, such as the RSPCA, to undertake investigations and conduct prosecutions under the ACPA.</p> <p>AgForce acknowledges the Memorandum of Understanding between Biosecurity Queensland and the RSPCA; but is cognisant that the RSPCA and any other non-government organisation is required to have sound governance processes and maintain credible accountability. They should also enforce the ACPA but not go beyond the requirements, particularly where this is based on RSPCA policies or personal perspectives around acceptable welfare outcomes.</p>

	<p>Qu. 15 People from non-government organisations who are appointed as inspectors under the ACPA should be subject to the same accountability as public servants in terms of ethics and codes of conduct.</p>	<p>AgForce strongly agrees that people from non-government organisations who are appointed as inspectors under the ACPA should be subject to the same accountability as public servants in terms of ethics and codes of conduct.</p> <p>AgForce is of the firm belief that any person from a non-government organisation that is engaged to act as an inspector, must undertake training that is consistent with a government employed person, and that they can demonstrate a sound ability to undertake the role and have a strong understanding of livestock.</p>
<p>11. Compliance and enforcement</p>	<p>Qu. 16 The current suite of compliance options (not including PINs) for responding to breaches of animal welfare under the ACPA is comprehensive.</p>	<p>AgForce strongly agrees that the current suite of compliance options (not including PINs) for responding to breaches of animal welfare under the ACPA is comprehensive.</p>
	<p>Qu. 17 PINs should be introduced as a compliance option under the ACPA for clearly defined, low range animal welfare offences.</p>	<p>AgForce strongly disagrees that PINs should be introduced as a compliance option under the ACPA for clearly defined, low range animal welfare offences.</p> <p>AgForce cannot consider this proposed offence without a thorough understanding of what “low range animal welfare offences” are, and who or what would have the power to execute a PIN.</p> <p>AgForce expects further consultation to understand the objectives the proposal would look to achieve and a thorough understanding of how introducing PINs as a compliance option under the Act will lead to improved animal welfare outcomes.</p>

<p>12. Orders relating to animal welfare offences</p>	<p>Qu. 18 The introduction of a provision that would allow a court to make a decision to sell or rehome seized animals prior to court matters being finalized is reasonable.</p>	<p>AgForce strongly disagrees with the introduction of a provision that would allow a court to make a decision to sell or rehome seized animals prior to court matters being finalized is reasonable. AgForce considers that if there has been no judgment or verdict made, the animal(s) are still under the ownership of the primary animal carer, enjoying the presumption of innocence, which does not justify the court to decide to sell or rehome seized animals unless the primary carer relinquishes the animals to the seizing entity or agrees to the sale of these animals.</p>
	<p>Qu. 19 The introduction of a provision that would allow a court to impose a bond or security on the owner of seized animals for the care of their animals prior to court matters being finalized is reasonable.</p>	<p>AgForce neither agrees or disagrees with the introduction of a provision that would allow a court to impose a bond or security on the owner of seized animals for the care of their animals prior to court matters being finalized. AgForce supports the introduction of a bond or security provision when dealing with seized companion animals. However, when dealing with livestock production animals the bond or security provision could impose unreasonable costs, particularly when dealing with the consequences of extreme weather conditions, when animals could be seized unreasonably.</p> <p>Due consideration needs to be given in cases where large numbers of livestock are involved, most likely during extreme weather conditions such as droughts or floods and that the provided care of the animals is proportionate to the physiological and nutritional needs of the animals.</p> <p>AgForce advocates that these cases need to be dealt with by government inspectors on a case-by-case basis, and not by non-government organisations. Government inspectors are better equipped to handle livestock cases to determine the best way forward for those animals to be seized.</p> <p>AgForce would very much like to collaborate with the Department to consider the introduction of such a provision and to formulate appropriate metrics to tackle the problem without creating precedents and undesirable side-effects.</p>

<p>13. Establishing appropriate penalties</p>	<p>Qu. 20 The maximum penalties for animal welfare offences under the ACPA are appropriate.</p>	<p>AgForce strongly agrees that the maximum penalties for animal welfare offences under the ACPA are appropriate.</p> <p>Whilst AgForce strongly agrees that the maximum penalties prescribed under the Act are appropriate, it is questioned why the financial penalties in Queensland legislation are ten (10) times higher than any other State and Territory, which appears disproportionate and should warrant further justification.</p> <p>However, the penalties under the Act have been prescribed for some time, and with courts holding the decision on what penalty is to apply to any particular offence committed, AgForce is unaware of any circumstance in the past where a court has ruled that the maximum penalty was to apply. This could become of increasing concern and opposition if in coming years more maximum penalties are ruled by court.</p> <p>AgForce recommends that a review of how the penalties are working be undertaken in three (3) years' time.</p> <p>AgForce also recommends that further consultation occurs to provide an improved understanding of what the maximum penalty unit could be if PINs were created as a new provision (<i>refer Qu. 17</i>).</p>
	<p>Additional queries outside of the questions posed in the Discussion paper</p>	<p>Submission</p>
	<p>Chapter 3, Part 5</p> <p>AgForce considered that amendment is required to Division 3 <i>Baits or harmful substances</i>, Section 36 Prohibitions</p>	<p>(1) A person must not, with the intention of injuring or killing an animal, administer to, or feed, the animal a substance the person knows is harmful or poisonous to the animal. Maximum penalty—300 penalty units or 1 year's imprisonment. Note— If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 209A, to have also committed the offence.</p> <p>(2) However, subsection (1) does not apply to a person authorized to administer or feed the substance to the animal under the Health Act 1937. Note— See, for example, the Health (Drugs and Poisons) Regulation 1996.</p> <p>(3) A person must not, with the intention of injuring or killing any animal, lay a bait or a substance that is harmful or poisonous to any animal. Maximum penalty—300 penalty units or 1 year's imprisonment. Note— If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 209A, to have also committed the offence.</p>

		<p>(4) In this section— lay includes deposit, distribute, leave and throw.</p> <p>AgForce considered that similar to the exemption prescribed in (2) above, that a similar exemption should apply to (3) where a person is authorized under the <i>Health Act 1937</i> to lay a bait or substance, and where “lay” is defined as “deposit, distribute, leave and throw”.</p> <p>Furthermore, AgForce recommends that consideration be given to additional clauses to clearly ensure that 36 (3) does not apply to persons approved to manage vertebrate pests as per Medicines and Poisons (Pest Management) Regulation 2021; nor should it apply to a primary producer, contractor or land holder carrying out pest control activity to control rodents, invasive molluscs, pest birds and other pest animals.</p> <p>AgForce also recognises that the <i>Health Act 1937</i> will be superseded by the <i>Medicines and Poisons Act 2019</i> from 1 September 2021 https://www.health.qld.gov.au/clinical-practice/guidelines-procedures/medicines/medicines-poisons-act</p>
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