

Review of the *Animal Welfare Act 2002*



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Summary Report on the Public Forums

June 2020



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EXECUTIVE SUMMARY

Between November 2019 and February 2020, the independent Panel responsible for the Review of the *Animal Welfare Act 2002 (WA)* (Act) hosted four public forums to seek stakeholder input on matters of importance to the operation and effectiveness of the Act. The forums took place in Broome, Karratha, Katanning and Perth. They were attended by more than 150 participants representing various stakeholder groups. The topics covered at each forum varied somewhat, according to specific regional concerns and the discussion threads that developed.

Themes discussed at the forums can be broadly summarised as follows:

- A more comprehensive approach to the definition of 'harm' in the Act.
- A more proactive legislative model, promoting animal welfare based on the 'duty of care'-concept.
- 'Duty of care' should be considered in context. The species, breed and use of an animal affect what it needs for good welfare.
- Seasonal conditions and emergency situations should be taken into account when considering the responsibility of the owner/carer of an animal.
- There is a lack of inspectors, particularly in regional areas.
- Inspectors do not always have the training or experience to be able to enforce the Act in certain regional areas or animal sectors. Related to this, the Royal Society for the Prevention of Cruelty to Animals WA (RSPCA) should not be authorised to enforce the Act in the livestock sector.
- Inspectors should be able to delegate powers to rangers or other officers in an urgent situation.
- Support for the creation of an independent office for prosecutions under the Act; some considered that this office should also be responsible for animal welfare inspection.
- There were mixed views on the 'powers of entry' of inspectors, and whether unannounced 'on the spot' inspections were appropriate to check compliance. Views were expressed that this should depend on the level of training and experience of the inspector.
- Inspectors should be able to enter a property without notice in the situation where an animal welfare offence had been previously committed.
- Inspectors should have the power to issue infringement notices.
- Inspectors should approach their duties with more emphasis on education and less on punishment, and improved relationships between stakeholders and regulators.

The Panel appreciated participants' interest and engagement in relation to animal welfare, and confirmed that all points discussed at the forums would be considered in the review of the Act.

These discussions highlighted the complexity of animal welfare regulation. As it was not possible in the time available to cover all issues relevant to the review, the Panel encouraged all participants to make a written submission or comment, setting out their concerns and opinions in more detail

Stakeholders demonstrated serious engagement on the topic of animal welfare regulation and there was general support for a robust review and meaningful changes to the Act.

INTRODUCTION

This report summarises the discussion that took place at public forums undertaken to support the review of the *Animal Welfare Act 2002 (WA)* (Act). It includes an overview of the public forum process, and the themes, concerns and amendments to the Act raised by the participants at the forums. This report does not aim to capture all opinions or issues expressed by stakeholders but, rather, to identify common themes. Some of these themes relate directly to the Act, while others are more relevant to the subsidiary legislation, policies or standards. The importance of using plain, clear language in legislation was emphasised.

BACKGROUND AND METHODS

In May 2019, the Hon Alannah MacTiernan MLC, Minister for Regional Development, Agriculture and Food, appointed an independent Panel to review the Act. The Terms of Reference of the review were to consider the operation and effectiveness of the Act, including whether it promotes contemporary best practice and is 'fit for purpose' in the context of animal welfare regulation in Western Australia (WA). The Panel will report to Government by 28 August 2020, including recommendations on amendments to the Act and related matters. To support the review, the Panel carried out a public consultation process, including four public forums and a call for written submissions. Matters addressed in written submissions provided to the Panel are the subject of a separate report.

The Panel hosted four public forums: in Broome (26 November 2019), Karratha (28 November 2019), Katanning (31 January 2020) and Perth (3 February 2020). The public was advised of the stakeholder forums via a Ministerial media statement¹, the webpage² of the Department of Primary Industries and Regional Development (DPIRD), social media and an e-mail to a list of stakeholders based on DPIRD records and individuals who registered their interest in the review. An agenda outlining the key topics for discussion was provided to participants at the forums ([Appendix 1](#)).

Each forum was attended by all Panel members, with administrative support from DPIRD. In total, more than 150 people attended the four forums. The forums took place over three hours. The Panel Chair gave an overview of the review. Panel members presented background and key issues in relation to each agenda item, and stakeholders were invited to voice their opinions. There was also an opportunity for general discussion and open questions to the Panel. The forums were designed to promote open discussion guided by the Panel. There was no intention to cover all key issues, industry sectors, or sections of the Act. As would be expected, the topics that were covered varied, reflecting the issues of greatest interest in the region where the forum took place. Many but not all of the issues discussed at forums were also raised in written submissions. The Panel's records were used to compile this summary report.

¹ <https://www.mediastatements.wa.gov.au/Pages/McGowan/2019/11/Animal-welfare-legislation-the-focus-at-upcoming-public-forums.aspx>

² <https://www.agric.wa.gov.au/animalwelfare/review-animal-welfare-act-2002>

SUMMARY OF THEMES DISCUSSED AT PUBLIC FORUMS

Definition of 'Animal' in the Act

There was concern among some stakeholders that the Act does not cover fish, molluscs and crustaceans, and that this causes inconsistencies in requirements for scientific research involving these species in Western Australia (WA), compared to interstate and international requirements. It was noted that a decision is needed on whether the welfare of these species should be covered in the Act, or in the *Fish Resources Management Act 1994*.

Definition of 'Harm' in the Act and the Concept of 'Duty of Care'

Stakeholders supported a more inclusive approach to the definition of 'harm' in the Act. As explained by the Panel, the current definition of 'harm' under the Act does not encourage a duty to promote the welfare of an animal (referred to as a 'duty of care') and therefore limits the legislation to a reactive, 'prevention of cruelty' model, which may not align with contemporary understanding or expectations of what comprises 'good animal welfare'. Stakeholders were generally supportive of expanding the definition of harm to include concepts such as psychological neglect, and freedom to express natural or innate behaviours, considering that this would promote a more proactive approach to animal welfare.

Some stakeholders commented that the species, breed and use of animals have a major bearing on their welfare needs. Seasonal conditions and emergency situations should be taken into account when considering the responsibility of the owner/carer of an animal.

The view was expressed that changes to the definition of 'harm' should not place a disproportionate emphasis on minor offences.

Responsibility for Inspection and Prosecution; the Issue of Resources

It was noted that with so many different agencies having responsibilities under the Act, there is some confusion as to which agency should be contacted to report a welfare issue, or 'where to go' for animal welfare advice. Some stakeholders supported the appointment of inspectors primarily from the Department of Primary Industries and Regional Development (DPIRD) and the Royal Society for the Prevention of Cruelty to Animals WA (RSPCA). There were no specific views on inspectors employed by other agencies.

There were many comments about the lack of inspectors in regional areas, and some stakeholders noted that many local governments do not have the resources to nominate animal welfare inspectors. There was support for a process whereby inspectors can delegate powers of inspection to rangers or other officers in an emergency, when an appointed inspector cannot attend an incident without delay. The use of video technology to enable inspectors to operate remotely was also supported.

Many stakeholders agreed that prosecution under the Act should be managed by an independent body, to overcome the problem of 'regulatory capture'. Some stakeholders considered that inspection, as well as prosecution, should be managed by an independent body.

Inspector Competencies and Distinct Approaches to livestock / other animals

There were some significant concerns about the competencies of inspectors in the enforcement of the Act. Some stakeholders commented that RSPCA inspectors do not have appropriate training or experience to



enable them to regulate the livestock industry, and recommended removing the RSPCA from this role. Stakeholders felt that many of the current and proposed new powers of inspectors are only acceptable if the inspectors are trained in and experienced with a particular animal sector, and familiar with local conditions. Stakeholders expressed willingness to be involved in the training of inspectors and felt that this would encourage better relationships with regulators and encourage an approach based more on education than punishment. Some stakeholders supported a minimum training standard for inspectors.

Powers of Entry of Inspectors

The Panel explained that, based on the Act as it stands, inspectors may only enter a property with permission of the owner or, if permission is withheld, with a warrant. This limits their ability to address urgent animal welfare issues; carry out proactive/preventative inspections, or carry out follow up inspections in relation to prohibition orders. Some stakeholders supported increasing inspectors' powers of entry so that they could enter a property without prior notice and carry out an 'on the spot' inspection, providing the inspector had sufficient training and experience. The need for consistency in the application of inspectors' powers (e.g. between the regions and metropolitan areas) was agreed.

On the other hand, some stakeholders opposed the entry of inspectors to a property without notice, due to biosecurity concerns and the risk of unfairly burdening producers who were subject to malicious animal welfare complaints. Views on an appropriate notice period were varied, ranging from 1-2 hours to an undefined period. There was support for inspectors being able to enter a property without notice where an animal welfare offence had previously been committed.

Definition of 'Person in Charge' in the Act

Stakeholders discussed the practical challenges of identifying the 'person in charge' under the Act, particularly in large pastoral properties with complex management/ownership structures. There was support for the Act incorporating the concept of 'chain of responsibility', where all individuals involved in a supply chain (e.g. sale and transport) are legally responsible for complying with animal welfare requirements.

Prosecution and penalties

There were no comments on whether offences under the Act should remain 'simple offences'. However, some stakeholders considered that more serious offences should be prosecuted in a different manner, as should offences committed by businesses, in comparison with individual owners. Stakeholders supported giving inspectors the power to issue infringement notices, providing there are appropriate appeal provisions. Stakeholders supported the use of prohibition orders where people are convicted of 'animal hoarding'³.

CONCLUSION

Stakeholders demonstrated serious engagement on the topic of animal welfare regulation and there was general support for a robust review and meaningful changes to the *Animal Welfare Act 2002*.

³ Animal hoarding - a pathological human behaviour that involves a compulsive need to obtain and control animals, coupled with a failure to recognize their suffering. G J Patronek, Tufts School of Veterinary Medicine.

APPENDIX 1 – EXAMPLE OF AGENDA OF PUBLIC FORUM

Animal Welfare Act 2002
Independent Review Panel

Public Forum Agenda

<u>Broome</u>	<u>Karratha</u>
Date: 26 November 2019	Date: 28 November 2019
Time: 2 pm to 5 pm	Time: 2 pm to 5 pm
Venue: Mangrove Hotel - Durack room	Venue: Karratha International Hotel - Superior Garden room

Panel Members: Linda Black (Chair) Dominique Blache, Di Evans, Catherine Marriott, David Marshall

2:00 pm Introduction by the Chair

2:15 pm Current impediments to effectiveness of the *Animal Welfare Act 2002*

2:30 pm Proposed increases of powers of inspectors and other powers under the *Animal Welfare Act 2002*

2:45 pm Some specific issues raised with the Panel so far

3:00 pm Streamlining of processes

3:15 pm Meaning of harm and duty of care provisions

3:30 pm Issues relating to codes of practice

3:45 pm Practical issues arising from definitions

4:00 pm Current structure vs ideas for new structure

4:15 pm Open discussion, question and answer session

5:00 pm Summary and close

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Animal Welfare Act 2002 Independent Review Panel

Public Forum Agenda

Katanning

Date: 31 January 2020

Time: 2 pm to 5 pm

Venue: New Lodge Motel –
Function room

Perth

Date: 3 February 2020

Time: 2 pm to 5 pm

Venue: State Library of
Western Australia

Panel Members: Linda Black (Chair), Dominique Blache, Di Evans,
Catherine Marriot, David Marshall.

- 2:00 pm** Introduction by the Chair
- 2:15 pm** Current impediments to effectiveness of the *Animal Welfare Act 2002*
- 2:30 pm** Proposed increases of powers of inspectors and other powers under the *Animal Welfare Act 2002*
- 2:45 pm** Some specific issues raised with the Panel so far
- 3:00 pm** Streamlining of processes
- 3:15 pm** Meaning of harm and duty of care provisions
- 3:30 pm** Issues relating to codes of practice
- 3:45 pm** Practical issues arising from definitions
- 4:00 pm** Current structure vs ideas for new structure
- 4:15 pm** Open discussion, question and answer session
- 5:00 pm** Summary and close

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