

TASMANIAN ASSOCIATION OF COMMUNITY LEGAL CENTRES

Animal Welfare Community Legal Centre • Environmental Defenders Office • Hobart
Community Legal Service • Launceston Community Legal Centre • North West Community
Legal Centre • Tenants' Union • Women's Legal Service • Worker Assist

16 November 2012

Executive Officer
Animal Welfare Advisory Committee
Department of Primary Industries, Parks, Water and Environment
131 St Johns Avenue
New Town TAS 7008

Dear Executive Officer,

Re: Review of the *Animal Welfare Act 1993 (Tas)*

The Tasmanian Association of Community Legal Centres (TACLCL) welcomes the release of the review of the *Animal Welfare Act 1993 (Tas)* and the opportunity to respond.

TACLCL is an incorporated network representing the eight community legal centres in Tasmania. Our member centres provide accessible advice, representation and legal education services to the community, and advocate for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

TACLCL strongly believes in an *Animal Welfare Act 1993 (Tas)* (the Act) that promotes the welfare of animals and seeks to deter cruelty to animals. In our opinion a strengthened Act will play a constructive role in reducing the strong association between cruelty to animals and the infliction of violence against humans.¹ We therefore urge the adoption of legally enforceable standards including the banning of inherently cruel practices such as sow stalls and battery hen farming.

With regards to the recommendations contained in the Discussion Paper we have focused on those areas likely to lead to an Act capable of monitoring the welfare of animals as well as better investigating, prosecuting and sentencing offenders of animal cruelty.

¹ See for example, Mark Dadds, Cynthia Turner & J McAloon, Developmental Links between Cruelty to Animals and Human Violence (2002) 35 *Australian and New Zealand Journal of Criminology* 363.

Offences

TACLCLC endorses the recommendation of the Animal Welfare Community Legal Centre that 'management' under the Act be defined. It is not appropriate that the meaning remains unclear and it is important that an interpretation be provided that removes loopholes and reflects community standards. We agree that the proposed reform should include both transportation and confinement as well as including both acts and omissions. We agree with the Animal Welfare Community Legal Centre that section 19(3) of the Western Australian *Animal Welfare Act 2002* provides a good definition that should be adopted.

We also concur with the Discussion Papers recommendation that the Act should be amended to clarify that 'pain and suffering' includes distress and mental and physical suffering.

Further, we endorse the recommendations of the Discussion Paper that it should be an offence to intentionally kill an animal or attempt to kill an animal using an inappropriate method. It is agreed that an inappropriate method of killing is one that is not in accordance with an approved Animal Welfare Guideline and carries a foreseeable risk of causing pain or suffering and the use of which is not justified in the circumstances.

Investigation and Prosecution

With regards to the investigation and prosecution powers of the Act we endorse the finding of the Discussion Paper that to be effective in protecting animals from cruelty the Act must be enforceable in practice. We endorse the recommendations contained within this part of the Discussion Paper including clarifying 'dwelling' and amending the Act to enable authorised officers to obtain a warrant to enter, search and inspect premises. We also agree that the Act should be amended to clarify that compliance or non-compliance with a guideline approved under the Act is admissible in proceedings for a cruelty offence.

Providing for the welfare of animals

We endorse the Discussion Papers view that monitoring the welfare of animals kept for commercial purposes, acting to assist animals in trouble and providing for the welfare of animals involved in an offence yet to be dealt with by the courts are measures just as important as improved investigation, prosecution and sentencing powers. We therefore welcome the recommendations of the Discussion Paper that the definition of 'animals kept for commercial purposes' be broadened to include animals kept for the purposes of breeding animals for sale. We welcome the recommendation that search powers be broadened to allow officers to inspect dwellings where it is believed that animals are kept for commercial purposes and to allow officers to enter premises other than a dwelling to take possession of an animal or to provide veterinary or other appropriate treatment to an animal. We also endorse the recommendation to amend the Act to provide for a magistrate to order the seizure of an animal if satisfied that the animal's welfare is at risk.

However, with respect to costs we do not believe the Discussion Paper goes far enough is merely recommending that a bond be paid for the provision of 'care and maintenance of the animal or pay any identified costs for the care and maintenance of the animal'. We endorse the recommendation of the Animal Welfare Community Legal Centre that any amendment be broadly defined to encapsulate *all* costs associated with the seizure of animals and should not be limited to care and maintenance of the animal.

Penalties

Whilst amendments to the Act in 2008 significantly increased the maximum penalties able to be imposed, including terms of imprisonment for particularly egregious acts, it is clear that inadequate sentences remain the norm. There are numerous examples from all areas of Tasmania of sentences being imposed that do not meet community standards:

- A man who tore the heads off two kittens outside a suburban home in Hobart was sentenced to a wholly suspended three-month jail term and 49 hours of community service.²
- A woman who failed to take her seriously injured Kelpie Cross to a vet was fined \$300 and barred for 5 years from acquiring any more animals. However she was allowed to keep her horses, dog and cat. The Kelpie Cross had to be put down after RSPCA inspectors determined that it was in too much pain to be spared.³
- A dairy farmer who cut the tails off more than 100 cattle with an angle grinder was fined the equivalent of \$53 per cow.⁴
- A sheep farmer who neglected 1,000 sheep, 150 of which starved to death and the others 'emaciated, near death' received a one-month wholly suspended sentence with the magistrate finding he 'didn't mean to do it' and 'didn't know what he should be feeding them'.⁵
- A farmer was given a 30 day wholly suspended sentence after being convicted of cruelty offences against groups of cattle and sheep, a number of which were starved to death and severely neglected. He was arrested again on further charges of cruelty and aggravated cruelty within a fortnight, and the original 30 day sentence was reimposed with an additional 28 days added, all wholly suspended.⁶

Continued reluctance by the judiciary to impose sentences for animal cruelty in line with community expectations brings the sentencing system into disrepute. It

² Zara Dawtrey, Anger at kitten killer penalty, *The Mercury*, 3 July 2012.

³ Zara Dawtrey, Cruelty brings five-year ban, *The Mercury*, 23 June 2012.

⁴ Angle Grinder and Knife Used to Cut Cows' Tails, *The Advocate*, 8 March 2011.

⁵ Gavin Lower, Farming Found Guilty Over Starving Sheep, *The Mercury*, 19 October 2006.

⁶ Heather Low Choy, Farmer in Court Over Dead and Dying Cattle, *The Mercury*, 14 December 2006.

may also result in violent offences being perpetrated against other animals and/or humans. We endorse the finding of the Animal Welfare Community Legal Centre that the penalties able to be imposed are adequate but that a judicial education campaign should be carried out.

We thank you for your time in considering this submission.

Please do not hesitate to contact us if you have any queries or would like to discuss our submission further.

Yours Faithfully,

Benedict Bartl
Policy Officer
Tasmanian Association of Community Legal Centres
