



Animal Welfare Bill Consultation
Business Development Unit
Transport Canberra and City Services Directorate
Via email: communityengagement@act.gov.au

To whom it may concern

We welcome the opportunity to provide a submission to the consultation on the exposure draft of the Animal Welfare Legislation Amendment Bill 2019 (the Draft Bill).

The Human Rights Commission supports amendments to ensure that the ACT has a best practice, contemporary and effective regulatory system that protects and promotes the welfare of animals.

There are some aspects to the Draft Bill that we view as engaging and limiting human rights under the *Human Rights Act 2004* (HRA) and which require further consideration and redrafting in order to be compatible with the HRA.

These concerns primarily relate to the framing of some of the major offences and whether they are appropriately defined and limited in scope. There are also specific concerns about the proposed changes to the regulation of support animals, which may weaken protections against disability discrimination, including amendments recently implemented by the Government in the *Discrimination Amendment Act 2016*.

This submission briefly outlines the relevant rights that are engaged and limited by the Draft Bill and indicates measures that may be required to ensure that the limitations are reasonable and proportionate to serve the aim of a best practice animal welfare system.

Right to presumption of innocence - s 22(1) HRA and issues of framing offences

New s 6B of the Draft Bill implements a general duty to provide appropriate care to an animal. This duty is framed very broadly and attracts a significant penalty for a breach, but has a comparatively narrow defence which places the legal burden on the accused to prove that they took reasonable steps to provide the care.

In the current *Animal Welfare Act 1992* (the Act) the offence is framed as a duty to take reasonable steps to provide appropriate care, with the legal burden on the prosecution to prove a failure.

Given the broad definition, the change to reverse the legal burden seems onerous given that in some instances there may be differing views about what is suitable for the needs of the animal having regard to species, environment, and circumstances of the animal. This would presumably require significant expert evidence and legal expense to settle an objective position on what is

appropriate. Placing the burden on the defendant to produce that evidence limits the fundamental principle of the presumption of innocence in s 22(1) of the HRA. The explanatory statement for the Draft Bill should clearly identify this limitation and outline the reasons why it is considered reasonable and justified in accordance with the criteria in s 28 HRA. We consider that because the offence carries a penalty of imprisonment, and involves matters which the defendant cannot easily prove as essential elements of the offence, this provision is likely to be incompatible with the presumption of innocence. We suggest that the burden, if it is to be reversed, is an evidential burden only, which would not be as onerous on the defendant and more readily established.

It is also not clear if reasonable steps takes into account the circumstances of the person giving care to the animal. For example if a person becomes disabled, homeless or is subjected to domestic violence and is no longer able to give the animal appropriate exercise will they become liable to prosecution on commencement of these change. If they can't afford a dog walker, or can't arrange a carer immediately would 'reasonable steps' encompass having a reasonable excuse for not being able to comply? If a person becomes unable to pay for preventative veterinary treatment and so seeks to have an animal euthanised, will they be liable to prosecution?

Although the intention of the Draft Bill is to promote a high standard of care for animals in the community, there is a risk that the requirements of the new law, with its reversed burden, will have the effect of indirect discrimination on vulnerable groups who rely on animals for social support including older people, people with mental illnesses and homeless people.

Removing the main offence in s 6(1B) and retaining the strict liability offence in s 6B(4) where a person has failed to comply with a notice within a certain reasonable period of time, would be a less restrictive way of enforcing this duty of care.

Further the specific offences in s 6C-6G seem to overlap with the head offence in s 6B. This may result in potentially arbitrary choices of charge available for the same set of facts resulting in a defence available in one instance (i.e. under s 6B) but not under another (s 6D).

The 6F abandoning provision, is not temporally delimited / or sufficiently targeted to the intention of the person in charge which supposedly gives rise to criminal responsibility. Abandonment supposes leaving for an extended time, with intention to relinquish control or possession. This provision could conceivably capture leaving a dog tied up for 20 minutes out the front of the shops, as the person in charge could not say that another person is able to care for the dog.

The laying poison offence in section 12A seems very broad. The s 12A in the current Act requires intent to be established presumably on the basis that poisons which might harm an animal could be argued to have a range of other legitimate uses. As an example some person may lay rat baits in their yard that could potentially kill small native reptiles or birds. Even if intent was an element, presumably some poisons can be legitimately laid for a purpose other than killing animals even if that is a possible outcome. There is no reasonable excuse defence.

New section 17 also contains a legal burden, with the defendant required to demonstrate that they did not or could not have reasonably known that violent animal activity was occurring in a place that they attended. Here the legal onus on the defendant may be more appropriate as this

could be something that would be uniquely known to the defendant, but the question remains as to how the defendant will be able to prove these facts to establish a defence. How this will work and why the limitation is justified will need to be carefully addressed in the explanatory statement.

It is unclear whether amended s 62 requires an exception for fishing, which would seem to be covered by the definition of trapping an animal.

Right to privacy – s 12 HRA

New part 3A relating to pet business licensing and new section 24Q engage the right to privacy by requiring all pet buyers and people involved in running pet businesses to provide personal information including their name, address and contact details. The justification for this limitation, particularly for private buyers, should be outlined in the explanatory statement.

Right to equality, non-discrimination and equal recognition under law – s 8

The changes in the Bill to the regulation of assistance animals may limit the right to non-discrimination on the grounds of disability and to equal recognition before the law. We are concerned the new scheme is not responsive to the diverse needs of people with disability, and if not properly designed and implemented may act as a significant barrier for people with disability from being supported to participate in our community.

The definition of assistance animal departs from the reform to the *Discrimination Act 1991* which commenced on 3 April 2017 that broadened the definition of assistance animals to cover any animal that is trained (whether accredited or not) to help alleviate the effects of a person's disability. This meant that owner-trained support animals would be afforded the same legal recognition, as long as they were trained to meet a reasonable standard of behaviour and hygiene.

Although the Draft Bill no longer specifically excludes 'therapy dogs' from the definition of assistance animal, as was the case in an earlier draft, it is not clear whether animals trained to alleviate the effects of mental or social disorders will be able to be recognised and accredited, without the standards being developed by the Minister for review as part of this consultation.

This has the potential to narrow the scope of support animals recognised by law and thereby limit the rights to equality for people with particular classes of disability which do not arise from physical impairments. The new law seems to allow for owner trained animals e.g. through mindDog, the organisation that campaigned for the changes in 2016/17, which will then need to be assessed by a registered assessor, but again it is not clear how this process will work without the standard having been developed for review at the time of the consultation.

Potentially it will also jeopardise the recognition of interstate accreditations as 'corresponding law' for the purposes of the proposed ACT system only relates to "a law of a State about the registration of assistance animal trainers" rather than accreditation of assistance animals generally. It may be better to align with the definition of assistance animal under the national *Disability Discrimination Act 1992*. We understand that some states have no formal accreditation scheme and therefore people from those states who are reliant on assistance animals won't be able to display identification or accreditation documents.

The requirement to have the animal accredited by a registered training organisation may limit access to support animals in jurisdictions such as ACT where I understand there is no established local training provider, or where the training standard is not determined by the Minister (as the Minister may, but does not have to, determine an accreditation standard) or not nationally consistent. There is no transitional provision that deem animals already providing supports to be accredited.

Requirement for registration of assistance animals may also place an unjustifiable burden on those who are not necessarily most able to navigate that process. For example new s 97 requires the owner of an assistance animal to apply to register the assistance animal. This provision should enable a support person for the owner of an assistance animal to make the application. If not, there should be some positive duty on the registrar to support the applicant through that process and we recommend that no fee is set for this service. Failure to provide supports would be inconsistent with the policy commitment of the Government to enhance the rights of people with disability in the justice system through the soon to be released disability justice strategy.

Further, the new offence of being in a public place with more than 3 dogs in clause 141, may have a discriminatory effect on people involved in the animal care industry, for example dog walkers, by criminalising their profession (employment status). There is no defence of taking reasonable steps to maintain proper control of the dogs or similar for this offence. It is not clear that criminalising a person based on an arbitrary number of dogs in their care in a public place is the least restrictive way to address the stated purpose of reducing dog attacks and improving animal welfare.

We are happy to provide further input into the development of the Draft Bill to address these human rights concerns, and particularly the standards which will need to be carefully developed to support the new assistance animals scheme if it is to better support people with a disability. The contact in the Commission is Alex Jorgensen who can be contacted on 6207 0534 or at alex.jorgensen@act.gov.au

Yours sincerely



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