



Animal Defenders Office
Using the law to protect animals

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The Animal Defenders Office Inc. is accredited by the National Association of Community Legal Centres.

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Dear Sir/Madam

Submission to the WA Department of Justice on the consultation draft of the Animal Welfare and Trespass Legislation Amendment Bill 2020

Thank you for the opportunity to provide a submission on the consultation draft of the Animal Welfare and Trespass Legislation Amendment Bill 2020 ("the Bill").

About the Animal Defenders Office

The Animal Defenders Office ("ADO") is a nationally accredited not-for-profit community legal centre that specialises in animal law. The ADO is run by volunteer lawyers, law students and other professionals. It offers information and representation for individuals and groups wishing to take legal action to protect animals. The ADO also produces information to raise community awareness about animal protection issues and works to advance animal interests through law reform.

The ADO is a member of Community Legal Centres Australia, the peak body representing community legal centres in Australia.¹

Further information about the ADO can be found at www.ado.org.au.

GENERAL COMMENTS

The Bill reportedly seeks to deter trespass by animal activists on farms, abattoirs and knackeries while also addressing inadequacies of official mechanisms for monitoring animal welfare in these facilities.²

The ADO welcomes measures that would address community concerns about the treatment of animals by industry.

However, the ADO submits that the proposed new trespass provisions and misconduct restraining orders targeting animal activists are not supported by evidence and are both unnecessary and disproportionate.

¹ Formerly known as the National Association of Community Legal Centres Inc: <http://www.naclc.org.au/>.

² WA Department of Justice, 'Background', *Farm Trespass and Animal Welfare Bill Consultation*, <https://www.wa.gov.au/organisation/departement-of-justice/farm-trespass-and-animal-welfare-bill-consultation>.

The ADO therefore makes the following recommendations in our submission:

Recommendation 1: That any proposal to enhance inspector powers under the Animal Welfare Act be combined with a commitment to fund the appointment of additional inspectors to ensure all relevant commercial animal enterprises in WA are inspected at frequent intervals.

Recommendation 2: That designated inspectors' proposed entry powers be used in relation to premises at which any of the activities listed in section 18B(2) of the Animal Welfare Act are undertaken.

Recommendation 3: That the Bill be expanded to enable infringement notices to be issued by both general and designated inspectors.

Recommendation 4: That a register of designated inspectors appointed under the Bill be made available on the relevant government department's website.

Recommendation 5: That RSPCA general inspectors should be able to be appointed as designated inspectors to reduce the perceived conflict of interest inherent in the relevant department's role in ensuring compliance with animal welfare laws by the industries the department is committed to protecting and growing.

Recommendation 6: That the Bill be amended to require that the agency responsible for appointing designated inspectors report the inspectors' enforcement activities annually to Parliament, and that this information be included in the agency's annual report.

Recommendation 7: That the proposed 'aggravated' trespass offence in section 70A(2A) of The Criminal Code be removed from the Bill.

Recommendation 8: That the Bill amend the Animal Welfare Act by increasing existing penalties for animal cruelty offences, and by creating a distinct 'aggravated animal cruelty offence' for cases where the animal is seriously injured or dies as a result of an act or acts of animal cruelty.

Recommendation 9: That, if the proposed offence of aggravated trespass on animal production facilities remains in the Bill, the Bill be amended to include partial or full defences for the offence including in cases of necessity or public interest.

Recommendation 10: That the proposed minimum sentence in section 70A(2B) of The Criminal Code be removed from the Bill.

Recommendation 11: That the proposed amendments to Part 3 of the Restraining Orders Act be removed from the Bill.

Recommendation 12: That independently monitored CCTV be installed in animal enterprises as a way of deterring trespass by persons wishing to reveal the conditions of animals confined in those enterprises.

DETAILED COMMENTS

PART 2—ANIMAL WELFARE ACT 2002 AMENDED

The proposed amendments to the *Animal Welfare Act 2002* (WA) (“the Animal Welfare Act”) would create a new class of inspector, being a ‘designated inspector’.³ We note only ‘a general inspector who is a member of the staff of the Department’ could be made a designated inspector.⁴ The new type of inspector would be given an additional power of entry.⁵ The Bill proposes to allow designated inspectors to enter any of the specified places ‘at any time’.⁶

The WA Attorney General John Quigley referred to these measures as “enhanc[ing] inspection powers in order to ensure community confidence in the welfare of animals in abattoirs, knackeries and other relevant facilities.”⁷

The ADO welcomes any measures that would address community concerns about the way animals are treated by animal industries.

However, the ADO has several concerns about the proposed measures and submits that they will not achieve their objective of increased transparency and effective enforcement unless additional legislative and policy measures are adopted.

Number of inspectors

The ADO notes that rather than appointing new designated inspectors, the CEO of the relevant agency would only be able to designate inspectors from the existing pool of general inspectors already appointed from the agency.⁸

The ADO is concerned that there would not be enough of the (re)designated inspectors to monitor animal enterprises’ compliance with the Animal Welfare Act to a point that would enhance the sector’s transparency and accountability in the eyes of the public. Empowering inspectors to monitor compliance with the Animal Welfare Act without a warrant is of no use if the inspectorate does not have enough inspectors or time to exercise these powers.

This is an issue in other jurisdictions where animal welfare inspectors are already empowered to inspect animal enterprises without a warrant. For example, inspectors appointed under the *Prevention of Cruelty to Animals Act 1979* (NSW) are empowered to inspect and examine land used for certain commercial purposes related to animals (s24G). The inspector does not require the occupier’s consent or a search warrant. Despite this, the RSPCA and other animal welfare inspectors within NSW have inspected relevant commercial facilities at an alarmingly low rate, far too low to ensure compliance or to boost public confidence that the Act is being adequately enforced.

³ Animal Welfare and Trespass Legislation Amendment Bill 2020, sections 35A (page 10, lines 7-31), and 37(1)(aa) (page 12, lines 16-23).

⁴ Animal Welfare and Trespass Legislation Amendment Bill 2020, section 35A(1) (page 10, lines 8-10).

⁵ Ibid, section 38(1A) (page 14, lines 7-12).

⁶ Ibid. The proposed power would allow designated inspectors to enter an ‘intensive production place’, an abattoir or a knackery.

⁷ ‘Farm trespass and animal welfare Bill out for public comment’, Media Release, WA Attorney General’s Office, 29 February 2020.

⁸ Animal Welfare and Trespass Legislation Amendment Bill 2020, section 35A(1) (page 10, lines 8-10).

In recent public hearings during the NSW Legislative Council Select Committee's Inquiry into Animal Cruelty Laws in New South Wales, RSPCA NSW was asked by the Committee why its inspection rates of these facilities were so low:⁹

On page 36 of your submission you outline the inspections conducted on animal trades in 2018-2019 and from the animal agriculture industry it says you inspected one poultry farm and one dairy farm. Given there are approximately 15,000 animal agriculture operations in New South Wales do you consider that to be an acceptable level of oversight to be able to protect the animals used in these industries?

The CEO of RSPCA NSW, Mr Coleman, responded by saying:

If it is a question around the level of resourcing I am compelled to say that we are under-resourced.

The ADO submits that these same issues could present themselves in WA.

In the *Report of the WA Legislative Council Select Committee into the Operations of the Royal Society for the Prevention of Cruelty to Animals Western Australia (Inc)* released in May 2016 ("the 2016 WA Parliamentary Committee Report"), the Committee members noted both the significant under-resourcing of relevant agencies with responsibility for the Animal Welfare Act, and the increase in the number of animal cruelty complaints exacerbating the under-resourcing.¹⁰

The ADO submits that it is not enough to provide existing inspectors with additional powers that they would have neither the time nor the capacity to exercise. To have a chance at achieving the objectives of the proposed amendments, the new inspection regime would require a guarantee from the WA Government of a significant injection of funding into animal welfare enforcement.

Recommendation 1: The ADO recommends that any proposal to enhance inspector powers under the Animal Welfare Act be combined with a commitment to fund the appointment of additional inspectors to ensure all relevant commercial animal enterprises in WA are inspected at frequent intervals.

Undue limitations on proposed inspection powers

Places that can be inspected

Under the Bill the proposed powers for designated inspectors would apply only in relation to abattoirs, knackereries and intensive production facilities (s37(1)(aa)). This means the powers are limited to inspections relating only to the slaughtering of animals and the use of animals in food production facilities.

The ADO is concerned that allowing the proposed powers to be used in relation to such a limited range of animal enterprises unduly restricts the proposed amendments. The potential for animal cruelty in commercial or scientific enterprises is not limited to the production of

⁹ NSW Legislative Council Select Committee on Animal Cruelty Laws in New South Wales, 13 February 2020, page 58.

¹⁰ WA Legislative Council Select Committee into the Operations of the Royal Society for Prevention of Cruelty to Animals Western Australia (Inc), *Report*, May 2016, page 176, para 8.13.

food through slaughter or confinement. Animals are used in a range of commercial and other enterprises. For example, it is not clear (to us) whether the new powers would enable inspections of hatcheries, saleyards, or live export depots or embarkation points.

Other enterprises or production industries involving animals include:

- aquaria/marine parks
- breeding establishments
- circuses
- clothing/fabric
- feedlots
- guard dog firms
- kennels and catteries
- medical research
- pet shops
- petting zoos
- pounds
- racing premises
- riding schools
- rodeos
- shelters
- shows
- wildlife parks
- wildlife commercial processing facilities
- zoos.

The ADO submits that animals could be mistreated within any of these categories of commercial enterprises. Yet none may be covered by the proposed amendments to the Animal Welfare Act contained in the Bill. The ADO submits that narrowing the scope of the proposed designated inspector powers is a grave injustice to animals in facilities that are not covered by the amendments.

The ADO suggests that one way to broaden the scope of the powers is to allow designated inspectors to enter any premises where the activities outlined in section 18B(2) of the Animal Welfare Act are undertaken.

Recommendation 2: The ADO recommends that designated inspectors' proposed entry powers be used in relation to premises at which any of the activities listed in section 18B(2) of the Animal Welfare Act are undertaken.

Enforcement tools

Designated inspectors would also be limited in what they can achieve if the range of compliance measures and enforcement tools under the Animal Welfare Act is not increased.

According to the WA 2016 Parliamentary Committee Report:

The Committee finds that general inspectors appointed under the *Animal Welfare Act 2002* cannot issue infringement notices for prescribed offences considered to be minor, despite provision in the Act for offences to be prescribed in regulations and therefore subject to an infringement notice.

The Committee finds that Part 5, Division 3 of the *Animal Welfare Act 2002* has no effective operation as no regulations have been made to prescribe offences under the Act.¹¹

In response to this finding, the Committee recommended that the relevant government department:

enact regulations that immediately implement Part 5, Division 3 of the *Animal Welfare Act 2002* to enable infringement notices to be issued by general inspectors [and] implements an infringement notice system for prescribed offences.¹²

The Government of the day 'noted' these recommendations and stated they would 'be considered' in the review of the *Animal Welfare Act* and inspector governance.¹³

However, the *Animal Welfare (General) Regulations 2003* (WA) do not appear to have been updated since May 2013.¹⁴

The ADO supports these recommendations and submits that infringement notices should be made available to designated inspectors. The ADO also submits that the relevant department be required to report on the number of notices issued, the offences for which they were issued, and the number and type of animals affected.

<p>Recommendation 3: The ADO recommends that the Bill be expanded to enable infringement notices to be issued by both general and designated inspectors.</p>

Transparency

Publishing information about inspectors

The proposed amendments do not indicate if appropriate information about inspectors appointed under the Bill would be made publicly available.

The WA 2016 Parliamentary Committee Report recommended that:

... details of inspectors appointed under the *Animal Welfare Act 2002* be published in the Western Australian Government Gazette and that the Department of Agriculture and Food maintains a current list of general inspectors on its website.¹⁵

The Government of the day 'noted' this recommendation and stated it would 'be considered as part of inspector governance framework'.¹⁶

The ADO supports this recommendation and submits that there is a general public interest in knowing details about inspectors that have been appointed under the *Animal Welfare Act*. The ADO submits that, in the interests of transparency, a general public register of inspectors should be freely available. The register would not contain personal information about the inspectors. At the very least, however, it should contain the numbers of general

¹¹ Findings 23 and 24 in the Report.

¹² Recommendations 10 and 11 in the Report.

¹³ *Government Response. Recommendations of the Select Committee into the Operations of the Royal Society for the Prevention of Cruelty to Animals Western Australia (Inc)* ("Government Response"), August 2016, page 3.

¹⁴ https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_s9058.html.

¹⁵ Recommendation 5.

¹⁶ *Government Response. Recommendations of the Select Committee into the Operations of the Royal Society for the Prevention of Cruelty to Animals Western Australia (Inc)*, page 2.

and designated inspectors appointed during the year, and the entity from which they were appointed.

Recommendation 4: The ADO recommends that a register of designated inspectors appointed under the Bill be made available on the relevant government department's website.

Conflict of interest

The Department of Primary Industries and Regional Development is responsible for administering the Animal Welfare Act.¹⁷ Its goal is to grow and protect WA's agriculture and food sector.¹⁸

The problem is that there is a perceived, if not actual, conflict between the competing goals of protecting agriculture and food industries, and protecting animals. A large proportion of agriculture and food industries profit from keeping and killing animals as cheaply as possible. Inevitably the interests of these industries would conflict with measures by the Department to protect animals from suffering. The perception of this conflict is inherent in the current administrative and regulatory structure.

For this reason, the ADO submits that designated inspectors should also be appointed from the RSPCA and (if possible) other independent sources. This would go some way to addressing the perceived conflict of interest that is inherent in any animal welfare role the Department carries out in relation to industry.

Recommendation 5: To reduce the perceived conflict of interest inherent in the Department's role in ensuring compliance with animal welfare laws by the industries it is committed to protecting and growing, RSPCA general inspectors should be able to be appointed as designated inspectors.

Reporting

If giving new entry powers to inspectors is intended to increase transparency in animal agriculture industries, the agency or agencies responsible for the inspectors must be required to report on the inspectors' activities.

The ADO submits that the agency responsible for appointing designated inspectors must be required to report to Parliament about the inspectors' activities. The information reported should include as a minimum the number of inspections, the types of facilities inspected, and whether the inspections were unannounced.

The agency should also include this information in its annual report.

¹⁷ <https://www.agric.wa.gov.au/animalwelfare>.

¹⁸ <https://www.agric.wa.gov.au/>.

Recommendation 6: The ADO strongly recommends that the Bill be amended to require that the agency responsible for appointing designated inspectors report the inspectors' enforcement activities annually to Parliament, and that this information be included in the agency's annual report.

Other comments

To achieve the purported aim of ensuring 'community confidence in the welfare of animals in abattoirs, knackeries and other relevant facilities', proposed designated inspectors would need to be adequately and regularly trained. They should also be appointed in regional and remote areas of the State to ensure facilities in these areas are inspected, and inspected frequently.

Finally we note that section 37(1)(aa) is mistakenly referred to as section '37(1aa)' on page 14, line 8, and page 15, line 19.

PART 3—THE CRIMINAL CODE AMENDED

Trespass offence amendments

The Bill proposes to amend section 70A of *The Criminal Code* (WA) ("the Criminal Code") which sets out the offence of trespass.

Under the proposed amendment, the offence of trespass 'simpliciter' would be set out in section 70A(2), while the proposed section 70A(2A) would specify an aggravated form of trespass.

The aggravated form of trespass could only occur in an 'animal source food production place' and in 'circumstances of aggravation'. These proposed circumstances are set out in the definitions provision in subsection 70A(1), and consist of interfering with, or intending to interfere with, an activity carried out for or connected with commercial food production.

The maximum penalty for the proposed aggravated form of trespass would be double the maximum penalty for trespass 'simpliciter'.

The ADO queries why it is only in the circumstances of animal food production or agriculture that a more severe trespass offence is proposed. The ADO also queries why, if an aggravated trespass offence is considered necessary, it does not apply to vulnerable persons in general; that is, where the offence is committed against one or more of the following 'victims':

- family or intimate partners;
- racial minorities;
- disabled or mentally ill persons;
- older persons;
- gender or sexuality diverse persons.

Evidence-based and proportionate laws

The ADO considers that laws should be evidence based.

In our view, however, there is no evidence justifying the creation of the proposed new offence.

To our knowledge neither the Attorney General, nor the relevant Minister, has provided data or evidence to suggest that the offence is necessary.

For example, evidence has not been provided to demonstrate that there is an increased incidence of farm trespass, or that any alleged increase is due to animal advocates rather than illegal hunting¹⁹ or stock thefts. These are common forms of trespass on rural and agricultural ground and have 'adverse economic and personal consequences'²⁰, yet it is not clear if the proposed offence would apply in these cases.

The ADO also submits that evidence has not been provided to show that the 100% increase in the maximum penalty is proportionate to the proposed aggravated offence. As Legislation Review Committees have noted in other jurisdictions:

Large increases in penalties can result in excessive punishment where the penalty is not proportionate to the offence.²¹

Given the lack of evidence supporting the need for the proposed offence, the ADO submits that it is difficult to justify the considerable increase in penalty as proportionate to the alleged problems the new offence is meant to address.

The ADO therefore submits that creating a new offence of trespass that applies to only one sector of our community and that has a hugely increased (100%) maximum penalty is excessive, manifestly unjust and discriminatory.

Recommendation 7: The ADO recommends that the proposed 'aggravated' trespass offence in section 70A(2A) of The Criminal Code be removed from the Bill.

Aggravated cruelty offence

The ADO notes that the Bill would create a new offence with a high maximum penalty for a person who trespasses on animal food enterprises, yet does not propose a similar 'aggravated' offence for persons who commit acts of animal cruelty on these properties, or who inflict 'aggravated' cruelty on animals generally.

The maximum financial penalty for animal cruelty under the Animal Welfare Act is a fine of \$50,000 (s19(1)). This is behind Queensland (\$266,900)²² and Victoria (\$82,610)²³.

Moreover, unlike other jurisdictions, the WA Animal Welfare Act does not have a separate offence for aggravated animal cruelty.²⁴ Aggravated cruelty is usually where the animal is seriously injured or dies as a result of an act of cruelty.

¹⁹ See for example, L Newey, 'Feral pigs a problem in the South West', Busselton-Dunsborough Mail, <https://www.busseltonmail.com.au/story/2636372/feral-pigs-a-problem-in-the-south-west/>.

²⁰ WA Department of Justice, 'Background', *Farm Trespass and Animal Welfare Bill Consultation*, <https://www.wa.gov.au/organisation/departments-of-justice/farm-trespass-and-animal-welfare-bill-consultation>.

²¹ Legislation Review Committee, *Legislation Review Digest No. 5/57 – 24 September 2019*, NSW Parliament, p6.

²² *Animal Care and Protection Act 2001* (QLD), s18.

²³ *Prevention of Cruelty to Animals Act 1986* (VIC), s10.

Recommendation 8: The ADO recommends that the Bill amend the Animal Welfare Act by increasing existing penalties for animal cruelty offences, and creating a distinct ‘aggravated animal cruelty offence’ for cases where the animal is seriously injured or dies as a result of an act or acts of animal cruelty.

Appropriate defences

We note that the Bill does not propose a defence or exception to the proposed aggravated trespass offence in section 70A(2A) of The Criminal Code. The ADO submits that, if the proposed offence of aggravated trespass on animal production facilities remains in the Bill, that the Bill should also contain partial or full defences for the offence, such as:

1. Necessity - where the defendant sought to prevent the commission of an act of animal cruelty including the unnecessary infliction of pain, suffering, or loss of life, or failure to provide veterinary treatment; and/or
2. Public interest - where the trespass is in the public interest because it reveals acts of animal cruelty which are reported to authorities.²⁵

Recommendation 9: The ADO recommends that, if the proposed offence of aggravated trespass on animal production facilities remains in the Bill, the Bill should be amended to include partial or full defences for the offence including in cases of necessity or public interest.

Mandatory minimum sentence

The Bill proposes a mandatory minimum sentence for the proposed offence of aggravated trespass (s70A(2B)). The minimum sentence applies if the Court does not impose a term of imprisonment. It requires that the Court must impose a community order including a community service requirement, and a fine of at least \$2,400.

As a legal organisation, the ADO opposes mandatory sentences on the grounds that they ‘curtail a judge’s discretionary power to take into account a case’s particular circumstances that could reduce the sentence’.²⁶ Mandatory sentencing laws reduce a court’s ability to consider mitigating factors or to utilise alternative sentencing options to deal with offenders.²⁷ They can also lead to disproportionate outcomes, and outcomes that disadvantage certain sectors of our society, such as younger persons.

²⁴ Queensland is the only other jurisdiction where the animal welfare law does not have an aggravated form of the ‘cruelty’ offence.

²⁵ For an example of a public interest exemption, see *Surveillance Devices Act 2016* (SA), s10 ‘Communication or publication of information or material—public interest’.

²⁶ H Tubex, ‘Mandatory sentencing leads to unjust, unfair outcomes’, *The Conversation*, 2016.

²⁷ Australian Law Reform Commission, ‘Mandatory Sentencing’:
<https://www.alrc.gov.au/publications/mandatory-sentencing>

Finally, we note that draft legislation in Australia is reviewed by parliamentary Legislation Review Committees.²⁸ The committees scrutinise proposed legislative amendments and report on their impact on personal rights and liberties.

It is arguable that such a committee would raise concerns about the proposed mandatory minimum sentence as restricting the ability of courts to consider the personal circumstances of offenders when imposing sentences. In some jurisdictions this could be seen as an infringement on the human right to be free from cruel, inhumane or degrading punishment.²⁹

For these reasons the ADO does not support the proposed minimum sentence set out in section 70A(2B) of the Bill.

Recommendation 10: The ADO recommends that the proposed minimum sentence in section 70A(2B) of The Criminal Code be removed from the Bill.

PART 4—RESTRAINING ORDERS ACT 1997 AMENDED

The Bill proposes to amend the *Restraining Orders Act 1997* (“the Restraining Orders Act”) by enabling Misconduct Restraining Orders to be granted in circumstances where it is held that the respondent is likely to commit an offence under (proposed) section 70A(2A) of The Criminal Code (trespassing on an animal food production facility)³⁰. Proposed section 35(2A) of the Restraining Orders Act would require that the court that is considering the granting of such an order have regard to certain specified matters.³¹

The ADO submits that these provisions are unnecessary and inefficient, as the intended actions sought to be restrained and prevented are already largely outlined in Part 2 of the Restraining Order Act pertaining to Violence Restraining Orders, as well as the existing legislative framework for Misconduct Restraining Orders. Violence Restraining Orders are already available for cases where individuals have committed an act of violence and are likely to commit another act of violence. Misconduct restraining orders also already allow for the granting of these orders to prevent acts of intimidation.

On this basis, the ADO submits it would be unnecessary, inefficient and confusing to law enforcement agencies and the courts to add an additional provision for Misconduct Restraining Order targeting animal activists.

Recommendation 11: The ADO recommends that the proposed amendments to Part 3 of the Restraining Orders Act be removed from the Bill.

²⁸ See for example in NSW:

<https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=245>.

²⁹ Attorney-General’s Department, ‘Human Rights Scrutiny’, Australian Government:

<https://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/Pages/assessing-compatibility-tools.aspx>.

³⁰ Animal Welfare and Trespass Legislation Amendment Bill, amendment to section 34 of the Restraining Orders Act, page 29, lines 6-7.

³¹ Ibid page 31.

Animal agricultural activity—transparency and visibility

The ADO submits that the proportionality of the trespass and restraining order provisions in this Bill can be assessed by considering whether these proposed laws are necessary. One way of assessing the need for the proposed provisions is to ask whether there is ‘no obvious and compelling alternative, reasonably practical, means of achieving the same purpose.’³²

Increasing the transparency and visibility of animal industries would be a compelling and obvious way to deter farm trespasses by animal advocates.

While the provision of designated inspectors with powers to monitor compliance with the Animal Welfare Act would be an improvement to WA’s existing enforcement framework, the ADO submits that this alone would not address the root cause of unauthorised activity by animal advocates.

As an absolute minimum, the ADO submits that independently monitored CCTV could be installed in animal enterprises and made available to designated inspectors upon request, as well as to the public.

The ADO submits that mandating transparency in animal-use industries would be a more effective way of dealing with animal advocate activities targeting such industries. This is because transparency would negate the need to expose the conditions and treatment of animals used in these industries.

Recommendation 12: The ADO recommends that independently monitored CCTV be installed in animal enterprises as a way of deterring trespass by persons wishing to reveal the conditions of animals confined in those enterprises.

Conclusion:

In its current form the Bill does not achieve an appropriate balance between the two competing concerns of protecting an already heavily protected agricultural sector, and maintaining community confidence in how that sector treats animals.

To achieve the latter, WA needs more open doors to its farms (or ‘animal source food production facilities’), rather than devising new ways to shut out the light, and therefore the eyes of the public, from these places.

In its present state, the Bill would (ironically) introduce severe penalties for the very conduct that is cited as justifying the increased inspection powers in relation to animal enterprises.³³ Under the proposed amendments, the revelations of unconscionable treatment of retired racehorses in Australian knackeries would have resulted in WA in at least a hefty fine and community service, if not imprisonment, for the whistleblowers. In our view, this would not be a just outcome.

³² *Clubb v Edwards* (2019) 93 ALJR 448.

³³ “The nexus between these issues is illustrated by revelations regarding the mistreatment of retired racehorses in eastern states abattoirs in October of last year [‘The Final Race’, 7.30 ABC, 17 October 2019]. The ABC’s reporting relied on footage captured by hidden cameras. It appears likely that the installation of the cameras was facilitated by the commission of a trespass offence.” WA Department of Justice, ‘Background’, *Farm Trespass and Animal Welfare Bill Consultation*, <https://www.wa.gov.au/organisation/departments/justice/farm-trespass-and-animal-welfare-bill-consultation>.

For these reasons, the ADO would urge the WA Government to:

- address the cause of the issue not the symptom,
- provide a commitment that animal welfare inspectors will be sufficiently resourced to conduct frequent monitoring of animal food production facilities,
- ensure any trespass offences are general, proportionate and have appropriate defences,
- increase transparency of animal industries, and
- increase penalties for animal cruelty offences.

We thank the Department of Justice for taking our submission into consideration.

Farnham Seyed
Lawyer (Volunteer)

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Animal Defenders Office

30 March 2020