

Consultation on the exposure draft of the Animal Welfare Legislation Amendment Bill 2019

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The NSW Young Lawyers Animal Law Committee (**Committee**) makes the following submission in response to the ACT Government's Consultation on the exposure draft of the Animal Welfare Legislation Amendment Bill 2019 (**Consultation**).

NSW Young Lawyers

NSW Young Lawyers is a division of The Law Society of New South Wales. NSW Young Lawyers supports practitioners in their professional and career development in numerous ways, including by encouraging active participation in its 15 separate committees, each dedicated to particular areas of practice. Membership is automatic for all NSW lawyers (solicitors and barristers) under 36 years and/or in their first five years of practice, as well as law students. NSW Young Lawyers currently has over 15,000 members.

The Committee comprises a group of over 400 members interested in animal welfare and laws regulating the treatment of animals. The Committee aims to raise awareness and provide education to the legal profession and wider community, while increasing understanding about the importance of protecting animals from abuse and neglect. A common theme amongst Committee members is a passion and desire to use their legal skills and the law to help improve the lives of animals.

Summary of Recommendations

1. The Committee supports the proposal to update the objects of the *Animal Welfare Act 1992* (ACT) (**the Act**) to recognise animals' sentience, intrinsic value and entitlement to compassion;
2. The Committee agrees with the proposal to permit information to be shared between the Animal Welfare Advisory Committee (**AWAC**) and the Animal Welfare Authority;
3. The Committee supports the proposal to enhance regulation of pet businesses, though notes that to meet the standard of best practice, the ACT should mandate that pet shops can only sell rescue animals;
4. The Committee supports the proposal to restrict the number of dogs a person can walk to three animals, in the interests of the walker's and the dogs' safety, as well as the safety of other pedestrians and animals;
5. The Committee agrees with the proposed amendments to the scheme for the registration of assistance animals in the ACT, particularly provisions concerning the exclusion of persons convicted of animal welfare offences from the training and assessment of assistance animals;

6. The Committee concurs with the introduction of 'minor' duty of care or cruelty offences, provided they operate to expand the legislative reach of the Act by applying only to conduct which would not otherwise be caught by the existing provisions;
7. With respect to the proposed amendments to introduce new or amend current offences in the Act:
 - i. The Committee supports proposed changes to section 10 of the Act to require a person to report an injury to a mammal within 2 hours rather than 24 hours largely given mortalities resulting from roadkill can be highly destructive for species with small populations;
 - ii. The Committee supports the amendment of section 17 to expand the penalties for dog fighting offences, however recommends that consideration be given to increasing the penalty amount for this offence;
 - iii. The Committee supports the increase to maximum Court penalties but highlights the importance that the higher penalties ultimately are imposed by courts following such amendments being made;
 - iv. The Committee:
 - a. Agrees with the proposed amendments to section 9 of the Act as they would clarify that the section extends to a person confining an animal in a vehicle; and
 - b. Strongly supports proposed section 113, which would allow a person to break into a car to rescue an animal where appropriate, without attracting any criminal or civil liability.

Discussion

Background

As part of the ACT Government's *Animal Welfare and Management Strategy 2017-2022*, a review of the Act was undertaken with the guidance of the RSPCA and the Animal Welfare Advisory Committee. In response to the findings of that review, the Animal Welfare Amendment Bill 2019 (the **Bill**), the subject of this consultation, has been developed. The ACT Government has sought the public's views on the Bill's proposed amendments, which seek to 'ensure that the ACT has a best-practice, contemporary and effective regulatory system that protects and promotes the welfare of animals, prevents and deters cruelty to animals and responds appropriately to animal welfare abuses.'¹

Below, the Committee makes comment on the proposed amendments (a), (b), (c), (d), (e), (g) and (h).

¹ ACT Government, *Consultation on the exposure draft of the Animal Welfare Legislation Amendment Bill 2019* (13 December 2018) <https://www.legislation.act.gov.au/View/ca/db_59376/current/PDF/db_59376.PDF>.

a. Update the objects of the Act to reflect contemporary views on animal welfare, including recognition of animals as sentient beings.

The Committee strongly supports the proposal to expressly recognise animals as sentient creatures in the objects of the Act.

This amendment would bring the legislation into alignment with community values. As early as 2009, Peter Sankoff, an animal protection scholar, observed that '[w]e have formally abandoned the notion that these sentient beings are 'just' animals and undeserving of moral concern...' and that it is likely that 'the large majority of people in Australia... believe that animals *matter*, and that their welfare is something that is worthy of being considered'.² Amending the objects of the Act to include recognition of animals as sentient beings would accurately capture the impetus behind society's concern for animal welfare; it therefore represents an appropriate and desirable amendment.

The proposal also reflects global best practice; animal sentience was expressly recognised by legislation passed by the French National Assembly in 2014,³ the New Zealand Parliament in 2015,⁴ the parliament of the province of Quebec in 2015,⁵ and Colombia in 2016.⁶

b. Amend the governance framework for the Animal Welfare Advisory Committee (the AWAC) so that the AWAC can provide advice to the Animal Welfare Authority in addition to the Minister.

The AWAC is established under Part 9 of the Act, and under s 109(3), its functions are, amongst others:

- To advise the Minister about animal welfare legislation;
- To participate in the development of approved codes of practice and mandatory codes of practice;
- To provide advice to other Territory authorities, and to community bodies, about programs for the improvement of community awareness about animal welfare; and
- To advise the Minister about any other matter relating to animal welfare.

² Peter Sankoff, 'The Welfare Paradigm: Making the World a Better Place for Animals?' in Peter Sankoff and Steven White (eds), *Animals Law in Australasia: A New Dialogue* (The Federation Press, 2009) 7, 9.

³ French Civil Code, Art. 515-14: "Animals are living beings gifted with sentience. Subject to the laws that protect the animals, they are subjected to the regime of goods."

⁴ s 4, Animal Welfare Amendment Act (No 2) 2015 (2015 No 49): "animals are sentient".

⁵ Quebec Civil Code, Art. 898.1: "Animals are not things. They are sentient beings and have biological needs. In addition to the provisions of special Acts which protect animals, the provisions of this Code and of any other Act concerning property nonetheless apply to animals."

⁶ Colombia Civil code, Art. 655: "Recognizing the quality of sentient beings to animals".

The AWAC's ability to satisfy these functions speaks to the high level of expertise possessed by the entity in relation to animal health, welfare, law and policy. As the Animal Welfare Authority would undoubtedly benefit from accessing this expertise, the Committee welcomes the proposal to amend the Act in this way, while, of course, retaining the statutory independence of the Animal Welfare Authority from the AWAC.

c. Set out a high level framework for regulating pet businesses, and specifically pet shops and boarding kennels, to assure animal welfare outcomes.

Clause 36 of the Bill, in summary:

- Requires pet businesses to hold a licence authorising them to operate; and
- Requires pet businesses to adhere to relevant codes of practice and any other conditions deemed necessary to continue to hold the licence.

The current Act makes it an offence for a person to fail to comply with a mandatory code of practice regulating pet businesses.⁷ This includes the ACT Code of Practice for the Care and Management of Animals in Pet Shops.⁸ While these codes of practice are detailed and provide for the welfare of animals for sale in pet shops to some extent, the Committee considers the structure of current legislation to be reactive. In the Committee's submission, the proposed amendments are therefore a positive development, as the licensing system would likely reduce mistreatment, rather than retroactively punishing it. Proposed section 24G provides the mechanism for this, providing that a license will only be issued if the authority is satisfied 'that the person intends to carry out the business on suitable premises and meets any requirements for a pet business prescribed by legislation.'

While the Committee welcomes this amendment as a way of augmenting current licensing systems to achieve a more robust regulatory framework, in respect of pet shops, the Committee submits that the proposed changes do not extend far enough to be considered best practice. The proposed amendments require pet shops to keep records of both buyers and sellers of pets, with this record of the supply chain of animals improving accountability for animal welfare outcomes. However, consistently with international best practice, the Committee submits that the ACT Government should emulate legislation implemented in

⁷ *Animal Welfare Act 1992* (ACT) s 24B.

⁸ Australian Capital Territory, *Determination No. 139 of 1993 – Animal Welfare Act 1992*, No 206, 28 September 1993.

California⁹ which makes it an offence to sell ‘a live dog, cat, or rabbit in a pet store unless the dog, cat, or rabbit was obtained from a public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group.’ This legislated policy would support the objects of the proposed legislation and good animal welfare outcomes more broadly by:

- Facilitating the rehoming of rescued animals, both in the immediate and medium terms; and
- Removing a market for commercially bred animals in the ACT, reducing the surplus of animals available for sale¹⁰ (and thereby alleviating pressure on rescue organisations) and disincentivising substandard animal welfare breeding practices, for example in the form of “puppy farms”.

Two national Australian pet shops have already implemented this initiative. Neither PetBarn¹¹ nor PetStock¹² sell animals for profit in store; instead, they have partnered with animal rescue organisations such as the RSPCA to rehome rescued animals. To reflect best practice animal management, the ACT government should legislate this model.

d. Restrict any one person to walking a maximum of three dogs at any one time.

The Committee agrees with proposed section 141, which would make it an offence to be in a public place with more than three dogs at a time. This would ensure people have greater control of their dogs, thereby reducing the potential for injuries to animals and humans in public spaces.

e. Set out a high level regulatory framework for assistance animals in the ACT that provides for the recognition, regulation and rights of access of assistance or service animals working in the Territory, and particularly assistance dogs.

The Committee supports and approves of the additional requirements imposed on assistance animals, assistance animal trainers and assistance animal assessors, as these mechanisms will ensure greater animal welfare protection for assistance animals.

⁹ Cal Health and Safety Code § 122354.5.

¹⁰ See Animals Australia, *Companion Animals* (8 November 2018) <https://www.animalsaustralia.org/issues/companion_animals.php>.

¹¹ Petbarn, *Our Mission and Adoption Partners* (2018) <<https://www.petbarn.com.au/services/adoptions#our-mission-and-adoption-partners>>.

¹² Petstock, *Pet Adoption* (2019) <<https://www.petstock.com.au/services/pet-adoption>>.

The Committee welcomes the proposed amendments, which, amongst other things, would:

- Provide for the establishment of certain standards according to which assistance animals are to be trained;¹³
- Preclude any person who had been convicted of an animal welfare offence from applying for registration as an assistance animal trainer or assessor within two years of the conviction;¹⁴
- Provide for the suspension of a person's assistance animal trainer or assessor registration on animal welfare grounds;¹⁵ and
- Provide for the cancellation of a person's assistance animal trainer or assessor registration where the person is convicted of an animal welfare offence.¹⁶

The proposal to empower the Minister to determine standards for the training and assessment of assistance animals would provide the ACT Government with influence and visibility over the techniques used in training programs, providing greater assurance of the protection of animal welfare.

By excluding persons convicted of animal welfare offences from assistance animal training and assessment, and by enabling the Government to suspend a person's registration on animal welfare grounds, the amendments exhibit a desirable recognition that, where animals are used to assist vulnerable people, the animals' interests must be considered.

g. Introduce a new offence category for minor duty-of-care or cruelty offences where warnings and fines can be issued where appropriate (for example, where a person does not leave out water for their dog or kicks a dog in anger). The existing serious offences that attract significant financial and court penalties will remain and still be available, and the jail terms for the most serious offences have increased.

The Committee supports the introduction of additional offences provided they would not affect the availability of penalties under the existing duty of care and cruelty offences. While the Committee appreciates that the

¹³ Animal Welfare Legislation Amendment Bill 2019 (ACT) cl 143 (proposed s 95).

¹⁴ Ibid cl 143 (proposed ss 99, 103).

¹⁵ Ibid cl 143 (proposed ss 100(1)(d), 104(1)(d)).

¹⁶ Ibid cl 143 (proposed ss 101(b),(c), 105(b)(c)).

additional strict liability offences could increase ease of prosecution, the Committee is concerned about their potential to diminish existing offences which already capture duty of care offences and acts of cruelty.¹⁷

The Committee is concerned that conduct to which the proposed “minor” offences has the capacity to inflict the same degree of harm as conduct amounting to existing cruelty and duty of care offences, and could therefore be prosecuted under the current legislation. Additionally, the lesser penalties suggest that some degree of neglect or gratuitous cruelty is less harmful than others. For example, proposed s 6D makes failure to provide an animal with hygienic environment an offence, attracting a penalty of up to 25 penalty units. The Committee submits that this conduct could be prosecuted under s 6B(2)(a)(ii) of the Act, which makes it an offence for a person in charge of an animal to fail to take reasonable steps to provide the animal with appropriate shelter or accommodation and carries a maximum penalty of 100 penalty units or one year imprisonment. Similarly, the proposed offences relating to hitting or kicking animal¹⁸ should already be captured by cruelty offences as such conduct ‘caus(es) pain that is unjustifiable, unnecessary or unreasonable in the circumstances’.¹⁹

If the concern is with respect to the risk of offenders defending the claim by proving “reasonable steps”,²⁰ then the focus should be on changing the assessment of “reasonable steps” so that the scope for doing so is narrowed. In any event, only in extenuating circumstances would a person be able to argue that they had taken reasonable steps, but nonetheless failed to give an animal access to appropriate shelter.

The Committee agrees with substituting the wording in cruelty offences so that any person who commits a duty of care offence bears the onus of proving of reasonable steps were taken to give the animal a thing mentioned in the above subsections.²¹

Finally, the Committee strongly supports the proposal to increase the maximum penalty for the offence of:

- Cruelty under s 7,²² from 100 penalty units or imprisonment for 1 year to 100 penalty units or imprisonment for 2 years; and
- Aggravated cruelty under s 7A,²³ from 200 penalty units or imprisonment for 2 years to 200 penalty units or imprisonment for 3 years.

¹⁷ See *Animal Welfare Act 1992* (ACT) ss 6B and 7A.

¹⁸ *Animal Welfare Legislation Amendment Bill 2019* (ACT) cl 11 (proposed s 7C).

¹⁹ *Animal Welfare Act 1992* (ACT) s 6A.

²⁰ *Animal Welfare Legislation Amendment Bill 2019* (ACT) cl 7 (proposed s 6B(2)).

²¹ *Ibid* cl 7 (proposed s 6B(2)).

²² *Ibid* cl 8.

²³ *Ibid* cl 9.

The increased maximum imprisonment terms reflect the seriousness of animal cruelty and are entirely consistent with the Bill's proposed expression of the objects of the Act, which recognise the sentience and intrinsic value of animals and that animals deserve to be treated with compassion.

h. Make a number of amendments to introduce new or amend current offences in the Act. These include:

- i. requiring a person to report the injury of a mammal within 2 hours, rather than the current 24 hours in the Act (for example, where a driver collides with kangaroo or a dog with their car and the animal needs urgent veterinary treatment).**

The Committee is supportive of the proposed changes to section 10 of the Act to require a person to report an injury to a mammal within two hours rather than 24 hours.

Wild Australian fauna such as the kangaroo, wombat, wallaby, and emu continue to be among the most prevalent road-kill victims reported in Australia.²⁴

Data based on almost 9,000 insurance claims to AAMI between March 2017 and March 2018 show Canberra had the highest number of collisions between drivers and animals for the second year in a row.²⁵ Kangaroos accounted for 92 per cent of all animal-related collisions in the ACT during the 12-month period.

The Committee submits that this proposed amendment is crucial for the following reasons:

²⁴ Rowden, Peter J. and Steinhardt, Dale A. and Sheehan, Mary C., 'Road crashes involving animals in Australia' (2008) 40(6) *Accident Analysis and Prevention* 1, 1865-1871.

²⁵ Andrew Brown, *Canberra Tops The Nation For Driver Collisions With Animals* (2019) Canberra Times <<https://www.canberratimes.com.au/national/act/canberra-tops-the-nation-for-driver-collisions-with-animals-20180509-p4zebk.html>>

- a. It ensures that animals are recognised as sentient beings with intrinsic value, in line with the objective of the new legislative framework;²⁶ and
- b. Mortality resulting from roadkill can be highly destructive for species with small populations. Collisions with motor vehicles are the leading cause of death of the Florida Panther,²⁷ and is the largest cause of badger deaths in England.²⁸ Roadkill is considered to significantly contribute to the population decline of many threatened species, including the wolf, koala and eastern quoll.²⁹ In Tasmania, Australia the most common species affected by roadkill are brush tail possums and Tasmanian pademelons.³⁰

ii. introducing provisions that expressly address dog fighting and allow for effective enforcement of dog fighting offences, similar to changes in other jurisdictions;

Dog fighting places the animal at significant risk of serious pain, injury, suffering or even death for the purpose or entertainment or sport.³¹

The Committee supports the amendment of section 17 of the Act to expand the penalties for dog fighting offences. The amendments explicitly expand penalties to apply not just to those who own, keep, use or manage premises where animal fights take place, but also to those who attend such a violent activity.

However, the Committee notes that whilst dogfighting is currently “illegal” in Australia already, dogfighting still occurs. It is due to its illegality that when dogs are injured, owners may attempt to treat the injuries themselves rather than risk being reported by an attendant veterinarian. This then places the dog's health

²⁶ Animal Welfare Legislation Amendment Bill 2019 (ACT) 4A(1)(a).

²⁷ Defenders of Wildlife, *Threats To Florida Panthers* (2019) <<https://defenders.org/florida-panther/threats>>.

²⁸ Jonathan Owen, *50,000 Badgers Are Killed On Britain's Roads Every Year* (2019) The Independent <<https://www.independent.co.uk/environment/50000-badgers-are-killed-on-britains-roads-every-year-6231851.html>>.

²⁹ Alistair J. Hobday and Melinda L. Minstrell, "Distribution And Abundance Of Roadkill On Tasmanian Highways: Human Management Options" (2008) 35(7) Wildlife Research.

³⁰ EduTel Technology, *Roadkill 2007 - Summary of Past Data* (2019) Roadkill.edutel.com <<http://roadkill.edutel.com>>.

³¹ RSPCA, *Is Dog Fighting Legal In Australia?* - RSPCA Australia Knowledgebase (2019) <https://kb.rspca.org.au/Is-dog-fighting-illegal-in-Australia_237.html>.

and welfare at even greater risk as the owners are unqualified and untrained to perform medical or surgical practices which can lead to fatal consequences for the dog.³² This highlights the critical importance of effective enforcement of the proposed provision.

The proposed amendments include greater penalties for a person taking part in a violent animal activity (maximum 300 penalty units, imprisonment for 3 years, or both) which may address the above concern by disincentivising participation.

The Committee recommends an additional provision in this section sanctioning the breeding of fighting dogs. In South Carolina, a breeder of fighting dogs is serving a 30-year sentence.³³ Queensland animal welfare investigators have found cases of suspected dog fighting linked to "designer dog" breeding. In early 2018, RSPCA investigators and police raided four properties in Queensland and rescued 56 dogs from an alleged dog fighting operation. At the same properties they found evidence of a selective fighting dog breeding program.³⁴

The Committee recommends that proposed section 17(4) definition of one who "takes part in" a violent animal activity be extended to include the following, as most states in the US do:³⁵

- "Possess a dog with intent that it engage in dogfighting (even if not accompanied by actual fighting or training to fight)."
- "Possess or own a dog with injuries consistent with dogfighting (such as torn or missing ears, bite wounds, puncture wounds, bruising or other injuries) when accompanied by evidence that the dog has been or is intended to be used for dogfighting."
- "Possess equipment used for training dogs to fight or to enhance fighting ability."
- "Aid, abet, counsel or procure, solicit or incite another person do any of these activities."

iii. increase maximum court imposed penalties for cruelty and aggravated cruelty offences;

³² Ibid.

³³ Bill Burke, *Once limited to the rural South, dogfighting sees a cultural shift* (17 June, 2007) The Virginian-Pilot <https://pilotonline.com/news/local/crime/article_e8dfa7d4-619b-5bd7-a10c-39910df01fbe.html>

³⁴ RSPCA, *Is Dog Fighting Legal In Australia?* - RSPCA Australia Knowledgebase (2019) <[Kb.rspca.org.au <https://kb.rspca.org.au/Is-dog-fighting-illegal-in-Australia_237.html>](https://kb.rspca.org.au/Is-dog-fighting-illegal-in-Australia_237.html)>

³⁵ ASPCA, *Prosecutor's Guide to Dogfighting Cases* (2010) New England Animal Control/Humane Academy, <<http://neacha.org/resources/prosecutors.dogfight.pdf>>.

As discussed above, the Bill proposes increases to maximum court-imposed penalties for cruelty and aggravated cruelty offences, as follows:

Section	Current maximum penalty	Proposed maximum penalty
7 – Cruelty	100 penalty units, imprisonment for 1 year or both	100 penalty units, imprisonment for 2 years or both.
7A – Aggravated cruelty	200 penalty units, imprisonment for 2 years or both.	200 penalty units, imprisonment for 3 years or both.

Accordingly the Bill proposes that the maximum court-imposed prison sentence for cruelty and aggravated cruelty each be increased by one year.

The meaning of “cruelty” is currently defined in the Act to include the following:

- a. causing pain that is unjustifiable, unnecessary or unreasonable in the circumstances;
- b. beating that causes pain;
- c. abusing, terrifying or tormenting;
- d. injuring or wounding that is unjustifiable, unnecessary or unreasonable in the circumstances.

The meaning of “aggravated cruelty” is defined in the Act to include the following:

- a. the person commits an act of cruelty on an animal; and
- b. the act causes the death or serious injury of the animal; and
- c. the person intends to cause, or is reckless about causing, the death of, or serious injury to, the animal.

The Committee supports the increase to maximum Court penalties as it will act to greater deter cruelty to animals³⁶ and is certainly responsive to changes in the attitudes and expectations of the community.³⁷

In *Markarian v The Queen* (2005) 228 CLR 357 at [31], Gleeson CJ, Gummow, Hayne and Callinan JJ set out three reasons why judges should have particular regard to the maximum penalties prescribed by statute in the context of sentencing, as follows:

- The legislature has legislated for them;
- They invite comparison between the worst possible case and the case before the court at the time; and
- In that regard they do provide, taken and balanced with all of the other relevant factors, a yardstick".³⁸

The Committee endorses the proposed increase in maximum court penalties. However it has been observed that the Australian judiciary has exhibited reluctance to award sentences at the higher end of the range for animal cruelty offences.³⁹ In respect of a case in which a Tasmanian dairy farmer was sentenced to 15 months imprisonment, fined \$110,000 and prohibited him from owning livestock for 10 years for nearly 200 charges of animal cruelty, Emmanuel Giuffre of Voiceless observed:

There is a definite, indeed disturbing, trend of Australian courts imposing relatively lenient sentences in cases of animal cruelty. This is despite most states and territories having amended their animal cruelty statutes to increase the maximum penalties, and expanding the variety of sanctions that courts may impose, for cruelty offences...

While some would argue that Mitchell should have been sentenced for each animal that was harmed – a move that would have seen a possible maximum sentence imposed of over 120 years imprisonment – the sentence still provides a strong precedent for future cases and sends an important message to the farming community.⁴⁰

While this commentary expresses satisfaction with the outcome of this decision, it also speaks to a community expectation that sentencing should reflect the gravity of animal cruelty. While this is a judicial, rather than a legislative task, raising the maximum penalty of certain offences by statutory amendment is an

³⁶ Animal Welfare Legislation Amendment Bill 2019 (ACT) cl 5 (proposed s 4A(2)(c)).

³⁷ Ibid cl 5 (proposed s 4A).

³⁸ Emmanuel Giuffre, *Animal Law In The Spotlight: TAS Dairy Farmer Sentenced* (2013) Voiceless <<https://www.voiceless.org.au/content/animal-law-spotlight-tas-dairy-farmer-sentenced>>.

³⁹ See Annabel Markham, 'Animal Cruelty Sentencing' in Peter Sankoff and Steven White (eds), *Animals Law in Australasia: A New Dialogue* (The Federation Press, 2009)

⁴⁰ Emmanuel Giuffre, *Animal Law In The Spotlight: TAS Dairy Farmer Sentenced* (2013) Voiceless <<https://www.voiceless.org.au/content/animal-law-spotlight-tas-dairy-farmer-sentenced>>.

appropriate way of signalling the seriousness of the conduct and providing a benchmark to assist judges in administering penalties.

iv. expressly making it an offence for a person to leave an animal in a hot car, and providing appropriate provision for an authorised officer or person to break into a car to rescue an animal where required;

The Committee strongly supports the proposed section 113 of the Act allowing a person to break into a car to rescue an animal where appropriate, without attracting any criminal or civil liability. Presently people who do not own the animal are required to await the legal owner of the vehicle to return or await arrival of the relevant authorities. The potential harm to an animal whilst this occurs is catastrophic. The RSPCA estimates that they receive over 1,000 distress calls about animals (usually dogs) being left in cars in the heat.⁴¹ The RSPCA asserts that it can take as few as six minutes for a dog to die in a hot car.⁴²

It is the Committee's view that section 9 of the Act as currently drafted does not make it sufficiently clear that the section extends to a person confining an animal in a vehicle. Currently section 9 states a person commits an offence "if the person confines an animal in a way that causes injury, pain, or excessive distress to the animal." Although animals are sentient beings and do show signs of injury, pain and distress, these symptoms are not always obvious and objectively it would be problematic for an authority to ascertain with certainty that a person has breached the section as currently drafted.

The proposed amendment to section 9 provides examples to guide the ACT Police and RSPCA Inspectors as to particular offences which fall foul of the section. Further, while the current section 9(3) finds a person commits an offence if they "*confine[s] an animal in a way that causes injury, pain, or excessive distress to the animal*", the proposed amendment section 9(4)(b) finds a person also commits an offence if the

⁴¹ *Dogs Die In Hot Cars* (2019) RSPCA Queensland <<https://www.rspcaqld.org.au/what-we-do/welfare-awareness/companion-animals/dogs-die-in-hot-cars>>.

⁴² *It Only Takes Six Minutes For A Dog To Die In A Hot Car* (2019) RSPCA Queensland <<https://www.rspcansw.org.au/blog/seasonal-messages/it-only-takes-six-minutes-for-a-dog-to-die-in-a-hot-car/>>.

confinement is likely to cause the animal injury or pain. The Committee agrees with the proposed amendments to section 9.

The proposed amendments fit with the overall objective of the new legislative framework by recognising animals are sentient beings; ensuring animals are shown compassion and have an acceptable quality of life and enabling appropriate responses to animal welfare offences.⁴³

v. update penalty amounts and infringement notices where appropriate.

See above at g) and h)iii.

Concluding Comments

NSW Young Lawyers and the Committee thank you for the opportunity to make this submission. If you have any queries or require further submissions please contact the undersigned at your convenience.

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⁴³ Animal Welfare Legislation Amendment Bill 2019 (ACT) cl 5 (proposed s 4A).