



ATTORNEY GENERAL

Our Ref: 67-02663

Hon Matthew Swinbourn MLC
Chairman
Standing Committee on Environment and Public Affairs
Parliament House
Harvest Terrace
PERTH WA 6000

Dear Mr Swinbourn

PETITION 13 – ANIMAL WELFARE ACT

Thank you for your letter dated 17 August 2017 regarding Petition 13 – Animal Welfare Act.

I have noted the issues raised in the submission from the Hon Alanna Clohesy MLC, Member for East Metropolitan Region, in respect to sentences passed in response to convictions under the *Animal Welfare Act 2002 (WA)* (the Act). As you will appreciate, the Western Australian Parliament and the judiciary operate independently. In that context, it is the responsibility of the presiding judge or magistrate, who has access to all relevant circumstances and facts that are pertinent to each case, to sentence offenders in accordance with the law.

There will always be occasions when sentences will be handed down with which family members and the community will be dissatisfied, in the same way that different people in a community will form different views about what is the appropriate sentence. This will occur in any legal system that preserves the independence and discretion of the judiciary in relation to matters before them.

The principle of proportionality is an important consideration for governments when developing legislation and setting maximum penalties for offences. Additionally, sentencing outcomes need to take into account the harm caused relevant to the seriousness of the offence. It is particularly important that sentences of imprisonment should not exceed that which can be justified as appropriate or proportionate to the crime.

Section 19(1) in Part 3 in the *Animal Welfare Act 2002 (WA)* provides that a person found guilty of a cruelty offence can face a minimum penalty of \$2,000 and a maximum of \$50,000 and imprisonment for five years for each offence, which is among the highest penalties for acts of animal cruelty in Australia.

Section 19(2) of the Act provides that a person is cruel to an animal if the person tortures, mutilates, maliciously beats or wounds, abuses, torments, or otherwise ill-treats, the animal; uses a prescribed inhuman device on the animal; intentionally or recklessly poisons the animal; does any prescribed act to, or in relation to, the animal; or in any other way causes the animal unnecessary harm.

Section 85 in the Act provides that where a person is charged with an offence under Part 3 the fact that the person killed the animal, or did something that contributed to the death of the animal must be taken into consideration by the court; but is not sufficient, on its own, to prove that the person committed the offence.

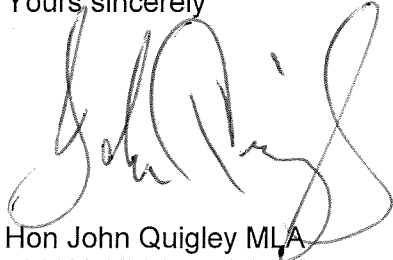
I have attached data on all convictions that have been handed down for an offence under the *Animal Welfare Act 2002* (WA) up to 30 June 2017. The data shows the number of charges that have resulted in a conviction and the types of sentences handed down by the Magistrates Court and the Children's Court of Western Australia for each conviction. I hope this will be useful for your Committee.

I note that in 2014, the Queensland Government introduced a new offence of serious animal cruelty. The offence, which is in the *Criminal Code* (Qld), has a maximum penalty of seven years' imprisonment. Section 242 of the *Criminal Code* (Qld) provides that a person who, with the intention of inflicting severe pain or suffering, unlawfully kills, or causes serious injury or prolonged suffering to, an animal commits a crime; and an act or omission that causes the death of, or serious injury or prolonged suffering to, an animal is unlawful unless it is authorised, justified or excused by the *Animal Care and Protection Act 2001* (Qld) or another law.

The *Animal Welfare Act 2002* (WA) falls within the portfolio responsibility of the Hon Alannah MacTiernan MLC, Minister for Agriculture and Food. On 14 June 2017 Minister MacTiernan announced that there will be a review of the Act in the second half of 2017.

I have no further comment to make in respect to the current penalties in the Act. However, a similar offence provision to section 242 in the *Criminal Code* (Qld) could be considered for Western Australia following the review of the *Animal Welfare Act 2002* (WA) if it is demonstrated that current animal cruelty laws are not effective.

Yours, sincerely



Hon John Quigley MLA
ATTORNEY GENERAL

Attach: Data on Animal Welfare Act 2002 Convictions

06 SEP 2017

Animal Welfare Act Convictions

The following data is sourced from the courts case management system ICMS via the relational data mart tables. It is a count of charges that resulted in a conviction for an offence related to the *Animal Welfare Act 2002* (WA), and the types of sentences handed down.

Counting Rules

The following table shows the number of charges that resulted in a conviction for an offence against the *Animal Welfare Act 2002* (WA) from 2002 to 30 June 2017, and the types of sentences handed down by the Magistrates Court and Children's Court for each conviction. Also displayed in the table is the minimum, average and maximum penalty (in \$ amount or months as appropriate) for each combination of offence type and sentence type. Note this is not a count of people or of cases.

Only the most serious sentence handed down is shown for each charge. For example, if a single charge results in both imprisonment and a fine, only the imprisonment is counted. Additional court orders, such as bans against pet ownership, are also not represented in this table.

It needs to be noted that for individual charges and their resulting sentences, sentence length is not necessarily indicative of the total sentence received by a person for a case, due to the effects of concurrency and cumulacy with other charges, and due to the principle of totality, in which the sentence imposed in respect of any one offence forming part of an overall sentencing package may have been adjusted to better reflect the overall seriousness of the criminal behaviour when all the offences are considered together.

Conviction Numbers and Sentences

The number of convictions and average sentences handed down by the courts can be seen on the following page.

As an example, there have been 11 charges resulting in a conviction for section 40 (failing to comply with a direction given by an inspector regarding the care of an animal) during the period. Of these charges resulting in a conviction, 8 received a fine of between \$250 and \$5,000, while 3 charges resulted in a court order (community based order, intensive supervision order, etc.) of between 6 months and 12 months duration.

Note:

- a court order includes community based orders, good behaviour bonds, conditional release orders and intensive supervision orders
- the 2 days listed in the minimum penalty length relates to community service of 15 hours given to a juvenile
- imprisonment sentences of less than 6 months for a single charge are generally only part of the total imprisonment sentence for an offender

Animal Welfare Act Convictions handed down to 30 June 2017

Section/Sentence	Number of Charges	Minimum Penalty Length	Average Penalty Length	Maximum Penalty Length
Section 19				
Imprisonment/Detention	22	1 month	6 months	12 months
Suspended Imprisonment Order	18	3 months	8 months	12 months
Court Order	210	2 days	7 months	18 months
Imprisonment until Fine is Paid	2	\$ 4,000	\$ 4,000	\$ 4,000
Fine	477	\$ -	\$ 4,240	\$ 30,000
Work And Development Order	1	\$ 2,000	\$ 2,000	\$ 2,000
No Punishment Imposed	11			
Section 31				
Order	1	4 months	4 months	4 months
Fine	1	\$ 250	\$ 250	\$ 250
Section 40				
Court Order	3	6 months	10 months	12 months
Fine	8	\$ 250	\$ 2,031	\$ 5,000
Section 47				
Fine	2	\$ 4,000	\$ 4,500	\$ 5,000
Section 55				
Suspended Imprisonment Order	1	6 months	6 months	6 months
Court Order	1	12 months	12 months	12 months
Fine	4	\$ 250	\$ 1,563	\$ 2,000
Section 76				
Court Order	1	6 months	6 months	6 months
Fine	1	\$ 500	\$ 500	\$ 500
Section 77				
Court Order	2	12 months	12 months	12 months
Fine	7	\$ 200	\$ 714	\$ 2,000
Section 79				
Fine	1	\$ 26,000	\$ 26,000	\$ 26,000