

Mrs Giulia Jones MLA
Chair
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)
ACT Legislative Assembly
GPO Box 1020
Canberra ACT 2601

Dear Mrs Jones

I write in relation to comments made by the Standing Committee on Justice and Community Safety (Legislation Scrutiny Role) (the Committee) in its Scrutiny Report 31 in relation to the Animal Welfare Legislation Amendment Bill 2019.

I thank the Committee for its comments relating to delegated powers and animal ownership prohibitions. Responses to the Committee's comments are provided below.

Rights to the presumption of innocence (section 22 HRA) - delegation of legislative powers

The Committee has raised concerns with the broad power of delegation conferred on the Animal Welfare Authority and the extent to which this may extend the range of bodies able to exercise administrative powers under the Act, which may have a prejudicial impact on rights, liberties and obligations.

Clause 5 of the Bill extends the current power of delegation to include any person who is not a public servant provided the Authority is satisfied that the function needs to be exercised by a person who is not a public servant.

The Committee requested further information on whether consideration was given to a more limited delegated power or otherwise providing for a more formal process of notification of any delegation similar to that provided in the Bill for animal entities.

Consideration was given to a more limited delegated power and a more formal process of notification. It is considered that the power in the Bill is already limited by the requirement that the function needs to be exercised by a non-public servant. This significantly limits the range of functions that could be delegated and it is not considered to be an inappropriate or overly broad delegation of power.

A similar delegation power is given to the head of service under the *Public Sector Management Act 1994*, the ombudsman under the *Ombudsman Act 1989* and the CEO of the Integrity Commission under the *Integrity Commission Act 2018*.

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Right to a fair trial (section 21HRA) – animal prohibition order and ownership ban

Animal welfare as a paramount consideration

The Committee raised concerns over the operation of the Bill in respect of temporary animal prohibition orders that are issued by the Animal Welfare Authority and also interim ownership bans that can be issued by a Court.

The Committee is concerned that the justification for the Bill's limit on the human right to equality does not extend to the welfare of animals being of paramount concern in any temporary animal ownership ban by a Court or interim prohibition order by the Animal Welfare Authority, unlike animal ownership and permanent ownership bans.

To be able to make an order the Authority or the Court needs to be satisfied that an animal's welfare is at risk. The Authority or Court then has a discretion to make the order. If the Authority or Court makes an order it must consider animal welfare and certain other matters and may consider other relevant matters. As the explanatory statement states the Authority or Court may consider the welfare of a person with disability who owns a companion animal so an order could be made, for example, prohibiting the person from owning an animal other than a particular companion animal.

The Court or Authority has the discretion to balance the welfare of the person with the animal and other animals. Including a statement that the welfare of animals is paramount in the Bill would take away a valuable discretion that has been given in weighing up all the circumstances of the case.

The language of the explanatory statement will be revised to reflect this consistently for all animal ownership orders, including animal ownership and permanent ownership bans.

Enabling submissions from affected persons

The Committee advised that consideration should be given to making it explicit in the Bill that, prior to any temporary prohibition order being made, the Authority must provide notice and enable submissions from persons potentially affected.

Requiring notice and enabling submissions could have the effect of significantly delaying an order and enabling animal welfare abuse to continue. These orders are only issued in the most serious circumstances and a range of considerations are already required under the Bill. The Bill does not prevent this from occurring, and the Authority or Court can weigh up and consider all relevant factors, which would include submissions from affected persons where relevant and appropriate to the case. The explanatory statement will be updated to reflect this.

Persons to whom a temporary prohibition order can apply

The Committee has noted that it is not clear to the Committee that temporary prohibition orders can apply only to persons against whom proceedings for breach of animal welfare offences are in contemplation.

The criteria for imposing a temporary prohibition order in the Bill is where the authority reasonably believes that an animal's welfare is, or would be, at serious risk if the person were to own, keep, care for or control the animal. The authority must consider the welfare of the animal and any other animal owned, kept, cared for or controlled by the person, the likelihood the person has, or will, commit an offence against the Act, and any conviction or finding of guilt of the person against an offence under an ACT or equivalent law (section 86E).

The intention is that this order would be used in circumstances where an investigation is underway with a view to deciding whether proceedings would be initiated. The decision is reviewable and limited in time. The explanatory statement will to be updated to reflect this and provide clarity on this issue.

Application of temporary prohibition orders

The Committee has noted that it is not clear that temporary prohibition orders will apply only where the person is the sole carer or controller of an animal whose welfare is at risk. In the Committee's view, if it is intended that temporary prohibition orders are not available where a domestic animal is owned, cared for or controlled jointly by two or more people then this should be made clear in the Bill.

Temporary prohibition orders are intended to be available in the same set of circumstances as other ownership bans in the Bill. I will amend the Bill to make a minor amendment to reflect this.

I trust the above responses provide the Committee with clarification and address their concerns.

Yours sincerely

Chris Steel MLA
Minister for City Services