



Government Response to the Report of the Independent Review of the *Animal Welfare Act 2002*

Background

The Independent Review of the Animal Welfare Act (Review) was commissioned by the McGowan Government in May 2019. In its report, the Review identified many legal gaps and uncertainties that limit the capacity of regulators to enforce compliance and the protection of animals under the *Animal Welfare Act 2002* (Animal Welfare Act).

The Animal Welfare Act came into effect in 2002. Since then, scientific understanding of animal welfare has grown, together with public awareness and expectations regarding humane treatment of animals. Animals are living beings and science tells us that they experience some of the same feelings that humans do. Western Australians care about the treatment of animals and are calling for a modern animal welfare law to protect and promote their welfare. The law should set minimum standards for the humane treatment of animals and give government the authority to enforce compliance with standards. A modern animal welfare law will help to support public confidence in the livestock sector and maintain the State's reputation for high ethical standards, including in the treatment of animals.

The McGowan Government generally accepts the findings of the Review and supports the recommendations, noting the need for further consideration of some recommendations in consultation with regulators and stakeholders.

The McGowan Government proposes five key areas of reform:

1. Modernising the Animal Welfare Act

The ethical treatment of animals has emerged as a significant public concern. The Animal Welfare Act should reflect public expectations and scientific evidence regarding animal welfare. Outdated legislation may lead to poor outcomes for animals and a loss of public confidence in the government's capacity to regulate.

- The government will amend the Animal Welfare Act to reflect modern, science-based concepts and evidence relevant to animal welfare.
- The goal is to encourage people who own or work with animals to meet their fundamental duty of care and deal with animals in a manner that is consistent with scientific understanding and community expectations.

2. Strengthening the authority and capability of animal welfare inspectors

Under the current legal framework, animal welfare inspectors have limited power to enter places and vehicles to monitor compliance with the Animal Welfare Act. The legal framework for animal welfare falls short of other state legislation, such as the *Biosecurity and Agriculture Management Act 2007*. These limitations on inspectors' powers do not align with the community expectation for a proactive approach to compliance.

- The government will increase its focus on the training and competence of all authorised animal welfare inspectors, including those employed by government and non-governmental organisations.
- The goal is to ensure that every authorised inspector has appropriate authority and is competent to apply the law by timely, effective and fair means.

3. More efficient and effective law enforcement

To safeguard animal welfare, the Animal Welfare Act must be effectively enforced. This requires effective systems to inform members of the public of their obligations, define and investigate offences, and enforce compliance using timely, effective and fair means.

- The government will adopt new policies and tools to strengthen the enforcement of the Animal Welfare Act.
- Outdated practices will be replaced by contemporary law enforcement principles and best practice.

4. Independent advice and expertise

Animal welfare policies and approaches to law enforcement should be based on objective, impartial, evidence-based advice. The Review identified a need for robust structures providing advice on the development of laws, policies and standards that reflect developments in animal welfare science and community expectations. Animal cruelty prosecutions are complex matters and specialised legal expertise is needed to support appropriate outcomes.

- The government will set up an independent Animal Welfare Advisory Committee (AWAC) to advise the Minister for Agriculture and Food.
- The government will also consider, through further consultation, the benefit of an independent Office for the Prosecution of Cruelty to Animals and enhanced arrangements for ethical review of the use of animals in scientific studies.
- The goal is to ensure that animal welfare policies and practices, including law enforcement, are based on objective, impartial assessment of evidence.

5. Open and effective administration

The Animal Welfare Act should be administered in a way that is open, easy to understand and effective to achieve the objectives of the legislation.

- The government will emphasise fairness, openness and clarity in policies relating to the administration of the Animal Welfare Act.
- The goal is to ensure that Western Australians understand and are motivated to comply with their legal obligations in relation to animal welfare. New policies will positively encourage compliance and deter non-compliance by providing appropriate sanctions and penalties.

The Government's response to individual recommendations is provided in the following table.

The Government will now prepare a Bill to amend the Animal Welfare Act in response to the Review. The amendment Bill will be made available for public comment. Government also commits to targeted consultation with key stakeholders as the Bill progresses.

No.	Recommendation	Government response
1	Duty of care The Panel recommends a 'duty of care' obligation be included in the <i>Animal Welfare Act 2002</i> and it be an offence to breach that obligation.	Supported.
2	Living beings The Panel recommends that section 3 of the <i>Animal Welfare Act 2002</i> be amended to expressly recognise that animals are living beings, able to perceive, feel, and have positive and negative experiences.	Supported.
3	'Good animal welfare' defined The Panel recommends that section 3 of the <i>Animal Welfare Act 2002</i> be amended to expressly recognise that good animal welfare requires the satisfaction of an animal's physiological and behavioural needs and the provision for positive experiences.	Supported.

No.	Recommendation	Government response
4	<p>Definition of harm amended</p> <p>The Panel recommends amending part (c) of the definition of ‘harm’ in the <i>Animal Welfare Act 2002</i> to take account of the fact that an animal may be experiencing distress before its observable physiological or behavioural reactions to such distress become ‘severe’.</p>	Supported.
5	<p>Definition of Person in Charge</p> <p>The definition of ‘person in charge’ in the <i>Animal Welfare Act 2002</i> should be modified to ensure that all persons who are responsible for the welfare of an animal are included in the definition, even though a person may not have ‘actual physical’ custody or ‘actual physical’ control of the animal.</p>	Supported.
6	<p>Fish – Part 2 (Scientific Licensing)</p> <p>The Panel recommends the inclusion of vertebrate fish and cephalopods in the definition of ‘animal’ for the purposes of Part 2 of the <i>Animal Welfare Act 2002</i>.</p>	Supported, noting this will more closely align WA with other jurisdictions and the reference standards in the National Health and Medical Research Council’s – Australian code for the care and use of animals for scientific purposes.
7	<p>Fish – domestic</p> <p>The Panel recommends that consideration be given to whether the welfare of vertebrate fish kept as domestic pets should be transferred to the <i>Animal Welfare Act 2002</i>.</p>	At this time, Government does not intend to regulate the welfare of fish kept as domestic pets under the <i>Animal Welfare Act 2002</i> .
8	<p>Fish – review current arrangements</p> <p>The Panel recommends a review be conducted to investigate the effectiveness of current arrangements for protecting the welfare of fish.</p>	Government’s priority is to develop regulations under the <i>Fish Resources Management Act 1994</i> to create offences for the deliberate ill-treatment of live finfish, including when they are held on commercial premises. The regulations will be prepared in liaison with peak stakeholder groups.

No.	Recommendation	Government response
9	<p>Powers of entry – urgent entry</p> <p>The Panel recommends that Inspectors be authorised to enter a place or vehicle, including a residence, if the Inspector reasonably believes that it is not possible, or that there is insufficient time, to obtain an urgent warrant, and the Inspector reasonably suspects:</p> <ul style="list-style-type: none"> • an animal at the place has sustained a severe injury and the injury is likely to remain untreated, or remain untreated for an unreasonable period; or • there is an imminent risk of death or injury to an animal at the place or in the vehicle; <p>whether or not an offence has occurred or is suspected.</p> <p>This power is to be used only if reasonable steps, where practicable, have been made to contact the owner or occupier of the place or vehicle and he/she cannot be contacted.</p>	<p>Supported, noting this will require clear and targeted communication with stakeholders to reflect that the powers are not intended for routine monitoring. Rather, the power would be used when inspectors have reason to believe that an animal’s welfare is at serious risk.</p>
10	<p>Powers of entry – compliance with direction and court orders</p> <p>The Panel recommends that Inspectors be able to enter a place other than a residence to monitor compliance with a direction or court order at any reasonable time.</p> <p>In order to enter a residence to monitor compliance with a direction or court order, the Panel recommends that an Inspector be empowered to obtain a warrant for that purpose.</p>	<p>Supported, noting this will require clear and targeted communication with stakeholders.</p>
11	<p>Powers of entry – monitoring compliance</p> <p>The Panel recommends Inspectors be able to enter any non-residential place or non-residential vehicle for the purpose of monitoring compliance with the <i>Animal Welfare Act 2002</i> and Regulations.</p> <p>Before entering the place or vehicle, an Inspector must provide reasonable notice of entry, unless he/she reasonably suspects that to do so will jeopardise the purpose of the proposed entry or the effectiveness of any search of the place or vehicle.</p>	<p>Supported, noting this will require clear and targeted communication with stakeholders and consideration of future developments with the <i>Animal Welfare and Trespass Legislation Amendment Bill 2020</i>.</p>

No.	Recommendation	Government response
12	<p>Monitoring compliance – Livestock</p> <p>Inspectors monitoring compliance with the <i>Animal Welfare Act 2002</i> and Regulations in relation to livestock must have met specified training standards and demonstrated competency relevant to the animal species/industry being monitored.</p>	Supported.
13	<p>Notice to enter vehicles</p> <p>The Panel recommends that section 39 of the <i>Animal Welfare Act 2002</i> be amended to allow the use of notices to enter a vehicle.</p>	Supported.
14	<p>Review objections to notice of entry</p> <p>The Panel recommends that the <i>Animal Welfare Act 2002</i> be amended so as to enable an expeditious review process of objections to notices of entry.</p>	Supported.
15	<p>Inspectors powers – directions</p> <p>The Panel recommends:</p> <p>(a) to resolve any uncertainty, the <i>Animal Welfare Act 2002</i> be amended to expressly provide Inspectors with power to issue directions relating to animals the Inspector reasonably believes are present at a place and whose welfare, safety and health is at risk, without needing to sight and identify all individual animals or groups of animals; and</p> <p>(b) the <i>Animal Welfare Act 2002</i> be amended to enable Inspectors to issue directions in relation to any object, vehicle or place, where such directions are reasonably necessary to protect the health, welfare or safety of any animal or group of animals, including animals who have not been specifically identified by the Inspector who may come in contact with the object, vehicle or place.</p>	Supported.

No.	Recommendation	Government response
16	<p>Inspectors powers – seizure for failure to comply with direction or welfare risk</p> <p>The Panel recommends an Inspector be authorised to seize an animal under a warrant in circumstances where either the animal’s welfare, safety and health is at risk, or there has been repeated non-compliance with a direction.</p>	Supported.
17	<p>Inspectors powers – seizure if breaching prohibition order</p> <p>The Panel recommends that an Inspector be authorised to seize an animal when an Inspector reasonably suspects that the person who has custody or control of the animal is in contravention of a prohibition order.</p> <p>The Panel recommends:</p> <ul style="list-style-type: none"> (a) a person who is present at a place where an animal is present should be presumed to have the care or custody or control of the animal unless the person can prove the contrary on the balance of probabilities; (b) the decision by the Inspector to seize the animal should be a reviewable decision; and (c) if an animal is seized from its owner on the grounds that the person is prohibited from owning the animal an automatic forfeiture process should apply once the period for review has expired. 	Supported.
18	<p>Inspectors powers – seizure of dependent animals</p> <p>The Panel recommends that Inspectors should be able to:</p> <ul style="list-style-type: none"> (a) seize any dependent animal of a seized animal; and (b) seize any animal that the animal itself depends on. <p>The usual provisions applicable under the <i>Animal Welfare Act 2002</i> for the return of a seized animal should apply to animals seized on this basis.</p>	Supported.

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19	<p>Inspectors powers – seizure of offspring</p> <p>The Panel recommends the <i>Animal Welfare Act 2002</i> be amended to clarify that if a seized animal gives birth, the seized animal's offspring are taken to have also been seized under the <i>Animal Welfare Act 2002</i>. The usual provisions applicable under the <i>Animal Welfare Act 2002</i> for the return of a seized animal should apply to animals seized on this basis.</p>	Supported.
20	<p>Inspectors powers – extend time to hold seized animals</p> <p>The Panel recommends that the length of time that must elapse before an Inspector is required to return seized animals or other property to an owner as detailed in section 44(5)(a) of the <i>Animal Welfare Act 2002</i> be extended to six months.</p>	Supported to address practical problems in the current operation of the Act.
21	<p>Inspectors powers – identification of seized animals</p> <p>The Panel recommends that Inspectors be permitted to identify seized animals by means prescribed in the Regulations.</p>	Supported to address practical problems in the current operation of the Act.

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22	<p>Inspectors powers – return of seized animals and abandonment</p> <p>The Panel recommends that the <i>Animal Welfare Act 2002</i> should provide that, in order to return a seized animal, including an animal suspected of being abandoned and seized under s 42, or other property, it is sufficient to make it available for collection. The <i>Animal Welfare Act 2002</i> or Regulations should specify:</p> <ul style="list-style-type: none"> (a) the means of notifying an owner (including owners who cannot be found) that the animal or other property is ready for collection; (b) if an animal or other property is not collected, the CEO or other relevant authority may forfeit the animal or other property to the Crown provided he/she is satisfied that reasonable attempts have been made to locate the owner; and (c) that the animal cannot be forfeited until at least 21 days has elapsed since the animal was seized. 	Supported to address practical problems in the current operation of the Act.
23	<p>Inspectors – provision of assistance</p> <p>The Panel recommends:</p> <ul style="list-style-type: none"> (a) the <i>Animal Welfare Act 2002</i> be amended to clearly state that, in defined circumstances, assistance may be provided by a person who is not in the direct physical presence of an Inspector; (b) that any such authorisation may be facilitated by mobile phone, fax, email, video or other electronic means; and (c) that DPIRD, in consultation with stakeholders, develop policy setting out the appropriate constraints to such authorisation. 	Supported to address practical problems in the current operation of the Act.
24	<p>Infringement notices</p> <p>The Panel recommends that any necessary steps be taken to enable infringement notices issued by Inspectors to be enforced by the Fines Enforcement Registry.</p>	Supported; steps have already been taken to implement this recommendation.

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25	<p>Modified penalty for failure to comply with direction</p> <p>The Panel recommends that failure to comply with a direction should be an offence for which an infringement notice can be issued.</p>	Supported.
26	<p>Training of Inspectors</p> <p>The Panel recommends in relation to appointed Inspectors:</p> <ul style="list-style-type: none"> (a) a specified standard of training and competency be overseen by an independent body; (b) the training and competency requirements must include practical and theory components; (c) an Inspector must meet the standard of competency set by the independent body; (d) Inspectors be required to participate in regular professional development to maintain their training and skills; and (e) a governance mechanism be established to ensure that the above points can be enforced for all appointed Inspectors. 	<p>The need for clear and transparent standards for training, competency and continuing professional development for inspectors is supported.</p> <p>An independent body could be involved in determining competency standards, but the regulator must retain responsibility for training.</p>
27	<p>Compliance monitoring of Livestock and training of Inspectors</p> <p>The Panel recommends, in relation to Inspectors who monitor compliance with the <i>Animal Welfare Act 2002</i> and Regulations with respect to livestock (see Recommendations 11 and 12), their practical training must include direct experience with relevant animal species/industry.</p>	Supported.

No.	Recommendation	Government response
28	<p>Enquiry into the sufficiency of resources relevant to enforcement</p> <p>The Panel recommends:</p> <ul style="list-style-type: none"> (a) training and professional development of Inspectors be prioritised and strengthened; and (b) the government inquire into the sufficiency of resources relevant to the enforcement of the <i>Animal Welfare Act 2002</i> by all organisations (including local government and the RSPCA), including with respect to specific geographical locations or situations. 	<p>Supported in principle, noting this recommendation requires further consideration. The government has committed to double the grant funding to the RSPCA, which will address some of the resourcing challenges.</p>
29	<p>Local Governments</p> <p>The Panel recommends:</p> <ul style="list-style-type: none"> (a) the involvement of local governments in enforcing the <i>Animal Welfare Act 2002</i> throughout the State be encouraged and supported and, where necessary, additional State Government funding be provided; and (b) where local government is involved in enforcing the <i>Animal Welfare Act 2002</i>, centralised and coordinated training, resources and support be provided to appointed Inspectors. 	<p>Supported in principle. Consultation with local government is required.</p>
30	<p>Funding and reporting by regulators</p> <p>The Panel recommends:</p> <ul style="list-style-type: none"> (a) all organisations acting as Regulators in relation to the <i>Animal Welfare Act 2002</i> be required to regularly and adequately report to government on their relevant enforcement activities; (b) all appointed Inspectors be fully funded by the State in relation to their <i>Animal Welfare Act 2002</i> enforcement activities; and (c) the allocation of funds set out in (b) to each organisation be accompanied by an obligation to expend the funds on the enforcement of the <i>Animal Welfare Act 2002</i>, and to provide annual reports on this expenditure. 	<p>30(a) supported in principle.</p> <p>30(b) and (c) will be further considered in conjunction with other funding priorities.</p> <p>Consideration will be given to funding for training of non-Departmental Inspectors.</p>

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31	<p>Communication of roles</p> <p>The Panel recommends that DPIRD take steps to clarify the role and responsibilities of all organisations (including local government and the RSPCA) in the enforcement of the <i>Animal Welfare Act 2002</i> and communicate this to stakeholders and the public.</p>	Supported.
32	<p>Information sharing between regulators</p> <p>The Panel recommends that a provision be inserted into the <i>Animal Welfare Act 2002</i> which provides that Inspectors employed by different organisations can share necessary information obtained in the course of their duties.</p>	Supported.
33	<p>Central register of enforcement activities</p> <p>The Panel recommends the creation of a central register for recording all enforcement activities, including official warnings, infringement notices, and directions, and the provision of access to that register for all Inspectors and appropriately authorised personnel.</p>	Supported.
34	<p>Information sharing – other bodies</p> <p>The Panel recommends that the <i>Animal Welfare Act 2002</i> be amended to allow for the exchange of information between relevant organisations where the information ‘is, or is likely to be, relevant to the regulatory functions’ of the other organisation.</p>	Supported.
35	<p>Independent prosecutorial authority</p> <p>The Panel recommends that an independent statutory prosecutorial authority be established by legislation. This entity is to:</p> <ul style="list-style-type: none"> • be created by statute; • conduct all prosecutions under the <i>Animal Welfare Act 2002</i>; • be composed of lawyers who are able to conduct prosecutions under the <i>Animal Welfare Act 2002</i>; and • be funded by government. 	This recommendation requires further consultation with regulators and consideration of anticipated costs and benefits.

No.	Recommendation	Government response
36	<p>Review investigative framework</p> <p>The Panel recommends that a separate review be undertaken to inquire specifically into the effectiveness of the current investigative framework under the <i>Animal Welfare Act 2002</i> and the benefits and disadvantages of any alternatives to that framework.</p>	Supported in principle noting this requires more detailed consideration.
37	<p>State to fund prosecution costs</p> <p>The Panel recommends that WA legislation provide that all costs (including disbursements) ordered to be paid by the prosecutor in a matter brought under the <i>Animal Welfare Act 2002</i> be paid from the Consolidated Revenue Fund.</p>	Supported in principle.
38	<p>Creation of indictable offences</p> <p>The Panel recommends the <i>Animal Welfare Act 2002</i> be amended to include indictable aggravated cruelty offences for acts of cruelty that:</p> <p>(a) If committed by an individual, are committed intentionally and which do in fact result in, or which are capable of resulting in, serious harm to, or death of, the animal.</p> <p>(b) If committed by a corporation, are committed intentionally or recklessly and which do in fact result in, or which are capable of resulting in, serious harm to, or death of, the animal.</p> <p>(c) Impact adversely upon a large number of animals, even where the resultant harm to each individual animal may not be individually described as 'serious harm'.</p>	Supported.
39	<p>Extend limitation period</p> <p>The Panel recommends the <i>Animal Welfare Act 2002</i> allow for the prosecution of an offence to be commenced within two years after the day on which evidence of the alleged offence first came to the attention of a person authorised to institute a prosecution under <i>the Animal Welfare Act 2002</i>.</p>	Supported in principle, with consideration to be given to an appropriate limitation period.

No.	Recommendation	Government response
40	<p>Disclosure rules to apply</p> <p>The Panel recommends that a simple offence under the <i>Animal Welfare Act 2002</i> be added to Schedule 4 of the <i>Criminal Procedure Act 2004</i>.</p>	Supported.
41	<p>Permanent prohibition orders</p> <p>The Panel recommends that, where an individual or corporation is convicted of an indictable offence, a permanent prohibition order be required to be made unless the accused can demonstrate exceptional reasons why such an order should not be made.</p>	Supported.
42	<p>Interstate prohibition orders</p> <p>The Panel recommends that the <i>Animal Welfare Act 2002</i> provide for the recognition and enforcement of prohibition orders made under a corresponding law of another state or territory.</p>	Supported.
43	<p>Review and consolidate defence provisions</p> <p>The Panel recommends that consideration be given to reviewing and consolidating the defence provisions in the <i>Animal Welfare Act 2002</i> to ensure they serve the purpose for which they were intended.</p>	Supported.
44	<p>Process to review defences</p> <p>The Panel recommends the defence provisions be reviewed every 10 years, to ensure:</p> <ul style="list-style-type: none"> (a) minimal overlap of defences; (b) the defence provisions continue to be consistent with prevailing contemporary standards taking into account relevant scientific and other developments in regard to how animals are treated, cared for and managed; (c) there continues to be a need for each defence; and (e) defences are clear and effective. 	The issues raised in this recommendation are complex, and the feasibility and practicality of the recommended action requires further consideration.

No.	Recommendation	Government response
45	<p>Adoption process for codes of practice</p> <p>The Panel recommends that the <i>Animal Welfare Act 2002</i> set out the steps that must be followed, and conditions which must be satisfied, before a code of practice is adopted.</p>	Supported.
46	<p>Animal Welfare Advisory Committee (AWAC)</p> <p>The Panel recommends that a Western Australian Animal Welfare Advisory Committee, with appropriate membership, be established as a statutory body under the <i>Animal Welfare Act 2002</i>.</p>	Government has committed to this and will seek to establish the Committee as a matter of priority.
47	<p>Role of AWAC</p> <p>The Panel recommends:</p> <ul style="list-style-type: none"> (a) the WA AWAC provide advice on legislative and other relevant matters to the Minister and the Regulators to improve animal welfare in WA; (b) consideration be given to the WA AWAC overseeing the development and implementation of a WA Animal Welfare Strategy and Action Plan; (c) consideration be given to the WA AWAC guiding the development and implementation of standards relevant to training and competency assessment of appointed Inspectors; and (d) consideration be given to the WA AWAC overseeing and coordinating all reviews and activities in WA affecting or relating to the <i>Animal Welfare Act 2002</i>. 	This will be considered as part of the development of the terms of reference of the AWAC.
48	<p>Penalty revenue to support AW</p> <p>The Panel recommends that all penalty revenue from all sources under the <i>Animal Welfare Act 2002</i> go into a separate fund to be used for furthering the objects of the AW Act. The WA AWAC or DPIRD should administer this fund.</p>	The use of a separate fund, consistent with the <i>Biosecurity and Agriculture Management Act 2007</i> , is supported. However, the administration of government funds requires separate consideration.

No.	Recommendation	Government response
49	<p>Review Part 2 (Scientific Use)</p> <p>The Panel recommends that Part 2 of the <i>Animal Welfare Act 2002</i> be reviewed to:</p> <ul style="list-style-type: none"> • investigate the fitness for purpose of the Scientific Use Code as a legal standard; and • confirm that Part 2 continues to be consistent with prevailing contemporary standards, taking into account relevant scientific and other developments in regard to how animals used for scientific purposes are treated, cared for and managed. 	Supported.
50	<p>Establish Community AEC</p> <p>The Panel recommends that the government establish a Community Animal Ethics Committee.</p>	Supported, and options will be provided to government in due course.
51	<p>Animal fighting offences</p> <p>The Panel recommends that section 32 be revised to improve the operational effectiveness of the <i>Animal Welfare Act 2002</i>, specifically, by making it an offence:</p> <p>(a) to possess certain items relating to animal fighting; and</p> <p>(a) to possess and share images and videos of animals being fought.</p>	Supported in principle. The precise scope of the offence will need further consideration.
52	<p>Animal hoarding</p> <p>The Panel recommends that DPIRD and the RSPCA investigate options to improve the operational effectiveness of the <i>Animal Welfare Act 2002</i> with respect to responding to and managing cases involving animal hoarding. Action should be taken in relation to policy, operations and legislative reform.</p>	Supported.