



Department of
**Primary Industries and
Regional Development**

Veterinarian's Guide to Animal Welfare Cases

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Supporting your success

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Foreword

This guide was developed in consultation with the RSPCA (WA), with the goal of informing veterinarians about animal welfare regulation in Western Australia and, in particular, the veterinarian's role in the investigation of suspected offences under the *Animal Welfare Act 2002*.

In addition to routine professional involvement in animal health and welfare, veterinarians may be called to examine, treat, and provide advice about animals that are the subject of regulatory investigations. In this regard, veterinarians may be called as expert witnesses in criminal prosecutions of animal cruelty matters. In most cases veterinarians may be asked to assist the prosecution or the defence in relation to cruelty charges.

Veterinarians play a crucial role in all aspects of animal welfare, and an understanding of the legal process involved in an animal cruelty prosecution is critical in fulfilling this important role. This guide supports veterinarians involved in animal welfare cases and other processes relevant to the enforcement of animal welfare legislation in Western Australia.

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1. Introduction

1.1 Enforcement of animal welfare in Western Australia

Under the *Animal Welfare Act 2002* (the Act), the Director General of the Department of Primary Industries and Regional Development (DPIRD) has the power to appoint general inspectors (inspectors) who investigate complaints and enforce the Act and regulations in Western Australia. Animal welfare inspectors are employed by:

- the DPIRD Livestock Compliance Unit (LCU)
- the Royal Society for the Prevention of Cruelty to Animals, Western Australia (Incorporated) (RSPCA)
- some local government authorities
- the Department of Biodiversity, Conservation and Attractions (DBCA).

All WA Police officers can also exercise the powers conferred to a general inspector under the Act as appropriate.

The primary function of general inspectors is to enforce Part 3 of the Act. To this end, they have statutory powers that are not given to the public or to veterinary surgeons.

The statutory powers, provided in Part 4 Division 2 of the Act, include the power to:

- enter vehicles and properties where a cruelty offence is suspected (Part 3)
- seize animals and evidence related to acts of animal cruelty
- examine, take extracts from or copy records
- provide animals with food, water, shelter or other care
- issue directions for the health, welfare and safety of an animal
- examine and take samples from an animal, place, vehicle or thing
- request a person to assist the inspector in performing the inspector's functions
- euthanise animals.

Many complaints about animal welfare result in minor investigations that can be dealt with by an inspector without calling on a veterinary surgeon. In more serious cases, the inspector may request expert assistance from a veterinary surgeon to identify the cause of the animal's condition and collect evidence to support a charge under the Act.

Reports of animal cruelty made by members of the public, including veterinary surgeons, should be sent to the RSPCA, either online or by calling 1300 278 3589. In an emergency, it is best to telephone, as online complaints are not checked over the weekend.

An overview of animal welfare law in Western Australia is in [Appendix 1](#).

2. Your role as a veterinary surgeon in investigations and prosecutions

The role of veterinary surgeons in an animal cruelty investigation is limited to providing factual evidence and expert opinion on the condition, husbandry, appropriate treatment and likely impact on the welfare of the animal/s. You will not be involved in the investigation of other matters relevant to the accused person or the circumstances of the case, nor the decision to prosecute.

Evidence from veterinary surgeons involved in animal welfare cases is often vital to a successful prosecution for cruelty. Veterinary surgeons are respected members of the community and their expertise is needed by courts to understand the technical details pertaining to animal welfare.

Veterinary surgeons can assist general inspectors in the investigation of an offence as well as provide witness testimony in legal proceedings. For example, a veterinary surgeon may be called as a witness in a prosecution of an animal welfare matter to explain to the court the appropriate husbandry procedures and feeding regimes that should occur during normal animal care, disease conditions and harm suffered by animals. Veterinary surgeons may also introduce important supporting evidence, such as photographs and clinical notes, which help the court understand the issues.

There are several ways in which an interested veterinary surgeon may be involved in an investigation of cruelty to animals:

- You may witness an act of cruelty or neglect in the course of your employment and report this to the RSPCA.
- You may be asked by an animal owner for advice after they have been directed to seek veterinary advice by an inspector.
- You may be asked to assist with a case of suspected cruelty by a general inspector. This could involve performing physical examinations, post mortem examinations, providing advice, providing veterinary treatment to animals, etc.
- You may be presented with evidence obtained during an investigation, such as photographs and pathology results, and asked to analyse the evidence and provide your opinion. This may be on behalf of the prosecutor or the accused person.
- You may be asked by an inspector to attend and assess a property and the condition of the animals you find there. This could be as part of an investigation into a possible prosecution or as part of a general investigation into a complaint of cruelty.

These situations will normally involve writing a detailed report. You may be asked to present your findings before a court. For the best outcome, you should keep clear, detailed and chronological notes on the location, the persons present, what happened and what was said. This detailed information is needed to draft evidence

and other relevant legal procedures. Your credibility and reliability as a professional and as a witness is greatly influenced by the quality of reports that you prepare.

Remuneration

While veterinary surgeons often donate their services to assist with animal cruelty investigations, you are entitled to remuneration for your work on the case and this should be discussed and agreed with the person who engages your service. The production of high quality reports that are needed for animal welfare investigations takes time, skill and expertise.

Field of expertise and conflict of interest

If you feel that the matters under investigation are outside your field of expertise, or that there may be a potential conflict of interest regarding your involvement, you should inform the inspector as early as possible. For example, a conflict of interest could occur when a third party makes a complaint against one of your existing clients, and you are asked to be the expert witness. Whether a conflict is 'real' or 'perceived', it is important that you mention any issues to the inspector immediately so that he/she can arrange for another veterinary surgeon to provide the service, if this is deemed to be necessary.

It is very important that you are honest and clear about your areas of expertise and your views on the case. The credibility of an expert witness is crucial for the court process and you can expect to be cross examined on the evidence that you provide. If you are asked to provide services in an area (animal species or industry sector) with which you are not familiar, you should advise the inspector at the outset.

Confidentiality

Information obtained through an investigation is confidential by law and strict penalties apply to those who do not respect legal requirements.

Emotional involvement

Given the nature of animal cruelty cases, it is understandable that you may become emotionally invested but be aware that becoming too personally involved may jeopardise your credibility as a witness and this can, in turn, negatively affect the outcome of the case.

Involvement in an animal cruelty case can be emotionally challenging, especially if the case concerns traumatic details, you are unable to discuss confidential matters, or you feel pressure in court. If you require support, speak to the investigating officer, or the Veterinary Surgeon's Board of Western Australia on 08 9317 2353.

2.1 Examination and treatment of animals at an owner's request

An animal owner may contact you and ask you to examine and treat their animals because they have been directed by an inspector to do so. This commonly occurs when a person has been issued with a direction notice to seek veterinary treatment for their animal within a specified time.

In this case, the relationship between you and the animal owner is a normal veterinary–client relationship. Whether or not the person is an existing client, you should examine and treat the animal and provide advice to the owner as required.

Recording the examination and treatment as evidence

To comply with a direction notice, an owner is often required to give the inspector evidence that the animal was examined and treated by a veterinary surgeon and the details of this treatment. Owners may therefore request a copy of your clinical records or consent to you providing your records to the inspector directly. In these cases, you should keep detailed notes and be very clear about your treatment recommendation and any advice provided to the client. Take care to mention any follow up actions required and relevant timeframes.

Once a direction notice has been complied with and the animal has been provided with veterinary treatment, the inspector will generally close the case. If you have concerns for an animal’s ongoing welfare it is important that you state in your records what the animal requires in terms of ongoing management/treatment. This enables an inspector to schedule follow-up visits to ensure that the advice has been complied with and implemented. You may also discuss any concerns you have with the inspector on a confidential basis, if you wish.

2.2 Examination of animals and collection of evidence at an inspector’s request

You might be asked by an inspector to participate in an animal welfare investigation and be presented with an animal to assess or treat. Examples of these requests can be found in [Appendix 5](#). While there are many similarities between managing animal cruelty cases and routine cases (e.g. stabilising emergency cases and providing pain-relief), some important aspects of record keeping, sample collection and submission, taking evidence and documenting visits differ.

Clinical examination record

Contemporaneous note taking is required in animal cruelty cases. You could use a Dictaphone or have somebody else record notes while you speak which you can then refer to when you write up your clinical notes.

Be thorough and record as much information as possible throughout the clinical examination. It is important to record all findings, whether they are normal or not. Any omissions in the record may be interpreted by a court as demonstrating that your clinical assessment was incomplete. You should include details of the animal’s behaviour, response to human presence, level of activity and the animal’s response to treatment. In animal cruelty cases, it is important that the veterinary surgeon assesses pain, distress and injury (and possible causes) as these elements commonly form the basis of a cruelty offence under the Act.

Sample collection and submission

You should record all samples taken (e.g. blood, faeces, urine) and store duplicate samples if possible. It is important that samples be obtained before treatment is

commenced if this will not cause further harm to the animal. If you decide to treat the animal first and take samples later, the reason for doing this should be recorded.

For evidentiary purposes, it is important to maintain the integrity of samples so that it can be proven beyond reasonable doubt that the samples came from the relevant animal. The term 'chain of custody' refers to the chronological documentation, custody, control, transfer, analysis, and disposition of evidence.

When submitting samples for laboratory analysis you should ask the inspector involved in the case which laboratory to use, to ensure the laboratory is accustomed to receiving samples for animal cruelty cases. When the samples are collected by the laboratory, you should obtain a signature from the person who picks up the samples stating they have taken custody of them. Alternatively, the inspector may take custody of the samples and deliver them to the laboratory to ensure the chain of custody. If you are unsure about requirements for chain of custody, you should contact the inspector for further information.

Photographic evidence

When assessing lesions, make detailed descriptions and take photographic evidence where possible. When taking photographs, ensure that the camera is set for the correct date and time, and keep the original photographs on the camera's data card (this can be important for evidentiary purposes). Use familiar objects such as rulers or coins in photographs to indicate the scale where required.

Diagnostic imaging

For cases where deliberate ill-treatment (abuse) is suspected, a thorough examination may include radiographs or other diagnostic imaging to reveal lesions, such as fractures, that may not be obvious on physical examination and to detect signs of previous trauma. When taking radiographs, you should include the patient's details, the veterinary surgeon's details, date, description of the view taken, left or right markers and if possible a scale or ruler. If the images are processed digitally, it is important to retain back-up files as necessary.

2.3 On-farm examination of animals

Some investigations require assessment of herds of animals on farms. These investigations are usually conducted with the consent of the property owner, in which case the inspector is not required to use their statutory powers to enter the property. Often they involve husbandry/management issues that can be resolved with appropriate advice. An inspector may or may not accompany the veterinary surgeon during such a visit, depending on the individual circumstances.

In addition to the information given above, tools relevant to the assessment of livestock on farms are listed under Useful Resources, in [Appendix 6](#).

Documenting a visit to livestock on a farm

Clinical notes for a welfare investigation must be detailed and complete, allowing for description of and determining the cause of the welfare issue and other possible issues. You should make a differential diagnosis list and apply your findings to either

rule in or rule out possible causes of the welfare issue. You should include photographs and diagrams as appropriate to describe the issues you find. Be sure to include information detailing individual animals and the scale of any injuries or harm seen. Details of individual animals (e.g. NLIS tag number) should be documented.

You should keep the original records from any animal welfare investigation secure at all times. This includes draft documents, electronic documents and digital recordings. All records must be kept until the end of any legal proceedings resulting from an investigation. Court proceedings may take several years to conclude.

Copies of your notes and any other documentation should be provided to the investigating inspector along with your final report. Your notes should be as detailed and complete as possible because it is likely that some time will pass before the matter is heard by the courts, and it will be helpful to you to have records of your thought processes as well as your findings.

It is relevant to include the following in your notes for livestock cases:

- Clear descriptions of any health or welfare risks to the animals which are already present or are likely to occur. This will include observations of the animal and surroundings, measurements, body condition scores along with weight if possible, feed available, supplementary feed available, water availability and quality (take samples of feed and water where appropriate), and shelter availability.
- Diagnosis of all conditions seen and identification of the animals affected with conditions such as fly strike, pregnancy toxemia, photosensitisation, dental problems, internal and external parasites, etc.
- Information obtained from observations and physical examinations, along with all matters discussed, and persons present during the discussions.

On-farm sample selection and collection

When collecting samples such as blood, serum or faecal matter from a group, ensure a representative sample is obtained. In practice, this should be at least ten animals from a group and all samples should be individually labelled with the animal's identification number. When poisoning is suspected ensure samples are taken of all suspicious plants and other potential toxins that the animal might have access to. Label all feed and water samples and keep in individual containers for later identification and analysis. Plants can be placed into labelled paper bags and dried for future identification. You may be assisted during this process by inspectors, if they are present. All samples taken should be clearly marked and identified.

What happens if the owner or person in charge of the animal is present?

Dealing with a person who has been reported for possible cruelty to an animal can be a challenging experience for the veterinary surgeon who visits a property. You will not be asked to attend a property alone to perform an examination of animals unless the consent of the owner or person in charge has been established first. In all other cases you will be in the company of an inspector.

The owner or person in charge of the animal may not consent to the examination or euthanasia of animals which you recommend on welfare grounds. Your actions are subject to the inspector's statutory powers, and you should follow the guidance and requests of the inspector. You should not act in an accusatory manner, even if confronted by serious cruelty. Keep calm and let the inspector communicate with the owner of the animal.

2.4 Post-mortems

When performing a post-mortem procedure for an animal welfare assessment, your report and notes on the procedure should be as complete as possible. Failure to record any part of the procedure could be taken by the court to mean that your post mortem was incomplete or insufficient to prove the cause of any lesions seen. If an organ, system or diagnostic result appears to be completely normal, this must be included.

If animals are to be euthanised, try to get a full set of blood samples and record the behaviour of the animal(s) prior to euthanasia.

If performing the procedure in the field, you should take note of the circumstances. For example, is the animal restrained or trapped, is there a build-up of faeces around it, or evidence of paddling. Take note of anything which could give you an indication of the factors that may have been relevant before its death.

Try to take notes throughout the dissection to ensure every detail is recorded. **Contemporaneous note taking** using a digital video or voice recorder or having someone record what you dictate can be useful for this. As well as a full set of standard histology samples taken for a normal post mortem examination, some additional samples should be taken in animal welfare examinations. A list of samples to take and more detailed post mortem instructions are included in the appendices.

If examining a large number of animals, more than one post mortem is usually necessary to obtain a representative sample. In animal welfare prosecutions each animal is the subject of one charge and the charge is based on the evidence provided by that individual animal, not the flock or herd as a whole. A single post mortem is unlikely to be sufficient to prove an issue is affecting the entire flock.

A comprehensive guide to post mortem sampling is provided in [Appendix 3](#).

2.5 Preparing a veterinary surgeon's report for the court

In addition to providing your clinical records, you may be asked to prepare a report with your findings and recommendations, and if the case progresses to court, then you might be asked to answer a series of questions about the animal(s) and the conditions observed. Your report will serve as the basis for your answers.

If you are asked to prepare a report, remember that it may be entered as evidence if you are called as witness to an animal cruelty prosecution. When performing assessments and writing reports, you must include all the facts and information. Your role as a witness in court is to tell the truth. All practicing veterinary surgeons are

professionally obliged to maintain appropriate clinical records. All procedures, tests, analysis and information you obtain from others involved in the case should be recorded. When other parties have provided you with services as a part of your investigation, such as pathology or other diagnostic services, please record their names and qualifications for the record. Reports should be complete, unbiased and objective. All findings and recommendations should be explained in layman's terms. Your report should include the following (as applicable):

1. Introduction

- your name and full qualifications (attach your CV/resume)
- the date, time and locations visited
- who engaged your services (including their full name, position/title and organisation/agency)
- who was present on the day (including the information as above wherever possible)
- the duration of the visit
- the identifying information relating to the animal (including number of animals, species, breed, sex, tags, approximate age, microchip numbers, NLIS tag numbers and markings of all animals involved)

2. History

- history, including duration, clinical signs, number of animals, prior treatment
- relevant epidemiological information
- history of management practices (such as nutrition, stock density)
- locations and quality of water sources (take samples where appropriate)
- type, quality and quantity of food offered to animals (take samples where appropriate)

3. Findings

- animal identification – microchip, NLIS tag numbers or brands (e.g. horses)
- animal body condition
- findings from physical examinations of animals (dental condition, pregnancy, external parasites, skin lesions etc.)
- approximate prevalence and duration of any conditions observed e.g. condition score 1–2 across the flock or herd
- descriptions of injuries or disease processes present
- levels of pain or distress observed
- any abnormal behaviour observed
- details and findings of any physical examinations performed
- details of all samples taken and how they were processed
- details of any tests performed and who they were done by
- results of any post mortem examinations
- discussions about any findings and/or comments made by observers or facility staff

4. Conclusions

- your diagnosis and any related information i.e. why you identified this as a cause
- all possible alternative diagnoses, and why these have been ruled out
- gross pathology findings and full pathologist's report
- any literature used in making your diagnosis or providing treatment
- any facts or assumptions used in the development of your opinion
- any treatment, medications or euthanasia administered
- the likely effect of the animal's condition on its welfare
- a summary of your conclusions

5. Recommendations

- recommendations of management strategies to mitigate welfare risks if applicable
- details of follow up treatments or visits required by veterinary surgeons or other professionals (e.g. farrier)
- communications or advice to or from any involved party
- sources and publications that can be used for further guidance (relevant [codes of practice](#) or Australian Animal Welfare Standards and Guidelines that specify the minimum standards of care, scientific articles, etc.)
- predicted outcomes if your advice is followed

When writing recommendations the advice should include specific dates, if possible. For instance, 'Increase supplementary feeding with 50kg of oats a day by 26th November 2018 and continue until the end of June 2019.' You should also try to include predictions as to the expected results if your advice is followed. For example, 'If the new diet plan is followed the horses are likely to increase in body condition to 2/5 over a period of 8 weeks.' Where the report covers multiple dates or events, try to set your report out in chronological order so it is easy for those reading it to understand what happened and exactly what was done.

Reports should be clear, concise and easy to understand. This will enable both the recipients of the report and members of the judiciary to understand the details of the case. It is helpful to describe how there was insufficient feed on a farm for the number of animals present or the way in which a lesion will cause pain to an animal. Additionally, you should try to explain the steps that could have been taken to reduce or avoid harm and estimate the length of time during which a disease or condition may have been present. Be clear about what is happening and the likely implications to the animal(s). If it is your opinion that an animal is likely to be suffering pain or distress, you should make this clear.

The prosecution and defence may be required by law to provide evidentiary material such as reports to the other party after legal proceedings have commenced. Additionally they may be made available to the person of interest and could be used as evidence of past regulatory action in the event of a future prosecution. In this case, your report will be of prime importance to show that recommendations were

made but not followed. Reports should be as complete as possible and present a fair assessment of any issues you found.

In circumstances where you want to remain anonymous to a person of interest it is important to inform the relevant inspector in the early stages of an investigation. If you are a witness in a matter that proceeds to prosecution you will be obliged to disclose your identity.

The following should NOT be included in the written report:

- opinions on likelihood of a successful prosecution
- opinions on demeanour or personality of the owner, unless relevant to the case
- advice regarding animal welfare legislation
- recommendations about regulatory action e.g. 'this person should be monitored into the next season', 'this person should be given a warning', etc.

For an example of a veterinary report, and other documents used in the investigation process, please see [Appendix 5](#).

6. Veterinary surgeons giving evidence in court

3.1 Types of witness

There are two broad classes of witness in our legal system — factual witnesses and expert witnesses.

Factual witnesses

A factual witness is someone who has direct knowledge of an incident through their own observation of the event and states this before a court. They provide evidence regarding exactly what took place based on their own memory. You may be called as a factual witness if you directly observed an incident of cruelty take place, such as in a workplace or on a farm, or if you examined and treated an animal which is the subject of a prosecution.

Expert witnesses

Expert witnesses are used when a matter requires a specialised understanding of a subject matter that is beyond that which a member of the public can be reasonably expected to have. An example of this is the further knowledge acquired during the education, training and continued practise as a veterinary surgeon. Normally, witnesses are not asked to provide an opinion, as this is not helpful to the court in considering the merits of each side of a case. However, the opinion of an expert witness may be relevant to the merits of the case. Once it is established that a witness constitutes an expert witness in a given field, he/she is permitted to give evidence of what they have been able to infer, or what they believe to have happened in a case without having observed the incident itself, within the confines of their area of expertise.

The veterinary surgeon can assist the court by offering an expert opinion on certain elements of an offence which relate directly to veterinary expertise, such as whether an animal suffered pain or distress and the cause and duration of an injury or disease. They can also explain to the court whether the treatment of the animals met currently accepted guidelines as to proper and humane care. The veterinary surgeon is not offering an opinion or judgement on the person in question. Rather, he/she is simply addressing the question of whether the treatment of the animal was consistent with acceptable contemporary practices.

3.2 Independence of witness

When acting as a witness to an act of animal cruelty, your duty is to state before a court exactly what happened, in a way that can be understood by any member of the public. When you present to the court as an expert witness, your duty is to present your unbiased opinion to the court. You should not side with the defence or the prosecution. While you may have a strong opinion regarding the guilt or innocence of a party, your role is to enable the court to understand the matters before it. Your opinion concerns animal health and welfare or husbandry matters, not the guilt or

innocence of parties involved on trial. Even if your services are paid for by the prosecution or defence, it is important to be objective and fair at all times.

As an expert witness you have an obligation to inform all parties and the court if your professional opinion changes from that expressed in your report presented as evidence or your statement. If this occurs during preparation or a trial, you should immediately discuss this fact with the solicitor who is managing the case for the party that engaged you.

3.3 Preparation to give testimony

Lawyers often meet with witnesses just before their court attendance. Such meetings are known as conferences or 'proofing' and may involve the lawyer providing you with information about the trial process and your role as a witness. This will give you an opportunity to raise any concerns you may have.

During the conference, you may go through your evidence. The lawyer may ask you about specific facts that are important e.g. times, dates, visual impressions. He or she may also ask you about any contradictions in your evidence, similar to the questions opposing counsel will ask when cross examining you at trial.

The lawyer must not coach you on your evidence. They are not allowed to explain how you should present your evidence but he/she can, however, advise you on:

- how to refresh your memory using documents from the witness box
- questions you may be asked in cross-examination — how the opposing counsel may attempt to undermine your credibility as a witness
- how to answer questions in cross-examination e.g. answers should be concise and only include details in your direct experience or knowledge
- an outline of court procedure
- relevant documents you need to bring e.g. you may need to bring pathology reports, laboratory results and photos, your clinical notes and your final report

3.4 Attending at court

Before the trial, you will be advised what day and time you are likely be called to give evidence. On that day, you should be available for the whole day, depending on your instructions. It is best to arrive at court at least half an hour before you are expected to give evidence. This will give you time to look through your evidence before you are expected in court. Be prepared for lengthy waits as trials do not always go to plan. As a witness, you will not be permitted to observe the court proceedings of the case in which you will give your evidence but you may be permitted to stay inside the court room once your testimony has been completed.

Sometimes you may not give all of your evidence in a single session, as the court may take a break. If this occurs, you must not discuss your evidence or anything about the case with any other witness or with the lawyer or inspector. You can talk about general matters unrelated to the case but the safest option is to keep to yourself during the break to avoid being accused of collusion.

You may be eligible to receive reimbursement for expenses associated with your services as a witness. This should be discussed with your counsel early in the process.

3.5 Evidence

Evidence, broadly defined, is any word or thing which establishes a fact or provides a reason for believing something. Evidence can be categorised as:

- real evidence – physical objects
- documentary evidence – written statements and documents
- personal evidence – what the parties or other witnesses said
- expert evidence – specialist evidence based on opinion and views.

A veterinary surgeon could be called upon to give some or all of these types of evidence.

The judicial process relies on witnesses to produce evidence, which is accorded weight on the basis of its accuracy, credibility and truthfulness.

In this regard, any evidence brought to support the prosecution's case such as notes or records, must be clearly organised, indexed and dated. It is particularly important that veterinary surgeons document all steps that lead to a diagnosis of harm (including pain and distress) being suffered by the animal/s. Evidence of the process or considerations adopted in ruling out all other possible contributing factors before reaching this conclusion will assist the court in assessing the veterinary surgeon's credibility.

Based on thorough consideration of the evidence, a veterinary surgeon will be able to identify assumptions that are not based on the available evidence.

3.6 Giving evidence

The three phases of giving evidence in the witness stand are:

Evidence-in-chief – a narrative given by a witness

Cross-examination – the lawyer who does not call the witness questions the accuracy of the testimony presented during evidence-in-chief

Re-examination – the lawyer who first called the witness has the opportunity to clarify any matter that was brought up through the process of cross examination

When giving evidence, you should only answer the specific question that is being asked. Do not provide additional information that you think might help. If this information is required, the lawyer will ask you.

During the cross-examination, lawyers often ask leading questions to try to obtain their desired responses. The defence may attempt to weaken your testimony or otherwise present you as an unreliable witness. This strategy can take many forms. The defence may attempt to challenge your qualifications, experience or history in the field. He/she may attempt to make you admit you are less qualified as a witness than others in the field or other veterinary surgeons they have employed as

witnesses. He/she may challenge your evidence based on published works in the area or even lead you into hypothetical scenarios where the findings that you made in relation to the case could have been in error. They may challenge the validity of tools or information you used to come to your conclusions. Finally, the defence may assert that you falsified data or are presenting at the case simply to further your own monetary or career interests.

Before appearing in court, you should try to meet with the lawyer who is representing the side that engaged you to establish what sort of questioning the defence team may take. The process of cross-examination can be unpleasant, but it is important to remain calm and collected at all times. Remember to pause and think before answering any question put to you. It is important to remember during cross examination that the lawyer may be trying to damage your credibility by making you defensive or leading you to anger. The court may not form a good opinion of a witness or their evidence if they appear to be rude, sarcastic or arrogant. Maintain your composure and keep a polite, professional demeanour at all times. Even if your diagnosis is criticised or the facts of the case are questioned, you must give your evidence to the best of your ability and recollection. If you do not understand a question, ask for it to be repeated or asked in a different way. If you do not know the answer to a question, be honest and do not engage in speculation. Always speak the truth based on your recollection and understanding of the facts.

At times you may also be asked questions by the Magistrate. This usually occurs when the Magistrate wishes to clarify an answer that you have given.

During the process of giving your evidence, you may at times be interrupted by the lawyers who will object to certain questions being asked. When there is an objection, stop speaking and let the lawyers and Magistrate work out the next step and wait to be asked to continue. Don't interject while the lawyers and Magistrate are determining the outcome of an objection as these are based on legal rules of evidence and court procedure.

3.7 Demeanour in court

Magistrates give importance to their observation of witnesses, especially when they are in the stand. You should observe the following rules when in court:

- Bow when you enter and leave the court
- Address the magistrate as 'Your Honour', 'Sir' or 'Madam'
- Address all others present by their title and last name
- Always answer with courtesy and restraint
- When you are giving your answers, make eye contact and face the Magistrate as he or she is the person to whom you are addressing your evidence.

A suit or similar professional clothing is appropriate for a court appearance. If you are unsure about what to wear you should discuss any concerns with counsel prior to your appearance at the trial.

Appendix 1: Animal welfare law in Western Australia

The *Animal Welfare Act 2002* and regulations

In Australia, the responsibility for administering and enforcing animal welfare law lies with state and territory governments. In Western Australia, the *Animal Welfare Act 2002* (the Act) and its accompanying regulations provide the legal framework for ensuring that all animals have appropriate standards of care. For a current copy of all legislation please visit the State Law Publisher's website at slp.wa.gov.au.

The Department of Primary Industries and Regional Development (DPIRD) assists the Minister for Regional Development; Agriculture and Food in the administration of the Act. The Act's purpose is to promote and protect the welfare, safety and health of animals.

The Act contains six parts:

1. Part 1 – Preliminary – outlines the purpose and intent of the Act and definitions.
2. Part 2 – Use of animals for scientific purposes.
3. Part 3 – Offences against animals – sets out cruelty provisions and defences.
4. Part 4 – Inspectors – provides for the appointment, functions and powers of general inspectors and additional powers of scientific inspectors.
5. Part 5 – Enforcement – provides for the application of additional court orders, warrants, reviewable decisions, offences other than cruelty and general matters.
6. Part 6 – Miscellaneous – provides for a range of other matters such as delegation, powers of the CEO, improper use of information and regulation making powers.

Subsidiary legislation under the Act comprises four sets of regulations, which detail further standards that supplement the Act:

- Animal Welfare (General) Regulations 2003
- Animal Welfare (Scientific Purposes) Regulations 2003
- Animal Welfare (Commercial Poultry) Regulations 2008
- Animal Welfare (Pig Industry) Regulations 2010

Offence provisions and defences

Part 3 of the Act contains the offence and defence provisions in respect to offences against animals. Section 19 provides that it is an offence to be cruel to an animal (defined under the Act as any vertebrate, not including humans or fish).

Some offence provisions may apply to persons 'in charge' of animals, such as animal owners, property owners or someone who has actual custody or control of an animal. For example, failing to provide proper and sufficient food or water, or failing to take reasonable steps to prevent harm (see s.19(3)). Other provisions may apply to any person, regardless of whether they are a person in charge of animals, for example, beating or ill-treating an animal (see s.19(2)). The Act and regulations also refer to the use of inhumane devices (e.g. jawed traps) and other offences.

In sections 20 to 29, the Act sets out a number of defences against a charge of cruelty, including:

- acting in self-defence
- acting under the instructions of a veterinary surgeon
- authorised by law
- acting in accordance with a generally accepted animal husbandry practice
- killing prescribed pest animals
- acting in accordance with a relevant code of practice.

Codes of practice

Some codes of practice are prescribed in the Animal Welfare (General) Regulations 2003 (Schedule 1). These codes of practice provide the minimum standards for the care and management of a range of different species of animals. Some codes have been developed nationally, involving state and territory departments of agriculture, industry, animal user groups and major animal welfare organisations. A list of the current implemented codes of practice can be found on the [DPIRD website](#).

Codes of practice are used by the court to assess husbandry and management practices in cases of alleged cruelty. Where a person is being prosecuted for cruelty to animals under the Act, failure to act in accordance with a prescribed code of practice must be taken into consideration by the court, however non-compliance with a prescribed code is not an offence under the Act in and of itself. Equally, if a person prosecuted for animal cruelty can provide evidence that they acted in accordance with a relevant prescribed code of practice, this may be used as a defence to the charge of cruelty.

National standards and guidelines for the welfare of livestock

In recent years there has been a move to create nationally consistent standards and guidelines for animal welfare. To date, several national standards have been agreed on and endorsed by the Australian states and territories. These national standards must be adopted into legislation by each state and territory to have legal effect. Western Australia is in the process of adopting national standards into its existing legislative framework.

Please visit the DPIRD website for more information.

Western Australian standards and guidelines

There are some gaps in the coverage of some species and sectors by codes of practice and national standards. DPIRD is developing Western Australian standards and guidelines for the welfare of horses and dogs, using a consultative process. As with national standards, these Western Australian standards will only become enforceable when they have been adopted into the Act or regulations.

Industry guides

Animal industries produce guides on animal welfare for owners and producers, e.g. the publication *Is it fit to load?* (Meat and Livestock Australia). These guides are not legally enforceable and complying with them does not constitute a defence against charges of animal cruelty under the Act. However, they are an important educational tool and represent industry expectations in terms of humane handling of animals.

Appendix 2: Information about enforcement of the Act and prosecution for cruelty

Most complaints about animal welfare issues are received by the RSPCA. LCU inspectors may also see animal welfare problems when they are monitoring livestock aggregation points, such as saleyards. The inspector attending to the complaint must make an initial assessment of the animal/s with the aim of alleviating pain, suffering or distress and identifying potential breaches of the Act and/or regulations. The following is a general description of how an inspector could investigate and consequently prosecute an alleged act of cruelty under s.19, specifically a charge under s.19(3)(h).

It is an offence under s.19 of the Act to be cruel to an animal. Cruelty can be deliberate or can result from neglect. With reference to the latter, s.19(3)(h) of the Act provides that 'a person in charge of an animal is cruel to an animal if the animal suffers harm which could have been alleviated by the taking of reasonable steps'.

Under the Act, the term 'harm' includes 'injury; pain; and distress evidenced by severe, abnormal physiological or behavioural reactions'.

The legal elements for investigation of a possible offence under s.19(3)(h) are:

- a) What caused the harm? Relevant evidence may include video footage of the animal if it is behaving abnormally, images of the injury pre- and post-death or pre- and post-treatment, and a veterinary statement relating to the animal's injury, pain, pathology reports, etc.
- b) Who is the person in charge of the animal as defined under the Act? Relevant evidence may include admissions during an interview, or witness statements.
- c) Were there any reasonable steps that could have been taken to alleviate harm? Relevant evidence may be the experience of the person and the opportunity they had to treat the animal and opinions from an expert such as a veterinary surgeon about what steps could have been taken by the person to prevent harm occurring.

The inspector must also consider relevant defences under the Act.

If the inspector has made a preliminary finding that the animal has suffered or is suffering harm, he or she will take steps to mitigate the suffering of the animal. A Direction may be issued, requiring the person in charge to seek veterinary care/treatment for the animal.

The inspector will investigate the elements of the offence and may take statements from witnesses. At this time, the inspector might ask a veterinary surgeon to assist with a case of suspected cruelty, and this could involve performing physical examinations, offering expert opinion about the animal's condition and whether it has suffered pain, post-mortem examinations, providing advice and/or providing

veterinary treatment. During the post-mortem or veterinary treatment, the inspector may take photos to support the veterinary surgeon's opinion.

If the evidence shows that the animal suffered harm, the inspector will continue to identify and follow all avenues of enquiry in order to establish all the facts required to meet the elements of the possible offence. The inspector will also try to establish any facts that may give rise to a defence.

Upon review of the investigation, it may become evident that the facts do not satisfy the elements of an offence, the person of interest has a credible defence or a prosecution is not in the public interest. In such cases the inspector may provide the person with a verbal or written advice and any educational material relevant to the animal welfare issue. If there is a *prima facie* case, that is, the case satisfies all elements of the possible offence with no credible defences, the inspector must decide whether prosecution is appropriate in the circumstances. This will take into account prosecution policy and public interest tests.

Prosecutions

Court jurisdiction

There are several different levels of court and each has a specific jurisdiction that determines the types of cases it can hear. Broadly speaking, the jurisdictions are criminal, civil and appellate (appeal). Offences under the Act fall within the court's criminal jurisdiction. Accordingly criminal proceedings are commenced by a prosecutor against an accused person in the best interests of the public. This is distinct from civil cases which involve private disputes between persons or organisations.

Magistrates court

All offences under the Act or regulations are commenced and dealt with within the Magistrates Court. There is no jury in the Magistrates Court. This court is presided over by a Magistrate who makes all the decisions and judgements. Appeals from the Magistrates Court are heard in the Supreme Court.

Burden and standard of proof

The burden of proof refers to the obligation of the litigant (in this case the prosecutor) to persuade the decision maker (the Magistrate) that the facts which establish their claims are true. The standard of proof is the degree to which the fact finder must be persuaded of the facts to find in favour of a party.

In criminal matters, the accused is presumed innocent until proven guilty. Generally, the prosecution carries burden or obligation of the guilt of the accused, which must be proved beyond reasonable doubt (standard of proof). This is a high threshold that requires the decision maker to reject all reasonable hypotheses or any reasonable possibility inconsistent with the prosecution's case.

In civil cases, a party asserting a claim or defence generally carries the burden of proof. The standard of proof used by a court in civil proceedings is proof on a balance of probabilities, meaning something is more likely to have happened than to have not happened. This is very different to a criminal trial.

Commencing proceedings

Proceedings for an offence under the Act may be commenced by the Director General (DG) of DPIRD, officers of DPIRD as authorised by the DG and authorised inspectors. The authorised person will commence the court action by prosecution notice accompanied by a court hearing notice. The accused will receive these documents requiring his or her attendance at court, which also provides information as to the alleged offence.

First mention

The defendant will generally appear in the Magistrates Court for a first mention, where he or she will plead guilty or not guilty, or seek an adjournment to seek legal advice. If the defendant pleads guilty, the Magistrate will sentence the defendant. If the defendant pleads not guilty the matter will go to a trial in the Magistrates Court. The matter is set down for a case management hearing and a date will be set for the trial. If there is a date set for trial, the witnesses will receive a notice, called a witness summons, requiring them to attend court to give evidence. The witness summons will tell the witness when they will be required to give evidence. It may take 12 months or longer before a trial is heard.

The trial

A trial commences with the opening by the prosecution followed by the presentation of the prosecution's evidence and witnesses. After this, the defence can present its case. The Magistrate hears all the evidence and decides the verdict. If it is a guilty verdict, the Magistrate will either impose a sentence, or set a later date for when a sentence will be imposed. If the verdict is not guilty, the matter is dismissed.

Sentencing

The *Sentencing Act 1995 (WA)* outlines the principles the court must apply when imposing a sentence on an offender. In summary, the Magistrate must order a sentence that is fair under the law considering the seriousness of the offence and the particular circumstances of the offender.

The Magistrate will also consider the general pattern of sentencing for a particular offence and attempt to treat cases which are similar in a similar way. Courts may look at previous decisions and relevant statistics to identify if there is a pattern for sentencing that offence.

Appeals

Either party can appeal a verdict or sentence if the Supreme Court is satisfied that an error of law has been made and an appeal is warranted. There is a limited time in which an appeal can be made following a verdict and a formal procedure, including a

hearing, will commence. Appeals generally do not involve witnesses as consideration is limited to matters of law, not facts.

The steps in a prosecution are listed in Figure 1.

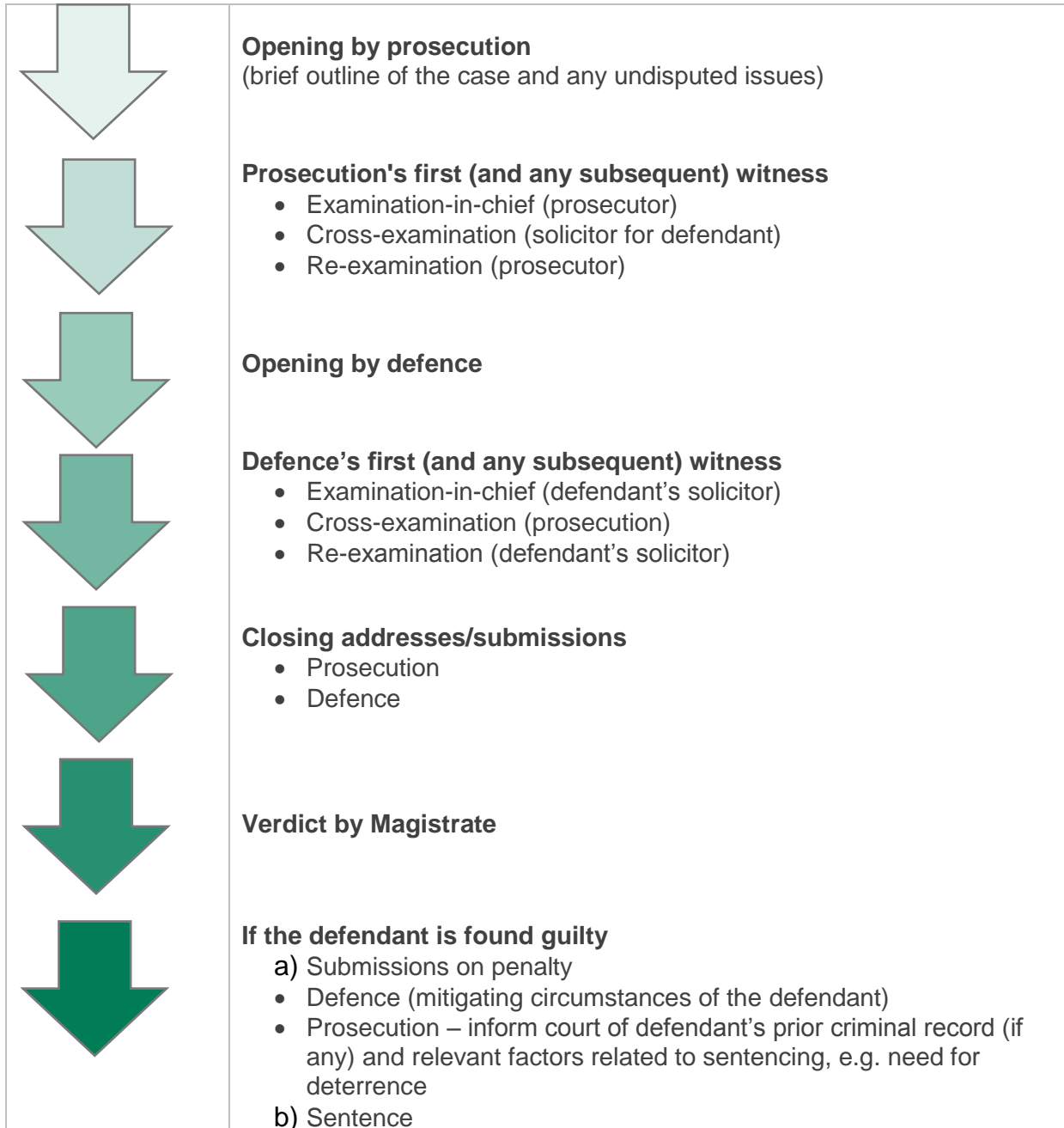


Figure 1 Summary of steps in a prosecution

Appendix 3: Post-mortem sampling guide

This is a comprehensive description of how to perform a thorough post mortem. All these steps and samples may not be required in every case and are only included here for guidance. You should rely on your own knowledge and experience, and seek support from a veterinary pathologist as required. Remember that in animal cruelty cases it may be necessary to prove that another disease process did not contribute to the animal's condition, therefore your examination and sampling may need to be more extensive than your routine approach. Regardless of this, if any specific lesion is found, it should be sampled or documented as appropriate.

General information

- Establish signalment: species, breed, approximate age (dentition), entire/desexed
- Individual identification: unique markings, collar/tag/brands/tattoos, microchip number, NLIS tag number etc

Photographs/Radiographs

- Take photos from several different views throughout the necropsy procedure. Distant, midrange and close-ups of lesions are all useful.
- Use a scale (ruler) and identity markers such as animal number, location or other identification when photographing any tissues, lesions or samples.
- For small animals and wherever appropriate, take radiographs of the animal before the post mortem. Radiographic views should be sufficient to verify the abnormality and its location. These can be examined not only for broken bones but also evidence of herniations, soft tissue swellings and historical fractures.

Clinical examination

- Carry out a thorough external examination.
- Record and describe any markings, incisions, tags, attachments, wounds, swellings, discolourations or other abnormalities.
- Record information about dentition, eye and face condition and symmetry, lymphoid tissues, muscle and body condition, foot or hoof condition, hair, skin, wool or fur condition or any other abnormalities found. Any items attached to the outside of the animal (such as wire, or a collar) should be photographed in situ with measurement/scale then bagged, labelled and stored.
- Fur, hair and wool can all hold clues as to the location of an incident and also microscopic evidence that may later be relied upon. Any tissues removed to examine for lesions (such as fur), should be stored in dry containers for future use rather than disposing of them.
- Take samples of any external parasites seen and record details of these where appropriate. The location and approximate number of parasites should be noted, as well as any associated lesions on the animal. This can be achieved by placing

them into alcohol or, preferably, by placing them in boiling water for about 10 seconds before storing them in 70–90% alcohol.

- For any lesion observed, record the location, size, shape, appearance, colour, consistency and extent. If possible, take photos of the lesions showing measurements. Noting the odour or any foreign materials present, such as glass or fibre, may also be useful.
- Avoid placing labels on lesions or over sites used for animal identification (i.e. ears) as these may obscure findings for second opinions.

Necropsy

To begin, position the animal in the manner that suits you best but, normally, on the left side for ruminants, right side for horses or dorsal recumbency for small animals.

After an initial stab incision near the axilla extend the incision from the mandible to the perineal area. For deliberate cruelty cases it may be worthwhile to skin the animal at this stage to look for deep bruising or other marks as it is easier to skin the animal now than when the body cavities have been opened. Otherwise reflect the skin and uppermost limbs away from yourself by cutting the muscular attachments to the cranial limb and dissecting the muscles around the femoral head and disarticulating the femoral head for the hind limb. Most bruising in animals occurs subcutaneously so when removing the skin make note of any petechial haemorrhages, contusions or tissue swellings.

Incise along the costal arch and extend this across the dorsal flank and pelvic rim. After reflecting this flap all the abdominal organs may be visible. Make a stab incision into the diaphragm and listen for the inrush of air as the lungs collapse. Extend this incision freeing the full length of the final rib. Use bone shears or a saw to cut the ribs close to the sternum and repeat the procedure near the spine before removing the entire rib section. At this stage take a photograph of internal organs in situ.

Remember that while conditions such as livor mortis (the settling of blood in the lower (dependent) portion of the body post mortem, causing a purplish red discoloration of the skin), nasal discharge and organ changes due to pentobarbitone injection are common in any post mortem examination, they should be recorded in your post mortem notes and your subsequent report. Ensure your observations are kept separate from your interpretations of the findings. This can be done by simply including your interpretations in parentheses. Be sure to include details such as the size of the gall bladder or shape and colour of the liver as this can be useful in starvation cases. Serious atrophy of fat occurs in starvation cases and fat reserves appear shrunken, translucent and gelatinous. This occurs in the peri-renal, pericardial and marrow fat reserves. If performing a post-mortem on a ruminant in a suspected case of starvation, take a bone marrow sample of at least 3cm and preserve the sample in formalin for submission to the pathologist. Make sure to describe the texture of the bone marrow. The easiest option is to submit an entire femur or half femur for larger species. From this sample the laboratory can extract the bone marrow.

Organ sampling

Obtain your base set of organ samples at the display stage, so they are not damaged during the subsequent tissue manipulation. These samples are listed in a table below for convenience. Take note of any changes to the tissues and the extent of these changes. The texture, colour or shape of any changes should also be noted.

Neck and lungs

- Open the neck to look for any damage to the oesophagus, check the pharynx and tonsillar tissue for any signs of infection, inflammation and damage.
- Strip the trachea out so that internal organs can be removed from the animal.
- Palpate the lungs to check for consolidation or any other changes such as fibrinous exudates or excessive pulmonary fluid.
- Slice the lung at this stage to ensure you don't miss anything and include any lesions in your samples for histology.
- You may wish to also include the bronchial lymph node. Lymph nodes must be individually labelled to ensure they are not mixed up.
- Collect uncontaminated samples into sterile containers and/or swabs collected into appropriate media (for example, Amies for bacterial culture, viral transport media for viral testing), making sure to include any grossly visible lesions.

Heart

- Assess the heart for size, shape, colour and fat content.
- Open the heart by incising from the right atrium down through the right ventricle and then extending the cut up the pulmonary artery, checking the valves and wall thickness and for endocardial or myocardial changes.
- Open the left atrium and left ventricle with a straight incision.
- Assess the atrioventricular, semilunar valves and chordae tendineae.
- Compare the wall thicknesses between the two halves of the heart and then take a 1cm thick section of the heart for histology by making two parallel incisions about two thirds of the way up the heart from the apex.
- The sections should contain both ventricles along with a portion of the intraventricular septum.
- Continue to slice the heart looking for other pathology.

Gall bladder and liver

- Palpate the gall bladder and gently squeeze to ensure the bile duct is patent.
- Incise along the hepatic ducts to look for parasites and see if there is any damage to the structure of the liver.
- Remove the liver and look for any gross abnormalities (size, shape or colour) before palpating to assess for any internal abnormalities.
- Cut into the liver to assess changes to the architecture or appearance of the lobules.

- Take samples of both the left and the right lobes for histology as well as taking larger fresh samples (at least 50g) for bacteriology and biochemistry.
- Finally slice the entire liver to check for any changes.

Kidneys and adrenals

- Check the adrenals and then remove the kidneys from the body.
- Remove the capsules and assess the surface of the organ.
- Look for depressions or elevations indicative of internal damage.
- Slice the kidneys and collect a sample 8–10mm thick, in formalin, that includes cortex, medulla and renal pelvis; include any grossly detectable lesions in the sample.
- If you need to test for toxicities submit an entire half kidney.
- Slice the kidneys to assess for any other changes.

Intestines, bladder and lymph nodes

- Take a sample of urine via cystocentesis if possible.
- Take fresh samples of faeces, ileal content and rumen/stomach contents or others as required to look for evidence of parasitism, feed type and presence of pathogens.
- In mono-gastric animals take samples from the stomach and in ruminants take samples from the rumen, reticulum, omasum and abomasum.
- Take samples of the duodenum, jejunum, ileocaecal junction, caecum and colon.
- Take samples of lesions where there may be attachments to the mucosal surface or evidence of parasites, and comment on the distribution and approximate number of parasites if there are many.
- When taking samples of intestines cut a 2.5cm long section then make a small ~1cm longitudinal incision at each end of the cut intestine.
- Take samples of any relevant lymph nodes such as the ileo-caecal nodes and label these in individual pots.
- In recently dead ruminants, test pH of the ruminal contents if possible.

Vitreous humour

- Collect the vitreous humour for biochemistry.
- This can be done by inserting an 18 gauge needle by the lateral canthus at the margin between the cornea and sclera.
- Direct the needle towards the back of the eye, remove the humour and then place into a plain tube.

Head and brain

- Collect the cerebrospinal fluid in a sterile manner in case it is required before removing the head and starting the process of removing the brain.

- Take samples for bacteriology before fixing the entire brain and the upper part of the spinal cord in formalin.
- The brain is the only organ that does not need to be sliced.
- If taking samples for a case where there is an ingrown horn, or in any site where a lesion may be needed as evidence during a court case, ensure that the horn and the impacted skull and soft tissue are preserved in formalin. Measure the horn length and the length of the ingrown section. This can be used to estimate the duration of the condition based on the animal's estimated age.

Wounds and lesions

If maggots are present in wounds, record the size and number of maggots and submit them for identification and aging. Be sure to check with the laboratory first that entomology services are provided. If they are not, you should source this from another laboratory, making sure that the chain of custody process is respected.

Before disposal of the carcass make sure you keep any lesion in formalin. Hard tissues, such as horns and hooves, can be frozen. These will be needed during any subsequent court case so it is important they are appropriately labelled and preserved. At this stage, take any photographs of lesions that may be required in future, ensuring you include information on the animal's identification and a scale if necessary. Talk to the investigator responsible for the case if you have any queries regarding this.

Tissue samples

Be sure to use sufficient formalin (10 times the volume of formalin to tissue) to ensure even fixation and prevent degradation of the sample. Providing that they are fully fixed before despatch, samples can be sent to a pathologist in a small volume of formalin. Always wrap the lids of all sample pots with tape to prevent leaking on the way to the laboratory. Samples for culture should be collected using swabs and transported in the appropriate media. Samples for toxicology are better collected into glass containers, or wrapped in aluminium foil before freezing, rather than in plastic containers.

Table 1 General post mortem sample guide

Sample	Tests	How to collect
Blood: EDTA, Lithium heparin, clotted (serum) and a blood film	Biochemistry, serology, trace elements, c.b.c.	Plain and EDTA blood collection tubes and a glass slide
Urine	Biochemistry, toxicology, culture	Sterile sample pot
Vitreous humour	Biochemistry	Plain blood collection tube
Bone marrow from the femur for starvation cases	Fat composition	Whole femur or half in horses or cattle
Stomach (or rumen) (100ml), ileal (10ml) and faecal contents (20g)	Parasitology, identification, toxicology, culture	Individually labelled sample pots, keep faeces fresh but the remainder of samples may be frozen
Large samples of skin, kidney, liver, lung, muscle and fat (around 100g)	Toxicology, culture	Individually labelled sample pots
Liver, kidney, spleen, lymph nodes, intestine (all sections), stomach(s), heart, lung, brain, muscle, thyroid, thymus, salivary gland, adrenal, reproductive tract, any lesions seen on any other part of the body dependant on the species of animal	Histology	Pooled in buffered formalin in a large pot (aside from individual nodes), 10 parts formalin to each part of tissue, ensure tissue samples are no thicker than 1cm and relatively small pieces (2cm by 3cm), apart from brain which can be kept whole

Appendix 4: Checklist for necropsy

A full post mortem may not always be required. It is best to check with the investigating officer before commencing the activity. The checklist below can be used to indicate whether any abnormalities were seen in any body system.

Location		Date and time	
Animal description			
Species		Breed	
Breed		Colour	
Age		Weight	
Identifying markings			
Body condition			
Element	Normal/Abnormal	Comments	
Hair/Feathers			
Skin			
Musculoskeletal system			
Radiographs			
Body cavities			
Neonates			
Hemolyphatic system			
Respiratory system			
Cardiovascular system			
Digestive system			
Diarrhoea			
Intestinal parasites			
Oral cavity			
Oesophagus			
Stomach			
Duodenum			
Ileum			
Transverse colon			
Large intestine			
Mesenteric L nodes			
Liver			
Pancreas			
Urinary system			
Reproductive system			
Endocrine system			
Nervous system			
Sensory organs			
Laboratory studies			
Summary			

Appendix 5: Example requests

Appendix 5.1: Request for Expert Opinion

EXAMPLE ONLY

Enquiries:

Date:

Dear Dr Cooper

Request for Expert Opinion

As you are aware, the Livestock Compliance Unit is currently investigating a case involving a possible offence under the *Animal Welfare Act 2002* (the AW Act) in relation to Mr Citizen of Hartford.

I am seeking your opinion in relation to the animals on Mr Citizen's property, in particular the animals identified as 1, 2, 3, 4 and 5.

Please note that you may be required to attend court as an expert witness to give evidence in relation to your opinion should charges be pursued and this matter proceed to a trial. It is important that you appreciate and acknowledge that an expert's opinion must be independent and the duty of an expert is to assist a Court impartially on matters relevant to the expert's area of expertise.

Would you please examine the following enclosed documents along with your notes and information gathered at Mr Citizen's property on 13 June 2017:

- Photographs – (*details*)
- Video – (*details*)
- Pathology report – (*details*)
- Summary of facts
- Other

After examining this information, would you please prepare a report of your findings and address the following questions? Please explain any assumptions or matters/facts relied upon in reaching your opinions and explicitly state your reasoning in reaching an opinion.

1. Was the feed on offer in the paddock that the animals were contained in on 13 June 2017 adequate for the type and number of animals on the paddock?
2. What are the feed requirements of these animals given normal conditions?
3. What was the condition of the animals on 13 June 2017?
4. Would the condition of the animals have been easily recognised by a person experienced in farming these animals? Please explain why or why not.
5. Did the animals suffer pain? If so, please explain how you have come to the conclusion that the animals suffered pain.
6. Did the animals suffer from an injury? If so, please give details of the injury.

7. Did the animals show signs of distress evidenced by severe, abnormal physiological or behavioural reactions? If so, please describe and explain the signs shown by the animals.
8. Did the animals show any other signs of suffering?
9. If your answer to questions 5, 6, 7 or 8 is yes, are there any reasonable steps that could have been taken to alleviate the pain, injury or suffering by the animals? In answering could you please provide all reasonable alternatives, and if possible give an opinion on what would not be reasonable in the circumstances.
10. When referring to reasonable steps can you please explain whether what is reasonable depends on the position/qualification/experience of the person, if so why, and please explain why you consider these steps reasonable.
11. Are there any codes or standards applicable and/or industry knowledge or expectations applicable in the circumstances?

Would you please include with your report a copy of your curriculum vitae that sets out your qualifications and experience in your professional field.

In addition to this report, would you also please provide a detailed description of the post mortem that you conducted on the animal identified as number 1 and a description of animal numbered 2, in particular the condition it was in prior to euthanasia.

If you have any queries, please do not hesitate to contact me on 0404 004 004.

Your assistance is greatly appreciated.

Compliance Inspector
Livestock Compliance Unit

Appendix 5.2: Letter of Instruction

EXAMPLE ONLY

Letter of instruction

I would be grateful if you could examine the animal(s) presented to you in relation to the RSPCA's inspectorate investigation into possible offences under the *Animal Welfare Act 2002*.

As court proceedings may arise as a result of your findings, we would be grateful if you could carry out a comprehensive clinical examination, considering all possible differential diagnoses, carrying out all relevant clinical tests, and detailing your findings.

In order to seek an early resolution to this investigation could you please compile your report at the earliest opportunity. Please liaise with the investigating inspector to arrange prompt collection of the report.

Original clinical notes should be as detailed as possible and, together with any other material generated by your examination and treatment, should be retained until the conclusion of the case. Please include a copy of any such material, including photographs, with your report.

The report should detail your clinical examination, including a full description of the animal, treatment given and prognosis.

If, as a consequence of your experience or qualifications, you feel you are able to provide an opinion on your findings, the RSPCA inspectorate would seek your opinion on:

- 1) Whether the animal(s) was/were suffering pain, injury or distress evidenced by severe, abnormal physiological or behavioural reactions.
- 2) Whether pain, injury or distress to the animal could reasonably have been avoided or reduced and if so how?
- 3) Whether the needs of the animal(s) were being met to the extent required by good practice and if not in what respect?
- 4) If you consider an animal to have suffered, please specify the period which it suffered, if possible.

Preparing your report in this fashion should greatly reduce the need for us to seek further clarification.

Appendix 5.3: Example Clinical Record

Date: 4/5/17

Time: 9:28am

Clinic: Hill Valley Veterinary Clinic, 1 Main Street, Hill Valley

Examined by: Dr Anne Jones BSc BVMS.

Others Present: Mr Adam Brown RVN.

Inspector Smith – Livestock Compliance Unit

Mr Brian Farmer – Property owner

Observations: I was contacted by Ms Smith of the LCU at approximately 4pm on 3 May 2017 and asked to attend the property at lot 42 Hill Valley Drive, Hill Valley to provide an assessment of the animals there. Upon arrival at the farm at 8am this morning I was greeted by Inspector Smith and Mr Farmer who directed me and my assistant, Mr Brown, to the north most paddock of the property. The Feed on Offer (FOO) in the paddock is composed mostly of perennial ryegrass with around 50% mixed weed species but mostly consisting of Capeweed. There is around 50kg DM/ha as assessed by visual inspection (photographs were also taken — attached). A square foot of this pasture was collected by Mr Brown for future testing of species abundance and FOO (this will be sent to the state laboratories for assessment). The paddock itself measures 800m by 400m according to Mr Farmer (32 hectares). In the paddock are approximately 600 cross bred merino ewes along with a number of carcasses piled against the fence in the neighbouring eastern paddock. There is no FOO evident in that adjoining paddock where the sheep had been moved from yesterday according to Mr Farmer. The water supply to each paddock consists of a single trough filled from the one tank that was positioned in the eastern paddock. A sample was taken for assessment of water quality. When questioned about his animals Mr Farmer stated he had only just removed the rams but joining had begun in early January.

Took evidence for future examination

Explained the feed and water availability in the paddock as well as where the sheep were previously

The ewes were drafted into a temporary yard to allow physical assessment and body condition scoring. During yarding a number of sheep went down and were unable to rise. I recommended that these animals be humanely euthanased prior to continuing and this was performed by Mr Farmer and Inspector Smith as I assessed the remaining sheep. After performing the initial euthanasia of the sheep I observed a conversation between Inspector Smith and Mr Farmer, after which Mr Farmer returned to the farmhouse saying he had

work to do. Of the 50 ewes assessed there was an average body condition score of 1 out of 5 using the 1-5 scoring system due to the severely undeveloped muscle mass over the vertebrae and easily felt transverse processes. The sheep assessed were all marked with the property owner's own brand ear tags indicating they had been born on the property. The dentition of the sheep indicated they were of mixed age of between one and full mouth with their ear tags indicating they were between one and six years old. The mucous membranes of the assessed sheep were pale and a number had signs of ventral oedema under the jaw. All sheep assessed had significant dags present (3/5) and blood and faecal samples were taken from 10 randomly selected sheep (from early, middle and tail end of the sheep being run through the race). Throughout the animal assessment Mr Brown took photographs to preserve the conditions of the paddocks and animals for future reference (see photographs 1–24).

Explained the assessment systems used and how they were applied

Three ewes found to be in particularly poor body condition and who were unable to stand after yarding were assessed prior to euthanasia. The identification of these sheep consisted of a yellow tagged sheep numbered 322 (henceforth referred to as sheep 1) and two blue tagged sheep, 104 and 275 (henceforth referred to as sheep 2 and 3 respectively). The dentition of the sheep corresponded with the ages indicated by the ear tag colours.

Explained the gross physical assessment of all sheep present

The temperatures and heart rate of these sheep were within normal limits. Respiratory rates were elevated at approximately 40 bpm for sheep 1 and 3 and 32 bpm for sheep 2. Their mucous membranes were pale but not significantly so (3 on the FAMACHA© system for all animals). All three sheep were in body condition 1 with significant dagging and sheep 2 and 3 had a pronounced ventral oedema of the jaw (see photographs 24–36). This oedema could be indicative of hypoproteinaemia due to undernutrition or parasitism. Following on from euthanasia palpation of the abdomen of the sheep revealed all three were in a late stage of pregnancy. The carcasses of all three sheep were then loaded into my work vehicle by Mr Brown and Inspector Smith so that post mortems could be conducted at the clinic (report to follow).

Gave more in depth assessment of a small number of animals, these are what any prosecution will be based upon

Explained the assessment systems used and how they were applied

Appendix 5.4: Example veterinary report to a request for an expert opinion

Dr Anne Jones BVMS BSc

Business

Hill Valley Veterinary Clinic
Address – 1 Main Street, Hill Valley
Email – vet@hillvalley.com.au

Private

PO Box 29
1 Main Street
Hill Valley
Mobile: 0400 000 000

I am a 52-year-old practicing veterinary surgeon. I received my qualifications of a Bachelor of Veterinary Medicine and Surgery from the Murdoch University Veterinary School in December 1995 and have been working as a veterinary surgeon at the Hill Valley Veterinary Clinic since February 1996. I completed a Masters in Sheep Nutrition in 2001 and I have published several scientific articles relating to sheep health and nutrition.

I am a member of the Australian Veterinary Association's special interest group known as the Australian Sheep Veterinarians. My normal workload consists of approximately 70% large animal work (sheep, cattle, pigs and horses) with about 80% of this relating directly to sheep. This work includes disease investigations, nutritional advice, stud ram selection, health assessments and treatment of trauma cases in valuable animals.

On the 4th of May 2017 I was asked by Ms Ella Smith of the Department of Primary Industries and Regional Development's Livestock Compliance Unit to jointly attend a property belonging to a Mr Brian Farmer.

Following my farm visit and earlier report I was asked to provide a number of additional details to Ms Smith pertaining to the animals I saw during my visit.

1. Was the feed on offer (FOO) in the paddock that the animals were contained in on 4 May 2017 adequate for the type and number of animals on the paddock?

No. After assessing the collected sample for dry matter content I used the Meat and Livestock Australia stocking rate calculator to determine that the available FOO within the paddock would have been exhausted within a week. In the paddock the sheep were in prior to my arrival on the property there was even less

FOO. Starvation was the likely cause of death of the animals whose carcasses were observed in that paddock during my visit. In my opinion the paddock the sheep had been kept in and the paddock they were moved to prior to our arrival both had inadequate feed for the numbers of sheep present.

2. What are the feed requirements of these animals in normal conditions?

According to Mr Farmer (the farm owner) the sheep had been joined at the start of January. This would mean that they are due for lambing in approximately June. As this is approximately one month from now the sheep will be requiring approximately 11MJ/head/day for maintenance. Due to the poor body condition of these sheep however they have likely not been receiving this for some time and will need to be supplemented further. Because of this I would recommend feeding them about 20MJ/head/day. Given the lack of FOO in the paddock all the required feed will have to be supplied from supplementary feed. To reach parturition in an appropriate body condition the sheep will need approximately 2.6kg of oaten hay per head per day or 2.2kg of oaten hay with 250g of lupins per head per day.

3. What was the condition of these animals on 4 May 2017?

The sheep observed were in poor body condition with a large number appearing to be suffering from malnutrition and parasitism. There was no palpable fat covering the spinous or transverse processes of the vertebrae of the sheep assessed leading to an average body condition score of 1. Additionally there were a number of animals that were unable to rise. This was likely to have been due to the stress and malnutrition resultant from the lack of feed and parasite burden of the animals (as evidenced by their high faecal egg counts (see attached pathology report)).

4. Did the animals show signs of distress evidenced by severe, abnormal physiological or behavioural reactions? If so please describe and explain the signs shown by the animals.

The sheep in question were showing severe physiological disturbance evidenced by the number of severely weakened animals. The behaviour of the animals was abnormal for healthy sheep in that they no longer exhibited a flight response when approached by humans. This was especially evident for those found to be moribund on arrival.

5. Are there reasonable steps that could have been taken to alleviate the harm suffered by the animals? In answering could you please provide all reasonable alternatives and if possible give an opinion on what would have been most reasonable in the circumstances.

There are a number of steps that could have been taken to prevent the condition of the sheep. The first of these and most reasonable option would have been to

commence supplementary feeding when the FOO appeared to be inadequate for the number of sheep in the paddock. The lack of adequate FOO is a regular occurrence for the region at this time of the year and supplementation is a generally accepted farming practice.

Secondly, when it became apparent that there was not going to be enough FOO for the number of animals in the paddock a number of them could have been moved to a separate paddock or agisted. There was a paddock to the southern border of the farm that was composed mostly of oat stubble. There was sufficient fallen grain in this paddock to maintain the body condition of several hundred sheep for at least a month and this would have been an easy on farm option. Finally, a number of the sheep could have been sold for slaughter prior to the feed supply options on farm becoming critical. The most reasonable option for this farm would have been to move the sheep through the stubble paddocks so that the pasture paddocks had a chance to grow. As the long term forecast began to predict an extended dry autumn either supplementary feeding should have occurred or on farm numbers should have been reduced to conserve the feed supply and prevent malnutrition and starvation.

Appendix 5.5: Example of a brief witness statement from a veterinary surgeon

EXAMPLE ONLY

Bruce Cooper

STATES:

1. I am 47 years of age and reside at an address known to the Department of Primary Industries and Regional Development (DPIRD).
2. I am a Registered Veterinary Surgeon, registered under the Veterinary Surgeons Act 1960, Western Australia.
3. I graduated from Murdoch University with a Bachelor of Veterinary Medicine and Surgery (BVMS) in 1999 and a Doctor of Philosophy (PhD) in 2008. My PhD research focussed on productivity of beef cattle breeding herds.
4. I am employed by Varsity University as a Senior Lecturer in Production Animal Health and Management since 2008.
5. Prior to that, I was a full-time PhD candidate from 2004. Between 1999 and 2004, I was a rural large-animal veterinary practitioner in Western Australia.
6. I am a member of the Australian Veterinary Association, The Australian Cattle Veterinarians, The Australian Sheep Veterinarians and Australian Practice Management.

7. On 13th March 2017, I received a telephone call from ELLA SMITH, from the Department of Primary Industries and Regional Development, Livestock Compliance Unit.
8. The telephone call was in relation to providing an expert opinion on an alleged animal welfare case involving two sheep with in-growing horns.
9. On 15th March 2017 I received an email containing photographic evidence of the two sheep at Newtown saleyard, a final pathology report of case number AW 199006 and pathological photographic evidence.
10. **Exhibit** On 5th April 2017, I emailed a signed copy of my expert opinion report on case number AW 199006 to ELLA SMITH together with my signed curriculum vitae.
11. **Exhibit** On 4th July 2017 I received an email from JANE SENIOR of the Livestock Compliance Unit with some further questions in relation to my report. I answered these questions and sent my final report on 8th July 2017.
12. I declare that this statement is true and correct to the best of my knowledge and belief and that I have made this statement knowing that if it is tendered in evidence I will be guilty of a crime if I have wilfully included in this statement anything which I know to be false or that I do not believe to be true.

Signed _____

On ____ at _____

Appendix 6: Useful resources

- **Animal Welfare Act 2002 and subsidiary legislation:**
legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_50_homepage.html
- **Relevant animal welfare codes of practice:**
agric.wa.gov.au/animalwelfare/animal-welfare-codes-practice
- **Meat & Livestock Association (MLA) resources, tools and extension material:** mla.com.au/extension-training-and-tools
- **Pork Association Australia extension material:**
australianpork.com.au/library-resources/publications/fact-sheets
- **The Necropsy Book: A Guide for Veterinary Students, Residents, Clinicians, Pathologists, and Biological Researchers.** Charles Louis Davis DVM Foundation, John King et al., 2014
- **Appearing as a witness:**
legaid.wa.gov.au/InformationAboutTheLaw/crime/appearing/Pages/Appearingincourtasawitness.aspx
- **Guide to giving evidence:**
courts.dotag.wa.gov.au/_files/A_guide_to_giving_evidence.pdf

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