RSPCA WA considers that powers of entry to commercial animal production premises to monitor compliance are essential to implementing Animal Welfare Standards. The current legislation means General Inspectors can only enter a premises when a reasonable suspicion of cruelty exists.

RSPCA WA acknowledges that the Animal Welfare and Trespass Legislation Amendment Bill 2020 (the Bill) is intended to improve the current situation; however, RSPCA WA strongly disagrees with limiting the appointment of designated general inspectors to the staff of the Department of Primary Industries and Regional Development. Should powers be limited to a subset of General Inspectors (i.e. Designated General Inspectors), RSPCA WA maintains that such Designation should be skills based, not employer based.

RSPCA WA also contends that the proactive powers of inspection should not be limited to intensive production places but extend to all places where animals are kept for commercial purposes.

RATIONALE

1. Designated General Inspectors

Proposed section 35A(1) of the Bill provides that the CEO (of WA Department of Primary Industries and Regional Development) may designate a general inspector who is a member of the staff of the Department as a designated inspector.

This excludes other general inspectors, including those from RSPCA WA, from seeking designation regardless of their training and expertise.

The effect of this exclusion from designation is that RSPCA WA Inspectors will not be able to undertake proactive inspections of intensive animal farming operations, abattoirs and knackeries under the new powers of entry in the Bill (see proposed section 38(1A)).

RSPCA WA is concerned that the proposal for only Department staff to be able to seek approval to be designated is based on sectional interest’s misinformed and biased views of the RSPCA and political reasoning, rather than being based on delivering the best animal welfare outcomes.

RSPCA WA submits that all political parties should support suitably skilled General Inspectors, including RSPCA WA Inspectors, being granted powers of inspection to enter knackeries, abattoirs and ‘intensive production places’ under the Amendment Bill. This is particularly important given:

- The established animal welfare role of RSPCA WA Inspectors and associated community expectations about their role;
- That RSPCA WA Inspectors will still be responsible for responding to animal cruelty complaints which may occur at these locations (detailed further below); and
- Concerns that have been raised relating to the problem of regulatory capture with respect to departments of agriculture being involved in enforcement.

RSPCA WA considers that the criteria for a General Inspector to be designated should not relate to the employing agency but should more properly relate to the training and expertise of the individual inspector.
2. Premises Subject to Proactive Inspections

The powers of entry in the Amendment Bill provide for proactive inspections to occur at any time at the following places:

- an ‘intensive production place’;
- an abattoir; and
- a knackery (proposed section 38(1A)).

The Amendment Bill defines ‘intensive production place’ as:

“A non-residential place where intensive production is carried out.”

‘Intensive production’ is defined as an activity that is carried out:

(a) at an animal source food production facility; and
(b) for the purpose of, or in connection with, commercial food production; and
(c) that, in the ordinary course of production, animals involved in the production do not have an opportunity to graze or forage outside.

This last element of the definition of intensive production means that the powers of entry do not relate to facilities where the animals source their food from the property (e.g. grazing on pasture). Therefore, operations such as intensive egg farms, intensive meat bird farms and intensive piggeries can be inspected but, other farms where production animals source their food from the property, cannot be inspected.

RSPCA WA considers that the places where proactive inspections can occur should not be this narrow. In NSW, for example, the powers of entry are not so restricted. Instead they relate to “land in or on which an animal is being used, or kept for use, in connection with any other trade, or any business or profession.”

RSPCA WA considers that the proactive powers of inspection should apply to all animals used for commercial purposes. RSPCA WA seeks that the Government clarify why the Amendment Bill limits the protection of proactive inspections only to intensive production places, and why other farming operations and the animals in them are not similarly protected.

This limitation relating to the places that can be subject to inspection is particularly noteworthy when contrasted with the relevant places for the proposed aggravated trespass offence in Part 3 of the Amendment Bill.

A person can commit the new aggravated trespass offence (section 70(2A) of the Criminal Code) when they trespass on an ‘animal source food production place’ in circumstances of aggravation.

In the Amendment Bill ‘animal source food production place’ is defined to mean any of the following places:

(a) an animal source food production facility;
(b) an abattoir;
(c) a knackery; (proposed section 70A(1)).
Additionally, ‘animal source food production facility’ is defined to mean any of the following places, operated for the purpose of commercial food production:

(a) a farm or other place where an animal is reared or fattened;
(b) a dairy farm;
(c) an egg farm or other place where poultry are kept to produce eggs.

Therefore, an ‘animal source food production facility’ includes any farm operated for the purpose of commercial food production where an animal is reared or fattened.

This place does not need to also be an intensive production place (i.e. where the animals do not have an opportunity to forage or graze outside). Therefore, the places where the aggravated trespass offences may occur are a wider category of places than where proactive inspections can occur.

RSPCA WA considers that the types of premises covered by the proposed trespass legislation and the types covered by improved inspection powers should be consistent in the Amendment Bill.

ENDS

1 “Regulatory capture refers to a process that occurs when the regulatory agency acts in the interest of the industry it is tasked with regulating, in a way that deviates from the public interest that underpins the regulation”, Dr Jed Goodfellow cited in Young Lawyers Conference Tackles the Big Issues in Animal Law.