

THE ANIMAL WELFARE ACT 2015: AN OVERVIEW

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*All things bright and beautiful,
All creatures great and small,
All things wise and wonderful,
The Lord God made them all.*

- Cecil Frances Alexander

The Animal Welfare Act 2015 (hereinafter referred to as “the Act”) received Royal Assent on 21 December 2015, was published on 29 December 2015 but is still not yet in force. This article seeks to provide an overview of some of the salient provisions within the Act and consider the sufficiency of the provisions pertaining to cruelty to animals and animal welfare. The focus will be centered on the provisions, which in the writer’s opinion, are of particular import in relation to dogs and cats and will not address the provisions in relation to livestock and others. As this article seeks to provide an introduction to the provisions of the Act, it is specific in its considerations of the efficacy of the Act itself.

Background and Underlying Concepts to Animal Welfare Law

At the outset, when one hears the words “rights” and “welfare”, one would naturally attach the same to a human being and not to an animal. It would therefore be helpful to consider the basis for animal rights and the reasons for the same.

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In terms of rights, Wilkinson¹ sets out an analysis of some theories pertaining to rights and how they are applicable to animals - from a consideration of legal rights and moral rights, to a consideration of the utilitarian approach and the benefit theory approach, and to a duty based approach as a means of providing a justification for the proposition that animals should have rights. Cooke² considered the duties owed specifically to what he referred to as “companion animals” whereby the duty to care for a pet’s welfare was based, *inter alia*, on the pet being a “sentient being” as well as the property of its owner, which would justify the protection of a pet.³ Both Wilkinson and Cooke strive to provide a justification for the fact that animals do have a right to be protected from cruelty and have their welfare taken care of by the law and society. Wilkinson further puts forward the argument that cruelty to animals dehumanizes the attacker.⁴

In Malaysia, the laws which provided for the protection of animals prior to the enactment of the Act, are contained in the Penal Code, the Animals Act 1953 (hereinafter referred to as “the AA”) and the Animals (Amendment) Act 2013.⁵ These legislations provide for various offences pertaining to the offences of cruelty to animals and the prevention of the same.

Under the AA, the relevant provision in respect of the prevention of cruelty to animals is section 44 of the AA which provides for the penalty for cruelty to animals. Here, the definition of animal includes livestock such as horses, cattle and sheep as well as ‘any four-footed beast kept in captivity or under control...’⁶ where the definition of “cat” and “dog” refers to a domesticated cat or dog.⁷ This

¹ Michael Wilkinson, ‘Animal rights: a test case for theories of rights’ [1998] 5 UCL Juris Rev 144-163.

² Steve Cooke, ‘Duties to companion animals’ (2011) 17(3) Res Publica 261-274.

³ *Ibid* 262.

⁴ (n 1) 162.

⁵ G Dhillon, PS Devi, SL Lee and ASJ Bohunting, ‘Animal Protection in Malaysia – Deficient Statutory Provisions and the Efficacy of the Enforcement Mechanisms’ [2015] 5 MLJ xxvi.

⁶ Animal Act 1953, s 2.

⁷ *Ibid*.

seems to imply that the AA is only applicable to pets and would not cover stray animals. However, for the purposes of section 44, the definition of animal appears to be wider as it includes ‘any living creature other than a human being.... Whether wild or tame...’.⁸ Accordingly, the provision for the prevention of cruelty to animals is applicable to all animals.

In this regard, section 44 of the AA encompasses various actions which include, *inter alia*, cruelly beating, kicking, ill-treating, overloading and terrifying animals or for an owner to allow an animal to be so treated; failing to supply an animal with sufficient food or water when that animal is being transported; and, causing the animal unnecessary pain or suffering by a wanton or unreasonable act or omission. The result is an offence of cruelty where the penalty is a fine of RM200 or to imprisonment of six months or both.

A point to note about the AA is that of its 87 sections, only one part addresses the issue of cruelty to animals and the prevention of it and only a single section specifically provides for cruelty to animals being an offence. The result of this has been numerous incidences of cruelty to animals which have been clearly documented in the media. One such newspaper article set out the following examples; the case of Sheena, the German Shepard, which had been so neglected by her owner that a post mortem on her wasted body showed that her internal organs had shrunk due to starvation which led to her owner being fined RM100; a man who had tied and dragged a dog behind his car who was not prosecuted due to lack of evidence; and, a report of a stray dog which was caught at the KTM station in Kepong, tied up and had a wooden stick shoved down its throat.⁹

⁸ *Ibid* s 43.

⁹ Chin Mui Yoon, ‘A dog’s life’ *The Star* (Kuala Lumpur, 3 October 2011) <<http://www.thestar.com.my/lifestyle/features/2011/10/03/a-dogs-life/>> accessed 1 September 2012

It has been highlighted by Dhillon *et al* that the said legislations are largely ineffective in the protection of animals due to various reasons including, *inter alia*, there being no clear guidelines on certain issues and that enforcement may not be effective.¹⁰ The laws on animal cruelty in both Singapore and Malaysia require reform in terms of the need for clarity in the provisions themselves and for there to be specific provisions on animal welfare. The need for reform was also made in comparison to several provisions of the United Kingdom's Animal Welfare Act 2006.¹¹

The Animal Welfare Act 2015

As an overview, the Act is divided into nine parts which are, *inter alia*, on the establishment of an Animal Welfare Board;¹² Animal Welfare;¹³ Cruelty to Animals;¹⁴ and Animals in Distress.¹⁵ In other words, the Act is dedicated to not merely the prevention of cruelty to animals but to animal welfare in general.

Definitions under the Act

Section 2 of the Act is the interpretation section where the three definitions which are of utmost import are firstly "animal" which includes 'any living creature other than a human being and includes any beast, bird, aquatic animals, reptile or insect but does not include wildlife under the Wildlife Conservation Act 2010'; "animal welfare" which is defined as '... including the needs specified under section 24' and where an "owner" '... means any person who owns any animal and includes any person for the time being in charge of any animal or any person occupying any premises'.

¹⁰ (n 5).

¹¹ Alvin WL See, 'Animal Protection Laws of Singapore and Malaysia' (2013) *Sing J Legal Stud* 125, 153-157.

¹² Animal Welfare Act 2015 Part II.

¹³ *Ibid* Part IV.

¹⁴ (n 12) Part V.

¹⁵ (n 12) Part VI.

The width of the above definitions is heartening. The definition of animal would allow for the protection of animals in general, whether domesticated or otherwise, and appears to be wide enough to protect any form of pet, livestock or animal used in teaching. Further, the inclusion of any person having charge of an animal within the definition is important as it would cover any person who, for example, has charge of an animal in a pet shop, an animal boarding house, or be in charge of the transport of an animal. This would therefore presumably allow for a wider application and protection of animals in general.

The Establishment of an Animal Welfare Board

The body responsible for the enforcement of the Act is the “*Animal Welfare Board*” which is to be established under section 3 of the Act. Here the functions of the Animal Welfare Board appear to be wide and include monitoring the work of bodies meant to prevent trauma and suffering to animals;¹⁶ monitoring work meant for the protection of animals including at animal shelters and rescue homes;¹⁷ and the imparting of education¹⁸ and promotion of animal welfare¹⁹.

Perhaps one of the most important functions of the Animal Welfare Board is its responsibilities to educate the public and promote animal welfare. The need to change mindsets is necessary in order to ensure that the provisions under the Act can be fully effective.

The Animal Welfare Board comprises of, *inter alia*, the Director General of the Department of Veterinary Services; the Director General of the Department of Wildlife Peninsular Malaysia and National Parks; the Director General of the Department of Fisheries; the Director General of Local Government Department

¹⁶ (n 12) s 4(1)(a).

¹⁷ (n 12) s 4(1)(b).

¹⁸ (n 12) s 4(1)(d).

¹⁹ (n 12) s 4(1)(e).

and officers from the Ministry of Agriculture and Agro-based Industry, the Ministry of Education and the Ministry of Health.²⁰ This is again a step in the right direction as the Animal Welfare Board constitutes of persons having the knowledge and necessary experience to deal with the issues of animal welfare. Further, the diverse backgrounds of the officials would presumably allow for a fuller consideration of the needs which can arise in respect of animal welfare.

Licensing

Although there are specific provisions under the Act in respect of animal welfare and the prevention of cruelty to animals, there are also specific activities listed under the Schedule to the Act which require a specific licence.²¹ These activities cover the boarding of animals, riding animals, performing and breeding animals, research, testing and teaching on animals, animal rescue and rehabilitation, animal pounds and shelters, quarantining animals, animal training, the captivity of animals for sale activities of animals, the slaughtering and disposal of animals and the control of stray animals.²² The carrying out of any of the above activities without a licence will result in a fine of between RM15000 to RM75000, or imprisonment of up to 2 years or both.²³

It can be noted from the activities specified in the Schedule that the same encompasses situations where an animal may face abuse or torture, whether knowingly or unknowingly done as in each of the activities so specified, an animal will be in a position where they may be confined and subject to the power of a human being.

²⁰ (n 12) s 6.

²¹ (n 12) s15(1).

²² (n 12) Schedule.

²³ (n 12) s 15(3).

Provisions on Animal Welfare

A marked difference between the Act and the AA are the provisions pertaining to animal welfare which are encompassed within Part IV of the Act where there were primarily no such provision under the AA. Part IV provides for, the duties of an owner or licensee in relation to an animal are provided for under section 24 of the Act, while section 25 of the Act provides for improvement notices, section 26 of the Act addresses the provision to be made for animals which are used in research, testing or teaching, section 27 of the Act covers the transportation of animals, and finally section 28 of the Act addresses the issues surrounding the sale of animals.

A reading of section 24 of the Act indicates that, the provision is not concerned primarily with cruelty to animals but instead with the actual welfare of an animal. The law requires reasonable steps to be taken to ensure that an animal's needs are fulfilled. These needs would encompass a suitable environment, diet, housing, protection from pain and suffering, and, the animal's need for its normal behavioural patterns.²⁴

However, as has been pointed out in the article by Dhillon *et al*,²⁵ there is no definition of what amounts to reasonable steps or what can amount to "suitable" under the above provisions. The term "suitable" is a wide term which should be interpreted so as to take the needs of different animals into account as what is suitable for one type of animal would not be suitable for another.

The term "reasonable" may be problematic where what is thought to be reasonable to one person may be widely different to what is reasonable to another. But perhaps guidance can be obtained from section 24(1)(b) of the Act where it

²⁴ (n 12) s 24(1).

²⁵ (n 5) iv.

is provided that the relevant circumstances are those which include the lawful purpose or activity for which the animal is kept. Therefore, the most basic application of this section would require that a pet not be kept constantly exposed to the environment, that its food requirements should provide for the needs of its health, that it be allowed exercise and medical care where necessary and perhaps, that it be allowed euthanasia in the event of incurably pain or disease.

The penalty for failing to take such reasonable steps is a fine of RM15000 to RM75000 or imprisonment of up to 2 years or both²⁶ and this is applicable to both an owner and a licensee.

In the event that section 24 of the Act is breached, an improvement notice can be issued by an animal welfare officer which would require an owner or licensee to remedy the said breach²⁷ where a failure to do so would result in a fine of RM10000 to RM50000 or imprisonment for up to 1 year or both.²⁸ Here, an ‘animal welfare officer’ is one who is appointed under section 36 of the Act²⁹ who is a public officer appointed by the Minister.³⁰

The question here would be what would be deemed to be steps which can be taken in this circumstance. The amount of the fine may not be sufficiently high to amount to an effective deterrent in the event that the animal is part of a commercial venture.

However, section 24(2) of the Act does make provision that an animal may be lawfully destroyed for ‘any reasonable purpose’ and that this is to be carried out in ‘an appropriate and humane manner’. This provision should be read together

²⁶ (n 12) s 24(3).

²⁷ (n 12) s 25(1).

²⁸ (n 12) s 25(5).

²⁹ (n 12) s 2.

³⁰ (n 12) s 36.

with section 54 of the Act which vests the court with the power to destroy an animal where it is appropriate in the interest of the animal.³¹

The provision in respect to the protection of the welfare of animals goes beyond the usual basic responsibilities of an owner or licensee as there is provision under Section 26 of the Act that extends to when an animal is used in research or testing or teaching. The section further provides that reasonable steps must be taken to ensure the animal's physical health and that any unreasonable or unnecessary pain or distress to the animal is minimal.³² The penalty for its contravention is a fine of between RM20000 and RM100000 or to imprisonment of not more than 3 years or both³³ and when animals are to be transported under section 27 of the Act, where the penalty is a fine of between RM15000 and RM75000, or imprisonment of up to 2 years or both.³⁴

The fact that provision is made for the welfare of animals which are used in research, testing or teaching is laudable as it would presumably ensure that the animals so used are not abused. However, the disadvantage is that any form of research or testing on an animal would in itself have to involve some form of pain and/or distress to the animal as the materials to be tested on them would arguably be at the stage where its safety is being determined.

Very importantly, section 26(2) of the Act provides that animals may not be used for research or testing, except in a school or if licensed by the Animal Welfare Board.³⁵ The issue which may arise in this respect is in terms of enforcement due to the number of schools and institutions which may use animals as part of the educational experience.

³¹ (n 12) s 54(1).

³² (n 12) s 26(1).

³³ (n 12) s 26(6).

³⁴ (n 12) s 27(3).

³⁵ (n 5) iv.

Perhaps, one of the more unusual and important provisions is section 28 of the Act, which prohibits the sale of an animal to a person who is under 12 years old unless that person is with an adult. If there is such a sale or no reasonable steps have been taken to ascertain that the buyer is not under 12 years old, then the penalty is a fine of RM15000 to RM 75000, or imprisonment of up to 2 years.

While the above provision is lauded, would this mean that all sales of animals would require some form of identification being produced in order to prove the age of the buyers. Further, while it may prohibit the sale of animals to a child under 12 years old, it does not prohibit the gifting of an animal to a child who is under 12 years old. In this aspect, the need for education as one of the functions of the Animal Welfare Board is of extreme importance where children need to be educated from a young age to respect animals and the importance of animal welfare and the prevention of cruelty to animals as well as on the ways in which to provide for animal welfare.

Provisions on Cruelty to Animals

While the above represent the offences in relation to the welfare of animals, specific provisions with regard to any cruelty to animals are contained under Part V of the Act where section 29 provides specifically for cruelty against animal offences, section 30 provides for the killing of animals, section 31 for the administering of poisons, section 32 for animal fighting ventures, and section 33 for the failure to exercise reasonable care and supervision.

There are 21 subsections under section 29(1) of the Act which stipulate the different actions which can amount to cruelty to animals which is a substantial increase to the 7 situations provided for under the AA. These circumstances include the mutilation of an animal;³⁶ skinning, roasting or killing a live animal

³⁶ (n 12) s 29(1)(h).

for superstitious reasons;³⁷ dynamiting or poisoning a stream or river in order to kill or harvest animals;³⁸ keeping an animal chained or tethered³⁹ or confined in an insufficient space;⁴⁰ selling⁴¹ or being in possession⁴² of an animal in pain; taking part in an activity which involves the shooting of an animal for sport⁴³ or participating in a sport which subjects an animal to cruelty.⁴⁴ The penalty for any such actions is a fine of between RM20000 to RM100000, or imprisonment for up to 3 years or both.⁴⁵

In the range of actions which are covered by the above, perhaps the most important, are the provisions under sections 29(1)(d), (e), (h), (l), (m), (o), (p), (q) and (r) of the Act as these prohibited actions are most likely to affect animals which are kept as pets, and therefore to a certain extent, represent a rather vulnerable group of animals due to their dependence on human beings.

The fact that the lower range of the penalty which can be imposed is RM20000 could however have its drawbacks as it could lead to an owner or licensee to conceal any action which may fall under section 29 of the Act as they would not want to pay such a penalty. The alternative is that such actions may then be conducted subversively and be difficult to investigate and prosecute which would be counterproductive.

The widening of the range of actions amounting to animal cruelty is a step in the right direction. The proviso within section 29(2) of the Act must be borne in mind as it provides for situations which will not amount to animal cruelty

³⁷ (n 12) s 29(1)(i).

³⁸ (n 12) s 29(1)(k).

³⁹ (n 12) s 29(1)(l).

⁴⁰ (n 12) s 29(1)(m).

⁴¹ (n 12) s 29(1)(n).

⁴² (n 12) s 29(1)(o).

⁴³ (n 12) s 29(1)(t).

⁴⁴ (n 12) s 29(1)(u).

⁴⁵ (n 12) s 29(1).

including accepted veterinary procedures,⁴⁶ the baiting of pest animals for, inter alia, public health, disease and population control,⁴⁷ and the use of animals as food for other animals.⁴⁸

Additionally, section 30(1) of the Act prohibits the shooting of any animal with a firearm save for the purposes of an emergency or disease control. This section does not however prevent an animal from being killed in several situations, including, if it is incurably ill⁴⁹ or so as to end its suffering.⁵⁰ The drawback of the provision is that it does allow the killing of an animal in order to control the animal population.⁵¹

The question that arises is again one of interpretation as to what would amount to an emergency or disease control. The Act does not seem to have any guidelines on what can amount to an emergency which would leave much scope in the determination of such.⁵²

Be that as it may, an incurably ill animal may be killed if such killing is necessary to end its suffering where this is determined by a veterinary authority or a registered veterinary surgeon.⁵³ This is particularly important in the scope of the legislation as the euthanizing of animals which are very ill is a way in which the pain and suffering of the animal is not prolonged. The Act is also clear in that the words “incurably ill” refers to an animal which is “fatally wounded or sick with a grave prognosis”.⁵⁴ This definition accords sufficient clarity as to the condition which an animal has to be in in order to be considered incurably ill.

⁴⁶ (n 12) s 29(2)(a).

⁴⁷ (n 12) s 29(2)(b).

⁴⁸ (n 12) s 29(2)(c).

⁴⁹ (n 12) s 30(2)(b).

⁵⁰ (n 12) s 30(2)(c).

⁵¹ (n 12) s 30(1)(e).

⁵² (n 5) iv.

⁵³ (n 12) s 30(2)(b).

⁵⁴ (n 12) s 30(3).

In respect to dogs, section 31(1) of the Act is important as it prohibits the administration of a poison or drug without lawful authority or reasonable excuse where the penalty which can be imposed is a fine of between RM20000 and RM100000 or imprisonment of a maximum of three years or both. Further, the causing of a dog to take part in an animal fight would also amount to cruelty to animals under section 32(1) of the Act. The Act is very clear in that an “animal fight” is defined as:

... an occasion on which an animal is placed with another animal or with a human, for the purposes of fighting, wrestling or baiting.”⁵⁵

It can be argued that the above definition would be wide enough to provide for all situations of animal fighting. However, the difficulty which may arise is that such fights are not usually a matter of public knowledge and this may hinder enforcement.

Perhaps the most welcomed provision under Part V of the Act is section 33(1), which makes it an offence for a person to fail to exercise reasonable care and supervision in respect of both cruelty to animals and the welfare of animals. This provision appears to be a blanket provision which could potentially encompass any and all instances where a person so fails to act. The question which may arise in terms of its applicability is again what is meant by the word ‘reasonable’ and who is determine what amounts to reasonable.

Provisions other than Welfare and/or Cruelty

Another aspect of the legislation are the provisions dealing with the destruction of animals. The Act allows for the destruction of an animal under section 34(1)

⁵⁵ (n 12) s 32(4).

of the Act provided that there is written certification by a registered veterinary surgeon for such destruction. The interesting aspect of section 34 of the Act is that it also allows for the taking into possession by an animal welfare officer of an animal which is suffering or is likely to suffer⁵⁶ and such an animal may be cared for and not destroyed.⁵⁷ This particular provision is essential as it would allow an animal's suffering to be put to an end, and it also gives sufficient scope to allow an animal who is not beyond help to have a new lease on life.

In terms of ancillary powers, the court has two powers the first under section 51 of the Act which addresses the issue of deprivation, and the second, under section 52 of the Act which addresses the issue of disqualification.

Pursuant to section 51, an owner or licensee can, quite apart from and in addition to the penalties under the specific sections, be deprived of the ownership of the animal.⁵⁸ This can include an order to destroy the animal. However, this particular form of penalty imposed on an owner or licensee, is a step in the right direction as it will have the ultimate result of removing the animal from a place where it was either being cruelly treated or where its welfare was not taken care of.

Further, under section 52(1), a person who is found to have committed any of the offences under sections 15, 24, and 26 to 32 of the Act can be disqualified from, *inter alia*, owning or keeping an animal for up to one year and any contravention of this order can result in a fine of RM10000 to RM50000 or imprisonment of up to a year, or both.⁵⁹ Again, this is an innovative penalty and one which is timely in order to discourage the re-commission of any act of

⁵⁶ (n 12) s 34(3).

⁵⁷ (n 12) s 34(6).

⁵⁸ (n 12) s 51(1).

⁵⁹ (n 12) s 52(3).

harming an animal. However, a disqualification of one year appears insufficient and that perhaps there should have been provision made for a life-long ban in respect of repeat offenders.

Concluding Thoughts

The provisions of the Act are a vast improvement of that under the AA. The Act's focus is on the welfare of animals and not merely the prevention of cruelty to animals. In this regard, the Act appears to be designed to being a holistic approach to animal welfare which is indeed a heartening prospect. There is also some clarity in the definitions of the actions which are to be prohibited.

However, it must be noted that the Act is still not in force and that cases of cruelty to animals still continue to occur and animal activists are questioning the non-implementation of the Act which is apparently to come into force in six months.⁶⁰

Be that as it may, the reality of the situation is that the efficacy of the enforcement of these provisions may be difficult and not as practical as it appears to be. This is particularly true when one considers the difficulty in ascertaining the meaning of 'suitable' and 'reasonable' and the fact that these offences may not be reported or may occur illicitly.

⁶⁰ Chuah Bee Kim 'Animal Protection: Eagerly waiting for more bite' *New Straits Times* (Kuala Lumpur, 12 February 2017) <<http://www.nst.com.my/news/2017/02/211651/animal-protection-eagerly-waiting-more-bite>> accessed 25 February 2017.