

Framework for stakeholder discussion

Department of Fisheries

FISH WELFARE

POSITION PAPER



Department of
Fisheries

July 2004



Fish for the future

CONTENTS

FOREWORD..... 2

PURPOSE..... 4

BACKGROUND 5

 CODES OF PRACTICE 5

 PREPARATION 6

 CONSULTATION..... 6

 OFFENCES 7

 COMPLIANCE 7

 EDUCATION..... 7

 WHERE AND WHEN TO SEND YOUR SUBMISSION..... 7

FOREWORD

Recent changes to animal welfare legislation have resulted in the Minister for Agriculture, Forestry and Fisheries ('the Minister') now having the power to prescribe regulations to prevent cruelty to fish and provide for the welfare, safety and health of fish.

This document aims to focus discussion on the Department of Fisheries' proposed position regarding proposed fish welfare subsidiary legislation and elicit final responses from stakeholders and the public regarding this position.

Recommendations on how to proceed with fish welfare legislation will then be forwarded to the Minister for his consideration.

Peter Rogers
Executive Director
Department of Fisheries

Process for Decision Making

The Department of Fisheries will ensure that the views of all stakeholders are taken into account before final recommendations are put to the Minister.

‘HOW TO HAVE YOUR SAY’

The release of this discussion paper for public comment provides an opportunity for you to express an opinion on the Department’s proposed position on fish welfare prior to the implementation of fish welfare legislation.

The closing date for submissions is **29 October 2004**. Please send your submission to:

Gaye Looby
Strategic Planning Officer
Department of Fisheries
168 St Georges Terrace
PERTH WA 6000

Phone 9482 7333
Fax 9482 7218
Email glooby@fish.wa.gov.au

PURPOSE

The level of community interest in animal welfare issues has increased considerably over recent years. There is now a community expectation that people will treat animals humanely and with respect. This includes the treatment of aquatic animals such as finfish, molluscs and crustaceans taken from our waters or kept for other purposes.

To accommodate changing community standards and provide for greater legislative power to ensure that animals are properly protected, the *Animal Welfare Act 2002* was introduced. As a result of this Act, the Royal Society for the Prevention of Cruelty to Animals (RSPCA) is no longer the body responsible for welfare issues with respect to fish.

The Department of Fisheries now has the responsibility for ensuring the welfare of fish. This role is undertaken in close liaison with the RSPCA. In the future, provisions to enable regulations to deal with cruelty offences against fish and other aquatic animals will apply under the *Fish Resources Management Act 1994* (FRMA).

All people should give consideration to the welfare of aquatic animals, in particular those involved with the take and handling of fish and those otherwise interacting with aquatic animals.

This paper outlines the Department of Fisheries' position to stakeholders regarding proposed developments on fish welfare issues (that is, fish as prescribed under the FRMA).

This paper is based on the premise that the development of sectoral codes of practice is fundamental to the overall improvement of animal welfare standards. It is important that all stakeholders involved with fish-related activities ensure that these minimum standards are consistent, measurable, robust and practical in order to be of benefit to both the aquatic animals and the community.

Codes of practice need to be developed by each sector - commercial, recreational, aquaculture, aquatic tour, restaurant, hobbyist and retail - involved with fish-related activities.

It is proposed that offences for failure to comply with codes of practice will be set out in regulations and penalties up to \$10,000 may apply.

The Department of Fisheries intends to work with the RSPCA regarding enforcement activities particularly in relation to welfare issues surrounding aquarium fish.

Public education is an essential component of the fish welfare strategy and will require input by both the Department of Fisheries and stakeholder groups.

BACKGROUND

Under the FRMA, the Minister has the power to prescribe regulations to prevent cruelty to fish and provide for the welfare, safety and health of fish.

In April 2003, Section 258 (v) of the Act was amended to include the following paragraphs:

The regulations may –

- “ (va) prescribe measures to –
 - (i) prevent cruelty to fish; and
 - (ii) provide for the welfare, safety and health of fish;

- (vb) provide for the adoption of codes of practice relating to the use, care, welfare, safety, or health of fish either -
 - (i) as modified by the regulations;
 - (ii) as they exist at a particular date; or
 - (iii) as they are amended from time to time; ”.

Enforcement of these regulations will be the responsibility of Fisheries and Marine Officers of the Department of Fisheries (including those holding delegation for the purpose). Offences for failure to comply with codes of practice will be set out in regulations and penalties up to \$10,000 may apply.

Codes of Practice

While welfare legislation will be the basis of any approach, codes of practice will be the mechanism by which the welfare, safety and health of fish is achieved. As a consequence commercial, recreational, aquaculture, aquatic tour, restaurant, hobbyist and retail sectors involved with the taking, handling and otherwise interacting with fish and other aquatic animals, will be expected to develop a code of practice and encourage its adoption.

To ensure that there are benefits to both aquatic animals and the community, it is important that each the code of practice is:

- **consistent** in the criteria covered;
- **measurable** so as to provide meaningful information;
- **robust** to avoid any ambiguity; and
- **practical** to encourage understanding and adoption.

In time, the Department of Fisheries anticipates that the codes of practice will be consistent in both structure and format.

Some broad benefits in establishing codes of practice (as opposed to regulations which represent “the letter of the law”) include:

- flexibility to modify and improve animal welfare standards in line with changing community expectations, scientific knowledge and technological change;
- representation of community expectations and views through community involvement in the development of codes of practice; and
- educational value through an ability to use codes of practice to improve community awareness of animal needs.

Apart from providing a fundamental role for the improvement in animal welfare standards for fish, it is anticipated that the codes of practice will assist in:

- promoting ethical behaviour;
- improving the quality of the fish product;
- increasing the longevity of live fish being kept for sale; and
- facilitating success in overseas markets.

From an individual’s perspective compliance with a relevant code of practice shall be a defence when a person is charged with a welfare offence under the FRMA.

Indeed, such persons would have the opportunity to argue and present evidence that their standard of care or conduct has equalled or exceeded that specified in a relevant minimum standard. In the absence of a code of practice a defence may be more difficult.

As codes of practice will be used to assist industry, encourage appropriate behaviour, establish minimum standards and promote best practice for all fish-related activities, it is envisaged the codes of practice will need to be detailed.

Preparation

As most sectors involved with taking, handling and interacting with fish have a representative peak body, the Department of Fisheries will be looking to these bodies to take leadership with respect to the development of the codes of practice.

Consultation

When preparing draft codes of practice each sector is encouraged to consult with representatives of bodies likely to be affected by the code of practice as well as encourage community involvement. Such consultation is essential to ensure that all views are taken into account. The act of consultation is a precursor to education/training.

Offences

It is intended that the codes of practice will have a particular legal status under the FRMA. Breach of the minimum standards in a code of practice will not be an offence. Rather, any prosecutions will be for failure to meet the obligations in the FRMA relating to the care of an animal or for ill-treatment of an aquatic animal. However, failure to adhere to the minimum standards set out in a code of practice will be able to be used as evidence to support a prosecution.

Compliance

The Department is considering seeking assistance from the RSPCA with regard to compliance activities. In future it may be possible for RSPCA inspectors to have limited powers issued under the authority to act as honorary Fisheries and Marine Officers (including those holding delegation for the purpose) in order to increase the scope of enforcement in specific areas.

This compliance arrangement would be particularly useful with respect to enforcement of welfare standards for aquarium fish. This proposal will need to be discussed and further developed with the RSPCA in due course.

Education

The Department's overall strategy will be to encourage the development and delivery of appropriate education and training as part of quality assurance programs for fish care that satisfy relevant fish welfare codes of practice and standards.

This will be carried out in partnership with stakeholders and should be implemented using the codes of practice in conjunction with the suite of brochures and information on welfare issues that are available on the Department's website.

Where and when to send your submission

The closing date for submissions is **29 October 2004**. Please send your submission to:

Gaye Looby
Strategic Planning Officer
Department of Fisheries
168 St Georges Terrace
PERTH WA 6000

Phone 9482 7333
Fax 9482 7218
Email glooby@fish.wa.gov.au