


for Clerk of Parliaments
6 / 6 / 2024PREVENTION OF CRUELTY TO ANIMALS AMENDMENT (TRANSPARENCY AND FIT AND
PROPER PERSONS) BILL 2024 (NSW)

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The NSW Government is committed to safeguarding animal welfare and providing the strongest possible regulatory framework to prevent cruelty and promote responsible animal ownership and care in NSW. The NSW Government has committed to:

- Reviewing the funding arrangements for Approved Charitable Organisations (ACOs) legislated to conduct compliance and enforcement activities under POCTAA
- Introducing a 'fit and proper person' regime that will prevent people convicted of an aggravated animal cruelty offence, multiple or repeat animal cruelty offences from being involved in the keeping and breeding of companion animals.

This Bill delivers the above commitments in relation to the fit and proper person regime and introduces provisions to improve ACO transparency, supporting the commitment to conduct a review the funding provided to these organisations.

The NSW Government recognises the importance of appropriate transparency and accountability requirements for enforcement agencies, particularly those that are independent from government. The NSW Government provides funding to assist RSPCA NSW and AWL NSW in their inspectorial and enforcement functions. There is strong stakeholder support for increased ACO transparency in relation to the ACO enforcement operations under POCTAA, and the Bill delivers this.

The Bill also addresses a current gap in the legislation regarding the fit and proper person regime currently in place under POCTAA, in relation to persons who have been convicted of multiple or repeat animal cruelty offences.

There are strong community views and public interest in ensuring NSW has strong and appropriate animal welfare laws. There is substantial Parliamentary interest in animal welfare, with numerous Parliamentary Inquires in recent years.

The policy proposals underpinning this Bill have been informed by:

- **a review of previous animal welfare reform work** and stakeholder consultation undertaken by the Department of Primary Industries (DPI) from 2019-2022 which included around 6,000 responses from the NSW community, received over two rounds of public consultation.
- **Evidence provided to numerous animal welfare Parliamentary Inquiries**, including but not limited to the: 2023 Inquiry into the operation of the approved charitable organisations under POCTAA (Dec 2023); the Inquiry into animal welfare policy in NSW (November 2021); the Select Committee on Puppy Farming in NSW (November 2021); the 2021 Inquiry into the ACOs under POCTAA (November 2021); and the Select Committee on Animal Cruelty Laws in NSW (August 2019).
- **Targeted consultation performed with stakeholders in May 2024**, including the POCTAA enforcement agencies and other key stakeholders such as the Animal Welfare Advisory Committee.

Objectives: What is the policy's objective couched in terms of the public interest?

POCTAA is the primary piece of legislation that provides for animal welfare in NSW. POCTAA is enforced by the NSW Police Force and two non-government ACOs – the Royal Society for the Prevention of Cruelty to Animals NSW (RSPCA NSW) and Animal Welfare League NSW (AWL NSW). In addition to the ACOs, POCTAA is also enforced by Inspectors of the Greyhound Welfare and Integrity Commission.

The Bill seeks to serve the NSW public by providing more information and transparency around animal welfare enforcement by the ACOs and further strengthen animal welfare protections to align with community expectations in relation to convicted persons.

In summary, the Bill seeks to:

- increase public transparency in ACO enforcement operations
- introduce a presumption for disqualification orders for repeat cruelty offenders
- introduce appropriate information sharing provisions to enhance administration, and Ministerial delegations to improve the administration and enforcement.

ACO transparency

The Bill seeks to make changes to POCTAA to ensure appropriate transparency of ACO enforcement operations, noting the importance of ensuring that the ACOs, which receive public funding, are operating effectively in relation to their enforcement activities under POCTAA.

The ACOs operate under their own constitutions and governance structures and are independent of government. The NSW Government recognises the importance of appropriate public transparency for these organisations in their POCTAA enforcement operations. In this context, the Bill seeks to increase transparency in ACO operations by:

- clarifying that the ACOs are subject to the requirements of the *Government Information (Public Access) Act 2009* which sets out how members of the public can access government information.
- providing that the ACOs are subject to oversight by the NSW Ombudsman with respect to their statutory enforcement activities (providing the public with an avenue to make a complaint concerning the enforcement functions of the ACOs)
- enhancing the information required to be provided by the ACOs to the Minister in their annual reports and requiring those reports to be tabled in Parliament i.e made public.
- making changes to the appointment process for authorised officers and inspectors to include terms of appointment; and require inspector identification showing evidence of appointment.

Fit and proper persons regime

POCTAA currently provides that a Court can make disqualification orders following a conviction, which prevent the convicted person from owning or caring for animals. These can be tailored to particular time periods. There is currently a presumption that a Court must make a disqualification order (unless satisfied that special circumstances exist) for persons convicted of certain serious animal cruelty offences. However, the presumption does not currently apply to those convicted of multiple or repeat animal cruelty offences.

The Bill seeks to strengthen the existing fit and proper person regime under the legislation, by introducing a presumption that a Court make a disqualification for persons convicted of either repeat animal cruelty offences or multiple animal cruelty offences

arising from separate events. This aligns with public expectation that these persons will be appropriately disqualified from dealing with animals following multiple or repeat convictions for animal cruelty.

The Bill also proposes to amend the definition of a 'disqualification order', to mean an order that disqualifies a person from doing any of the things listed in section 26 of POCTAA. Currently, a disqualification order can encompass either one or more of the things listed in section 26, leading to variation and uncertainty regarding the scope of these orders.

The public expects that government and enforcement agencies are efficiently and appropriately sharing relevant information to support the administration and enforcement of the legislation. The Bill seeks to introduce information (including personal information) collection, use and disclosure provisions to allow sharing of information for the purpose of administering and enforcing POCTAA. Importantly, relevant agencies will be able to collect, use and disclose information so long as it is reasonably necessary for the purposes of administration and enforcement of the legislation. This limitation represents an appropriate privacy measure. New delegation provisions for the Minister are proposed, to support the administration and execution of POCTAA.

Options: What alternative policies and mechanisms were considered in advance of the bill?

- Taking no action (maintaining the status quo) – maintaining the current animal welfare regulatory framework.
- Non-regulatory approaches seeking to achieve the objectives identified above such as the provision of information or written agreements such as a Memorandum of Understanding between Government and the ACOs.

Given the stakeholder support for the proposals, and the importance of ensuring that community expectations in relation to ACO transparency are met, the above alternative approaches were considered to not meet the desired policy objectives.

Analysis: What were the pros/cons and benefits/costs of each option considered?

Maintaining the status quo is not considered a viable option, given the significant public interest and community expectations around strengthening animal welfare protections. There has been multiple Parliamentary Inquiries into animal welfare matters in recent years calling for reforms to the legislative framework. In addition, the NSW Government made an election commitment to introduce a new animal welfare framework in NSW and identified specific policy proposals which require legislation to implement.

Benefits of pursuing a non-regulatory approach, such as through informal written agreement with the ACOs could go some way to improving transparency of the ACOs. However, an agreement would not be enforceable. Ensuring the public have appropriate complaints mechanisms and access to information can only be fully achieved through legislation.

As such, the options of maintaining the status quo or implementing non-regulatory approaches will not achieve the desired objectives.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

It is proposed that the Bill will commence on assent. No transition period is required as the proposals underpinning the Bill are well informed and stakeholder views are well understood.

POCTAA is jointly administered by the Minister for Agriculture and the Minister for Local Government. The Department of Regional NSW, as the lead agency for animal welfare in NSW, will implement the changes in consultation with the ACOs, and other relevant agencies including NSW Police, the Information and Privacy Commission NSW, and NSW Ombudsman.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

The proposals in the Bill are well informed and stakeholder views are well understood. Stakeholders who were consulted in relation to the Bill in May 2024 include the following:

- RSPCA NSW
- Animal Welfare League NSW
- NSW Police
- Greyhound Welfare Integrity Commission
- Animal Welfare Advisory Council
- Animal Research Review Panel
- Exhibited Animals Advisory Committee
- Veterinary Practitioners Board
- Australian Veterinary Association
- NSW Farmers Association
- Dogs NSW, and
- Animal Care Australia

The Department of Primary Industries has also conducted consultation across government in relation to the Bill, including with the NSW Information Privacy Commission and the NSW Ombudsman.

Community feedback in relation to the animal welfare framework has also been reviewed in the formulation of the Bill, including the 2021 and 2023 annual inquiries into ACO operations under POCTAA.

There is significant public interest and widespread community support in ensuring adequate protections for animal welfare in NSW.