



LEGISLATIVE COUNCIL

STANDING COMMITTEE ON STATE DEVELOPMENT

Animal welfare policy in New South Wales

First report

Report 48

June 2022



www.parliament.nsw.gov.au

Standing Committee on State Development

Animal welfare policy in New South Wales

First report

Ordered to be printed 15 June 2022 according to Standing
Order 231

New South Wales. Parliament. Legislative Council. Standing Committee on State Development. Report no. 48.

Animal welfare policy in New South Wales

“June 2022”

Chair: Hon Catherine Cusack MLC



A catalogue record for this book is available from the National Library of Australia

ISBN 978-1-922543-64-6

Table of contents

	Terms of reference	v
	Committee details	vi
	Chair's foreword	vii
	Recommendations	viii
	Conduct of inquiry	ix
Chapter 1	Overview	1
	Background of animal welfare reform in New South Wales	1
	Approach and timeline for reform	2
	Objects of the Draft Animal Welfare Bill 2021	3
	How will the draft bill achieve its objects?	3
Chapter 2	Key issues	7
	Regulation not provided with the Draft Animal Welfare Bill 2021	7
	Unable to review draft regulation in conjunction with the draft bill	8
	Regulations more readily amended	9
	Consultation regarding the regulations	11
	Animal sentience is not explicitly acknowledged	12
	Not a 'modern' animal welfare act	13
	Practical impacts on statutory interpretation and others	14
	Animal sentience in other jurisdictions	16
	Animal sentience in the objects of the bill	17
	Inclusion of psychological suffering	18
	Independent office of animal welfare	20
	Conflict of interest for the Department of Primary Industries?	21
	Complaints and accountability mechanism	23
	Exemptions in the Draft Animal Welfare Bill 2021	24
	Exempting entire categories of animals	25
	Exempting acts or omissions done in accordance with a prescribed standard	26
	Clearer restrictions and definitions for exemptions	27
	Additional exemptions	28
	National and international standards	30
	Surgical artificial insemination on a dog	32
	Impacts on breeders and owners	33
	Alternatives to surgical artificial insemination	33
	Government's position	34

	Issues not considered in the draft bill	34
	Committee comment	38
Chapter 3	Incorporation of provisions of <i>Animal Research Act 1985</i>	41
	Current legislative framework for animal research in New South Wales	41
	Animal Ethics Committees and the Code	42
	Key issues related to incorporating legislation	44
	Lack of specificity regarding animal research	45
	Uncertainty regarding incorporation of Animal Ethics Committees and the Code	47
	Streamlining and modernising legislation	48
	Committee comment	49
Appendix 1	Submissions	51
Appendix 2	Witnesses at hearings	60
Appendix 3	Minutes	63
Appendix 4	Dissenting statement	83

Terms of reference

1. That the Standing Committee on State Development inquire into and report on the State's animal welfare policy, regulatory and legislative framework, including any measures required to:
 - (b) streamline animal welfare laws in New South Wales,
 - (c) reduce and remove unnecessary regulation, and
 - (d) ensure existing policy and regulatory arrangements remain appropriately balanced.
2. That upon its publication in December 2021, the Committee review the proposed Exposure Draft *Animal Welfare Bill 2021*, developed following the NSW Animal Welfare Reform – Discussion Paper.
3. The Committee provide an interim report by 30 May 2022.
4. That upon their publication, the Committee inquire into and report on the draft regulations associated with the proposed Animal Welfare Bill 2021.
5. The Committee table its final report as soon as practicable after the release of the draft Regulations.

The terms of reference were referred to the committee by the Minister for Agriculture and Western New South Wales on 25 November 2021 and adopted by the Committee on 30 November 2021.

¹ The original reporting date was 30 May 2022 (*Minutes*, NSW Legislative Council, 22 May 2022, pp 2962-2963). The reporting date was later extended to 15 June 2022 (*Minutes*, NSW Legislative Council, 10 May 2022, p 3235).

Committee details

Committee members

Hon Catherine Cusack MLC	Liberal Party	<i>Chair</i>
Hon Mick Veitch MLC	Australian Labor Party	<i>Deputy Chair</i>
Hon Mark Banasiak MLC	Shooters, Fishers and Farmers Party	
Hon Scott Barrett MLC*	The Nationals	
Ms Abigail Boyd MLC**	The Greens	
Hon John Graham MLC	Australian Labor Party	
Hon Emma Hurst MLC****	Animal Justice Party	
Hon Taylor Martin MLC***	Liberal Party	
Hon Peter Poulos MLC*****	Liberal Party	

Contact details

Website	www.parliament.nsw.gov.au
Email	State.Development@parliament.nsw.gov.au
Telephone	02 9230 2262

* The Hon Scott Barrett MLC replaced the Hon Scott Farlow MLC from 1 March 2022 as a substantive member of the committee. The Hon Scott Farlow MLC replaced the Hon Sam Farraway MLC as a substantive member of the committee from 25 January 2022 to 1 March 2022.

** The Hon Taylor Martin MLC replaced the Hon West Fang MLC as a substantive member of the committee from 8 March 2022.

*** Ms Abigail Boyd MLC is a participating member from 9 December 2021 for the duration of the inquiry.

**** The Hon Emma Hurst MLC substituted for the Hon Mark Pearson MLC for the duration of the inquiry on 26 November 2021.

***** The Hon Peter Poulos MLC replaced the Hon Natasha Maclaren-Jones MLC as a substantive member of the committee from 25 January 2022.

Secretariat

Helen Hong, Principal Council Officer

Andrew Rode, Senior Council Officer

Irene Penfold, Administration Officer

Stewart Smith, Director

Chair's foreword

The inquiry into animal welfare policy was referred to the Standing Committee on State Development by the Minister for Agriculture as part of the NSW Government's proposed reform of the animal welfare legislative and policy frameworks. This report focuses on the Draft Animal Welfare Bill 2021 and is the first of two reports that will be produced for the inquiry. The second report will focus on the Regulations associated with the draft bill.

Animal welfare legislation is a highly contested regulatory challenge, where the expertise, values and reputations of invested stakeholders in industry are often challenged by animal welfare activists.

It is therefore important that good regulation matches informed community expectations and is able to adapt as community expectations evolve in response to emerging science and research. It also requires the process to be independent and free of 'political fixes' which undermine faith in those processes.

Clarity in legislation is essential as unnecessary complexity can drain productivity, increase compliance costs and unfairly undermine producer confidence and reputations.

The proposed reform presents an important opportunity to improve the quality of animal welfare regulation, noting that best practice regulation should align closely with national and international standards. This was highlighted by evidence provided, particularly in the area of medical research.

Our key recommendations for the first report are that the NSW Government retain the Animal Research Act 1985 as a separate Act and for the Legislative Council to not consider the bill until the draft regulations have been published and stakeholder feedback received. Notwithstanding the efficient operation of the Act in its current form, there is also an opportunity for the government to engage in ongoing stakeholder consultation to ensure that we are building on our experience in animal research regulation and show leadership in this space. In doing so, New South Wales can make a greater contribution to simplifying national and global animal welfare standards that assist industry and improve outcomes for animals.

On behalf of the committee, I would like to thank the stakeholders who shared their expertise with us through submissions and at the committee's hearings. I also thank my committee colleagues for their contributions to the inquiry, as well as the committee secretariat and Hansard reporters.



Hon Catherine Cusack MLC

Committee Chair

Recommendations

- Recommendation 1** **39**
That the Legislative Council not consider the *Animal Welfare Bill 2021* until draft regulations have been released and stakeholder feedback has been received and reported on by this committee.
- Recommendation 2** **50**
That the NSW Government retain the *Animal Research Act 1985* as a separate Act.

Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council by the committee on 25 November 2021.

The committee received 309 submissions and 1 supplementary submission.

The committee held two public hearings: 16 March 2022 and 21 March 2022 at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

Chapter 1 Overview

The NSW Government is undertaking a comprehensive reform of its animal welfare legislative framework by consolidating and replacing the *Prevention of Cruelty to Animals Act 1979*, *Animal Research Act 1985* and *Exhibited Animals Protection Act 1986* with a single Act.

This chapter provides an overview of the development of the Draft Animal Welfare Bill 2021 as a key part of this reform and also considers the objects of the draft bill.

Background of animal welfare reform in New South Wales

- 1.1 The Draft Animal Welfare Bill 2021 (hereafter the draft bill) was published for public consultation in December 2021 and the NSW Government has described the draft bill's purpose as setting out a contemporary animal welfare legislative framework to replace the State's current animal welfare laws. It will focus on promoting the welfare of animals, preventing animal cruelty and providing oversight of higher-risk activities through licensing schemes.¹
- 1.2 The draft bill consolidates the existing provisions of the *Prevention of Cruelty to Animals Act 1979* (hereafter POCTAA), *Animal Research Act 1985* (hereafter ARA) and *Exhibited Animals Protection Act 1986* (hereafter EAPA) and replaces it with a single piece of legislation.²
- 1.3 NSW Government representatives described the current animal welfare legislative framework as 'very complex and quite prescriptive', partially due to it being amended many times over the past 40 years as science and community expectations around animal welfare significantly evolve.³
- 1.4 Ms Tara Black, Deputy Director General of Strategy and Engagement for the Department of Primary Industries (hereafter DPI), told the committee that the Government's intention for this reform is to 'address the confusion and complexity around the core components of our animal welfare laws'.⁴
- 1.5 By modernising the definitions, language and structure of the legislation, the Government hopes to streamline the animal welfare laws and address any 'known gaps'.⁵ Ms Clem Harris, DPI Director of Policy and Industry Insights, explained that the draft bill will bring together the provisions and powers that are currently 'spread out all over the place' and make it easier for people to understand their obligations, including for enforcement.⁶
- 1.6 As an example, the proposed cruelty provision in the draft bill consolidates approximately eight separate offences under POCTAA into a single cruelty offence.⁷

¹ Submission 69, NSW Government, p 1.

² Submission 69, NSW Government, pp 1 and 5.

³ Submission 69, NSW Government, p 2; Evidence, Ms Tara Black, Deputy Director General, Strategy and Engagement, Department of Primary Industries, 21 March 2022, p 52.

⁴ Evidence, Ms Black, 21 March 2022, p 52.

⁵ Evidence, Ms Black, 21 March 2022, p 52; Submission 69, NSW Government, p 1.

⁶ Evidence, Ms Clem Harris, Director, Policy and Industry Insights, Department of Primary Industries, 21 March 2022, p 58.

⁷ Evidence, Ms Harris, 21 March 2022, p 58.

Approach and timeline for reform

- 1.7** In May 2018, the Government released its NSW Animal Welfare Action Plan (hereafter Action Plan), which set out a framework to modernise the State's animal welfare laws. Following a review of the current legislation, the Government conducted two rounds of public consultation on the issue:
- the NSW Animal Welfare Reform – Issues Paper (hereafter Issues Paper)⁸ was released for public consultation from February to June 2020
 - the NSW Animal Welfare Reform – Discussion Paper (hereafter Discussion Paper)⁹, was released for public consultation from August to September 2021.¹⁰
- 1.8** Both rounds of public consultation received significant feedback, reflecting the broad range of stakeholder and community interest and views on animal welfare. Over 1,100 responses were received on the Issues Paper and 4,800 responses for the Discussion Paper.¹¹
- 1.9** The draft bill is therefore a key component of the Government's reform process and is phase 1 of its proposed three-stage approach:
- Phase 1: Developing a new Act (namely, the Draft Animal Welfare Bill 2021)
 - Phase 2: Developing new Regulations to support the new Act
 - Phase 3: Reviewing the approach to mandatory Standards and other supporting materials that underpin the policy and legislative framework.¹²

Ministerial reference

- 1.10** On 25 November 2021, the Hon Adam Marshall MP, former Minister for Agriculture and Western New South Wales, referred the Exposure Draft Animal Welfare Bill 2021 to the Standing Committee on State Development for inquiry and to provide a first report by 30 May 2022.¹³ The reporting date was later extended to 15 June 2022.¹⁴
- 1.11** The Government noted that the committee's inquiry process is an additional opportunity for the community to have their say on the draft bill as it has proposed changes and incorporated feedback from the Discussion Paper process.¹⁵
- 1.12** The committee formally adopted the terms of reference on 30 November 2021.

⁸ Department of Primary Industries, *NSW Animal Welfare Reform: Issues Paper* (February 2020) <https://nla.gov.au/nla.obj-2567504701/view>.

⁹ Department of Primary Industries, *NSW Animal Welfare Reform - Discussion Paper* (July 2021) https://www.dpi.nsw.gov.au/__data/assets/pdf_file/0004/1324948/NSW-Animal-Welfare-Reform-Discussion-Paper.pdf.

¹⁰ Submission 69, NSW Government, p 3.

¹¹ Submission 69, NSW Government, pp 2 and 3.

¹² Submission 69, NSW Government, p 2.

¹³ *Minutes*, NSW Legislative Council, 22 May 2022, pp 2962-2963.

¹⁴ *Minutes*, NSW Legislative Council, 10 May 2022, p 3235.

¹⁵ Submission 69, NSW Government, p 3.

Objects of the Draft Animal Welfare Bill 2021

1.13 The primary objects of the Draft Animal Welfare Bill 2021 are listed in clause 3:

- (a) to promote the welfare of animals, and
- (b) to prevent cruelty to animals.¹⁶

1.14 The Government advised that the objects of the draft bill are consistent with the current objects of *Prevention of Cruelty to Animals Act 1979* but have been updated to provide greater clarity to the courts and the public, and about the purpose of the new animal welfare laws.¹⁷

1.15 As a comparison, POCTAA's objects are as follows:

- (a) to prevent cruelty to animals, and
- (b) to promote the welfare of animals by requiring a person in charge of an animal—
 - (i) to provide care for the animal, and
 - (ii) to treat the animal in a humane manner, and
 - (iii) to ensure the welfare of the animal, and
- (c) to promote the welfare of dogs and cats by requiring information about them to be provided when they are advertised for sale.¹⁸

How will the draft bill achieve its objects?

1.16 Clause 4 of the draft bill provides more detail on how it plans to achieve its objects of promoting animal welfare and preventing animal cruelty, as well as ensuring oversight of higher-risk activities:

- (a) providing for the care and protection of animals by—
 - (i) establishing a baseline of acceptable conduct, by persons who are responsible for animals, to ensure animals are provided with an acceptable standard of care (the *minimum care requirements*), and
 - (ii) developing standards for the care of animals and certain actions or activities involving animals and establishing a mechanism to give effect to the standards, and
 - (iii) requiring information about dogs and cats to be provided when the dogs and cats are advertised for sale or to be given away,
- (b) and protecting animals from cruelty and harm by—

¹⁶ cl 3, Draft Animal Welfare Bill 2021.

¹⁷ Submission 69, NSW Government, p 5.

¹⁸ s 3, *Prevention of Cruelty to Animals Act 1979*.

- (i) prohibiting certain actions and activities that will always constitute animal cruelty, and
 - (ii) restricting when and by whom certain activities that may cause harm to animals may be performed, and
- (c) providing a licensing framework to regulate and oversee the conduct of certain activities involving animals, including—
- (i) the use of animals for research purposes consistent with the principles of replacement, reduction and refinement, and
 - (ii) the keeping and use of animals for the purposes of exhibition.¹⁹

- 1.17** The Government explained that the draft bill carries over POCTAA's existing provisions and modernises and clarifies them. For example, the draft bill introduces minimum care requirements in Part 3, Division 1, which sets out a baseline acceptable standard of care for animals. These reframe existing provisions of POCTAA but into a positive obligation.²⁰
- 1.18** The minimum care requirements are also complemented by a streamlined framework for setting mandatory Standards for certain species or activities involving animals, which simplifies the approach taken under current laws.²¹
- 1.19** Clause 7 of the draft bill provides a definition of what constitutes cruelty based on current laws and consolidates a range of different offence provisions. These include unacceptable outcomes and outlines certain specific unacceptable activities.²² Furthermore, the draft bill carries across the existing offence for committing an act of aggravated cruelty and defines it in clause 8. More serious offences under the *Crimes Act 1900* remain unchanged.²³
- 1.20** The draft bill includes a range of specific offences regarding practices that are prevalent or have significant animal welfare impacts, such as new provisions relating to the transport of dogs in hot vehicles, tethering and animal cruelty material.²⁴
- 1.21** In addition, the draft bill sets out a framework for licensing higher-risk activities involving animals, including exhibiting animals and animal research (currently licenced under the EAPA and ARA respectively). The operational detail of licensing schemes is to be set out in the regulations.²⁵
- 1.22** Finally, the Government confirmed that the draft bill will provide certainty for lawful activities (with specific exemptions for fishing, hunting and shooting animals in a way that inflicts no

¹⁹ cl 4, Draft Animal Welfare Bill 2021.

²⁰ Part 3, Division 1, Draft Animal Welfare Bill 2021; Submission 69, NSW Government, p 5.

²¹ cl 20, Draft Animal Welfare Bill 2021; Submission 69, NSW Government, p 6.

²² cl 7, Draft Animal Welfare Bill 2021; Submission 69, NSW Government, p 6

²³ cl 8, Draft Animal Welfare Bill 2021; Submission 69, NSW Government, p 6.

²⁴ cl 34-39, Draft Animal Welfare Bill 2021; Submission 69, NSW Government, p 6.

²⁵ Part 5, Draft Animal Welfare Bill 2021; Submission 69, NSW Government, pp 6-7.

unnecessary harm),²⁶ streamlined compliance powers based on modern legislation,²⁷ an improved approach to penalties²⁸ and improved enforcement arrangements.²⁹

²⁶ cl 119, Draft Animal Welfare Bill 2021.

²⁷ Part 7, Divisions 2-4, Draft Animal Welfare Bill 2021.

²⁸ cl 108-112, Draft Animal Welfare Bill 2021.

²⁹ cl 59 and 102, Draft Animal Welfare Bill 2021.

Chapter 2 Key issues

This chapter reviews the evidence received about a number of key issues that inquiry participants found contentious in the Draft Animal Welfare Bill 2021.

The issues explored include consideration of why the draft regulations were not published at the same time as the draft bill, a lack of recognition of animal sentience, establishment of an independent office of animal welfare, exemptions, national and international standards and the surgical artificial insemination on dogs. Each issue and the various viewpoints are explored in the sections below.

Regulation not provided with the Draft Animal Welfare Bill 2021

- 2.1** As noted in 1.9, there will be a new regulation to support the new Act (currently in the form of the Draft Animal Welfare Bill 2021) however the draft regulation has not been published yet, and the Draft Animal Welfare Bill seeks to move many provisions that are currently in legislation into the new regulations, which was of concern for many inquiry participants.
- 2.2** Whilst details are still pending, the Government confirmed that the new regulation will support and provide further information on the matters outlined in the draft bill, including details relating to:
- the circumstances in which certain restricted procedures can be performed
 - the prescribed routine husbandry practices
 - the list of mandatory Standards and who must comply with them
 - content to be included in the annual reports of the approved charitable organisations.³¹
- 2.3** Further to the above, the Government noted that regulation will also cover matters relating to the operation of the animal research and exhibited animals licensing schemes, including details about:
- the process for applying for licences, and the factors that are considered when making decisions to grant or refuse licence applications
 - the approach to placing conditions on licences – including standard conditions that apply to all licences
 - fees and charges related to licencing schemes
 - processes for suspending or cancelling licences.³²
- 2.4** Ms Tara Black, Deputy Director General, Strategy and Engagement, Department of Primary Industries (hereafter DPI), stated that it is the Government's intention to first finalise the draft bill and have it passed in Parliament before consultation begins with the community and public on the regulation.³³

³¹ Submission 69, NSW Government, pp 8-9

³² Submission 69, NSW Government, p 9.

³³ Evidence, Ms Tara Black, Deputy Director General, Strategy and Engagement, Department of Primary Industries, 21 March 2022, p 53.

2.5 However the inability to review the draft regulations with the draft bill proved to be particularly contentious amongst stakeholders as they argued that being able to review how the provisions interact with each other is important to identify any gaps or issues with the legislation. Furthermore, inquiry participants were concerned about the number of provisions being moved from legislation into regulation given the relative ease at which regulations can be changed, as well as the need for further consultation while the regulations are being developed and when they are eventually made public. These issues are considered in more detail below.

Unable to review draft regulation in conjunction with the draft bill

2.6 As noted earlier, the Government explained its three-stage approach to changing the animal welfare legislative and policy framework as:

- Phase 1: Developing a new Act (that is, the Animal Welfare Bill 2021)
- Phase 2: Developing new Regulations to support the new Act
- Phase 3: Reviewing the approach to mandatory Standards and other supporting material that underpins the policy and legislative framework.³⁴

2.7 In March 2022, Ms Black, DPI Deputy Director General of Strategy and Engagement, advised the committee that although the Government had commenced working on the regulation, she stated that it had experienced 'some challenges' with developing the regulation before the draft bill has been finalised.³⁵

2.8 Ms Black stated that the Act focuses on the 'high-level' principles, expectations and offences and there needs to be 'some certainty' about what they are before beginning consultation on the draft regulations.³⁶

2.9 However, numerous stakeholders expressed their strong objection to the Government's approach and argued that a draft regulation should have been released at the same time as the draft bill as it is essential to see how the two interact and subsequently reveal the function of the Act. This included key animal organisations, such as the Australian Veterinary Association, Humane Society International, Animals Australia and Animal Care Australia, who described the drafting of the regulations as 'critical' in ensuring the intent and direction of the Act, as well as its application and success in delivering animal welfare outcomes.³⁷

2.10 Ms Diane Ryan, NSW Division President of the Australian Veterinary Association, further raised that without knowing the content of the regulations, it was difficult to provide comment on the provisions of the draft bill.³⁸

³⁴ Submission 69, NSW Government, p 2.

³⁵ Evidence, Ms Black, 21 March 2022, p 53.

³⁶ Evidence, Ms Black, 21 March 2022, p 53.

³⁷ Submission 53, Australian Veterinary Association, p 3; Submission 93, Animal Care Australia, p 1; Evidence, Ms Nicola Beynon, Head of Campaigns, Humane Society International, 16 March 2022, p 3; Evidence, Ms Glenys Oogies, Chief Executive Officer, Animals Australia, 16 March 2022, p 19.

³⁸ Evidence, Ms Diane Ryan, NSW Division President, Australian Veterinary Association, 21 March 2022, p 42.

- 2.11** Similarly, Ms Rochelle Flood, World Animal Protection Australia's Campaign Manager, commented that there is 'no complete picture' of the legislation as the regulations contain 'a large portion' of the animal welfare requirements and guidelines and it is necessary for stakeholders to be able to consider the two together ensure a 'cohesive' piece of legislation.³⁹
- 2.12** Furthermore, Ms Fiona Chisholm, NSW State Director of Coalition for Protection for Greyhounds, highlighted that having oversight of the regulations and draft bill together allowed stakeholders to identify conflicting sections or where problems may arise in the future.⁴⁰

Regulations more readily amended

- 2.13** Inquiry participants expressed their concern about the significantly large number of animal welfare guidelines and requirements that are missing from the bill and are yet to be confirmed on whether they will be included in the regulations and standards. This was particularly a concern for some as regulations are able to be more readily amended compared to making changes to an Act.
- 2.14** For example, the NSW Ombudsman raised a number of concerns regarding shifting provisions into regulations:

... we have noted that the Bill will repeal specific provisions of current legislation and replace them with 'mere' regulation-making powers. In particular, we note:

1. the repeal of provisions in the *Prevention of Cruelty to Animals Act 1979*, the *Animal Research Act 1985* and the *Exhibited Animals Protection Act 1986* concerning the establishment and composition of committees and panels, and the inclusion instead of clauses that provide for certain matters to be dealt with by regulation
2. the replacement of the registration and licensing provisions of the *Animal Research Act 1985* with a clause providing that regulations 'may provide for a licensing scheme to carry out a licensed activity'
3. the replacement of the *Animal Research Act 1985* complaints scheme with a provision permitting the regulations to provide for a complaints scheme, and
4. clause 46 of the Bill, which provides for regulations to prescribe which decisions under the Bill are to be 'reviewable decisions' for the purposes of the Bill.

...

It also appears to us that, particularly in the policy context of this regime, at least some of the matters that are proposed to be repealed are ones that may be considered important – albeit in some cases perhaps 'procedural' – safeguards.

We raise them here to invite the Committee to consider whether it is appropriate that these cease to be prescribed by Parliament in statute, and whether the Committee is

³⁹ Evidence, Ms Rochelle Flood, Campaign Manager, World Animal Protection Australia, 16 March 2022, p 7.

⁴⁰ Evidence, Ms Fiona Chisholm, NSW State Director, Coalition for Protection for Greyhounds, 16 March 2022, p 19.

comfortable that these matters be left to the discretion of the Government by way of future regulation.⁴¹

- 2.15** There was particular concern about the potential for important provisions currently in legislation to be moved into regulation. For example, Animal Care Australia expressed concern that they were 'under the assumption that a vast part of both the *Animal Research Act* and the *Exhibited Animals Protection Act* would actually have appeared in the Act and not all of it being transferred into the regulations.⁴²
- 2.16** The Animal Defenders Office also recommended that important aspects of the new regulatory framework should not be left to be incorporated in the regulations as they can be changed with relatively little, if any, parliamentary scrutiny. Importantly, amended regulations have legal effect as soon as they are made even if subsequently disallowed.⁴³
- 2.17** However, some inquiry participants, including the Government, recognised this flexibility as a positive relative to the rigidity and process of making changes to an Act, which requires a bill be passed through both Houses of Parliament.⁴⁴
- 2.18** The DPI's Deputy Director General of Strategy and Engagement explained that this more modern approach towards legislation, namely including more of the administrative matters within the regulations, afforded the Government to move with 'a little more agility' when adapting details in legislation. Ms Black explained that this proves to be advantageous when changes need to be made as a result of evolving sciences, new process improvements and changing community expectations.⁴⁵
- 2.19** Whilst the NSW/ACT Deputy Vice-Chancellors (Research) Committee, Western Sydney University and German Shepherd Dog League of NSW, acknowledged the relative flexibility as a benefit of regulation, they also flagged that changes to a regulation could be based on ill-informed biases, and personal or political opinion without adequate stakeholder engagement.⁴⁶
- 2.20** Stakeholders from the university and industry sectors therefore argued that fundamental principles and issues should be underpinned within the Act in order to minimise the amount of changes that can come through regulations, including with changing governments.⁴⁷
- 2.21** President of NSW Farmers, Mr James Jackson advocated for all animal welfare offences or acts of animal cruelty to be clearly stipulated in the bill and therefore require parliamentary oversight if prompted to be amended by a 'new construct' or 'new science'.⁴⁸ Mr Jackson highlighted that

⁴¹ Submission 91, NSW Ombudsman, pp 2 and 6.

⁴² Evidence, Mr Michael Donnelly, President, Animal Care Australia, 21 March 2022, p 37.

⁴³ Answers to questions on notice, Animal Defenders Office, 6 March 2022, p 5.

⁴⁴ Evidence, Ms Black, 21 March 2022, p 53; Evidence, Professor Kevin Dunn, Pro Vice-Chancellor Research, Western Sydney University, 21 March 2022, p 4.

⁴⁵ Evidence, Ms Black, 21 March 2022, p 53.

⁴⁶ Submission 102, NSW/ACT Deputy Vice-Chancellors (Research) Committee, p 2; Evidence, Professor Dunn, 21 March 2022, p 4; Evidence, Ms Yvonne Yun, Executive Member, German Shepherd Dog League of NSW, 16 March 2022, pp 44 and 46.

⁴⁷ See for example, Evidence, Professor Kathy Belov, Pro-Vice Chancellor (Global Engagement), University of Sydney, 21 March 2022, p 4.

⁴⁸ Evidence, Mr James Jackson, President, NSW Farmers, 16 March 2022, pp 31 and 33.

relevant provisions in the Act can still be changed but would attract a higher level of scrutiny by going through both Houses of Parliament.⁴⁹

2.22 Australian Pork Limited's Chief Executive Officer, Ms Margo Andrae, highlighted the importance of recognising any negative consequences for farmers and economies if regulations are changed, and explained that those in the pork industry are already feeling 'smashed' by red tape.⁵⁰

2.23 Separately, the Animal Defenders Office identified that the draft bill's proposed regulation-making power is broader than its equivalent in section 35 of the *Prevention of Cruelty to Animals Act 1979* (hereafter POCTAA), which states:

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required...⁵¹

2.24 The proposed power in clause 166 of the draft bill omits the words 'not inconsistent with this Act' prompting the Animal Defenders Office to recommend that the draft bill mirror the POCTAA wording to ensure that the regulations cannot permit anything that conflicts with the Act.⁵²

Consultation regarding the regulations

2.25 Based on the points raised above, many inquiry participants insisted that the Government must engage in close stakeholder consultation regarding the content of the draft regulations.⁵³

2.26 The DPI Deputy Director General of Strategy and Engagement reassured stakeholders that in addition to the extensive stakeholder consultation that the Government has undertaken to date, it 'fully intend[s] to undertake thorough, targeted and public consultation on the draft regulation and that will include a regulatory impact statement.'⁵⁴

2.27 Ms Black further advised that the Government has also been very conscious of the risk of stakeholder fatigue and confusion. She stated that one of the challenges of consulting stakeholders on the draft regulation, before the Act is through Parliament, is that it risked confusing people about how it fit amongst the multiple private members' bills and inquiries.⁵⁵

2.28 Finally, Ms Black confirmed that the Act will not commence until the regulation is finalised:

⁴⁹ Evidence, Mr Jackson, 16 March 2022, p 33.

⁵⁰ Evidence, Ms Margo Andrae, Chief Executive Officer, Australian Pork Limited, 16 March 2022, p 31.

⁵¹ s 25, *Prevention of Cruelty to Animals Act 1979*.

⁵² Answers to questions on notice, Animal Defenders Office, p 5.

⁵³ See, Evidence, Ms Kristina Vesk, Chief Executive Officer, Cat Protection Society, 16 March 2022, p 2; Evidence, Ms Andrae, 16 March 2022, p 31; Evidence, Professor Dunn, 21 March 2022, p 3; Evidence, Ms Rachel Smith, Chief Executive Officer, Humane Research Australia, 21 March 2022, p 43; Submission 53, Australian Veterinary Association, p 3; Submission 78, University of Sydney, p 2; Submission 93, Animal Care Australia, p 1.

⁵⁴ Evidence, Ms Black, 21 March 2022, p 53.

⁵⁵ Evidence, Ms Black, 21 March 2022, p 53.

That is definitely our intention, that we would have the Act passed by the Parliament and then we would finalise the regulation through that consultation process I outlined, and only once that regulation was finalised and made would the new framework commence.⁵⁶

2.29 The Government also highlighted that upon the publication of the draft regulation, the committee is to separately consider and produce a final report on its contents as soon as is practicable.⁵⁷

2.30 The Government provided the committee with its timeline for key milestones for drafting regulations:

- committee's interim report on Draft Bill due 30 May 2022⁵⁸
- Draft Bill finalised
- Draft Regulations drafted and tested with key stakeholder groups
- Draft Regulatory Impact Statement drafted and tested with key stakeholder groups
- Draft Regulations and Regulatory Impact Statement published and provided to the committee for consideration
- committee considers Draft Regulations
- committee tables final report
- Draft Regulation finalised.⁵⁹

Animal sentience is not explicitly acknowledged

2.31 Animal sentience is defined by the RSPCA as an animal's capacity to experience different feelings such as suffering and pleasure.⁶⁰ The Australian Veterinary Association explained that acknowledging animal sentience is important because it recognises that animals can have negative or positive feelings and emotions, and be conscious of their environment and situation.⁶¹

2.32 Although the Government does not explicitly acknowledge or reference animal sentience in the draft bill, the Government proposed that the concept is implicitly acknowledged in clause 11, which defines harm as both physical and mental suffering:

Harm includes –

⁵⁶ Evidence, Ms Black, 21 March 2022, p 53.

⁵⁷ Submission 69, NSW Government, p 2.

⁵⁸ The original reporting date was 30 May 2022 (*Minutes*, NSW Legislative Council, 22 May 2022, pp 2962-2963). The reporting date was later extended to 15 June 2022 (*Minutes*, NSW Legislative Council, 10 May 2022, p 3235).

⁵⁹ Answers to questions on notice, Department of Primary Industries, 5 May 2022, p 5.

⁶⁰ RSPCA, *What is animal sentience and why is it important?* (9 September 2019), <https://kb.rspca.org.au/knowledge-base/what-is-animal-sentience-and-why-is-it-important/>.

⁶¹ Submission 53, Australian Veterinary Association, p 5.

- (a) distress, and
- (b) pain, and
- (c) physical suffering, and
- (d) psychological suffering.⁶²

2.33 The wording builds on and broadens similar provisions in POCTAA about animal cruelty, where psychological suffering is not explicitly referenced at all. An animal cruelty offence under POCTAA is limited to an act that results in an animal being unreasonably, unnecessarily or unjustifiably inflicted with pain (not harm) and pain has a narrower definition as suffering and distress.⁶³

Not a 'modern' animal welfare act

2.34 Many inquiry participants were also united in their objection that animal sentience had not been explicitly recognised or acknowledged. They argued that this is an indication that the draft bill is not representative of a modern animal welfare act that is also focused on the future. According to these inquiry participants, animal sentience must be included because it is supported by scientific research and reflects the community's changing attitudes and expectations around animal welfare.⁶⁴

2.35 For example, Ms Tara Ward, Managing Solicitor of the Animal Defenders Office, described it as a 'serious omission' and that no acknowledgment of sentience 'really undermines any claim that this will be a modern animal welfare act that will take New South Wales into the next 10 years or more'.⁶⁵

2.36 Animal protection groups such as Animal Defenders Office, Sentient Animal Law Foundation, Humane Society International, World Animal Protection and Animals Australia all agreed that recognising sentience in the draft bill was critical.⁶⁶ Dr Jed Goodfellow, Consultant for Humane Society International, explained the importance:

Fundamentally, it is about recognising why animal welfare matters—why we are all here and why the first ever animal protection laws were passed in the world. It was because of a recognition that animals are sentient, they have the capacity to suffer and, therefore, their interests matter in a moral and ethical sense. So it is really just putting that upfront

⁶² cl 11, Draft Animal Welfare Bill 2021.

The NSW Animal Welfare Reform – Consultation Outcomes paper (released in December 2021 after receiving feedback on the Discussion Paper) also notes, 'The draft Bill acknowledges the concept of animal sentience through reference to protecting animals from harm, which is defined as including distress, pain, and physical and psychological suffering.'

⁶³ s 4, *Prevention Of Cruelty To Animals Act 1979*.

⁶⁴ Submission 80, RSPCA NSW, p 4; Submission 94, Humane Society International, p 2; Submission 146, Animal Defenders Office, p 3; Evidence, Ms Oogjes, 16 March 2022, p 14.

⁶⁵ Evidence, Ms Tara Ward, Managing Solicitor, Animal Defenders Office, 21 March 2022, p 13.

⁶⁶ Evidence, Ms Ward, 21 March 2022, p 13; Evidence, Dr Jed Goodfellow, Consultant, Humane Society International, 16 March 2022, p 7; Submission 62, Sentient Animal Law Foundation, pp 3-4.

in the objects of the bill to ensure that anyone who is interpreting the legislation has that understanding that that is why animal welfare matters.⁶⁷

- 2.37** Sentient Animal Law Foundation also highlighted that the draft bill's limited focus on anti-cruelty demonstrated that the legal responsibilities established by the State's animal laws are inconsistent with the contemporary science of the Five Domains.⁶⁸
- 2.38** Other key animal organisations like Animal Liberation and Sentient, the Veterinary Institute for Animal Ethics, emphasised that the absence of explicit recognition of sentience neither reflects nor is compatible with evolving community attitudes and understanding of animal welfare.⁶⁹ President of Sentient, the Veterinary Institute for Animal Ethics, Dr Rosemary Elliott, stated that the public now has a more sophisticated understanding of how animals should be treated and supports the idea that animals deserve a good life, regardless of how they are used.⁷⁰
- 2.39** Lawyers for Animals further argued that New South Wales' lack of recognition of sentience in its animal welfare legislation will risk it lagging behind other jurisdictions when it comes to animal welfare:

The draft Bill's stated objects are limited to promoting the welfare of animals and preventing cruelty to animals. Neither the Objects, nor the definition of 'animal' in Schedule 3, refer to animal sentience. Nor is there a section dedicated to 'Principles of the Act' in which animal sentience might feature.

LFA recommends that the public recognition of animal sentience be explicitly acknowledged as the first object of the draft Bill, thereby fulfilling the educative function required of any modern law which also aims to promote welfare and prevent cruelty. This will bring NSW up to date with Australian and World's best practice.⁷¹

- 2.40** In a similar vein, many stakeholders raised that the role of education is integral so that people continue to become more aware about what constitutes animal cruelty and their obligations under the new act.⁷²

Practical impacts on statutory interpretation and others

- 2.41** Animal organisations including Humane Society International, Sentient Animal Law Foundation, World Animal Protection Australia and Animal Liberation asserted that the

⁶⁷ Evidence, Dr Goodfellow, 16 March 2022, p 7.

⁶⁸ Submission 62, Sentient Animal Law Foundation, p 3.

⁶⁹ Submission 252, Animal Liberation, 46; Evidence, Dr Rosemary Elliott, President, Sentient, The Veterinary Institute for Animal Ethics, 21 March 2022, pp 42-43. See also, Submission 129, NSW Young Lawyers, p 3.

⁷⁰ Evidence, Dr Elliott, 21 March 2022, pp 42-43.

⁷¹ Submission 253, Lawyers for Animals, p 6.

⁷² Evidence, Ms Ryan, 21 March 2022, p 44; Evidence, Dr Elliott, 21 March 2022, p 44; Evidence, Ms Deidre Crofts, Animal Welfare and Community Liaison Officer, Dogs NSW, 21 March 2022, p 40; Evidence, Mr Michael Donnelly, President, Animal Care Australia, 21 March 2022, p 39; Submission 93, Animal Care Australia, p 5.

inclusion of an explicit reference to animal sentience would also have practical impacts in terms of statutory interpretation and reputational and trade benefits for New South Wales.⁷³

2.42 By explicitly recognising sentience as an object in the act, these inquiry stakeholders stated that further guidance is provided to interpreters and enforcers of the legislation on how they should determine the appropriate application of the law, particularly in cases of ambiguity. They explained that further clarity of the purpose of the legislation would thereby facilitate improved consistency in its interpretation and assist with sentencing processes.⁷⁴

2.43 Humane Society International argued that recognising sentience in the draft bill could also improve sentencing outcomes in relation to animal cruelty offences:

Recognising animal sentience in the objects of the legislation signals to the judiciary the underlining reasons for why promoting animal welfare and preventing cruelty is important. This can in turn encourage judicial officers to view the offences in a different light; one in which abused animals are seen as victims of the offending conduct leading to more informed sentencing decisions that better reflect the community's views on the seriousness of animal cruelty offences.⁷⁵

2.44 In addition, World Animal Protection Australia, Humane Society International and Sentient Animal Law Foundation argued that an express acknowledgement of animal sentience could precipitate reputational and trade benefits for New South Wales.⁷⁶ World Animal Protection Australia Campaign Manager, Ms Rochelle Flood, referred to recent negotiations held for free-trade agreements between Australia and the United Kingdom and the EU⁷⁷ and noted:

Both these trading partners prioritise animal welfare and recognise animal sentience, and it is important that New South Wales as a significant primary producer upholds those standards in its legislation.

One way of clearly signalling the importance of animal welfare to trading partners would be to include the explicit recognition of animal sentience in the objects of this proposed bill.⁷⁸

2.45 World Animal Protection Australia recommended that the explicit recognition of animal sentience in the object of the bill would signal the importance of animal welfare to trading partners,⁷⁹ while Sentient Animal Law Foundation suggested that its omission could lead to lost opportunities for New South Wales industries and to strengthen consumer trust.⁸⁰

⁷³ Submission 62, Sentient Animal Law Foundation, p 4; Submission 252, Animal Liberation, p 44; Evidence, Ms Flood, 16 March 2022, p 5; Evidence, Dr Goodfellow, 16 March 2022, p 5.

⁷⁴ Submission 62, Sentient Animal Law Foundation, p 4; Submission 252, Animal Liberation, p 44; Evidence, Ms Flood, 16 March 2022, p 5; Evidence, Dr Goodfellow, 16 March 2022, p 5.

⁷⁵ Submission 94, Humane Society International, p 6.

⁷⁶ Submission 62, Sentient Animal Law Foundation, p 4; Submission 88, World Protection Australia, p 3; Submission 94, Humane Society International, pp 6-7.

⁷⁷ Evidence, Ms Flood, 16 March 2022, p 5.

⁷⁸ Submission 88, World Animal Protection Australia, pp 2-3.

⁷⁹ Submission 62, Sentient Animal Law Foundation, p 3.

⁸⁰ Submission 88, World Animal Protection Australia, pp 2-3.

Animal sentience in other jurisdictions

- 2.46** Many inquiry stakeholders referred to other domestic and international jurisdictions as examples of animal welfare legislation that have incorporated and acknowledged animal sentience.⁸¹
- 2.47** In 2019, the Australian Capital Territory was the first Australian jurisdiction to recognise animal sentience in its *Animal Welfare Act 1992* (ACT). The Act lists it as its first object and acknowledges the intrinsic value of animals:
- s 4A** The main objects of this Act are to recognise that –
- (a) animals are sentient beings that are able to subjectively feel and perceive the world around them; and
- (b) animals have intrinsic value and deserve to be treated with compassion and have a quality of life that reflects their intrinsic value⁸²
- 2.48** Humane Society International also advised the committee that the Victorian Government has flagged its intention to recognise animal sentience in its current review of *Prevention of Cruelty to Animals Act 1986* (Vic)⁸³ and the Western Australian Government has recently endorsed a recommendation to amend the objects of the *Animal Welfare Act 2002* ('to expressly recognise that animals are living beings, able to perceive, feel, and have positive and negative experiences.'⁸⁴⁸⁵
- 2.49** New Zealand also recognises animal sentience in the long title of its *Animal Welfare Act 1999* (NZ)⁸⁶ and the United Kingdom has recently introduced an Animal Welfare (Sentience) Act 2022 to make provisions for an Animal Sentience Committee that will have functions relating to the effect of government policy on the welfare of animals as sentient beings.⁸⁷
- 2.50** Humane Society International highlighted that as more countries include recognition of animal sentience in their animal welfare laws, the absence of such recognition in Australia, and New South Wales, becomes increasingly apparent.⁸⁸

⁸¹ See for example, Submission 129, NSW Young Lawyers, pp 3-4; Submission 94, Humane Society International, p 6; Evidence, Dr Elliott, 21 March 2022, p 42; Evidence, Ms Flood, 16 March 2022, pp 2 and 5.

⁸² s 4A, *Animal Welfare Act 1992* (ACT).

⁸³ Media release, Hon Daniel Andrews MP, Premier of Victoria, 'Victorians in favour of new Animal Welfare Act', 29 April 2021.

⁸⁴ Department of Primary Industries and Regional Development WA, Government response to the Report of the Independent Review of the *Animal Welfare Act 2002*, p 3, <https://www.agric.wa.gov.au/animalwelfare/reviewanimal-welfare-act-2002-government-response>.

⁸⁵ Submission 94, Humane Society International, p 6.

⁸⁶ Title, *Animal Welfare Act 1999* (New Zealand).

⁸⁷ Animal Welfare (Sentience) Act 2022 (UK).

⁸⁸ Submission 94, Humane Society International, p 6. See also, Appendix on pp 16-24 of the Humane Society International submission for full list of jurisdictions that have recognised animal sentience.

Animal sentience in the objects of the bill

- 2.51** Noting the reasons listed above, many animal advocacy, legal and veterinary organisations flagged that an explicit reference to animal sentience should be included in the bill and recommended that it specifically be inserted into the objects clause.⁸⁹
- 2.52** For example, Dr Jed Goodfellow, Consultant for Humane Society International, expressed that it is fundamental for the bill to recognise why animal welfare matters – animals are sentient and have the capacity to suffer – therefore their interests matter in a moral and ethical sense.⁹⁰
- 2.53** Furthermore, Humane Society International and World Animal Protection Australia advocated for its inclusion because it would specifically recognise the inherent value of animals, similar to the Australian Capital Territory legislation.⁹¹
- 2.54** Acknowledging that the NSW Government believes in animal sentience by implicitly referencing it in the bill, RSPCA NSW questioned why the Government had then chosen not to go so far and reference it explicitly. The organisation noted that the Consultation Outcomes Report provides no explanation of why it is necessary or desirable to avoid the term in legislation nor has an alternate view been provided for consideration.⁹²
- 2.55** On the contrary, Animal Care Australia objected to referencing animal sentience in the bill and stated that the purpose of an animal welfare act is to provide a written measure of:
- what is minimally required to maintain animal welfare to those who are interacting with their animals
 - what can be done to improve animal welfare
 - the laws and guidance for when animal welfare requirements are not met by those who interact with animals.
- The organisation argued that the recognition of sentience will have no bearing, impact or influence on the outcomes of the act, nor will it change how people comply with the objects of the act.⁹³
- 2.56** There were mixed opinions amongst academic experts about whether animal sentience should be included in the draft bill, with some recommending that if included, there should be clear definitions and be operable for animal research. Dr Susan Maastricht, Director of Research

⁸⁹ Submission 94, Humane Society International, p 2; Submission 92, Sentient, the Veterinary Institute for Animal Ethics, p 2, Submission 146, Animal Defenders Office, p 3, Submission 129, NSW Young Lawyers, p 3; Submission 253, Lawyers for Animals, p 6; Submission 62, Sentient Animal Law Foundation, p 4; Submission 87, Coalition for the Protection of Greyhounds, pp 3 and 8; Submission 88, World Animal Protection Australia, p 2, Submission 80, RSPCA NSW, p 3; Submission 252, Animal Liberation, p 51; Submission 53, Australian Veterinary Association, p 5.

⁹⁰ Evidence, Dr Goodfellow, 16 March 2022, p 7.

⁹¹ Submission 88, World Animal Protection Australia, p 2; Submission 94, Humane Society International, p 2.

⁹² Submission 80, RSPCA NSW, p 4. See also, Evidence, Ms Kathleen Jurd, General Counsel, RSPCA NSW, 21 March 2022, p 21.

⁹³ Correspondence from Mr Michael Donnelly, President, Animal Care Australia, to committee, 5 May 2022.

Integrity and Ethics Administration at the University of Sydney, advocated for its inclusion and noted that the term is already a part of the 'global language' around animals that are used in the research environment.⁹⁴ Whereas Western Sydney University advised that there is currently no universally accepted definition of sentience concerning animal welfare, thus making it difficult to determine sentience in animals that are not already established as sentient or not vertebrates.⁹⁵

2.57 Within an animal research context, both the University of New South Wales and Western Sydney University emphasised the necessity to be clear on what taxa or species of animals are covered by animal research legislation. The University of New South Wales noted that specific inclusion of sentience outside the current definitions in the *Animal Research Act 1985* or the Australian Code for the Responsible Conduct of Research (such as insects without clear understanding on how sentience translates to them) could introduce uncertainty on which animals should be subject to ethics review and legislative requirements.⁹⁶ Western Sydney University recommended that by relying on the scientific taxonomy of animals, it would clearly delineate which animals are covered by sentience and remove the lack of clarity.⁹⁷

2.58 The DPI's Deputy Director General of Strategy and Engagement, Ms Tara Black, affirmed to the committee that the Government 'absolutely agree[s] animals are sentient' and 'there is no debate about the fact' as evidenced by the State's early introduction of laws in 1979 that acknowledge animal suffering and welfare.⁹⁸

2.59 However Ms Black also reiterated that the purpose of the draft bill is to streamline animal welfare legislation and make it clear. She questioned the practical impact and necessity of explicitly referencing animal sentience in the objects, noting that the draft bill's provisions already adequately address sentience through the cruelty provisions around pain, distress, physical and psychological suffering:

It is not that we do not recognise that animals are sentient. It is more that we did not believe it was necessary, and there was potential risk to cause confusion if we have language in there that does not really relate to anything else that is in the bill.⁹⁹

Inclusion of psychological suffering

2.60 In regards to animal welfare, stakeholders told the committee that following the identification of the 'Five Freedoms', which generally focused on alleviating the negative states of animals such as freedom from hunger and pain, there has been a shift in recent years towards the 'Five

⁹⁴ Evidence, Dr Susan Maastricht, Director, Research, Integrity and Ethics Administration, University of Sydney, 21 March 2022, pp 8-9.

⁹⁵ Answers to questions on notice, Professor Kevin Dunn, Western Sydney University, 28 April 2022, pp 2-3.

⁹⁶ Answers to questions on notice, Professor Sven Rogge, Pro Vice-Chancellor (Research), University of New South Wales, p 2; Answers to questions on notice, Professor Dunn, pp 2-3.

⁹⁷ Answers to questions on notice, Professor Dunn, pp 2-3.

⁹⁸ Evidence, Ms Black, 21 March 2022, p 55.

⁹⁹ Evidence, Ms Black, 21 March 2022, pp 55-56.

Domains' model.¹⁰⁰ The Five Domains is a framework which emphasises the need to consider the mental as well as physical wellbeing of animals.¹⁰¹

- 2.61** The Five Domains allows a distinction to be made between the physical and functional factors that affect an animal's welfare and the overall mental state of the animal arising from these factors.¹⁰²

Table 1: Five Freedoms and Five Domains - simplistic form¹⁰³

Five Freedoms	Five Domains
1. From hunger and thirst	1. Nutrition
2. From discomfort	2. Environment
3. From pain, injury and disease	3. Health
4. To express normal behaviour	4. Behaviour
5. From fear and distress	5. Mental state

- 2.62** Therefore by primarily focusing on protecting animals from unnecessary negative states and suffering, some inquiry stakeholders argued that the draft bill is inconsistent with contemporary science and research, including the Five Domains model. Humane Society International gave evidence that there is 'voluminous' scientific evidence to show that animals are capable of experiencing psychological suffering.¹⁰⁴ Animal Liberation supported this argument, and noted that scientific research has found most animal species are sentient:

Modern scientific conclusions drawn from behavioural and neural evidence confirms that most animals, including all farmed animals, are sentient: the catalogue of empirical studies on animal suffering constitute an indisputable confirmation that animals can and do experience physical and psychological suffering.¹⁰⁵

- 2.63** Dr Katherine van Ekert, Vice President of Sentient, the Veterinary Institute for Animal Ethics, acknowledged the difficulty in being able to identify suffering in some species but she also observed that psychological suffering presents itself in animal behaviour like body posture, willingness to eat and drink, and facial expressions.¹⁰⁶ Further research provided by Sentient, the Veterinary Institute for Animal Ethics stated that it is possible to make 'meaningful

¹⁰⁰ Submission 53, Australian Veterinary Association, pp 3-4; Submission 62, Sentient Animal Law Foundation, pp 3-4; Evidence, Dr Elliott, 21 March 2022, p 42.

¹⁰¹ RSPCA, *What is animal sentience and why is it important?* (9 September 2019), <https://kb.rspca.org.au/knowledge-base/what-is-animal-sentience-and-why-is-it-important/>.

¹⁰² RSPCA, *What are the Five Domains and how do they differ from the Five Freedoms?* (7 July 2020), <https://kb.rspca.org.au/knowledge-base/what-are-the-five-domains-and-how-do-they-differ-from-the-five-freedoms/>.

¹⁰³ RSPCA, *What are the Five Domains and how do they differ from the Five Freedoms?* (7 July 2020), <https://kb.rspca.org.au/knowledge-base/what-are-the-five-domains-and-how-do-they-differ-from-the-five-freedoms/>.

¹⁰⁴ Evidence, Dr Goodfellow, 16 March 2022, p 6.

¹⁰⁵ Submission 252, Animal Liberation, p 46.

¹⁰⁶ Evidence, Dr Katherine van Ekert, Vice President, Sentient, the Veterinary Institute for Animal Ethics, 21 March 2022, p 46.

approximations' and 'useful predictions' of animals' requirements and assessments of wellbeing, based on sound scientific evidence.¹⁰⁷

- 2.64** On the other hand, some industry and animal hobbyist groups questioned how psychological suffering of animals can be understood in a legal context and advocated that it be removed from the draft bill. NSW Farmers, Australian Pork Limited, the Recreational Fishing Alliance NSW and NSW Cat Financiers Association all raised questions about how psychological suffering is going to be identified and quantified in the many types of animal species.¹⁰⁸ Australian Pork Limited also flagged that it could lead to confusion for inspectors and producers with difficulty in being able to assess suffering objectively and consistently.¹⁰⁹
- 2.65** In addition, Animal Care Australia, a national incorporated association established to lobby for animal welfare by those who keep, breed and care for animals, observed that identifying and measuring psychological pain and suffering in individual species is 'very difficult' and 'unclear'. The organisation maintained that whilst animals can experience psychological suffering, this suffering is the result of the impact of the neglect of an animal and accordingly, the requirement of a compliance organisation should be on proving the level of neglect or cruelty committed to that animal instead.¹¹⁰

Independent office of animal welfare

- 2.66** Another issue with the draft bill that attracted comment was that it did not establish a separate independent office or body for animal welfare.¹¹¹ Many key animal organisations, including World Animal Protection Australia, Humane Society International, Animal Defenders Office and Sentient, the Veterinary Institute for Animal Ethics, advocated for its establishment, emphasising the importance of it being independent of the NSW Government and specifically the Department of Primary Industries (hereafter DPI).¹¹²
- 2.67** This view however was not shared by other key groups including NSW Farmers and importantly RSPCA NSW who holds enforcement responsibilities under POCTAA.
- 2.68** The reasons for or against establishing such a body are outlined below.

¹⁰⁷ Answers to questions on notice, Sentient, the Veterinary Institute for Animal Ethics, 5 May 2022, pp 4-5.

¹⁰⁸ Submission 251, NSW Farmers, p 6; Submission 75, Australian Pork Limited, p 2; Submission 101, Recreational Fishing Alliance NSW, p 2; Evidence, Miss Michelle Grayson, Treasurer – Executive Committee, NSW Cat Financiers Association, 16 March 2022, p 44.

¹⁰⁹ Submission 75, Australian Pork Limited, p 2.

¹¹⁰ Submission 93, Animal Care Australia, p 7.

¹¹¹ See for example, Submission 63, Amanda Evans, p 1; Submission 84, CatRescue 901, p 1; Submission 89, GREY2K USA Worldwide, p 1; Submission 99, Tree of Compassion, p 3; Submission 104, Margaret Rose, p 7; Submission 106, Mary Ann Gourlay, p 1.

¹¹² Submission 88, World Animal Protection Australia, pp 4-5; Submission 94, Humane Society International, p 3; Submission 146, Animal Defenders Office, p 16; Evidence, Dr Elliott, 21 March 2022, p 43.

See also, Submission 252, Animal Liberation, pp 58-59; Submission 4, Humane Research Australia, p 4; Evidence, Ms Oogies, 16 March 2022, p 17.

Conflict of interest for the Department of Primary Industries?

2.69 Many of the key animal organisations who advocated for the creation of an independent office of animal welfare argued that DPI and the Minister for Agriculture have a conflict of interest arising from having both agriculture and animal welfare within their portfolio. These stakeholders explained that a conflict therefore exists because DPI must ensure both the profitability of the agriculture sector and elevation of animal welfare outcomes.¹¹³

2.70 Ms Rochelle Flood, Campaign Manager of World Animal Protection Australia, explained, 'Sometimes what is best for animal welfare may not be the most profitable option, and we need to ensure there is a level of independence there to maintain public confidence in our animal welfare system.'¹¹⁴

2.71 Dr Rosemary Elliott from Sentient expressed her concern about the role currently played by DPI:

Our animal welfare regulatory system is broken. It fails the majority of animals because the Department of Primary Industries has a conflict of interest arising from having as their core business aims the promotion and profitability of the industries they are attempting to regulate. It is not appropriate for the DPI to hold responsibility for animal welfare at the State or national level. Those who care about the welfare of animals have had enough of the lack of independence, science and transparency in how animal welfare standards are developed and likewise of the failures in oversight and enforcement.¹¹⁵

2.72 Humane Research Australia also expressed their support for an independent office for animal protection and provided an example of how a conflict within the DPI can arise in relation to animal protection:

A recent example to highlight this conflict of interest is the DPI 'investigating itself'. Veterinarians slaughtered 12 sheep by cutting their throats without stunning them first as part of a training program two top NSW universities ran for years without animal ethics approval as a DPI facility. This is simply unacceptable and there needs to be independent oversight.¹¹⁶

2.73 Dr Jed Goodfellow from Humane Society International explained how an independent office of animal welfare could operate in practice:

We would like to see an Animal Welfare Authority established in order to administer the legislation. The enforcement of the legislation could still be conducted by the bodies that are in existence right now, but instead of answering to the Department of Primary Industries they would be reporting to the Animal Welfare Authority as a centralised agency. We think that would really fit well with the consolidation of the three different pieces of legislation as well. Animal welfare regulation is becoming a lot more complex

¹¹³ Submission 4, Humane Research Australia, p 4; Submission 88, World Animal Protection Australia, pp 4-5; Submission 94, Humane Society International, p 3; Submission 146, Animal Defenders Office, p 16; Submission 146, Animal Liberation, pp 58-59; Evidence, Dr Elliott, 21 March 2022, p 43; Evidence, Ms Oogjes, 16 March 2022, p 17.

¹¹⁴ Evidence, Ms Flood, 16 March 2022, p 2.

¹¹⁵ Evidence, Dr Elliott, 21 March 2022, p 43.

¹¹⁶ Submission 4, Humane Research Australia, p 4.

these days, a lot more sophisticated. A lot of expertise and specialisation is required, and having a central expert authority set up to administer many of those regulations would be a great benefit...¹¹⁷

2.74 In response, the NSW Government maintained that no conflict of interest exists. Ms Tara Black, Deputy Director General of Strategy and Engagement at DPI, told the committee that the department has significant expertise in both animal use industries and animal welfare and that 'those two functions work really well in bringing in together ... our administration of the laws'.¹¹⁸

2.75 Ms Black also reinforced that the current arrangement is appropriate and fit-for-purpose, with a 'strong' framework that includes DPI, Greyhound Welfare and Integrity Commission, RSPCA, Animal Welfare League and the NSW Police Force who make up a 'unique mix of expertise, experience and enforcement and animal care infrastructure'.¹¹⁹

2.76 RSPCA NSW also did not support establishing an independent and separate office. Ms Kathryn Jurd, General Counsel, explained that she was not convinced with the lack of details surrounding the establishment of such an office and cast doubt on whether it would be able to achieve what it needs to do:

Absent some specificity about how it would be arranged, where it would be located, who would have responsibility for budgeting it—things like that—to my mind, additional bureaucratic oversight is not potentially going to address the harm that it claims to be trying to address.

From my perspective, it is not a "hard no". I have not seen detail that would give me comfort that what it was proposing to achieve would, in fact, for the money spent to achieve it, do what it needed to do.¹²⁰

2.77 NSW Farmers was strongly opposed to the creation of an independent animal welfare body. It recommended that DPI retain its administrative responsibilities of animal welfare policy, and argued that DPI has the technical knowledge and established relationships to deliver on the policies.¹²¹

2.78 NSW Farmers also identified that welfare outcomes in production animal industries have an 'obvious nexus' to biosecurity and disease legislation, therefore it is important that DPI have oversight over both. Mr James Jackson, President, explained that his members spend a lot of time and money preventing illness and prioritising the health and welfare of the animals in their possession because it impacts their business and 'bottom line'.¹²²

2.79 However, Humane Society International argued that the DPI could still play a role under an independent office:

Under such an arrangement, the NSW DPI would continue to play an important role in the provision of technical advice and assistance, industry extension services, and

¹¹⁷ Evidence, Dr Goodfellow, 16 March 2022, p 10.

¹¹⁸ Evidence, Ms Black, 21 March 2022, p 56.

¹¹⁹ Evidence, Ms Black, 21 March 2022, p 56.

¹²⁰ Evidence, Ms Jurd, 21 March 2022, pp 29-30.

¹²¹ Submission 251, NSW Farmers, p 9.

¹²² Evidence, Mr Jackson, 16 March 2022, p 36; Submission 251, NSW Farmers, p 9.

informing the development of policy, but it would not be wholly responsible for the administration of the state's animal welfare laws and policy. Likewise, current entities such as the RSPCA, Animal Welfare League and Police would continue to play their enforcement role but instead of reporting to the DPI they would report to the Animal Welfare Authority.¹²³

Complaints and accountability mechanism

- 2.80** Other inquiry stakeholders expressed their support for an independent office of animal welfare on the basis it could hold those with enforcement powers accountable or liable for their actions, including charitable organisations and authorised officers.¹²⁴
- 2.81** Under Part 7 of the draft bill, authorised officers have significant and broad powers to gather information¹²⁵, enter premises including residential properties¹²⁶ and seize objects¹²⁷ if they hold reasonable suspicion or belief that an offence is being committed under the act or regulation.
- 2.82** There are equally broad parameters of who an authorised officer can be. Clause 59 lists public service employees, police officers, employees or those engaged by approved charitable organisations, and inspectors under the *Greyhound Racing Act 2017*.¹²⁸
- 2.83** Animal Care Australia and the NSW Cat Financiers Association expressed their concern at what they saw as a lack of accountability in the draft bill because there is no independent body to address complaints to about aforementioned authorised officers or charitable organisations, nor an appeals process.¹²⁹
- 2.84** Furthermore, Animal Care Australia highlighted that approved charitable organisations can make the decision to appoint people to be authorised officers with little to no external oversight, thereby granting them with significant powers. The organisation suggested that with no accountable department or office, no ombudsman and no independent procedures included in the draft bill, these authorised officers are subject to a lower level of scrutiny than members of the NSW Police Force.¹³⁰ The NSW Cat Financiers Association also flagged that procedural fairness does not exist for an accused person when the only entity they can complain to is the subject of their complaint.¹³¹
- 2.85** However, the NSW Ombudsman noted that as currently drafted, the bill and the *Ombudsman Act 1974* together permits the Ombudsman's office to oversight the conduct of all authorised

¹²³ Submission 94, Humane Society International, p 9.

¹²⁴ See for example, Submission 47, Mr Rodney Slater, p 1; Submission 48, Mrs Kelly Slater, p 1; Submission 50, Name suppressed, p 1; Submission 58, Name suppressed, p 1.

¹²⁵ Part 7, Division 2, Draft Animal Welfare Bill 2021.

¹²⁶ Part 7, Division 3, Draft Animal Welfare Bill 2021.

¹²⁷ Part 7, Division 5, Draft Animal Welfare Bill 2021.

¹²⁸ cl 59, Draft Animal Welfare Bill 2021.

¹²⁹ Submission 94, Animal Care Australia, p 7; Submission 98, NSW Cat Financiers Association, pp 2 and 8.

¹³⁰ Submission 94, Animal Care Australia, p 7 and 17.

¹³¹ Submission 98, NSW Cat Financiers Association, p 2.

officers, except for police officers.¹³² The Ombudsman noted that police conduct is oversights by the Law Enforcement Conduct Commission, but this is only available for 'serious conduct' or 'serious maladministration'. It therefore expressed concern that complaints about officer misconduct or maladministration do not meet the thresholds to be referred to the Commissioner for Police.¹³³

Exemptions in the Draft Animal Welfare Bill 2021

2.86 The draft bill contains exemptions so that certain categories of animals or standards are excluded from particular provisions of the bill. The following exemptions were particularly contentious for some inquiry participants:

- **cl 18 Appropriate exercise**

(3) This section does not apply to –

- (a) a stock animal, other than a horse, or
- (b) an animal of a species that is usually kept in captivity, if the animal is kept in a cage or tank of a height, length and breadth that provides the animal with an opportunity to exercise.¹³⁴

- **cl 20 Requirement to comply with standards**

(1) A responsible person for an animal in relation to which a prescribed standard applies must comply with the standard.

Maximum penalty – category 3 penalty.

(2) A responsible person for an animal does not commit an offence against this Act for an act or omission in relation to the animal if the act or omission is in accordance with a prescribed standard.¹³⁵

- **cl 119 Specific exemptions**

(1) A person's act or omission in relation to an animal is not an offence under this Act or the regulations if the act or omission occurred:

- (a) in the course of, and for the purpose of, performing prescribed animal husbandry in a way that inflicted no unnecessary harm on the animal, or
- (b) in the course of, and for the purpose of—
 - (i) fishing, hunting, shooting, snaring, trapping, catching or capturing the animal in a way that inflicted no unnecessary harm on the animal, or
 - (ii) destroying the animal, or preparing the animal for destruction, for the purpose of producing food for human consumption in a way that inflicted no unnecessary harm on the animal, or

...

¹³² Submission 91, NSW Ombudsman, pp 3-5.

¹³³ Submission 91, NSW Ombudsman, pp 3-5.

¹³⁴ cl 18, Draft Animal Welfare Bill 2021.

¹³⁵ cl 20, Draft Animal Welfare Bill 2021.

(d) in the course of, and for the purpose of, undertaking aquaculture, within the meaning of the *Fisheries Management Act 1994*, or

...

(h) in accordance with the precepts of—

(i) the Jewish religion, or another religion prescribed by the regulations for this paragraph

(ii) another religion prescribed by the regulations for this paragraph.¹³⁶

2.87 Inquiry participants expressed their concern firstly with exempting entire categories of animals and argued that this approach is another example of how the draft bill is not characteristic of modern animal welfare legislation. Secondly, considering the broad nature of some of these exemptions, stakeholders contended that there is a need for clearer definitions and restrictions to improve the welfare of these categories of animals. Finally, evidence was received about other exemptions, including the transport of dogs and exhibition of animals. Each of these issues are explored in more detail below.

Exempting entire categories of animals

2.88 Key animal advocacy and legal organisations, including Animals Australia, Animal Liberation, Animal Defenders Office and Lawyers for Animals, objected to exempting entire categories of animals – such as stock and captive animals under clause 18(3) and farmed animals in clause 119(1)(a). They argued that blanket exemptions such as these undermine the objects of the bill,¹³⁷ which is to promote the welfare of and prevent cruelty towards all animals.¹³⁸

2.89 Animals Australia's Chief Executive Officer, Ms Glenys Oogjes, explained that these exemptions have the effect of 'immediately' ruling out basic freedoms for whole classes of animals, particularly the behavioural freedoms of farmed animals.¹³⁹ Animal Liberation also warned that these exemptions put the 67 million farmed animals across New South Wales at risk of 'legalised acts of cruelty'.¹⁴⁰

2.90 In a similar vein, Animals Australia and Sentient, the Veterinary Institute for Animal Ethics gave evidence that in any other context, the severity of certain husbandry procedures and confinement (which are exempted in the bill) would constitute an offence of cruelty or aggravated cruelty against the animals.¹⁴¹

¹³⁶ cl 1119, Draft Animal Welfare Bill 2021.

¹³⁷ cl 3, Draft Animal Welfare Bill 2021.

¹³⁸ Submission 253, Lawyers for Animals, p 11; Submission 252, Animal Liberation, p 477; Submission 146, Animal Defenders Office, p 6; Evidence, Ms Oogjes, 16 March 2022, p 18. See also, Submission 92, Sentient, the Veterinary Institute for Animal Ethics, pp 8-9; Submission 88, World Animal Protection Australia, p 10.

¹³⁹ Evidence, Ms Oogjes, 16 March 2022, p 18.

¹⁴⁰ Submission 252, Animal Liberation, pp 48-49.

¹⁴¹ Evidence, Ms Oogjes, 16 March 2022, pp 13-14; Submission 92, Sentient, the Veterinary Institute for Animal Ethics, pp 8-9.

- 2.91** The exemptions were further described in evidence as inappropriate,¹⁴² inherently harmful and arbitrary¹⁴³ on the basis that all animals, regardless of what they are used for, are sentient beings.¹⁴⁴ Sentient, the Veterinary Institute for Animal Ethics concluded that the exemptions have therefore been designed to support human profit and convenience above animal welfare, and to protect the agricultural and environmental management industries (amongst others).¹⁴⁵
- 2.92** In addition, stakeholders such as Humane Society International and RSPCA NSW advised the exemptions in the draft bill were not illustrative of a modern animal welfare legislation that focuses on a positive duty of care for animals. Humane Society International cautioned, 'Wholesale carve-outs for certain practices without limitation is an outdated feature of animal welfare legislation that should not be carried through to the new act.'¹⁴⁶

Exempting acts or omissions done in accordance with a prescribed standard

- 2.93** Some inquiry participants expressed concern with respect to clause 20 of the draft bill, which provides that certain acts or omissions will not be considered an offence if they comply with a 'prescribed standard'.
- 2.94** Humane Society International explained the important role played by standards in the animal protection regulatory space:
- Industry codes and standards comprise an integral part of the legislative framework. Industry standards govern the welfare of hundreds of millions of animals in NSW, far more than the number of animals that will benefit from the minimum standard of care provisions outlined in the Bill. This is due to the operation of s.20(2) of the Bill in exempting any act done in accordance with a prescribed standard from the application of the minimum care requirements. Accordingly, what is written in the prescribed standards will arguably be more important for animal welfare outcomes than what is written in the principal legislation itself.¹⁴⁷
- 2.95** Humane Society International expressed concern that 'the Bill is silent on the process and criteria for the making and adoption of such standards', which opens the door for 'the making and adoption of any animal welfare standard no matter how deficient or contrary to the objects of the legislation it may be.'¹⁴⁸
- 2.96** As a result, Humane Society International recommended that the NSW Government consider the approach taken in New Zealand regarding the development and adoption of standards, and 'include requirements for the making and adoption of standards under the Act, including:
- consistency with the objects and duties of the Act;

¹⁴² Evidence, Ms Oogjes, 16 March 2022, p 18.

¹⁴³ Submission 146, Animal Defenders Office, p 6.

¹⁴⁴ Submission 146, Animal Defenders Office, p 20; Submission 92, Sentient, the Veterinary Institute for Animal Ethics, pp 8-9.

¹⁴⁵ Submission 92, Sentient, the Veterinary Institute for Animal Ethics, pp 8-9.

¹⁴⁶ Submission 94, Humane Society International, p 14.

¹⁴⁷ Submission 94, Humane Society International, pp 10-11,

¹⁴⁸ Submission 94, Humane Society International, p 11,

- relevant factors to be taken into account including advice of the Animal Welfare Advisory Council, relevant scientific knowledge, and available technology; and
- tabling in Parliament.¹⁴⁹

Clearer restrictions and definitions for exemptions

- 2.97** Considering the broad nature of the exemptions and the large number of stock and farmed animals that it covers, animal advocacy organisations called for clearer definitions and restrictions to limit the scope of exemptions as much as possible.¹⁵⁰ For example, World Animal Protection Australia identified that allowing prescribed animal husbandry procedures in clause 119 is too broad and called for these procedures to be reviewed and limited.¹⁵¹
- 2.98** NSW Young Lawyers also reflected that in legislation that has the maintenance of animal welfare at its centre, any defence must be robust, reflective of modern scientific evidence, and strongly justified.¹⁵²
- 2.99** Humane Society International remarked that including exemptions without appropriate boundaries creates uncertainty in the law and risks unintended consequences such as permitting objectively cruel and unnecessary practices to take place 'with impunity'.¹⁵³ It stated that therefore it is 'critical' reasonable qualifications are placed on how those practices are performed, including a requirement to inflict 'no unnecessary harm' on the animal.¹⁵⁴
- 2.100** By highlighting that a number of the proposed exemptions in clause 119 do not include the 'no unnecessary harm' limitation, the Animal Defenders Office warned that harmful practices can be carried out 'with no checks or balances'.¹⁵⁵
- 2.101** A number of inquiry participants separately took issue with the specific exemptions included in clauses 119(d) and (h) allowing a person's act or omission towards an animal in the course of undertaking aquaculture and for religious purposes.¹⁵⁶
- 2.102** Certain animal organisations argued that some of the exemptions are actually unnecessary, namely clauses 20(2) and 18(1)(a) that specify a person does not commit an offence if they are complying with the relevant prescribed standards or regulations.¹⁵⁷ Humane Society International and Lawyers for Animals stated that as farmed and production animal industries

¹⁴⁹ Submission 94, Humane Society International, p 11.

¹⁵⁰ Submission 80, RSPCA NSW, p 9; Submission 81, Cat Protection Society, p 3; Submission 88, World Animal Protection Australia, p 10; Submission 94, Humane Society International, p 14.

¹⁵¹ Submission 88, World Animal Protection Australia, p 10

¹⁵² Submission 129, NSW Young Lawyers, p 7.

¹⁵³ Answers to questions on notice, Humane Society International, 14 April 2022, pp 1-2.

¹⁵⁴ Submission 94, Humane Society International, p 14; Answers to questions on notice, Humane Society International, pp 1-2.

¹⁵⁵ Submission 146, Animal Defenders Office, p 20.

¹⁵⁶ Submission 94, Humane Society International, pp 3-4; Submission 88, World Animal Protection Australia, p 10; Submission 81, Cat Protection Society, p 3; Submission 146, Animal Defenders Office, p 20.

¹⁵⁷ cl 18(1)(a) and cl 20(2), Draft Animal Welfare Bill 2021.

are governed by strict regulations and standards, the broad exemptions under clause 18(3) exempting stock animals from appropriate exercise and clause 119(1)(a) allowing prescribed animal husbandry practices should be removed from the draft bill altogether.¹⁵⁸

- 2.103** In contrast, firearm organisations claimed that the exemptions do not go far enough to clarify other lawful activities. The Shooters' Union NSW and Firearm Owners United recommended that the exempted activities be broadened to include additional legal hunting and pest control activities.¹⁵⁹ More specifically, Mr Golding, Director, Shooters' Union NSW, argued that the legal and cultural activities of legal pig hunting with dogs, legal bow hunting, legal rifle hunting and legal catch-and-release fishing should be specifically exempt.¹⁶⁰
- 2.104** The Government responded that exemptions in the draft bill are important to include because it provides certainty to people who engage in lawful activities, such as fishing, hunting, pest management and agriculture, that their actions do not constitute an animal welfare offence as long as they are done appropriately.¹⁶¹
- 2.105** The Government also noted that the exemptions listed in the draft bill are based on the current defences available under existing legislation¹⁶² and that they only apply in 'very narrow situations'. It noted that most of the exemptions, including for animal husbandry and legal fishing, hunting and shooting, already contain qualifiers that mean the exemption does not apply if a person causes unnecessary harm to an animal.¹⁶³

Additional exemptions

- 2.106** Other exemptions in the draft bill are related to the transport of dogs and exhibition of animals, which are briefly considered in the following sections.

Transport of dogs

- 2.107** Clauses 37(3) and 37(4) are listed in the draft bill as:

cl 37 Requirements for transporting dogs

- (3) A person must not carry or convey a dog on the open back of a moving vehicle on a public street unless the dog is restrained or enclosed in a way that prevents the dog from falling from the vehicle.

Maximum penalty—category 3 penalty.

¹⁵⁸ Submission 94, Humane Society International, p 14; Submission 254, Lawyers for Animals, p 11. See also, Submission 252, Animal Liberation, p 49.

¹⁵⁹ Evidence, Mr Craig Golding, Director, Shooters' Union NSW, 16 March 2022, p 23; Submission 254, Firearm Owners United, p 2.

¹⁶⁰ Evidence, Mr Golding, 16 March 2022, p 23

¹⁶¹ Submission 69, NSW Government, p 7.

¹⁶² Submission 69, NSW Government, p 7.

¹⁶³ Department of Primary Industries, *NSW Animal Welfare Reform - Discussion Paper* (July 2021), https://www.dpi.nsw.gov.au/__data/assets/pdf_file/0004/1324948/NSW-Animal-Welfare-Reform-Discussion-Paper.pdf.

- (4) Subsection (3) does not apply to a dog being used to control or protect stock animals.¹⁶⁴

2.108 The exemption in clause 37(4) has been carried over from section 7(2A) of POCTAA, which states:

Without limiting subsection (1), a person must not carry or convey a dog (other than a dog being used to work livestock), on the open back of a moving vehicle on a public street unless the dog is restrained or enclosed in such a way as to prevent the dog falling from the vehicle.¹⁶⁵

2.109 The Australian Veterinary Association, RSPCA NSW and Sentient, Veterinary Institute for Animal Ethics recommended that this exemption be removed as working dogs are at just as much risk of injury as non-working dogs and therefore should be protected accordingly.¹⁶⁶

2.110 From an industry perspective however, the Australian Pig Doggers and Hunters Association stated that the exemption in clause 37(4) is a 'sensible acknowledgement' of the reality of stock management being carried out on public roads that are often remote and driven along at reduced speeds.¹⁶⁷

Exhibition of animals

2.111 Clauses 10(1) and 10(2) lists the meaning of 'exhibiting an animal':

cl 1 Meaning of "exhibiting an animal"

- (1) ***Exhibiting an animal*** means displaying the animal, or keeping the animal for display, for—
- (a) cultural, educational, entertainment or scientific purposes, or
 - (b) another purpose prescribed by the regulations.
- (2) Without limiting subsection (1), exhibiting an animal includes the following –
- (a) displaying an animal, or keeping an animal for display, at an aquarium, wildlife park or zoo,
 - (b) displaying an animal, or keeping an animal for display, in a circus,
 - (c) displaying an animal, or keeping an animal for display, to allow public interaction with the animal at a petting farm,
 - (d) displaying an animal, or keeping an animal for display, as part of an educational wildlife demonstration.¹⁶⁸

¹⁶⁴ cl 37(3) and cl 37(4), Draft Animal Welfare Bill 2021.

¹⁶⁵ s 7(2A), *Prevention of Cruelty to Animals Act 1979*.

¹⁶⁶ Submission 53, Australian Veterinary Association, p 9; Submission 80, RSPCA NSW, p 6; Submission 92, Sentient, Veterinary Institute for Animal Ethics, p 7.

¹⁶⁷ Submission 68, Australian Pig Doggers and Hunters Association, p 4.

¹⁶⁸ cl 10(1) and cl 10(2), Draft Animal Welfare Bill 2021.

- 2.112** Animal hobbyist organisations raised that the current wording in the draft bill is unclear about whether it is permissible to exhibit animals at dog shows and agricultural events. Dogs NSW advised that although the EAPA and its regulations make a clear distinction between exhibiting animals at establishments like zoos, aquariums and circuses, as opposed to dog shows and agricultural events, the broad ambit of clauses 10(1)(a) and (b) create uncertainty as to whether this distinction will remain in the proposed legislation.¹⁶⁹
- 2.113** Acknowledging that the new regulations and associated details are yet unknown, Dogs NSW, the French Bulldog Club of NSW and Animal Care Australia recommended that the current exemptions in EAPA be carried over to the new legislative framework. They stated that these arrangements, including exemptions from holding licences and permits, would ensure that that animals can continue to be exhibited at dog shows and agricultural events, such as at the Sydney Royal Easter Show.¹⁷⁰

National and international standards

- 2.114** Multiple stakeholders from the universities and industry sector lauded New South Wales as a national and international leader for its high animal welfare standards in industry and research.
- 2.115** In terms of production, both NSW Farmers and Australian Pork Limited explained that animal welfare is taken very seriously by industry in Australia and described the standards as 'exemplary' and 'superior' compared to other international systems.¹⁷¹
- 2.116** The system of ensuring animal welfare in industry is complex, with NSW Farmers advising that its members comply with multiple regulatory and other standards that impact a farmer's animal welfare requirement, including biosecurity. The organisation also noted that while general animal welfare requirements that broadly impact all livestock industries exist, different livestock species have distinct needs, resulting in specialised guidelines being developed to govern welfare outcomes for each species.¹⁷²
- 2.117** In addition, Ms Margo Andrae, Chief Executive Officer of Australian Pork Limited, advised the committee that the domestic pork industry must meet 'incredibly high standards' to function in Australia and export its product. She stated that the industry monitors 'very seriously' what is happening globally as well as emerging local community expectations, and voluntarily chooses to adapt its processes.¹⁷³
- 2.118** President of NSW Farmers, Mr James Jackson, explained that supply chains can also adapt to satisfy demands raised in international trade agreements or according to consumer preference. Using the European export market with its strict conditions as an example, Mr Jackson stated:

¹⁶⁹ Submission 70, Dogs NSW, p 2.

¹⁷⁰ Evidence, Ms Crofts, 21 March 2022, p 40; Evidence, Mr Sam Davis, Vice President, Animal Care Australia, 21 March 2022, p 40; Submission 70, Dogs NSW, p 2; Submission 65, French Bulldog Club of NSW, p 2.

¹⁷¹ Evidence, Mr Jackson, 16 March 2022, pp 34-35; Evidence, Ms Andrae, 16 March 2022, p 35.

¹⁷² Answers to questions on notice, NSW Farmers, 14 April 2022, p 1.

¹⁷³ Evidence, Ms Andrae, 16 March 2022, p 35.

The principal thing is that we have got a system, and certainly in the red meat industry we have got a system that has a bespoke supply chain for supplying European product. It is demanding things for that product going into the country, it is basically around [hormonal growth promotants] but it could, with the [European Union] Free Trade Agreement, have other demands ... on getting access into the EU market.

But we have bespoke supply chains that supply product that comply with that particular demand.¹⁷⁴

- 2.119** In relation to animal research (and as will be explored in more detail in chapter 3), university stakeholders highlighted to the committee that New South Wales is at the 'forefront of national and international efforts to regulate animal welfare'.¹⁷⁵ For example, Dr Susan Maastricht, Director of the University of Sydney's Research Integrity and Ethics Administration, described that New South Wales had 'set the standard and the world followed'.¹⁷⁶
- 2.120** Dr Maastricht further confirmed that there is close collaboration and high levels of compliance in the animal research sector in New South Wales, ensuring that standards are applied across all industries and fields of studies. She also advised that the animal research framework is regularly reviewed to incorporate elements of the international settings.¹⁷⁷
- 2.121** However animal welfare and advocacy groups argued that more could be done to increase the state's standing and reputation when it comes to animal welfare and bring it up to date with domestic and international best practice.¹⁷⁸
- 2.122** World Animal Protection Australia and Humane Society International told the committee that Australia was recently given a 'D' ranking in the Animal Protection Index.¹⁷⁹ (World Animal Protection produces the Animal Protection Index, which is a ranking of 50 countries around the globe 'according to their legislation and policy commitments to protecting animals'.)¹⁸⁰ Humane Society International noted that many non-governmental organisations, multinational food companies, institutional investors and government advisors draw guidance on a nation's animal welfare record and reflected:

As an advanced and economically prosperous nation with significant animal-based industries, it is unfortunate that Australia's ranking is so low compared with equivalent nations around the world.¹⁸¹

¹⁷⁴ Evidence, Mr Jackson, 16 March 2022, p 34.

¹⁷⁵ Evidence, Professor Rogge, 21 March 2022, p 3. See also, Submission 95, University of Newcastle, p 1.

¹⁷⁶ Evidence, Dr Maastricht, 21 March 2022, p 6.

¹⁷⁷ Evidence, Dr Maastricht, 21 March 2022, p 6.

¹⁷⁸ See for example, Submission 252, Animal Liberation, p 44; Submission 253, Lawyers for Animals, p 6.

¹⁷⁹ Submission 88, World Animal Protection Australia, p 2; Submission 94, Humane Society International, p 6.

¹⁸⁰ World Animal Protection, *Welcome to the Animal Protection Index*, <https://api.worldanimalprotection.org/>.

¹⁸¹ Submission 94, Humane Society International, pp 6-7.

- 2.123** As noted earlier in 2.47-2.48, World Animal Protection Australia and Humane Society International highlighted that failure to improve New South Wales' reputation on animal welfare could have negative implications for trade and market access. The organisations advised that key trading partners, including the European Union and the United Kingdom, have already raised concerns about animal welfare standards in Australia.¹⁸²
- 2.124** However in response to this argument, NSW Farmers and Australian Pork Limited expressed that Australia holds higher and superior standards for animal welfare and biosecurity comparative to systems in some parts of Europe and the United States of America.¹⁸³ Ms Andrae of Australian Pork Limited also explained that meat industries in Australia are free from disease and highlighted its holistic approach where various factors are considered, including their workforce, sustainability and the environment, as well as the animals.¹⁸⁴

Surgical artificial insemination on a dog

- 2.125** Surgical artificial insemination is conducted on a dog for the purposes of breeding. The procedure involves putting the dog under general anaesthetic so that an incision can be made to reach its uterus and inject frozen or fresh semen.¹⁸⁵
- 2.126** Currently the surgical artificial insemination on a dog is permissible as a restricted act of veterinary science under the Veterinary Practice Regulation 2013.¹⁸⁶ Specific to the greyhound industry, the NSW Greyhound Welfare Code of Practice stipulates that surgical artificial insemination can only be performed by a veterinarian using general anaesthetic with appropriate pain relief during and post-surgery.¹⁸⁷
- 2.127** However clause 22(1)(e) of the draft bill proposes to prohibit the procedure completely,¹⁸⁸ which proved to be a very divisive issue amongst inquiry stakeholders. In addition, a number of the key canine organisations expressed their concern that there had been no industry consultation on the proposed change.¹⁸⁹
- 2.128** The other areas of contention related to the impacts the proposed change will have on breeders and owners and the merits of alternative methods. These issues are considered in the sections below.

¹⁸² Submission 88, World Animal Protection Australia, p 3; Submission 94, Humane Society International, p 6.

¹⁸³ Evidence, Ms Andrae, 16 March 2022, p 35; Evidence, Mr Jackson, 16 March 2022, p 34.

¹⁸⁴ Evidence, Ms Andrae, 16 March 2022, p 35.

¹⁸⁵ Evidence, Ms Chisholm, 16 March 2022, p 13; Evidence, Mr Robert Macaulay, Head of Legal, Greyhound Racing NSW, 16 March 2022, p 40.

¹⁸⁶ s 4(d)(vii), Veterinary Practice Regulation 2013.

¹⁸⁷ cl 4.14, NSW Greyhound Welfare Code of Practice (May 2020).

¹⁸⁸ cl 22(1)(e), Draft Animal Welfare Bill 2021.

¹⁸⁹ Submission 90, NSW Greyhound Breeders, Owners and Trainers Association, p 5; Evidence, Ms Lyn Brand, President, Dogs NSW, 21 March 2022, p 36; Evidence, Mr Macaulay, 16 March 2022, p 39.

Impacts on breeders and owners

- 2.129** Canine organisations, such as Dogs NSW, Greyhound Racing NSW and the German Shepherd Dog League of NSW, submitted that the proposed prohibition of the procedure would have significantly negative effects on their breeding programmes and welfare of their animals. The organisations explained that racing animals and animals that work or protect stock generally are very valuable, therefore having access to and control over genetic material to 'breed away' what might have been weaknesses in certain dogs is very important.¹⁹⁰
- 2.130** According to the canine organisations, surgical artificial insemination is preferable to other methods because they can access frozen semen from dogs in distant locations, including overseas, which saves them money and time in transporting the dogs around Australia for breeding purposes. They also claimed that other benefits of the procedure included double the effectiveness of the alternative transcervical artificial insemination, has safer outcomes for the dog and a higher rate of live-born healthy puppies.¹⁹¹

Alternatives to surgical artificial insemination

- 2.131** Many inquiry participants, including Coalition for the Protection of Greyhounds, the Australian Veterinary Association, RSPCA NSW and Animal Liberation, advised that transcervical insemination is available as an alternative to the surgical procedure and just as effective. They also claimed that it is the preferred method on the basis that it is less invasive for the dog, non-surgical and free of anaesthetics.¹⁹² For example, RSPCA NSW expressed the view:

There is no justifiable reason for this procedure where non-surgical, anaesthetic-free, minimally invasive, effective alternatives exist, including for the use of frozen semen. The risks and discomfort associated with undertaking surgical artificial insemination are unnecessary with trans-cervical artificial insemination now available.¹⁹³

- 2.132** A number of animal protection organisations raised concerns about the animal welfare impacts of surgical artificial insemination. For example, Coalition for the Protection of Greyhounds described the procedure as 'cruel' and 'painful', noting it involves 'cutting through skin and muscle to reach the uterus and injecting frozen or fresh semen there. Then the female must carry the pups to term having just had gut surgery'.¹⁹⁴ Coalition for the Protection of Greyhounds also expressed concern about the fact that the Minister had 'made a unilateral decision before this Committee even concluded its review process' on the issue, after meeting with representatives from the greyhound industry.¹⁹⁵

¹⁹⁰ Evidence, Mr Macaulay, 16 March 2022, p 39.

¹⁹¹ Evidence, Mr Macaulay, 16 March 2022, p 39; Evidence, Ms Yun, 16 March 2022, p 45; Evidence, Ms Lyn Brand, President, Dogs NSW, 21 March 2022, p 36. See also, Submission 14, Northern Rivers Veterinary Service, pp 1-2.

¹⁹² Submission 53, Australian Veterinary Association, p 10; Submission 80, RSPCA NSW, pp 8-9; Submission 87, Coalition for the Protection of Greyhounds, p 5; Submission 252, Animal Liberation, p 56. See also, Evidence, Ms Jurd, 21 March 2022, p 30.

¹⁹³ Submission 80, RSPCA NSW, p 8.

¹⁹⁴ Evidence, Ms Chisholm, 16 March 2022, p 13.

¹⁹⁵ Evidence, Ms Chisholm, 16 March 2022, p 13; Submission 87, Coalition for the Protection of Greyhounds, p 13.

- 2.133** The Australian Veterinary Association and the Coalition for the Protection of Greyhounds also noted that surgical artificial insemination has been banned in certain countries, including in the United Kingdom, Sweden, Norway and Denmark.¹⁹⁶
- 2.134** Whilst they believed it should be a prohibited practice, Sentient, the Veterinary Institute for Animal Ethics gave concession that surgical artificial insemination should only be an option if a veterinary practitioner recommended it as necessary on medical grounds with the proviso that this is not routinely performed on racing greyhounds, which is currently the case.¹⁹⁷
- 2.135** In a similar vein, multiple inquiry participants, including veterinary organisations, recommended that the practice remain a restricted veterinary procedure because it is a specialised area and veterinary practitioners should make the determination or decision based on the circumstances.¹⁹⁸

Government's position

- 2.136** Following the publication of the draft bill and reviewing feedback from stakeholders, the new Minister for Agriculture, the Hon Dugald Saunders MP, indicated that there will be no change to the status of the surgical artificial insemination procedure and it will continue to remain a restricted veterinary act.
- 2.137** DPI's Deputy Director General of Strategy and Engagement, Ms Tara Black, confirmed to the committee:

What the Minister has said is that we will not be making that change, so surgical AI will remain a restricted act of veterinary science. That position is supported by a number of stakeholders.¹⁹⁹

Issues not considered in the draft bill

- 2.138** Some inquiry participants expressed the view that the draft bill should have introduced reforms on a range of additional animal welfare issues.
- 2.139** While a number of provisions within the draft bill were met with support from animal protection organisations – for example, the introduction of the minimum care requirements and the expansion of the definition of ‘animal’ to include crustaceans and cephalopods²⁰⁰ - there

¹⁹⁶ Submission 53, Australian Veterinary Association, p 11; Evidence, Ms Chisholm, 16 March 2022, p 13.

¹⁹⁷ Submission 92, Sentient, The Veterinary Institute of Animal Ethics, p 4; Evidence, Ms Chisholm, 16 March 2022, p 13.

¹⁹⁸ Submission 14, Northern Rivers Veterinary Service, pp 1-2; Submission 60, Master Dog Breeders and Associates, p 3; Submission 64, Veterinary Practitioners Board, p 1; Submission 65, French Bulldog Club of NSW Inc, pp 1-2; Submission 77, Greyhound Racing NSW, p 1; Submission 92, Sentient, the Veterinary Institute for Animal Ethics, p 4; Submission 93, Animal Care Australia, pp 9-10; Evidence, Ms Brand, 21 March 2022, p 36.

¹⁹⁹ Evidence, Ms Black, 21 March 2022, p 64.

²⁰⁰ See for example, Submission 146, Animal Defenders Office, pp 5 and 23; Submission 80, RSPCA NSW, p 4; Submission 94, Humane Society International, p 10.

were also a number of issues which some stakeholders felt were either not adequately addressed in the draft bill, or not addressed at all. While it is not possible to outline all of these matters within this report, some of the key issues raised have been outlined below:

- Tethering – Part 4, Division 3

These clauses of the draft bill seek to prohibit ‘inappropriate or unreasonable tethering of animals’. Prolonged tethering was identified as an issue by many animal protection groups including RSPCA NSW, who felt the protections contained in the draft clauses were ‘insufficient’ and required further consideration and revision.²⁰¹

- Dogs in hot cars – Part 4, Division 4

The draft bill seeks to prohibit leaving ‘a dog unattended in a vehicle in hot weather for more than 5 minutes’. While there was general support for the NSW Government’s move to prevent dogs from being left unattended in hot cars given the serious potential welfare impacts, stakeholders argued that the provision should be extended to include all animals (not just dogs), and that the temperature ‘threshold’ of 28 degrees should be reviewed. RSPCA NSW and the Animal Defenders Office also argued that the draft bill should allow for ‘rescue’ provisions, similar to those in the Australian Capital Territory.²⁰²

- Injuries to animals struck by a vehicle – Clause 29

Clause 29 of the draft bill replicates an existing provision from POCTAA, which requires the driver of a vehicle that strikes and injures an animal, other than a bird, to take reasonable steps to alleviate any harm caused to the animal. Sentient, the Veterinary Institute of Animal Ethics raised concerns with the exclusion of birds from this provision, stating they are ‘just as sentient as other animals’.²⁰³

- Poisoning a domestic animal – Clause 30

Some stakeholders argued that clause 30 of the draft bill, which makes it illegal to intentionally poison a domestic animal, should also be extended to include accidental poisonings as well as the poisoning of wild animals.²⁰⁴

- Animal cruelty material – Part 4, Division 5

The animal cruelty material provision would criminalise the production, dissemination or possession of material that depicts an animal cruelty offence – organisations including the Animal Defenders Office, Humane Society International and the Shooters Union, expressed concerns and argued the provision ought be omitted from the draft bill.²⁰⁵

For example, the Animal Defenders Office argued that the provision is redundant given the introduction of section 547E (concerning bestiality and animal crush material) into

²⁰¹ Submission 80, RSPCA NSW, p 5; Answers to questions on notice, RSPCA NSW, 5 May 2022, pp 1-2; Submission 53, Australian Veterinary Association, pp 9- 10.

²⁰² Submission 80, RSPCA NSW, p 6; Submission 146, Animal Defenders Office, pp 10-11; Evidence, Ms Jurd, 21 March 2022, pp 24-25; Submission 53, Australian Veterinary Association, p 9.

²⁰³ Submission 92, Sentient, the Veterinary Institute of Animal Ethics, p 5; Evidence, Ms Ward, 21 March 2022, p 12.

²⁰⁴ Submission 92, Sentient, the Veterinary Institute of Animal Ethics, p 5; Submission 146, Animal Defenders Office, p 8; Evidence, Ms Vesk, 16 March 2022, p 9.

²⁰⁵ Submission 37, Shooters Union NSW, p 3; Submission 146, Animal Defenders Office, p 11; Answers to questions on notice, Humane Society International, p 3.

the *Crimes Act 1900* in late 2021, and said the provision was ‘too broad and will capture things that it really should not capture, matters that should not be criminalised’.²⁰⁶ Humane Society International expressed a similar view that the provision could have a ‘very dangerous gagging effect on legitimate public communication’ and could prevent serious offences of animal cruelty from being ‘brought to the attention of authorities via social and other digital media.’²⁰⁷

The DPI indicated at the hearing that they would reconsider this provision in light of feedback received at the inquiry.²⁰⁸

- Other feedback on draft clauses

Feedback was also given by stakeholders in relation to a large number of other clauses in the draft bill, including but not limited to:

- clause 7 – concerning the use of the terms ‘unreasonably or unnecessarily’ in relation to the definition of an act of cruelty²⁰⁹
- clause 50 - concerning the definitions section surrounding stock welfare panels and whether there should be a greater emphasis on ‘psychological harm’²¹⁰
- clauses 66 and 67 - concerning the powers of inspectors to enter and conduct ‘proactive’ or ‘routine’ inspections (including premises used for residential purposes, particularly in circumstances where those premises are being used for breeding companion animals)²¹¹
- clauses 128 and 130 - concerning the test that is applied when the court determines whether to impose an interim or final disqualification order²¹²
- clauses 154(3) – concerning the appropriate minimum holding times before a charitable organisation can rehome an animal in their care²¹³

2.140 The committee received numerous submissions from individuals and organisations that raised a number of animal protection issues they felt were important to be considered as part of this inquiry. These issues concerned the treatment of companion, native and introduced animals, as well as animals in the animal agribusiness industry, animals used in entertainment and animals used in the research industry. It is clear that matters relating to animal protection are deeply important to the people of New South Wales.

²⁰⁶ Evidence, Ms Ward, 21 March 2022, p 12; Submission 146, Animal Defenders Office, p 11.

²⁰⁷ Answers to questions on notice, Humane Society International, p 3.

²⁰⁸ Evidence, Ms Clem Harris, Director of Policy and Industry Insights, Department of Primary Industries, 21 March 2022, p 55.

²⁰⁹ Submission 94, Humane Society International, p 12.

²¹⁰ Submission 146, Animal Defenders Office, p 13.

²¹¹ Submission 146, Animal Defenders Office, pp 16-17; Answers to questions on notice, Animal Defenders Office, pp 4-5.

²¹² Submission 80, RSPCA NSW, p 18; Evidence, Ms Jurd, 21 March 2022, p 28.

²¹³ Submission 93, Animal Care Australia, pp 20-21; Submission 80, RSPCA NSW, pp 13-14; Answers to questions on notice, Cat Protection Society of NSW, 18 April 2022, pp 2-3.

2.141 Given the volume of submissions received and issues raised, is not possible to list all of the issues raised by stakeholders in this report. However, it is noted that some of the issues raised by stakeholders included but were not limited to:

- puppy farming and backyard breeding²¹⁴
- the use of devices such as prong collars, shock collars, steel jaw traps and glue traps²¹⁵
- the consumption of dog and cat meat²¹⁶
- the sale and consumption of shark fin²¹⁷
- the use of 1080 poison²¹⁸
- ‘trap, neuter release’ programs²¹⁹
- husbandry procedures including mulesing, branding, and castration, dehorning and tail docking (including the performance of these procedures without pain relief)²²⁰
- the use of battery cages, sow stalls and farrowing crates²²¹
- providing ducks with ‘surface water’²²²
- the use of animals in rodeos (in particular, calf roping)²²³
- the property status of animals²²⁴
- an animal cruelty register²²⁵
- whistle-blower protections²²⁶

²¹⁴ Submission 146, Animal Defenders Office, p 24; Evidence, Ms Oogjes, 16 March 2022, p 19.

²¹⁵ Submission 96, Pet Professional Guild Australia, p 4; Submission 146, Animal Defenders Office, p 11; Submission 92, Sentient, the Veterinary Institute for Animal Ethics, p 5.

²¹⁶ Answers to questions on notice, World Animal Protection Australia, 12 April 2022, p 3.

²¹⁷ Answers to questions on notice, World Animal Protection Australia, p 3.

²¹⁸ Evidence, Mr Golding, 16 March 2022, pp 21 and 23; Evidence, Ms Vesk, 16 March 2022, p 9; Evidence, Dr van Ekert, 21 March 2022, p 42.

²¹⁹ Answers to questions on notice, Cat Protection Society of NSW, pp 1-2; Submission 182, Miss Sharon Richards, p 1.

²²⁰ Submission 129, NSW Young Lawyers, pp 6-7; Evidence, Ms Oogjes, 16 March 2022, pp 14, 17 and 18; Evidence, Dr Elizabeth Arnott, Chief Veterinarian, RSPCA NSW, 21 March 2022, p 27; Evidence, Ms Ward, 21 March 2022, p 15; Submission 92, Sentient, the Veterinary Institute for Animal Ethics, p 4; Submission 146, Animal Defenders Office, pp 6-7.

²²¹ Answers to questions on notice, Animals Australia, 14 April 2022, pp 1-2; Evidence, Ms Oogjes, 16 March 2022, p 14.

²²² Answers to questions on notice, Animals Australia, p 1.

²²³ Submission 92, Sentient, the Veterinary Institute for Animal Ethics, p 2; Submission 253, Lawyers for Animals, pp 12-15.

²²⁴ Submission 252, Animal Liberation, p 19.

²²⁵ Submission 146, Animal Defenders Office, p 24.

²²⁶ Answers to questions on notice, Animal Defenders Office, pp 2-3.

- allowing private prosecutions for animal cruelty offences.²²⁷

Committee comment

- 2.142** The committee acknowledges that some of the key issues that have been contentious for some inquiry participants include but are not limited to: regulations not being published with the draft bill, lack of recognition of animal sentience, the need for an independent office of animal welfare, and the various exemptions specified in the Draft Animal Welfare Bill 2021.
- 2.143** The committee notes the Government's assurances that the draft regulation, and indeed the draft bill itself, will be reviewed in light of the issues raised in the committee's first report. The committee is of the opinion that rather than making recommendations on these specific issues, it is our role to raise awareness and summarise stakeholder feedback for the Government and Parliament to consider in its deliberations when considering any changes to the animal welfare legislative framework.
- 2.144** However, the committee also notes the significant feedback it received from stakeholders raising concerns about the number of legislative provisions being moved to regulations under the draft bill, and the difficulty in giving feedback on the draft bill without having seen the draft regulations. The committee therefore encourages the Government to conduct consultation on the draft regulations prior to finalising the bill. The committee acknowledges that this may delay the reform of animal welfare legislation, but considered this an important step given the level of stakeholder interest.
- 2.145** Animal welfare is clearly an area where regulations and standards will continue to evolve. The committee believes that it is in the best interests of all stakeholders and animals that we work to understand and implement best practice and achieve consistency across Australian jurisdictions. This in turn will contribute to and reflect international standards and best practice.
- 2.146** The committee recognises that animal welfare regulations have traditionally guided practices in production, namely the supply side of markets. The new dynamic of 'ethical procurement' means that animal welfare policy is increasingly influencing demand, and not just supply. Promoting the increased use of national and international regulatory standards to ensure that New South Wales animal welfare laws are up-to-date and consistent is important. Regulatory bodies can also work effectively with stakeholders to provide greater clarity and better outcomes in the future.
- 2.147** The committee therefore recommends that the Legislative Council not consider the Animal Welfare Bill 2021 until draft regulations have been released and stakeholder feedback has been received and reported on by this committee.

²²⁷ Submission 146, Animal Defenders Office, pp 19-20; Submission 94, Humane Society International, pp 13-14.

Recommendation 1

That the Legislative Council not consider the Animal Welfare Bill 2021 until draft regulations have been released and stakeholder feedback has been received and reported on by this committee.

Chapter 3 **Incorporation of provisions of *Animal Research Act 1985***

This chapter considers the NSW Government's intention to incorporate the provisions of the *Animal Research Act 1985* into the new Animal Welfare Act. It begins by reviewing the current legislative framework for animal research in New South Wales, including the system of oversight and approvals facilitated by Animal Ethics Committees.

Key issues related to the incorporation of legislation are then considered. Issues include the Draft Animal Welfare Bill 2021's lack of specificity around animal research, the proposal to delegate many of the Act's current provisions to the regulation, and uncertainty regarding the future of the Animal Ethics Committees process and adherence to the relevant national code. Finally, the chapters considers whether incorporating the *Animal Research Act* will achieve the NSW Government's objective to streamline legislation.

Current legislative framework for animal research in New South Wales

- 3.1** As noted earlier in the report, the *Animal Research Act 1985* (hereafter the Act) is one of three Acts being consolidated and replaced by the Draft Animal Welfare Bill 2021 (hereafter draft bill).
- 3.2** The purpose of the Act is as follows:
- (1) The object of this Act is to protect the welfare of animals used in connection with research by requiring persons or organisations carrying out animal research or supplying animals for research to be authorised under this Act and by regulating the carrying out of animal research and the supply of animals for research by those persons or organisations.
 - (2) Authorisations under this Act may be granted only for recognised research purposes. Recognised research purposes include purposes involving the use of animals for research, teaching, testing and the production of biological products.²²⁸
- 3.3** The Act and its associated Animal Research Regulation 2021²²⁹ work closely with the *Australian code for the care and use of animals for scientific purposes*²³⁰ (hereafter the Code), which is published by the Australian Government's National Health and Medical Research Council (see 3.8 for more detail.)
- 3.4** Key research stakeholders, including the University of Sydney, University of Newcastle and NSW/ACT Deputy Vice-Chancellors (Research) Committee, took pride in the Act, advising

²²⁸ s 2A, *Animal Research Act 1985*.

²²⁹ Animal Research Regulation 2021.

²³⁰ *Australian code for the care and use of animals for scientific purposes* (Cth).

that the dedicated legislation to animal research in New South Wales is a national and world leader in terms of providing welfare protection for animals used in research.²³¹

3.5 Similarly, the University of Newcastle drew attention to the fact that New South Wales is the only jurisdiction in Australia to set standards of care for animals used in research at a level consistent with the national Code, ensuring that it meets the highest international standards and sets a national benchmark for animal research.²³²

3.6 By contrast, Ms Rachel Smith, Chief Executive Officer of Humane Research Australia, expressed some concerns about the regulation of animal research in NSW, describing it as a 'system of self-regulation via institutional animal care and ethics committees with limited regulatory oversight or public accountability.'²³³

3.7 Ms Smith went on to identify a number of areas for potential reform within the regulatory regime:

The current process of reform presents opportunities to, one, strengthen the powers and competency of the New South Wales research review panel, the continuation of which HRA supports, for example, in broadening complaints initiation criteria or mandating expertise on non-animal research methods amongst the panel; two, increase transparency and clarity of reporting, one example being through clearer defining of "recognised research purpose"; three, prohibit procedures known to cause intense suffering with questionable scientific validity, such as the forced swim test or force inhalation research; four, counter conflict of interest by the appointment of an independent office for animal welfare; five, mandate rehoming for dogs and cats used in research; and, finally, expand the three Rs to add rehoming, relevance, redirection of funding and retraining.²³⁴

Animal Ethics Committees and the Code

3.8 In New South Wales any research activity involving animals must be authorised by an Animal Ethics Committee (hereafter AEC) and conducted in accordance with the Code. As a result, the designation of responsibilities for parties is very clear in the current legislative framework:

- the AEC decide if a research activity involving animals is justified
- the researcher or teacher is responsible for the conduct of an authorised research activity
- the Code sets the criteria by which activities are assessed, authorised and conducted.²³⁵

3.9 The AEC considers and decides if the proposed use of animals for a research purpose is ethically justified. The scientific basis and potential benefits of the project are weighed up against the

²³¹ Evidence, Professor Kathy Belov, Pro Vice-Chancellor (Global Engagement), University of Sydney, 21 March 2022, p 2; Submission 78, University of Sydney, p 1; Submission 95, University of Newcastle, p 1; Submission 102, NSW/ACT Deputy Vice-Chancellors (Research) Committee, p 1.

²³² Submission 95, University of Newcastle, p 1.

²³³ Evidence, Ms Rachel Smith, Chief Executive Officer, Humane Research Australia, 21 March 2022, p 43.

²³⁴ Evidence, Ms Smith, 21 March 2022, p 43.

²³⁵ Submission 104, Margaret Rose, p 1.

justification for the use of animals, including an assessment of the experiences and needs of the individual animals. The AEC also considers the impact of procedures throughout an animal's lifetime and strategies to minimise this.²³⁶

- 3.10** Furthermore, the AEC must be satisfied that the ethical and animal welfare standards of the Code are met not only in the initial approval but also throughout the lifetime of a project through post-approval monitoring and reporting requirements.²³⁷
- 3.11** Each project is considered on a case-by-case basis and guided by the '3R' principles of replacement, reduction and refinement.²³⁸
- 3.12** Importantly, the membership of an AEC must be comprised of a mix of people with backgrounds in veterinary science, animal research and animal welfare, as well as some who are completely independent.²³⁹ The University of New South Wales highlighted that the mandated community participation in decision-making and post-approval monitoring facilitates wider community input and enables a timely focus and attention to the particulars of each protocol.²⁴⁰
- 3.13** Many of the stakeholders from the research and academic areas credited the Act and AEC process for the very high level of protection and welfare standards currently in place for animals in research on an individual level.²⁴¹ Western Sydney University also explained that the work of AECs places a higher standard of animal care and husbandry that can be achieved under the proposed bill.²⁴²
- 3.14** By contrast, Humane Research Australia expressed some doubts about the effectiveness of the AEC system:

the information that we receive from members of animal ethics committees or those associated with the research review panel or sometimes from the research community anonymously suggest that it is not a robust system and that really having a system where an institution is approving the research that it is conducting itself may mean that it is not of the highest quality or may be infringing upon animal welfare. So there may be practices that are permitted by New South Wales research institutions, such as inhalation research, that would not be approved by other institutions. So it is very inconsistent because it is down to the discretion of that individual institution and the pressures that may be placed upon the members of that committee to approve or not approve that research.²⁴³

²³⁶ Submission 104, Margaret Rose, p 1; Submission 105, University of New South Wales, p 1.

²³⁷ Submission 105, University of New South Wales, p 1.

²³⁸ Submission 104, Margaret Rose, p 1; Submission 105, University of New South Wales, p 1.

²³⁹ s 2.2.4, *Australian code for the care and use of animals for scientific purposes* (Cth).

²⁴⁰ Submission 105, University of New South Wales, p 1.

²⁴¹ See for example, Submission 100, Western Sydney University, p 1; Submission 104, Margaret Rose, p 1; Submission 105, University of New South Wales, p 1; Evidence, Professor Sven Rogge, Pro Vice-Chancellor Research, University of New South Wales, 21 March 2022, p 2.

²⁴² Submission 100, Western Sydney University, p 1.

²⁴³ Evidence, Ms Smith, 21 March 2022, p 47.

- 3.15** The Australian Veterinary Association also expressed concerns with the standards set out in the Code, noting that it was 'last updated in 2013', and recommended that it be reviewed.²⁴⁴
- 3.16** Professor Margaret Rose has decades of experience in the development of public policy in relation to the welfare of animals used for scientific purposes. In her submission to the inquiry, Professor Rose noted that the Code has evolved during the lifetime of the Act and has ensured that the ethical framework aligns with community expectations, international standards and advances in animal welfare science, as well as informing and underpinning best practice.²⁴⁵
- 3.17** Western Sydney University also advised that the process guarantees the assessment of the benefits, costs and scientific validity of animal research studies, in line with what is done internationally.²⁴⁶
- 3.18** Professor Sven Rogge, Pro-Vice Chancellor of Research of the University of New South Wales explained that the Act also has clear provisions regarding compliance. Professor Rogge stated that there are penalties against non-compliance and the Act also encourages self-regulation in how institutions encourage compliance and the uptake of values enshrining welfare considerations in research involving animals covered by the Act.²⁴⁷
- 3.19** On the other hand, Humane Research Australia indicated they would like to see more transparency built into the regulatory regime, along with other reforms:
- To improve the system, greater accountability, greater transparency, and I think retrospective assessments of the research to see if it is meeting the claims that are made would definitely be an improvement. The legislation does not really enable bans of specific procedures because it is left at the discretion of individual institutions. That is a real weakness of the current legislation that could be addressed, actually having bans or restrictions on specific procedures.²⁴⁸
- 3.20** The specific procedures that Humane Research Australia indicated that it would like to see banned in New South Wales were forced inhalation research (particularly the nose-only exposure method used by Centennial and the University of Newcastle), the forced to swim test and antibody production using animals.²⁴⁹

Key issues related to incorporating legislation

- 3.21** Inquiry participants, particularly those from the university and research sectors, raised a number of concerns with incorporating the *Animal Research Act 1985* into the Draft Animal Welfare Bill 2021. The key issues raised were about the lack of specificity in the draft bill relating to animal research, including uncertainty about the Animal Ethics Committees process and adherence to the *Australian code for the care and use of animals for scientific purposes*. Another issue raised was whether

²⁴⁴ Submission 53, Australian Veterinary Association, p 6.

²⁴⁵ Submission 104, Margaret Rose, p 1.

²⁴⁶ Submission 100, Western Sydney University, p 2.

²⁴⁷ Evidence, Professor Rogge, 21 March 2022, p 3.

²⁴⁸ Evidence, Ms Smith, 21 March 2022, p 47.

²⁴⁹ Evidence, Ms Smith, 21 March 2022, p 47.

the incorporation of the Act will fulfil the Government's objective to streamline animal welfare legislation. These points are considered in the sections below.

Lack of specificity regarding animal research

3.22 In comparison to the substantial amount of provisions that have been moved over from the *Prevention of Cruelty to Animals Act 1979*, there are few references to animal research in the draft bill. The primary reference regarding animal research is found in clause 119 where it is listed as a specific exemption to an animal cruelty offence:

cl 119 Specific exemptions

(1) A person's act or omission in relation to an animal is not an offence under this Act or the regulations if the act or omission occurred:

...

(e) in the course of, and for the purpose of –

- (i) carrying out animal research in accordance with a licence, or
- (ii) supplying animals for use in connection with animal research in accordance with a licence, ...²⁵⁰

3.23 However inquiry participants cautioned that there could be negative impacts on community perception if the highly complex and regulated area of animal research is not singled out in a separate section or chapter in the draft bill and instead referenced as an exemption.

3.24 The NSW/ACT Deputy Vice-Chancellors (Research) Committee (which represents 14 universities based in New South Wales and the Australian Capital Territory) and the University of Sydney highlighted that compared to the other exemptions listed in clause 119, including the use of decapod crustaceans and cephalopods as bait in fishing,²⁵¹ 'rigorous' regulatory controls apply for animal research, which form the foundation of the 'social licence' that the community gives researchers to conduct animal research.²⁵²

3.25 The University of Sydney commented that 'We would not want public confidence to be eroded by an "exempt" classification that may not be well understood, particularly when compared to the other exempt activities.'²⁵³

3.26 Separately, other references to animal research in the draft bill include:

²⁵⁰ cl 119, Draft Animal Welfare Bill 2021.

²⁵¹ cl 119(1)(g), Draft Animal Welfare Bill 2021.

²⁵² Submission 78, University of Sydney, p 3; Submission 102, NSW/ACT Deputy Vice-Chancellors (Research) Committee, p 2.

²⁵³ Submission 78, University of Sydney, p 3. See also, Submission 102, NSW/ACT Deputy Vice-Chancellors (Research) Committee, p 2.

- clause 42(1) requires a person to hold a licence to carry out animal research and for the supply of animals for animal research²⁵⁴
- clause 45(1) sets out that the regulations may provide for a licensing scheme to carry out a licensed activity.²⁵⁵

3.27 As referenced in 1.21, the Government has advised that the new regulations will incorporate matters relating to the operation of the animal research licensing schemes. This will include the process for applying for a licence and the approach to placing conditions on licences, including standard conditions that will apply to all licences.²⁵⁶

Further detail to be confirmed in the Regulations

3.28 In addition to the issues other stakeholders raised about the regulations not being published at the same time as the draft bill (see 2.1-2.30), the universities who gave evidence to the committee were particularly concerned about the substantial amount of animal research provisions that will need to be covered by the regulation. As the Regulation has not yet been published, inquiry participants such as the NSW/ACT Deputy Vice-Chancellors (Research) Committee described there is 'no clarity' on what it will include.²⁵⁷

3.29 Most of the university stakeholders acknowledged that the inclusion of the licensing scheme in the regulations allows for 'more agile governing' as regulations can be more easily amended to address any unforeseen problems or emerging issues.²⁵⁸

3.30 However Western Sydney University, University of Newcastle, and the NSW/ACT Deputy Vice-Chancellors (Research) Committee maintained that animal research requires consistency and stability and therefore regulation is not the appropriate form of legislation as it could lead to the deterioration of the detailed framework of animal research authorisation.²⁵⁹

3.31 Similarly, the University of New South Wales went so far to say that it is 'not negotiable' to delegate powers to the regulations because of the 'substantial risk' that it will weaken the animal research licensing scheme, including the role of AECs.²⁶⁰

²⁵⁴ cl 42(1), Draft Animal Welfare Bill 2021.

²⁵⁵ cl 45(1), Draft Animal Welfare Bill 2021.

²⁵⁶ Submission 69, NSW Government, p 9.

²⁵⁷ Submission 102, NSW/ACT Deputy Vice-Chancellors (Research) Committee, p 1. See also, Submission 78, University of Sydney, p 1; Submission 95, University of Newcastle, p 1; Submission 100, Western Sydney University, p 2; Evidence, Mr Michael Donnelly, President, Animal Care Australia, 21 March 2022, p 37.

²⁵⁸ Submission 78, University of Sydney, p 2; Submission 95, University of Newcastle, p 1; Submission 100, Western Sydney University, p 2; Submission 102, NSW/ACT Deputy Vice-Chancellors (Research) Committee, p 2. See also, Submission 99, Tree of Compassion, p 3.

²⁵⁹ Submission 95, University of Newcastle, p 1; Submission 100, Western Sydney University, p 2; Submission 102, NSW/ACT Deputy Vice-Chancellors (Research) Committee, p 2.

²⁶⁰ Submission 105, University of NSW, pp 1-2.

- 3.32** Others suggested that the proposed changes will weaken the principles under the current Act and consequentially reverse any improvements to animal welfare precipitated by the new legislation.²⁶¹
- 3.33** University stakeholders therefore unanimously urged the Government to conduct targeted consultation with the research community on all matters pertaining to research and teaching prior to the release of the regulations for public consultation, in order to ensure that all relevant controls are included at an international best practice standard.²⁶²
- 3.34** In response, the Government assured stakeholders of its plan to 'roll over the existing requirements into the new laws' and that the regulations will also incorporate what was not included in the draft bill.²⁶³ The Department of Primary Industries' Director of Animal Welfare, Ms Suzanna Robinson, advised the committee:

We have carried across the substantive areas around the requirements for licensing for animal research and for committees. Then some aspects that are currently sitting in the *Animal Research Act*—the intent is to have them carried over into the regulation.²⁶⁴

Uncertainty regarding incorporation of Animal Ethics Committees and the Code

- 3.35** A primary issue amongst inquiry participants was that the draft bill does not include the fundamental principles of the Act, namely the strict regulatory environment whereby animal research can only currently be carried out with approval from an AEC and in accordance with the Code. As a result, there is uncertainty about if and where the provisions relating to AECs and related crossovers with the Code will fit in with the new legislation.²⁶⁵
- 3.36** The draft bill does not provide for the creation and functions of AECs, other than by permitting regulations to be made concerning these committees.²⁶⁶
- 3.37** The NSW Ombudsman highlighted that although these matters may be procedural details, they are important to include as these details impact the AEC's ability to remain independent, representative and sufficiently qualified to perform their functions.²⁶⁷ Western Sydney

²⁶¹ See, Evidence, Professor Rogge, 21 March 2022, p 3; Submission 78, University of Sydney, p 1; Submission 102, NSW/ACT Deputy Vice-Chancellors (Research) Committee, p 2; Evidence, Professor Kevin Dunn, Pro Vice-Chancellor Research, Western Sydney University, 21 March 2022, p 4.

²⁶² Submission 78, University of Sydney, p 2; Submission 95, University of Newcastle, p 2; Submission 105, University of New South Wales, p 2; Submission 100, Western Sydney University, p 2; Submission 102, NSW/ACT Deputy Vice-Chancellors (Research) Committee, p 2.

²⁶³ Evidence, Ms Tara Black, Deputy Director General, Strategy and Engagement, Department of Primary Industries, 21 March 2022, p 61.

²⁶⁴ Evidence, Ms Suzanne Robinson, Director, Animal Welfare, Department of Primary Industries, 21 March 2022, p 63.

²⁶⁵ See for example, Submission 95, University of Newcastle, p 1; Submission 100, Western Sydney University, p 1.

²⁶⁶ See clause 45(h)(iii).

²⁶⁷ Submission 91, NSW Ombudsman, pp 6-7.

University also described this as an 'important limitation' and recommended that the draft bill at least reference the Code and provide a clear framework for AEC procedures.²⁶⁸

- 3.38** Similarly, Dr Susan Maastricht, Director of the University of Sydney's Research Integrity and Ethics Administration, praised the partnership and collaboration that exists between the current Act and the Code. The partnership is notably absent in the draft bill, with Dr Maastricht describing it as lacking 'sufficient teeth and clarity' for people to be able to quickly and easily find information and understand what is prescribed.²⁶⁹
- 3.39** The NSW/ACT Deputy Vice-Chancellors (Research) Committee hence questioned the Government's decision to relinquish its standing as a leader in this area, noting that other states and territories have legislatively set 'minimum standards' for the welfare of animals used in research but these have failed to meet the standards described in the Code. It explained that researchers are then left to meet the Code requirements without the direction and penalties currently specified in the New South Wales Act.²⁷⁰
- 3.40** The University of Sydney, University of New South Wales, University of Newcastle, Western Sydney University and Professor Margaret Rose therefore strongly recommended that if the Act is incorporated into the draft bill, it should carry over key sections of the Act and its Regulation, including specific alignment and reference to the Code and providing a clear framework for AEC procedures.²⁷¹

Streamlining and modernising legislation

- 3.41** The Government's intention for the new legislative framework is 'to streamline and modernise and make the requirements consistent where they can be'.²⁷² This was supported by some inquiry participants, including the NSW Bar Association and Humane Society International, on the basis that the legislation could be easier to navigate and administer.²⁷³
- 3.42** The Government also told the committee that 66 per cent of public feedback was supportive when it consulted with the community to consolidate the three existing animal welfare related Acts into a single piece of legislation.²⁷⁴
- 3.43** However there was very limited support from inquiry participants in favour of integrating the Act into a general bill. Animal welfare advocates, including the RSPCA NSW, did not raise any concerns about maintaining separate legislation.²⁷⁵

²⁶⁸ Submission 100, Western Sydney University, p 1.

²⁶⁹ Evidence, Dr Susan Maastricht, Director, Research Integrity and Ethics Administration, University of Sydney, 21 March 2022, p 10.

²⁷⁰ Submission 102, NSW/ACT Deputy Vice-Chancellors (Research) Committee, p 1

²⁷¹ Submission 78, University of Sydney, p 2; Submission 95, University of Newcastle, p 2; Submission 100, Western Sydney University, p 1; Submission 104, Margaret Rose, p 2; Submission 105, University of New South Wales, p 1.

²⁷² Evidence, Ms Black, 21 March 2022, p 62.

²⁷³ Submission 103, NSW Bar Association, p 1; Evidence, Ms Nicola Beynon, Head of Campaigns, Humane Society International, 16 March 2022, p 94.

²⁷⁴ Answers to questions on notice, Department of Primary Industries, 5 May 2022, p 3.

²⁷⁵ See for example, Submission 80, RSPCA NSW, p 1; Submission 146, Animal Defenders Office, p 1.

3.44 In addition to the issues raised in the above sections, Professor Kevin Dunn, Pro Vice-Chancellor of Research at the Western Sydney University, warned of gaps that could be left with the repeal of the Act. Professor Dunn stated:

Its repeal could leave gaps in regulation that could undo what we perceive as very robust and effective animal protections that we have for research at the moment. Without those, we think there is the risk of unnecessary adverse events and unacceptable practice.²⁷⁶

3.45 When the committee questioned the benefits of incorporating the *Animal Research Act* into the draft bill and whether the Government was 'solving a problem that did not exist', Ms Tara Black, Deputy Director General of Strategy and Engagement, responded that the department is open to feedback. She also advised that it will consider whether it is clearer and easier to understand if the *Animal Research Act* is separated from the new Animal Welfare Act.

3.46 The Director of Animal Welfare, Ms Suzanne Robinson, also commented:

I guess we can have a look at if there is benefit in moving it into a separate piece of legislation and carrying over those benefits of the review and getting the consistency of approach across the different animal welfare areas.²⁷⁷

3.47 The Government further confirmed that it has noted stakeholder concerns raised throughout the inquiry process and are currently considering options for the most appropriate structure for the regulatory framework.²⁷⁸

Committee comment

3.48 Firstly, the committee wishes to indicate its support for the streamlining of the animal welfare regulatory framework in New South Wales. We therefore endorse and congratulate the Government's initiative to modernise the animal welfare legislative and policy framework, in line with emerging science and research and evolving community expectations.

3.49 We have carefully considered the evidence presented to us about the potential benefits and impacts of incorporating the *Animal Research Act 1985* into the Draft Animal Welfare Bill 2021. Although we recognise why the Government is aiming to streamline and consolidate the legislation, we are not convinced that the *Animal Research Act 1979* should be included in these reforms. We have been persuaded by the evidence of the university and research community that due to the complex nature of their work and environment they operate in, animal research is best governed by its own separate Act and regulations.

3.50 Therefore, we are of the opinion that incorporating the Act into the new bill, much of which will be delegated to regulations, is unnecessary and inappropriate at this time. We also do not believe that it will fulfil the Government's intention to make the legislation clearer and easier to navigate.

²⁷⁶ Evidence, Professor Dunn, 21 March 2022, p 3.

²⁷⁷ Evidence, Ms Robinson, 21 March 2022, p 63.

²⁷⁸ Answers to questions on notice, Department of Primary Industries, p 3.

- 3.51** It is possible that the current proposal may lead to gaps in the highly complex and regulated space of animal research, which may ultimately lead to inferior welfare. The Committee therefore recommends that as part of its animal welfare reforms, the NSW Government retain the *Animal Research Act 1985* as a separate Act.
- 3.52** It is noted that Portfolio Committee No. 2 – Health is currently conducting an inquiry into the use of primates and other animals in medical research in New South Wales, which is specifically considering the ‘adequacy of the current regulatory regime regarding the use of animals in medical research’. The committee draws the attention of the NSW Government to this inquiry given the potential implications of any of its findings for the *Animal Research Act 1985*.

Recommendation 2

That the NSW Government retain the *Animal Research Act 1985* as a separate Act.

Appendix 1 Submissions

No.	Author
1	Mr Luke Brown
2	Name suppressed
3	Name suppressed
4	Humane Research Australia
5	Name suppressed
6	Name suppressed
7	Name suppressed
8	Name suppressed
8a	Name suppressed
9	Name suppressed
10	Ms Sarah Avery
11	Name suppressed
12	Mr Cole Little
13	Confidential
14	Northern Rivers Veterinary Service
15	Name suppressed
16	Mr Waylan Murray
17	Mr Tammy Everist
18	Miss Sharon Richards
19	Name suppressed
20	Name suppressed
21	Name suppressed
22	Name suppressed
23	Name suppressed
24	Mr Peter Curtis
25	Name suppressed
26	Ms Crystel Walter
27	Mrs Judith Walter
28	Name suppressed
29	Rev Robert Rayner
30	Name suppressed
31	Name suppressed

No.	Author
32	Name suppressed
33	Dr Annette Page
34	Mr Jed Canellis
35	Name suppressed
36	Mrs Tannille Ohara
37	Shooters Union New South Wales
38	Confidential
39	Australian Privacy Foundation
40	Professor Culum Brown
40a	Professor Culum Brown
41	Name suppressed
42	Name suppressed
43	Name suppressed
44	Name suppressed
45	Mr Rickey Buttery
46	Mrs Jennifer Macdougall
47	Mr Rodney Slater
48	Mrs Kelly Slater
49	Name suppressed
50	Name suppressed
51	Ms Soo Balbi
52	Ms Ann Glenane
53	Australian Veterinary Association
54	Name suppressed
55	Name suppressed
56	Name suppressed
57	Name suppressed
58	Name suppressed
59	Name suppressed
60	Master Dog Breeders and Associates
61	Name suppressed
62	Sentient Animal Law Foundation
63	Amanda Evans
64	Veterinary Practitioners Board
65	The French Bulldog Club of NSW Inc

No.	Author
66	Confidential
67	Animals' Angels
68	The Australian Pig Doggers and Hunters Association
69	NSW Government
70	Dogs NSW
71	Youth for Conservation
72	Name suppressed
73	Name suppressed
74	The German Shepherd Dog League of NSW Inc
75	Australian Pork Limited
76	Companions And Pets Party
77	Greyhound Racing New South Wales
78	The University of Sydney
79	Wollondilly Shire Council
80	RSPCA NSW
81	Cat Protection Society of NSW
82	German Shepherd Dog Council of Australia
83	The Australian Association of Pet Dog Breeders
84	CatRescue 901
85	K9 Pro - The K9 Professionals
86	Dogs Australia (ANKC)
87	Coalition for the Protection of Greyhounds
88	World Animal Protection Australia
89	GREY2K USA Worldwide
90	NSW Greyhound Breeders, Owners and Trainers Association
91	NSW Ombudsman
92	Sentient, The Veterinary Institute of Animal Ethics
93	Animal Care Australia
94	Humane Society International Australia
95	The University of Newcastle
96	Pet Professional Guild Australia
97	Canary and Cage Bird Federation of Australia Inc.
98	NSW Cat Fanciers Association Incorporated
99	Tree of Compassion
100	Western Sydney University

No.	Author
101	Recreational Fishing Alliance of NSW
102	NSWACT Deputy Vice-Chancellors (Research) Committee
103	New South Wales Bar Association
104	Margaret Rose
105	The University of New South Wales
106	Mary Ann Gourlay
107	Name suppressed
108	Name suppressed
109	Name suppressed
110	Name suppressed
111	Name suppressed
112	Mrs Lisa Weeks
113	Name suppressed
114	Ms Dell Yates
115	Name suppressed
116	Ms Barbara Miller
117	Diana Geier
118	Name suppressed
119	Name suppressed
120	Mrs Sandra Farkash
121	Name suppressed
122	Mr Stephen Wharton
123	Name suppressed
124	Name suppressed
125	Name suppressed
126	Confidential
127	Mrs Julia Roso
128	Confidential
129	NSW Young Lawyers, The Law Society of NSW
130	Robelletoy Poodles
131	Cobbers for Life
132	Dr Joy Becker
133	Name suppressed
134	Name suppressed
135	Name suppressed

No.	Author
136	Mr Benjamin Cronshaw
137	Name suppressed
138	Name suppressed
139	Paul Murphy
140	Name suppressed
141	Name suppressed
142	Mrs Kay Labo
143	Name suppressed
144	Confidential
145	Name suppressed
146	Animal Defenders Office
147	Name suppressed
148	Name suppressed
149	Name suppressed
150	Ms Elizabeth Davidson
151	Confidential
152	Name suppressed
153	Name suppressed
154	Mrs Theresa Hawkins
155	Name suppressed
156	Confidential
157	Confidential
158	Name suppressed
159	Ms Elizabeth Gentle
160	Ms Yvonne Wedgwood
161	Name suppressed
162	Name suppressed
163	Mr Stephen Morris
164	Name suppressed
165	Miss Kerri Goman
166	Confidential
167	Mrs Margaret Maierhofer
168	Ms Karen O'Clery
169	Ms Judy Dean
170	Name suppressed

No.	Author
171	Name suppressed
172	Mrs Grace Woodward
173	Name suppressed
174	D White
175	Miss Michelle Stendara
176	Mrs Marguerite White
177	Mrs Pamela Turner
178	Miss Annette Rodgers
179	Ms Kristin Carroll
180	Name suppressed
181	Name suppressed
182	Miss Sharon Richards
183	Name suppressed
184	Name suppressed
185	Name suppressed
186	Ms Julie Deem
187	Mrs Ellie Robertson
188	Name suppressed
189	Name suppressed
190	Name suppressed
191	Name suppressed
192	Mrs Michelle Conley
193	Ms Colleen Kirgan
194	Name suppressed
195	Ms Belinda Wright
196	Name suppressed
197	Name suppressed
198	Name suppressed
199	Confidential
200	Name suppressed
201	Jo Bickley
202	Name suppressed
203	Mr Sean O'Donnell
204	Miss Donna Lennard
205	Name suppressed

No.	Author
206	Name suppressed
207	Mrs Sue Adams
208	Ms Michelle Parker
209	Name suppressed
210	Robyn Brown
211	Ms Gaynor Gaynor
212	Name suppressed
213	Mrs Anna Quigley
214	Ms Pauline Worthington
215	Name suppressed
216	Name suppressed
217	Confidential
218	Name suppressed
219	Name suppressed
220	Name suppressed
221	Mrs Merri-Lyn Burton
222	Dr Susanne Pedersen
223	Dr Henna Kuusisto
224	Name suppressed
225	Name suppressed
226	Name suppressed
227	Katie Lucantonio
228	Jan Kendall
229	Ms Yvonne Yun
230	Mr Pat Stuart
231	Name suppressed
232	Name suppressed
233	Name suppressed
234	Miss Frith McGuinness
235	Confidential
236	Name suppressed
237	Name suppressed
238	Name suppressed
239	Name suppressed
239a	Name suppressed

No.	Author
240	Name suppressed
241	Name suppressed
242	Name suppressed
243	Name suppressed
244	Panaquatic Health Solutions Pty Ltd
245	Name suppressed
246	Name suppressed
247	Confidential
248	Mrs Courtney Spencer
249	Name suppressed
250	Name suppressed
251	NSW Farmers' Association
252	Animal Liberation
253	Lawyers for Animals
254	Firearm Owners United
255	Name suppressed
256	Name suppressed
257	Mr Peter Stevenson-Fraser
258	Mr David Mirenda
259	Mrs Kay Labo
260	Ms Deirdre Downey
261	Ms Ceara Metlikovec
262	Mrs Martine Porret
263	Name suppressed
264	Name suppressed
265	Name suppressed
266	Name suppressed
267	Ms Francesca Agosti
268	Mrs Judith Leslie
269	Name suppressed
270	Name suppressed
271	Mrs Takako Ishii kiefer
272	Confidential
273	Ms Gabrielle Smalley
274	Mr Dale Smalley

No.	Author
275	Denisa Jalloh
276	Mr Dogan Ozkan
277	Confidential
278	Ms Anthea Von Staerck
279	Name suppressed
280	Mrs Clare Evans
281	Ms Corinne Sellers
282	Name suppressed
283	Ms Soo Balbi
284	Name suppressed
285	Name suppressed
286	Mrs Andrea Caldwell
287	Mrs Meg Nielsen
288	Mr Peter Nielsen
289	Confidential
290	Name suppressed
291	Ms Susan Brown
292	Ms Roseleen Healy
293	Ms Virginia Stalenberg
294	Name suppressed
295	Miss Alison Boulton
296	Ms Jennifer Simpson
297	Dr Michelle Haron
298	Name suppressed
299	Ms Cheryl Forrest-Smith
300	Ms Rowena Ollis
301	Ms Fiona Knight
302	Charles Davis
303	Ms Sirkka Harrisson
304	Name suppressed
305	Name suppressed
306	Name suppressed
307	Name suppressed
308	Name suppressed
309	Mr Robert Wade

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Wednesday 16 March 2022 Preston Stanley Room Parliament House, Sydney	Ms Rochelle Flood	Campaign Manager, World Animal Protection Australia
	Ms Nicola Beynon	Head of Campaigns, Humane Society International
	Dr Jed Goodfellow	Consultant, Humane Society International
	Ms Kristina Vesk	CEO, Cat Protection Society
	Ms Fiona Chisholm	NSW State Director, Coalition for the Protection of Greyhounds
	Ms Glenys Oogjes	CEO, Animals Australia
	Ms Shatha Hamade	Legal Counsel, Animals Australia
	Mr Craig Golding	Director, Shooters Union NSW
	Mr Ned Makim	Vice President, The Australian Pig Doggers and Hunters Association
	Mr James Jackson	President, NSW Farmers
	Ms Annabel Johnson	Head of Policy, NSW Farmers
	Ms Margo Andrae	Chief Executive Officer, Australian Pork Limited
	Mr Robert Macaulay	Head of Legal, Greyhound Racing NSW
	Ms Kristy Harper	Membership & Advocacy Manager, NSW Greyhound Breeders, Owners and Trainers Association
	Mr Stephen Noyce	Membership & Advocacy Manager, NSW Greyhound Breeders, Owners and Trainers Association
Ms Yvonne Yun	Executive Member, The German Shepherd Dog League of NSW	

Date	Name	Position and Organisation
	Miss Michelle Grayson	Treasurer - Executive Committee NSW Cat Fanciers Association Incorporated
Monday 21 March 2022 Preston Stanley Room Parliament House, Sydney	Professor Kathy Belov	Pro Vice-Chancellor (Global Engagement), University of Sydney
	Dr Susan Maastricht	Director, Research Integrity and Ethics Administration, University of Sydney
	Professor Sven Rogge	Pro Vice-Chancellor Research, University of New South Wales
	Dr Ted Rohr	Director of Research Ethics & Compliance Support, University of New South Wales
	Professor Kevin Dunn	Pro Vice-Chancellor Research, Western Sydney University
	Dr Ian Robertson	Director, Sentient Animal Law Foundation
	Mr Daniel Goldsworthy	Director, Sentient Animal Law Foundation
	Ms Tara Ward	Managing Solicitor (volunteer), Animal Defenders Office
	Professor Culum Brown	Head of the Fish Lab, Macquarie University
	Ms Kathryn Jurd	General Counsel, RSPCA NSW
	Dr Elizabeth Arnott	Chief Veterinarian, RSCPA NSW
	Mr Matthew Godwin	Chief Inspector, Animal Welfare League of NSW
	Ms Lyn Brand	President, Dogs NSW
Ms Deidre Crofts	Animal Welfare and Community Liaison Officer, Dogs NSW	
Mr Michael Donnelly	President, Animal Care Australia	
Mr Sam Davis	Vice President, Animal Care Australia	

Date	Name	Position and Organisation
	Ms Diane Ryan	NSW Division President, Australian Veterinary Association
	Ms Liz Gemes	Senior Advocacy Officer, Australian Veterinary Association
	Dr Rosemary Elliott	President, Sentient, the Veterinary Centre for Animal Ethics
	Dr Katherine van Ekert	Vice President, Sentient, the Veterinary Centre for Animal Ethics
	Ms Rachel Smith	CEO, Humane Research Australia
	Ms Tara Black	Deputy Director General Strategy and Engagement, Department of Primary Industries (DPI)
	Ms Clem Harris	Director, Policy and Industry Insights, Department of Primary Industries (DPI)
	Ms Suzanne Robinson	Director Animal Welfare, Department of Primary Industries (DPI)
	Assistant Commissioner Brett Greentree	Region Commander – Western Region, NSW Police Force
	Mr Matthew Tutt	Director, Compliance, Policy & Legal, Greyhound Welfare & Integrity Commission (GWIC)
	Dr Juliet Corish	Senior Manager Policy & Registration, Greyhound Welfare & Integrity Commission (GWIC)
	Mr John Baguley	Registrar, Veterinary Practitioners Board of NSW

Appendix 3 Minutes

Minutes no. 15

Tuesday 30 November 2021
 Standing Committee on State Development
 Via videoconference, 1.01 pm

1. Members present

Ms Cusack, *Chair*
 Mr Veitch, *Deputy Chair*
 Mr Banasiak
 Mr Fang
 Mr Graham
 Mr Khan (substituting for Mr Farraway)
 Mrs Maclaren-Jones
 Mr Pearson
 Ms Hurst (*substituting for Mr Pearson for the duration of the inquiry into animal welfare policy in NSW*)

2. Previous minutes

Resolved, on the motion of Mr Veitch: That draft minutes no. 14 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 25 November 2021 – Letter to Ms Catherine Cusack MLC, from the Hon Adam Marshall MP, Minister for Agriculture and Western New South Wales, requesting the committee to consider terms of reference for an inquiry into animal welfare policy in New South Wales
- 26 November 2021 – Email from the Hon Emma Hurst MLC, to the Chair, advising she will be substituting for Mr Pearson for the duration of the inquiry into animal welfare policy in NSW.

4. Consideration of ministerial terms of reference

The Chair tabled the following terms of reference received from the Hon Adam Marshall MP, Minister for Agriculture and Western New South Wales on 25 November 2021:

1. That the Standing Committee on State Development inquire into and report on the State's animal welfare policy, regulatory and legislative framework, including any measures required to:
 - a) streamline animal welfare laws in New South Wales,
 - b) reduce and remove unnecessary regulation, and
 - c) ensure existing policy and regulatory arrangements remain appropriately balanced
2. That upon its publication in December 2021, the Committee review the proposed Exposure Draft *Animal Welfare Bill 2021*, developed following the NSW Animal Welfare Reform – Discussion Paper
3. The Committee provide an interim report by 30 May 2022.
4. That upon their publication, the Committee inquire into and report on the draft regulations associated with the proposed *Animal Welfare Bill 2021*
5. The Committee table its final report as soon as practicable after the release of the draft Regulations.

Resolved, on the motion of Mr Khan: That the committee adopt the terms of reference.

5. Conduct of the inquiry into animal welfare policy in New South Wales

5.1 Closing date for submissions

Resolved, on the motion of Mrs Maclaren-Jones: That the closing date for submissions be Sunday 13 February 2022.

5.2 Stakeholder list

Resolved, on the motion of Mr Veitch: That the secretariat circulate to members the Chairs' proposed list of stakeholders to provide them with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

5.3 Advertising

All inquiries are advertised via Twitter, Facebook, stakeholder emails and a media release distributed to all media outlets in New South Wales.

It is no longer standard practice to advertise in the print media. The committee should pass a resolution if it wishes to do so.

5.4 Hearing dates

Resolved, on the motion of Mr Veitch: That the committee hold hearings in March / early April 2022, the dates of which are to be determined by the Chair after consultation with members regarding their availability.

6. Adjournment

The committee adjourned at 1.14 pm, *Sine die*.

Emma Rogerson
Committee Clerk

Minutes no. 16

Wednesday 16 March 2022

Standing Committee on State Development

Preston Stanley Room, Parliament House, 9.15 am

1. Members present

Ms Cusack, *Chair*

Mr Veitch, *Deputy Chair*

Mr Banasiak

Mr Barrett

Mr Buttigieg (*substituting for Mr Graham until 12.15 pm*) (*via videoconference*)

Mr Graham (*from 1.15 pm*) (*via videoconference*)

Ms Hurst

Mr Martin

Ms Boyd (*participating*)

2. Apologies

Mr Poulos

3. Change of membership

The committee noted the changes to committee membership.

4. Previous minutes

Resolved, on the motion of Mr Veitch: That draft minutes no. 15 be confirmed.

5. Correspondence

The committee noted the following items of correspondence:

Received

- 24 December 2021 – Email from Mr Scott Hansen, Director General, NSW Department of Primary Industries to Chair, providing a copy of the draft Animal Welfare Bill 2022 for the committee's information.
- 10 March 2022 – Email from Mr Stan Konstantaras, President, Recreational Fishing Alliance to secretariat, declining an invitation to appear as a witness at a hearing.
- 11 March 2022 – Email from Mr Pete Sweney, General Counsel, Racing NSW to secretariat, declining an invitation to appear as a witness at a hearing.

6. Inquiry into animal welfare policy in New South Wales

6.1 Public submissions

The committee noted the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1, 4, 10, 12, 14, 16-18, 24, 26, 27, 29, 33, 34, 36-39, 45-48, 51-53, 60, 62-71, 74-106, 112, 114, 116, 117, 120, 122, 127, 129-132, 146 and 251.

6.2 Partially confidential submissions (name suppressed)

Resolved, on the motion of Mr Barrett: That the committee keep the following information confidential, as per the requests of the authors: names and/or identifying and sensitive information in submissions nos. 2, 3, 5-9, 11, 15, 19-23, 25, 28, 30-32, 35, 40-44, 49, 50, 54-59, 61, 72, 73, 107-111, 113, 115, 118, 119, 121, 123-125 and 133-135.

6.3 Confidential submissions

Resolved, on the motion of Mr Veitch: That the committee keep submission nos. 13, 38, 66, 126 and 128 confidential, as per the requests of the authors.

6.4 Public hearing

The committee proceeded to take evidence in public at 9.29 am.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Rochelle Flood, Campaign Manager, World Animal Protection Australia
- Ms Nicola Beynon, Head of Campaigns, Humane Society International
- Dr Jed Goodfellow, Consultant, Humane Society International
- Ms Kristina Vesk, CEO, Cat Protection Society of NSW Limited

Ms Vesk tendered the following document:

- David Mellor et al., 'The 2020 Five Domains Model: Including Human-Animal Interactions in Assessments of Animal Welfare' (2020) *Animals* Volume 10, Issue 10, Article 1870.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Fiona Chisholm, NSW State Director, Coalition for the Protection of Greyhounds
- Ms Glenys Oogjes, CEO, Animals Australia
- Ms Shatha Hamade, Legal Counsel, Animals Australia

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Craig Golding, Director, Shooters Union NSW
- Mr Ned Makim, Vice President, Australian Pig Doggers and Hunters Association

Mr Golding tendered the following document:

- RSPCA Australia, 'Recreational hunting and animal welfare' (December 2017)

Mr Makim tendered the following document:

- Australian Pig Doggers and Hunters Association, APDHA Submission (July 2021): NSW Animal Welfare Reform Discussion Paper

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr James Jackson, President, NSW Farmers
- Ms Annabel Johnson, Head of Policy, NSW Farmers
- Ms Margo Andrae, Chief Executive Officer, Australian Pork Limited

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Robert Macaulay, Head of Legal, Greyhound Racing NSW
- Ms Kristy Harper, Membership & Advocacy Manager, NSW Greyhound Breeders, Owners and Trainers Association
- Mr Stephen Noyce, Membership & Advocacy Manager, NSW Greyhound Breeders, Owners and Trainers Association

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Yvonne Yun, Executive Member, The German Shepherd Dog League of NSW Inc
- Miss Michelle Grayson, Treasurer - Executive Committee, NSW Cat Fanciers Association Incorporated

The evidence concluded and the witnesses withdrew.

The hearing concluded at 3.51 pm.

6.5 Tendered documents

Resolved on the motion of Mr Martin: That the committee accept and publish the following documents tendered during the public hearing:

- David Mellor et al, 'The 2020 Five Domains Model: Including Human-Animal Interactions in Assessments of Animal Welfare' (2020) *Animals* Volume 10, Issue 10, Article 1870, tendered by Ms Vesk
- RSPCA Australia, 'Recreational hunting and animal welfare' (December 2017), tendered by Mr Golding
- Australian Pig Doggers and Hunters Association, APDHA Submission (July 2021): NSW Animal Welfare Reform Discussion Paper, tendered by Mr Makim

7. Other business

8. Adjournment

The committee adjourned at 3.57 pm, until Monday 21 March 2022, 9.15 am (Preston Stanley Room).

Stewart Smith
Committee Clerk

Minutes no. 17

Monday 21 March 2022
 Standing Committee on State Development
 Preston Stanley Room, Parliament House, 9.17 am

1. Members present

Ms Cusack, *Chair*
 Mr Veitch, *Deputy Chair*
 Mr Banasiak (from 9.26 am until 1.15 pm; from 2.50 pm until 4.00 pm)
 Mr Barrett
 Mr Graham (until 3.50 pm) (*via videoconference* from 2.10 pm)
 Ms Hurst
 Mr Martin (from 9.21 am)
 Mr Poulos (*via videoconference*) (from 12.09 pm)
 Ms Boyd (*participating*)

2. Apologies

3. Previous minutes

Resolved, on the motion of Mr Veitch: That draft minutes no. 16 be confirmed.

4. Inquiry into animal welfare policy in New South Wales

4.1 Updated publication status of submission No. 40

The committee noted that the updated status of submission No. 40 (public).

4.2 Recording and publication of hearing

Resolved, on the motion of Mr Veitch: That the hearings on 16 March, 21 March 2022 and any future public hearings be recorded and the recording be uploaded on the NSW Parliament's YouTube page and a link be published on the inquiry webpage as soon as practicable after the hearing subject to any comments or concerns from the secretariat or the committee after the hearing.

4.3 Public hearing

The committee proceeded to take evidence in public at 9.33 am.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Professor Kathy Belov, Pro Vice-Chancellor (Global Engagement), The University of Sydney
- Dr Susan Maastricht, Director, Research Integrity and Ethics Administration, The University of Sydney
- Professor Sven Rogge, Pro Vice-Chancellor Research, University of New South Wales
- Dr Ted Rohr, Director of Research Ethics & Compliance Support, University of New South Wales
- Professor Kevin Dunn, Pro Vice-Chancellor Research, Western Sydney University

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Ian Robertson, Director, Sentient Animal Law Foundation
- Mr Daniel Goldsworthy, Director, Sentient Animal Law Foundation
- Professor Culum Brown, Head of the Fish Lab, Macquarie University

- Ms Tara Ward, Managing Solicitor (volunteer), Animal Defenders Office

Professor Brown tendered the following document:

- Professor Culum Brown, supplementary submission to the inquiry

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Kathryn Jurd, General Counsel, RSPCA NSW
- Dr Elizabeth Arnott, Chief Veterinarian, RSPCA NSW
- Mr Matthew Godwin, Chief Inspector, Animal Welfare League of NSW

Dr Arnott tendered the following document:

- Allan Gunn et al., 'Letter to the Editor: The animal welfare aspects of surgical artificial insemination in the canine' (2021) *Australian Veterinary Journal*, Volume 99, No 4

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Lyn Brand, President, Dogs NSW
- Ms Deidre Crofts, Animal Welfare and Community Liaison Officer, Dogs NSW
- Mr Michael Donnelly, President, Animal Care Australia
- Mr Sam Davis, Vice President, Animal Care Australia

Mr Donnelly tendered the following document:

- Animal Care Australia, Opening statement: Inquiry into animal welfare policy in New South Wales, 21 March 2022

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Diane Ryan, NSW Division President, Australian Veterinary Association
- Ms Liz Gemes, Senior Advocacy Officer, Australian Veterinary Association
- Dr Rosemary Elliott, President, Sentient, the Veterinary Centre for Animal Ethics
- Dr Katherine van Ekert, Vice President, Sentient, the Veterinary Centre for Animal Ethics
- Ms Rachel Smith, CEO, Humane Research Australia

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Tara Black, Deputy Director General Strategy and Engagement, Department of Primary Industries (DPI)
- Ms Clem Harris, Director Policy and Industry Insights, DPI
- Ms Suzanne Robinson, Director Animal Welfare, DPI
- Assistant Commissioner Brett Greentree, Region Commander – Western Region, NSW Police Force
- Mr Matthew Tutt, Director, Compliance, Policy & Legal, Greyhound Welfare & Integrity Commission (GWIC)
- Dr Juliet Corish, Senior Manager Policy & Registration, GWIC

- Mr John Baguley, Registrar, Veterinary Practitioners Board of NSW

The evidence concluded and the witnesses withdrew.

The hearing concluded at 4.25 pm.

4.4 Tendered documents

Resolved on the motion of Mr Martin: That the committee accept and publish the following documents tendered during the public hearing:

- Professor Culum Brown, supplementary submission to the inquiry, tendered by Professor Brown
- Allan Gunn et al., 'Letter to the Editor: The animal welfare aspects of surgical artificial insemination in the canine' (April 2021) *Australian Veterinary Journal*, Volume 99, No 4, tendered by Dr Arnott
- Animal Care Australia, Opening statement: Inquiry into animal welfare policy in New South Wales, 21 March 2022, tendered by Mr Donnelly

5. Other business

6. Adjournment

The committee adjourned at 4.29 pm, *sine die*.

Stewart Smith
Committee Clerk

Draft minutes no. 18

Friday 10 June 2022

Standing Committee on State Development

Room 1254, Parliament House, 10.02 am

1. Members present

Ms Cusack, *Chair*

Mr Veitch, *Deputy Chair*

Mr Banasiak

Mr Barrett

Mr Fang (substituting for Mr Martin) (via videoconference)

Mr Graham

Ms Hurst

Mr Rath (substituting for Mr Poulos)

2. Apologies

Ms Boyd (participating)

3. Previous minutes

Resolved, on the motion of Mr Veitch: That draft minutes no. 17 be confirmed.

4. Correspondence

Committee noted the following items of correspondence:

Received:

- 10 April 2022 – Letter from Dr Margaret Rose, Former Chair of the NSW Animal Research Review Panel (1986-2010), to the Chair, regarding the development of the Australian Code for the Care and Use of Animals for Scientific Purposes

- 3 June 2022 – Email from Ms Charley-Rose Ford, Policy Analyst, Animal Welfare and Trade, Australian Pork Limited, to the secretariat, providing further information regarding the New Zealand National Animal Welfare Advisory Committee Review.

Sent:

- 29 April 2022 – Letter from the Chair, to the Hon Dugald Saunders MP, Minister for Agriculture and Western New South Wales, advising of the extension in reporting date for the animal welfare policy inquiry interim report.

5. Inquiry into animal welfare policy in New South Wales

5.1 Extension of reporting date

The committee noted that following agreement from the committee via email, the Chair sought an extension to the reporting date from the House until 15 June 2022.

5.2 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos 136, 139, 142, 150, 154, 159, 160, 163, 165, 167-169, 172, 174-179, 182, 186, 187, 192, 193, 195, 201, 203, 204, 207, 208, 210, 211, 213, 214, 221-223, 227-230, 232, 234, 244, 248, 252-254, 257-262, 267-268, 271, 273-276, 278, 280-281, 283, 286-288, 291-293, 295-297, 299-303 and 309.

5.3 Name suppressed submissions

Resolved, on the motion of Mr Banasiak: That the committee keep the name of each author confidential in submission nos 137, 138, 140, 141, 143, 145, 147-149, 152, 153, 155, 158, 161, 162, 164, 170, 171, 173, 180, 183-185, 188-191, 194, 196-198, 200, 202, 205, 206, 209, 212, 215, 216, 218-220, 224-226, 231, 233, 236-243, 245, 246, 249-250, 255-256, 263-266, 269-270, 279, 282, 284-285, 290, 294, 298 and 304-308.

5.4 Confidential submissions

Resolved, on the motion of Mr Banasiak: That the committee keep submission nos 144, 151, 156, 157, 166, 199, 217, 235, 247, 272, 277 and 289 confidential, as per the request of the author.

5.5 Answers to questions on notice

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice and supplementary questions from World Animal Protection Australia, received 12 April 2022
- answers to questions on notice and supplementary questions from Humane Society International, received 14 April 2022
- answers to supplementary questions from Animals Australia, received 14 April 2022
- answers to supplementary questions from NSW Farmers, received 14 April 2022
- answers to supplementary questions from Cat Protection Society, received 18 April 2022
- answers to questions on notice from Shooters Union NSW, received 27 April 2022
- answers to questions on notice from Australian Pig Doggers and Hunters Association, received 29 April 2022
- answers to questions on notice from Western Sydney University, received 28 April 2022
- answers to questions on notice from University of Sydney, received 2 May 2022
- answers to questions on notice from University of New South Wales, received 5 May 2022
- answers to questions on notice and supplementary questions from RSPCA NSW, received on 5 May 2022
- answers to supplementary questions from Animal Care Australia, received 5 May 2022
- answers to questions on notice from Australian Veterinary Association, received 5 May 2022
- answers to questions on notice and supplementary questions from Sentient, the Veterinary Centre for Animal Ethics, received 5 May 2022

- answers to questions on notice and supplementary questions from Department of Primary Industries, received 5 May 2022
- answers to supplementary questions from Animal League of NSW, received 6 May 2022.
- answers to questions on notice and supplementary questions from Animal Defenders Office received 6 May 2022.

5.6 Supplementary submission – Animal Care Australia

Resolved, on the motion of Ms Hurst: That the document from Animal Care Australia be:

- treated as correspondence to the committee,
- kept confidential with the exception of certain sections.

5.7 Answers to questions on notice from Australian Pork Limited

Resolved, on the motion of Mr Veitch: That Australian Pork Limited's answers to questions on notice, received 14 April 2022, be published.

5.8 Consideration of Chair's draft report

The Chair submitted her draft report, entitled 'Animal welfare policy in New South Wales – First report', which, having been previously circulated, was taken as being read.

Resolved, on the motion of Ms Hurst: That paragraph 1.1 be amended by inserting 'December' before 2021.

Resolved, on the motion of Ms Hurst: That paragraph 2.1 be amended by:

- inserting ', and the draft Animal Welfare Bill seeks to move many provisions that are currently in legislation into the new regulations' after 'published yet'
- omitting 'and this was a key issue' and inserting instead 'which was'.

Resolved, on the motion of Ms Hurst: That paragraph 2.5 be amended by inserting 'number of provisions being moved from legislation into regulation given the' after 'concerned about the'.

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 2.13:

'For example, the NSW Ombudsman raised a number of concerns regarding shifting provisions into regulations:

'... we have noted that the Bill will repeal specific provisions of current legislation and replace them with 'mere' regulation-making powers. In particular, we note:

1. the repeal of provisions in the *Prevention of Cruelty to Animals Act 1979*, the *Animal Research Act 1985* and the *Exhibited Animals Protection Act 1986* concerning the establishment and composition of committees and panels, and the inclusion instead of clauses that provide for certain matters to be dealt with by regulation
2. the replacement of the registration and licensing provisions of the *Animal Research Act 1985* with a clause providing that regulations 'may provide for a licensing scheme to carry out a licensed activity'
3. the replacement of the *Animal Research Act 1985* complaints scheme with a provision permitting the regulations to provide for a complaints scheme, and
4. clause 46 of the Bill, which provides for regulations to prescribe which decisions under the Bill are to be 'reviewable decisions' for the purposes of the Bill.

...

It also appears to us that, particularly in the policy context of this regime, at least some of the matters that are proposed to be repealed are ones that may be considered important – albeit in some cases perhaps 'procedural' – safeguards.

We raise them here to invite the Committee to consider whether it is appropriate that these cease to be prescribed by Parliament in statute, and whether the Committee is comfortable that these matters be left to the discretion of the Government by way of future regulation. [FOOTNOTE: Submission 91, NSW Ombudsman, pp 2 and 6.]'

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 2.13:

'There was particular concern about the potential for important provisions currently in legislation to be moved into regulation. For example, Animal Care Australia expressed concern that they were "under the assumption that a vast part of both the *Animal Research Act* and the *Exhibited Animals Protection Act* would actually have appeared in the Act and not all of it being transferred into the regulations." [FOOTNOTE: Evidence, Mr Michael Donnelly, President, Animal Care Australia, 21 March 2022, p 37.]'

Resolved, on the motion of Ms Hurst: That paragraph 2.14 be amended by:

- a) omitting 'For example,' before 'the Animal Defenders Office'
- b) inserting 'also' after 'the Animal Defenders Office'.

Resolved, on the motion of Ms Hurst: That paragraph 2.30 be amended by inserting 'the NSW Government proposed that' after 'draft bill'.

Resolved, on the motion of Ms Hurst: That paragraphs 2.32-2.37 be moved and inserted after paragraph 2.62.

Resolved, on the motion of Ms Hurst: That paragraph 2.40 be omitted: 'The Animal Defenders Office, Sentient Animal Law Foundation and Humane Society International, highlighted that acknowledging sentience would importantly incorporate a positive duty of care towards animals and their welfare. The Australian Veterinary Association further explained that current animal welfare legislation had initially been developed with a focus on prohibiting harm to animals, whereas many jurisdictions in recent years have moved away from this description in favour of incorporating animal welfare, which includes the concept of a more proactive duty of care.', and the following new paragraph be inserted instead:

'Animal protection groups such as Animal Defenders Office, Sentient Animal Law Foundation, Humane Society International, World Animal Protection and Animals Australia all agreed that recognising sentience in the draft bill was critical. Dr Jed Goodfellow explained the importance:

"Fundamentally, it is about recognising why animal welfare matters—why we are all here and why the first ever animal protection laws were passed in the world. It was because of a recognition that animals are sentient, they have the capacity to suffer and, therefore, their interests matter in a moral and ethical sense. So it is really just putting that upfront in the objects of the bill to ensure that anyone who is interpreting the legislation has that understanding that that is why animal welfare matters." [FOOTNOTE: Evidence, Dr Jed Goodfellow, Consultant, Humane Society International, 16 March 2022, p 7.]'

Resolved, on the motion of Ms Hurst: That the following new paragraphs be inserted after paragraph 2.46:

'Humane Society International argued that recognising sentience in the draft bill could also improve sentencing outcomes in relation to animal cruelty offences:

"Recognising animal sentience in the objects of the legislation signals to the judiciary the underlining reasons for why promoting animal welfare and preventing cruelty is important. This can in turn encourage judicial officers to view the offences in a different light; one in which abused animals are seen as victims of the offending conduct leading to more informed sentencing

decisions that better reflect the community's views on the seriousness of animal cruelty offences." [FOOTNOTE: Submission 94, Humane Society International, p 6.]

Resolved, on the motion of Ms Hurst: That the following new paragraphs be inserted after 2.66:

'Dr Rosemary Elliott from Sentient expressed her concern about the role currently played by DPI:

"Our animal welfare regulatory system is broken. It fails the majority of animals because the Department of Primary Industries has a conflict of interest arising from having as their core business aims the promotion and profitability of the industries they are attempting to regulate. It is not appropriate for the DPI to hold responsibility for animal welfare at the State or national level. Those who care about the welfare of animals have had enough of the lack of independence, science and transparency in how animal welfare standards are developed and likewise of the failures in oversight and enforcement." [FOOTNOTE: Evidence, Dr Rosemary Elliott, President, Sentient, the Veterinary Centre for Animal Ethics, 21 March 2022, p 43.]

Humane Research Australia also expressed their support for an independent office for animal protection and provided an example of how a conflict within the DPI can arise in relation to animal protection:

A recent example to highlight this conflict of interest is the DPI 'investigating itself'. Veterinarians slaughtered 12 sheep by cutting their throats without stunning them first as part of a training program two top NSW universities ran for years without animal ethics approval as a DPI facility. This is simply unacceptable and there needs to be independent oversight. [FOOTNOTE: Submission 4, Humane Research Australia, p 4.]

Dr Jed Goodfellow from Humane Society International explained how an independent office of animal welfare could operate in practice:

'We would like to see an Animal Welfare Authority established in order to administer the legislation. The enforcement of the legislation could still be conducted by the bodies that are in existence right now, but instead of answering to the Department of Primary Industries they would be reporting to the Animal Welfare Authority as a centralised agency. We think that would really fit well with the consolidation of the three different pieces of legislation as well. Animal welfare regulation is becoming a lot more complex these days, a lot more sophisticated. A lot of expertise and specialisation is required, and having a central expert authority set up to administer many of those regulations would be a great benefit...' [FOOTNOTE: Evidence, Dr Jed Goodfellow, Consultant, Humane Society International, 16 March 2022, p 10.]

Resolved, on the motion of Mr Barrett: That the following new paragraph be inserted after paragraph 2.63:

'This view however was not shared by other key groups including NSW Farmers and importantly RSPCA NSW who holds enforcement responsibilities under POCTAA.'

Resolved, on the motion of Mr Barrett: That paragraph 2.69 be amended by omitting ', who holds enforcement responsibilities under POCTAA,' after 'RSCPA NSW'.

Resolved, on the motion of Ms Hurst: That paragraph 2.69 be amended by inserting at the end: 'From my perspective, it is not a "hard no". I have not seen detail that would give me comfort that what it was proposing to achieve would, in fact, for the money spent to achieve it, do what it needed to do. [FOOTNOTE: Evidence, Ms Kathryn Jurd, General Counsel, RSPCA NSW, 21 March 2022, pp 29-30.]'

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 2.71:

'However, Humane Society International argued that the DPI could still play a role under an independent office:

"Under such an arrangement, the NSW DPI would continue to play an important role in the provision of technical advice and assistance, industry extension services, and informing the development of policy, but it would not be wholly responsible for the administration of the state's animal welfare laws and policy. Likewise, current entities such as the RSPCA, Animal Welfare League and Police would continue to play their enforcement role but instead of reporting to the DPI they would report to the Animal Welfare Authority." [FOOTNOTE: Submission 94, Humane Society International, p 9.]'

Resolved on the motion of Ms Hurst: That the following new paragraphs be inserted after paragraph 2.84:

'Exempting acts or omissions done in accordance with a prescribed standard

Some inquiry participants expressed concern with respect to clause 20 of the draft bill, which provides that certain acts or omissions will not be considered an offence if they comply with a 'prescribed standard'.

Humane Society International explained the important role played by standards in the animal protection regulatory space:

"Industry codes and standards comprise an integral part of the legislative framework. Industry standards govern the welfare of hundreds of millions of animals in NSW, far more than the number of animals that will benefit from the minimum standard of care provisions outlined in the Bill. This is due to the operation of s.20(2) of the Bill in exempting any act done in accordance with a prescribed standard from the application of the minimum care requirements. Accordingly, what is written in the prescribed standards will arguably be more important for animal welfare outcomes than what is written in the principal legislation itself" [FOOTNOTE: Submission 94, Humane Society International, pp 10-11.]

Humane Society International expressed concern that 'the Bill is silent on the process and criteria for the making and adoption of such standards', which opens the door for 'the making and adoption of any animal welfare standard no matter how deficient or contrary to the objects of the legislation it may be.' [FOOTNOTE: Submission 94, Humane Society International, p 11.]

As a result, Humane Society International recommended that the NSW Government consider the approach taken in New Zealand regarding the development and adoption of standards, and 'include requirements for the making and adoption of standards under the Act, including:

- consistency with the objects and duties of the Act;
- relevant factors to be taken into account including advice of the Animal Welfare Advisory Council, relevant scientific knowledge, and available technology; and
- tabling in Parliament.' [FOOTNOTE: Submission 94, Humane Society International, p 11.]

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after 2.119:

'A number of animal protection organisations raised concerns about the animal welfare impacts of surgical artificial insemination. For example, Coalition for the Protection of Greyhounds described the procedure as 'cruel' and 'painful', noting it involves 'cutting through skin and muscle to reach the uterus and injecting frozen or fresh semen there. Then the female must carry the pups to term having just had gut surgery'. [FOOTNOTE: Evidence, Ms Fiona Chisholm, NSW State Director, Coalition for the Protection of Greyhounds, 16 March 2022, p 13.] Coalition for the Protection of Greyhounds also expressed concern about the fact that the Minister had 'made a unilateral decision before this Committee even concluded its review process' on the issue, after meeting with representatives from the greyhound industry [FOOTNOTE: Evidence, Ms Fiona Chisholm, NSW State Director, Coalition for the

Protection of Greyhounds, 16 March 2022, p 13; Submission 87, Coalition for the Protection of Greyhounds, p 13.]

Resolved, on the motion of Ms Hurst: That paragraph 2.119 be amended by:

- a) inserting 'Coalition for the Protection of Greyhounds, the Australian Veterinary Association,' after 'including'
- b) inserting at the end: 'For example, RSPCA NSW expressed the view that “There is no justifiable reason for this procedure where non-surgical, anaesthetic-free, minimally invasive, effective alternatives exist, including for the use of frozen semen. The risks and discomfort associated with undertaking surgical artificial insemination are unnecessary with trans-cervical artificial insemination now available.” [FOOTNOTE: Submission 80, RSPCA NSW, p 8.]

Resolved, on the motion of Ms Hurst: That paragraph 2.121 be amended by:

- a) omitting 'and the Coalition for the Protection of Greyhounds' before 'gave concession'
- b) inserting 'with the proviso that this is not routinely performed on racing greyhounds, which is currently the case' after 'medical grounds'.

Resolved, on the motion of Ms Hurst: That the following new paragraphs be inserted after 2.124:

'Issues not considered in the draft bill

Some inquiry participants expressed the view that the draft bill should have introduced reforms on a range of additional animal welfare issues.

While a number of provisions within the draft bill were met with support from animal protection organisations – for example, the introduction of the minimum care requirements and the expansion of the definition of ‘animal’ to include crustaceans and cephalopods [FOOTNOTE: See for example, Submission 146, Animal Defenders Office, pp 5 and 23; Submission 80, RSPCA NSW, p 4; Submission 94, Humane Society International, p 10.] – there were also a number of issues which some stakeholders felt were either not adequately addressed in the draft bill, or not addressed at all. While it is not possible to outline all of these matters within this report, some of the key issues raised have been outlined below.

- Tethering – Part 4, Division 3
These clauses of the draft bill seek to prohibit ‘inappropriate or unreasonable tethering of animals’. Prolonged tethering was identified as an issue by many animal protection groups including RSPCA NSW, who felt the protections contained in the draft clauses were ‘insufficient’ and required further consideration and revision. [FOOTNOTE: Submission 80, RSPCA NSW, p 5; Answers to questions on notice, RSPCA NSW, 5 May 2022, pp 1-2; Submission 53, Australian Veterinary Association, pp 9- 10.]
- Dogs in hot cars – Part 4, Division 4
The draft bill seeks to prohibit leaving ‘a dog unattended in a vehicle in hot weather for more than 5 minutes’. While there was general support for the NSW Government’s move to prevent dogs from being left unattended in hot cars given the serious potential welfare impacts, stakeholders argued that the provision should be extend to include all animals (not just dogs), and that the temperature ‘threshold’ of 28 degrees should be reviewed. RSPCA NSW and the Animal Defenders Office also argued that the draft bill should allow for ‘rescue’ provisions, similar to those in the Australian Capital Territory. [FOOTNOTE: Submission 80, RSPCA NSW, p 6; Submission 146, Animal Defenders Office, pp 10-11;

Evidence, Ms Kathryn Jurd, General Counsel, RSPCA NSW, 21 March 2022, pp 24-25; Submission 53, Australian Veterinary Association, p 9.]

- Injuries to animals struck by a vehicle – Clause 29

Clause 29 of the draft bill replicates an existing provision from POCTAA, which requires the driver of a vehicle that strikes and injures an animal, other than a bird, to take reasonable steps to alleviate any harm caused to the animal. Sentient, the Veterinary Institute of Animal Ethics raised concerns with the exclusion of birds from this provision, stating they are ‘just as sentient as other animals’. [FOOTNOTE: Submission 92, Sentient, the Veterinary Institute of Animal Ethics, p 5; Evidence, Ms Tara Ward, Managing Solicitor, Animal Defenders Office, 21 March 2022, p 12.]
- Poisoning a domestic animal – Clause 30

Some stakeholders argued that clause 30 of the draft bill, which makes it illegal to intentionally poison a domestic animal, should also be extended to include accidental poisonings as well as the poisoning of wild animals. [FOOTNOTE: Submission 92, Sentient, the Veterinary Institute of Animal Ethics, p 5; Submission 146, Animal Defenders Office, p 8; Evidence, Ms Kristina Vesik, CEO, Cat Protection Society, 16 March 2022, p 9.]
- Animal cruelty material – Part 4, Division 5

The animal cruelty material provision would criminalise the production, dissemination or possession of material that depicts an animal cruelty offence – organisations including the Animal Defenders Office, Humane Society International and the Shooters Union, expressed concerns and argued the provision ought be omitted from the draft bill. [Submission 37, Shooters Union NSW, p 3; Submission 146, Animal Defenders Office, p 11; Answers to questions on notice, Humane Society International, 14 April 2022, p 3.]

For example, the Animal Defenders Office argued that the provision is redundant given the introduction of section 547E (concerning bestiality and animal crush material) into the *Crimes Act 1900* in late 2021, and said the provision was ‘too broad and will capture things that it really should not capture, matters that should not be criminalised’. [FOOTNOTE: Evidence, Ms Tara Ward, Managing Solicitor, Animal Defenders Office, 21 March 2022, p 12; Submission 146, Animal Defenders Office, p 11.] Humane Society International expressed a similar view that the provision could have a ‘very dangerous gagging effect on legitimate public communication’ and could prevent serious offences of animal cruelty from being ‘brought to the attention of authorities via social and other digital media’ [FOOTNOTE: Answers to questions on notice, Humane Society International, 14 April 2022, p 3.] The DPI indicated at the hearing that they would reconsider this provision in light of feedback received at the inquiry [Evidence, Ms Clem Harris, Director of Policy and Industry Insights, Department of Primary Industries, 21 March 2022, p 55.]
- Other feedback on draft clauses

Feedback was also given by stakeholders in relation to a large number of other clauses in the draft bill, including but not limited to:

 - clause 7 – concerning the use of the terms ‘unreasonably or unnecessarily’ in relation to the definition of an act of cruelty [FOOTNOTE: Submission 94, Humane Society International, p 12.]
 - clause 50 - concerning the definitions section surrounding stock welfare panels and whether there should be a greater emphasis on ‘psychological harm’ [FOOTNOTE: Submission 146, Animal Defenders Office, p 13.]
 - clauses 66 and 67 - concerning the powers of inspectors to enter and conduct ‘proactive’ or ‘routine’ inspections (including premises used for residential purposes, particularly in circumstances where those premises are being used for breeding companion animals) [FOOTNOTE: Submission 146, Animal Defenders Office, pp 16-17; Answers to questions on notice, Animal Defenders Office, 6 May 2022, pp 4-5.]
 - clauses 128 and 130 - concerning the test that is applied when the court determines whether to impose an interim or final disqualification order [FOOTNOTE:

Submission 80, RSPCA NSW, p 18; Evidence, Ms Kathryn Jurd, General Counsel, RSPCA NSW, 21 March 2022, p 28.]

- clauses 154(3) – concerning the appropriate minimum holding times before a charitable organisation can rehome an animal in their care [FOOTNOTE: Submission 93, Animal Care Australia, pp 20-21; Submission 80, RSPCA NSW, pp 13-14; Answers to questions on notice, Cat Protection Society of NSW, 18 April 2022, pp 2-3.]

The committee received numerous submissions from individuals and organisations that raised a number of animal protection issues they felt were important to be considered as part of this inquiry. These issues concerned the treatment of companion, native and introduced animals, as well as animals in the animal agribusiness industry, animals used in entertainment and animals used in the research industry. It is clear that matters relating to animal protection are deeply important to the people of New South Wales.

Given the volume of submissions received and issues raised, it is not possible to list all of the issues raised by stakeholders in this report. However, it is noted that some of the issues raised by stakeholders included but were not limited to: puppy farming and backyard breeding, [FOOTNOTE: Submission 146, Animal Defenders Office, p 24; Evidence, Ms Glenys Oogjes, CEO, Animals Australia, 16 March 2022, p 19.], the use of devices such as prong collars, shock collars, steel jaw traps and glue traps, [FOOTNOTE: Submission 96, Pet Professional Guild Australia, p 4; Submission 146, Animal Defenders Office, p 11; Submission 92, Sentient, the Veterinary Institute for Animal Ethics, p 5.] the consumption of dog and cat meat, [FOONOTE: Answers to questions on notice, World Animal Protection Australia, 12 April 2022, p 3.] the sale and consumption of shark fin, [FOONOTE: Answers to questions on notice, World Animal Protection Australia, 12 April 2022, p 3.] the use of 1080 poison, [FOOTNOTE: Evidence, Mr Craig Golding, Director, Shooter Union NSW, 16 March 2022, pp 21 and 23; Evidence, Ms Kristina Vesk, CEO, Cat Protection Society, 16 March 2022, p 9; Evidence, Dr Katherine van Ekert, Vice President, Sentient, the Veterinary Institute for Animal Ethics, 21 March 2022, p 42.] ‘trap, neuter release’ programs, [FOOTNOTE: Answers to questions on notice, Cat Protection Society of NSW, 18 April 2022, pp 1-2; Submission 182, Miss Sharon Richards, p 1.] husbandry procedures including mulesing, branding, and castration, dehorning and tail docking (including the performance of these procedures without pain relief), [FOOTNOTE: Submission 129, NSW Young Lawyers, pp 6-7; Evidence, Ms Glenys Oogjes, CEO, Animals Australia, 16 March 2022, pp 14, 17 and 18; Evidence, Dr Elizabeth Arnott, Chief Veterinarian, RSPCA NSW, 21 March 2022, p 27; Evidence, Ms Tara Ward, Managing Solicitor, Animal Defenders Office, 21 March 2022, p 15; Submission 92, Sentient, the Veterinary Institute for Animal Ethics, p 4; Submission 146, Animal Defenders Office, pp 6-7.] the use of battery cages, sow stalls and farrowing crates, [FOOTNOTE: Answers to questions on notice, Animals Australia, 14 April 2022, pp 1-2; Evidence, Ms Glenys Oogjes, CEO, Animals Australia, 16 March 2022, p 14] providing ducks with ‘surface water’, [FOOTNOTE: Answers to questions on notice, Animals Australia, 14 April 2022, p 1.] the use of animals in rodeos (in particular, calf roping), [FOOTNOTE: Submission 92, Sentient, the Veterinary Institute for Animal Ethics, p 2; Submission 253, Lawyers for Animals, pp 12-15.] the property status of animals, [Submission 252, Animal Liberation, p 19.] an animal cruelty register, [FOOTNOTE: Submission 146, Animal Defenders Office, p 24.] whistle-blower protections, [FOOTNOTE: Answers to questions on notice, Animal Defenders Office, 6 May 2022, pp 2-3.] and allowing private prosecutions for animal cruelty offences. [FOOTNOTE: Submission 146, Animal Defenders Office, pp 19-20; Submission 94, Humane Society International, pp 13-14.]

Resolved, on the motion of Ms Hurst: That paragraph 2.125 be amended by:

- a) omitting 'the key issues' and inserting instead 'some of the key issues'
- b) inserting 'but are not limited to' after 'include'.

Ms Hurst moved: 'That paragraph 2.126 be amended by inserting at the end: 'Nonetheless, the Committee does consider it important to make recommendations regarding two critical matters raised during this inquiry: namely, the recognition of animal sentience and the establishment of an independent office of animal protection.'

Question put.

The committee divided.

Ayes: Ms Hurst

Noes: Mr Banasiak, Mr Barrett, Ms Cusack, Mr Graham, Mr Fang, Mr Rath, Mr Veitch.

Question resolved in the negative.

Ms Hurst moved: 'That the following new paragraph be inserted after paragraph 2.125:

'Overall, however, the Committee feels the draft bill is a huge missed opportunity to bring animal protection legislation into line with modern community expectations and science. This is the first substantive review of NSW animal cruelty laws since they were introduced in the 1970s and 1980s, and change is long overdue. It is deeply disappointing that, despite over four years of review and promises of reform, the draft bill produced by the NSW Government replicates most – if not all – of the existing flaws in NSW's animal cruelty laws. This includes carving out huge exemptions and defences for the treatment of farmed animals. The draft bill fundamentally fails to create adequate protections for animals in this state, particularly those used for profit in the animal agribusiness industry, as well as animals used for entertainment, research, and commercial breeding, and will leave them exposed to routine, systemic animal cruelty.'

Question put.

The committee divided.

Ayes: Ms Hurst

Noes: Mr Banasiak, Mr Barrett, Ms Cusack, Mr Graham, Mr Fang, Mr Rath, Mr Veitch.

Question resolved in the negative.

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 2.126:

'However, the committee also notes the significant feedback it received from stakeholders raising concerns about the number of legislative provisions being moved to regulations under the draft bill, and the difficulty in giving feedback on the draft bill without having seen the draft regulations. The committee therefore encourages the Government to conduct consultation on the draft regulations prior to finalising the bill. The committee acknowledges that this may delay the reform of animal welfare legislation, but considered this an important step given the level of stakeholder interest.'

Resolved, on the motion of Mr Banasiak: That the following new committee comment be inserted after paragraph 2.129:

'The committee therefore recommends that the Legislative Council not consider the Animal Welfare Bill 2021 until draft regulations have been released and stakeholder feedback has been received and reported on by this committee.'

Resolved, on the motion of Mr Banasiak: That the following new recommendation be inserted after paragraph 2.129:

'Recommendation X

That the Legislative Council not consider the Animal Welfare Bill 2021 until draft regulations have been released and stakeholder feedback has been received and reported on by this committee.'

Resolved, on the motion of Ms Hurst: That paragraph 2.129 be omitted:

'Finally, the committee acknowledges the evidence received about whether surgical artificial insemination on a dog should be prohibited or remain a restricted veterinary procedure. The committee also notes the Government's undertaking to remove clause 22(1)(e) from the bill and keep it as a restricted veterinary procedure and therefore makes no further comment on the Government's position'

Ms Hurst moved: That the following new recommendation be inserted after paragraph 2.129:

'Recommendation X

That the NSW Government recognise animal sentience in the objects of the Animal Welfare Bill 2022.'

Question put.

The committee divided.

Ayes: Ms Hurst

Noes: Mr Banasiak, Mr Barrett, Ms Cusack, Mr Graham, Mr Fang, Mr Rath, Mr Veitch.

Question resolved in the negative.

Ms Hurst moved: That the following new recommendation be inserted after paragraph 2.129:

'Recommendation X

That the NSW Government establish an independent statutory body, the Independent Office of Animal Protection, to oversight the animal welfare framework.'

Question put.

The committee divided.

Ayes: Mr Graham, Ms Hurst, Mr Veitch

Noes: Mr Banasiak, Mr Barrett, Ms Cusack, Mr Fang, Mr Rath.

Question resolved in the negative.

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 3.5:

'By contrast, Ms Rachel Smith from Humane Research Australia expressed some concerns about the regulation of animal research in NSW, describing it as a "system of self-regulation via institutional animal care and ethics committees with limited regulatory oversight or public accountability".'

Ms Smith went on to identify a number of areas for potential reform within the regulatory regime:

"The current process of reform presents opportunities to, one, strengthen the powers and competency of the New South Wales research review panel, the continuation of which HRA supports, for example, in broadening complaints initiation criteria or mandating expertise on non-animal research methods amongst the panel; two, increase transparency and clarity of reporting, one example being through clearer defining of "recognised research purpose"; three, prohibit procedures known to cause intense suffering with questionable scientific validity, such as the forced swim test or force inhalation research; four, counter conflict of interest by the appointment of an independent office for animal welfare; five, mandate rehoming for dogs and cats used in research; and, finally, expand the three Rs to add rehoming, relevance, redirection of funding and retraining." [FOOTNOTE: Evidence, Ms Rachel Smith, Chief Executive Officer, Humane Research Australia, 21 March 2022, p 43.]

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 3.11:

'By contrast, Humane Research Australia expressed some doubts about the effectiveness of the AEC system:

"the information that we receive from members of animal ethics committees or those associated with the research review panel or sometimes from the research community anonymously suggest that it is not a robust system and that really having a system where an institution is approving the research that it is conducting itself may mean that it is not of the highest quality or may be infringing upon animal welfare. So there may be practices that are permitted by New South Wales research institutions, such as inhalation research, that would not be approved by other institutions. So it is very inconsistent because it is down to the discretion of that individual institution and the pressures that may be placed upon the members of that committee to approve or not approve that research." [FOOTNOTE: Evidence, Ms Rachel Smith, Chief Executive Officer, Humane Research Australia, 21 March 2022, p 47.]

The Australian Veterinary Association also expressed concerns with the standards set out in the Code, noting that it was "last updated in 2013", and recommended that it be reviewed. [FOOTNOTE: Submission 53, Australian Veterinary Association, p 6.]

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 3.14:

'On the other hand, Humane Research Australia indicated they would like to see more transparency built into the regulatory regime, along with other reforms:

"To improve the system, greater accountability, greater transparency, and I think retrospective assessments of the research to see if it is meeting the claims that are made would definitely be an improvement. The legislation does not really enable bans of specific procedures because it is left at the discretion of individual institutions. That is a real weakness of the current legislation that could be addressed, actually having bans or restrictions on specific procedures." [FOOTNOTE: Evidence, Ms Rachel Smith, Chief Executive Officer, Humane Research Australia, 21 March 2022, p 47.]

The specific procedures that Humane Research Australia indicated that would like to see banned in NSW were forced inhalation research (particularly the nose-only exposure method used by Centennial and the University of Newcastle), the forced to swim test and antibody production using animals. [FOOTNOTE: Evidence, Ms Rachel Smith, Chief Executive Officer, Humane Research Australia, 21 March 2022, p 47.]

Resolved, on the motion of Ms Hurst: That paragraph 3.6 be amended by omitting 'One of the reasons that the New South Wales Act is regarded as a benchmark for the protection of animals in research is because' and inserting instead 'In New South Wales'.

Resolved, on the motion of Ms Hurst: That paragraph 3.44 be omitted:

'The committee was encouraged by the evidence that the *Animal Research Act* in its current form makes New South Wales a national and international leader in maintaining a high standard of protection for the welfare of animals in research.'

Ms Hurst moved: That the following new paragraph be inserted after paragraph 3.46:

'It is noted that Portfolio Committee No. 2 is currently conducting an inquiry into the 'Use of primates and other animals in medical research in New South Wales', which is specifically considering the 'adequacy of the current regulatory regime regarding the use of animals in medical research'. The Committee encourages the NSW Government to consider the findings of that Inquiry in relation to the *Animal Research Act 1985*.'

Mr Graham moved: That the motion of Ms Hurst be amended by omitting 'The committee encourages the NSW Government to consider the findings of that inquiry in relation to the *Animal Research Act 1985*' and inserting instead 'The committee draws the attention of the NSW Government to this inquiry given the potential implications of any of its findings for the *Animal Research Act 1985*'.

Amendment of Mr Graham put and passed.

Original question of Ms Hurst, as amended, put and passed.

Mr Graham moved: That the following new finding be inserted after paragraph 3.46:

'Finding X

That the NSW Government consider the findings of Portfolio Committee No. 2's inquiry into the use of primates and other animals in medical research in New South Wales given the potential implications for the *Animal Research Act 1985*.'

Question put.

The committee divided.

Ayes: Mr Banasiak, Mr Graham, Ms Hurst, Mr Veitch

Noes: Mr Barrett, Ms Cusack, Mr Fang, Mr Rath.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Resolved, on the motion of Mr Banasiak: That:

The draft report as amended be the report of the committee and that the committee present the report to the House;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

That the interim report be tabled on Wednesday 15 June 2022.

5.9 Future conduct of the inquiry

The committee noted that the inquiry's terms of reference stipulate that the committee produce two reports. The second half of this inquiry will inquire into and review the draft regulations of the Animal Welfare Bill. The terms of reference state:

4. That upon their publication, the Committee inquire into and report on the draft regulations associated with the proposed Animal Welfare Bill 2022

5. The Committee table its final report as soon as practicable after the release of the draft Regulations.

The committee noted that the draft regulations have not yet been published.

6. Next meeting

The committee adjourned at 11.26 am, *sine die*.

Helen Hong
Committee Clerk

Appendix 4 Dissenting statement

The Honourable Emma Hurst MLC, Animal Justice Party

This inquiry has exposed the draft Animal Welfare Bill 2022 as a monumental failure and a missed opportunity to bring NSW animal protection laws into line with other countries around the world.

The feedback on the draft Bill from the community throughout this Inquiry was clear – our laws are failing to protect animals in NSW, and should the draft Bill progress as is currently proposed, it will not provide animals with adequate protection from acts of cruelty.

Animal protection laws in NSW are woefully out of date. They were written in the 1970s and 1980s and remained largely unchanged in the decades since. As can be seen by the enormous number of submissions to this inquiry, and other animal protection inquiries, the people of NSW care deeply about animals and want to see them truly protected.

It is deeply disappointing that, despite years of reviews and promises of reform, the draft Bill produced by the NSW Government largely ignores community concerns and modern science, and instead replicates most – if not all – of the existing flaws in NSW’s animal cruelty laws. In fact, this Inquiry highlighted that the draft Bill contains provisions that could actually take our animal protection laws backwards.

The committee heard compelling evidence that the draft Bill fundamentally fails to create adequate protections for animals in this state, particularly those used for profit in the animal agribusiness industry, as well as animals used for entertainment, research, and commercial breeding.

Major issues about the content of the draft Bill were raised by every single animal protection group. These included the need for an Independent Office of Animal Protection, and the recognition of animal sentience. The committee voted down recommendations on these issues despite concerns raised by members of the community, animal protection groups, scientists, lawyers and other experts.

The committee heard evidence that an Independent Office for Animal Protection is desperately needed. Right now, the draft Bill fails to put structures into place to ensure proper oversight and enforcement of animal cruelty laws. Stakeholders to this inquiry highlighted the inherent conflict of interest in the Department of Primary Industry (DPI) being required to simultaneously promote industries that use animals for profit, while also promoting animal protection. They highlighted how this conflict has historically failed animals, and led to decisions in favour of industry. Yet under this draft Bill, the DPI will continue to play the same conflicted role it always has, and there will be no independent oversight body. Labor supported a recommendation to establish an Independent Office of Animal Protection – but shockingly the Liberal-National Government and the Shooters, Fishers and Farmers Party ignored the mountain of evidence and voted against it.

Another significant issue highlighted in multiple submissions and evidence given was the lack of recognition of animal sentience. NSW urgently needs a modern animal protection regime - one that has, at its core, a recognition of the sentience and intrinsic value of all animals. This is something that was well established in the scientific evidence before this inquiry, and yet was left entirely out of the draft Bill. Over 19 jurisdictions around the world have now recognised animal sentience – NSW is rapidly falling behind other states and the rest of the world. Shockingly a recommendation to include animal sentience in the draft Bill was rejected by both Government and the Labor party, ensuring animal protection in NSW will continue to be out of touch.

Lastly, I am concerned that the committee comments in this report did not adequately address the issue of exemptions in the draft Bill. Expert evidence exposed that the draft Bill will leave tens of millions of animals exposed to routine, systemic animal cruelty. It does this by creating speciesist exemptions and defences, and relying

on easily-changed regulations and industry developed ‘standards’ to govern how many animals will be treated, which effectively undermines any protections afforded by the draft Bill.

This is particularly true for the millions of farmed animals who will continue to be effectively exempt from our cruelty laws. Under the draft Bill, they can be subjected to painful acts such as mulesing, branding, castration, dehorning and tail docking, without even so much as pain relief. It will allow animals to remain in intensive confinement in battery cages, sow stalls and farrowing crates and other cruel environments which deprive them of the ability to express natural behaviours. Exemptions also exist to cruelty occurring at slaughterhouses, or during fishing and hunting.

I am also concerned about the failure of the Liberal-National Government – who are in the unique position of running an inquiry into their own draft Bill - to take on board the significant feedback provided to the Inquiry on these, and many other issues.

Given the voluminous issues raised in relation to the draft Bill throughout this Inquiry, it is clear the Minister will need to give serious consideration as to how to proceed. I am aware that other political parties have serious concerns with this draft Bill. The Greens, as well as other members, have highlighted to me that they could not support the Bill as it is currently drafted if put before the House.

I strongly urge the Minister for Agriculture to take on board the feedback received on the draft Bill – and in particular, the section of this report titled *Issues not considered in the draft Bill* which highlights an enormous number of animal protection issues that stakeholders felt were inadequately dealt with in the draft Bill, or left out entirely. I also encourage the Minister to review the transcript of evidence and detailed submissions provided by key animal protection organisations and community members, who are crying out for reform in this space.

The animals deserve better.

