



**HUMANE SOCIETY
INTERNATIONAL**
AUSTRALIA

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STANDING COMMITTEE ON STATE DEVELOPMENT

INQUIRY INTO ANIMAL WELFARE POLICY IN NEW SOUTH WALES

HEARING – 16 MARCH 2022

SUPPLEMENTARY QUESTIONS TO HUMANE SOCIETY INTERNATIONAL

- 1. A number of industry groups have raised concerns about the words “unreasonable” and “unnecessary harm” in the exemptions in the Bill. What is your reaction to this – how would you feel if the words “unnecessary harm” were removed from the specific exemptions in section 119, would you be concerned?**

As a general position, Humane Society International is opposed to the use of exemptions in the Bill as we believe all forms of animal use and interaction should be subject to the general prohibition on cruelty and the minimum care requirements.

Where exemptions are used, their scope must be clear and limited as much as possible. 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. This is why it is critical that the ‘no unnecessary harm’ condition is retained for the exemptions in the Bill.

Without this condition, a farmer could castrate a sheep using a blunt, rusty knife, a hunter could choose to kill an animal in a particularly slow and barbaric manner, a person could choose to kill an animal for food in a way that caused the animal to die a slow, painful death, or a pest controller could kill a feral cat by drowning in a wheelie bin.

The exemptions protect the relevant practice from the application of the cruelty and minimum care requirements but there must still be reasonable qualifications placed on *how* those practices are performed. Removing the ‘no unnecessary harm’ condition risks undermining the entire Bill and therefore it must be retained.



We provide further guidance on the meaning of 'unnecessary harm' and 'unreasonable', and how the Bill could be amended to provide such guidance, in recommendation 5 of our submission as follows:

Include further guidance for the courts on how to determine when an act or omission amounts to unnecessary or unreasonable harm by outlining relevant considerations, including:

- *whether the harm could reasonably have been avoided or reduced;*
- *whether the conduct which caused the harm was for a legitimate purpose such as a purpose benefitting the animal or to protect a person, property or another animal;*
- *whether the harm suffered was proportionate to the purpose of the conduct concerned; and*
- *whether the conduct concerned was in all the circumstances that of a reasonably competent and humane person..*

We are also aware that the term 'reasonable' is used in the exemptions for offence provisions for harm to protected species in the *Commonwealth Environment Protection and Biodiversity Conservation Act, 1999* and therefore there is precedent for interpreting the term.

2. The committee heard evidence that hunting groups would like to see the ban on game parks in NSW removed from the Bill. What are your thoughts on lifting the ban on game parks in NSW? If this ban was removed, what would that mean for animals in NSW?

The operation of game parks (also referred to as 'canned hunting') is an archaic and cruel practice that should remain consigned to the history books in NSW. Hunting animals that are confined should never be permitted as a sport, let alone a business. There is simply no justification for it other than the sadistic pleasure of killing an animal that has no fair chance of escape. We also note that many people within the hunting community itself object to the concept of game parks as they are contrary to what they view as the true ethos of hunting.

We have no doubt the NSW community would object strongly to the removal of the ban on game parks. The review of the Prevention of Cruelty to Animals Act should be taking NSW forward, not back to the dark ages.

3. Sections 38-39 would enact a ban on producing, disseminating or possessing "animal cruelty material". Are you concerned this provision may have a gagging effect? If so, please explain why.

Yes, if section 39 of the Bill became law it would have a very dangerous gagging effect on legitimate public communication and discussion of matters relating to the mistreatment of animals. We question whether such restrictions would be compatible with the implied freedom of political communication under the Australian Constitution.

Section 39 must be completely re-drafted and limited only to animal cruelty material that is intended to excite or gratify a sexual interest, or sadistic or otherwise perverted interest in violence or cruelty, such as bestiality or 'animal crush' videos.

4. If laws stop people from sharing footage of animal cruelty over channels such as social media, could this reduce the opportunities for authorities to track down and prosecute animal abusers? Can you explain why this could be problematic?

Yes, this is a very real consequence of s.39 as currently drafted. Many serious offences of animal cruelty are brought to the attention of authorities via social and other digital media and through widespread sharing and public debate. If the legislation places restrictions on the ability of members of the public to disseminate such footage, the chances of it coming to the attention of authorities will be significantly reduced.

Thank you for seeking our further recommendations on these matters. We hope they have been helpful for the committee's deliberations.

Yours sincerely

Nicola Beynon
Head of Campaigns

