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Select Committee Inquiry into Puppy Animal Welfare Policy in NSW
Legislative Council, Parliament of NSW
Supplementary questions - RSPCA NSW

Date: 5 May 2022

1. **The Hon. MICK VIETCH:** Are there any other jurisdictions that we could go to that actually have provisions around tethering of animals?Could you explain why you think section 34 (2) (a) is deficient and if there is a jurisdiction that has a clause or provisions or framework around tethering that we can look at for the bill, that would be good.

Response:

The following table provides a summary of some Australian and New Zealand laws relevant to tethering.

Jurisdiction and legal instrument	Comments
Australian Capital Territory <i>Animal Welfare Act 1992</i>	Section 9 makes it an offence to confine (which includes tether) an animal in a way that causes or is likely to cause injury, pain (includes distress and suffering), stress or death. It is an offence if the animal is not able to move in a way that is appropriate for the animal because of the confinement (tether).
Queensland <i>Animal Care and Protection Act 2001</i> Animal Care & Protection Regulation 2012	Section 3(a) contains a duty of care requirement to take reasonable steps to provide for an animal's needs including appropriate living conditions and allowing them to display normal patterns of behaviour. Clauses 13 and 14 require that tethered sheep and cattle must be given reasonable opportunity for exercise (by lead walking or release from the tether) daily and be able to stand, lie and move around for grazing. These livestock must not be tethered at night except at agricultural shows.
Victorian Prevention of Cruelty to Animals Regulation 2019	Clause 7 prohibits tethering unless the animal has access to water and food twice daily, shelter, free grazing (if herbivorous), ability to stand and sit without restriction, a swivel attachment at the collar, is exercised off the tether daily.
New Zealand Animal welfare (care and procedures) regulations 2018	Clauses 16 & 18 refer to tethering of goats and equids for the purpose of grazing. Access to food, water, shelter, shade and protection from temperature extremes is required. Clause 13 requires tethered dogs to be provided a shaded, dry, protected resting area large enough to stand, lie and turn around in natural position. It is a requirement that the dog has access at all times to an area in which to urinate and defecate away from its lying area; and that faeces or urine do not accumulate in any area in which the dog is kept.
New South Wales <i>Prevention of Cruelty to Animals Act 1979</i>	It is an offence, under s10, to tether an animal by an unreasonable short or heavy tether or for an unreasonable length of time. Section 9 requires confined animals (which includes tethering) to be provided reasonable exercise, that is, once in a 24 hour period. However, this requirement does not apply to stock animals (other than horses).

The NSW Animal Welfare Bill 2022, at section 34, requires that tethered animals be protected from harm (which includes distress, pain, suffering) and that the form, length, method and tethering time period be reasonable. Section 34(2) then clarifies what might be considered unreasonable in respect of tethering. It is RSPCA's submission that these qualifiers from (a) to (g) be revised to avoid conflict with the minimum care requirements at s13 and provide for better outcomes for tethered animals. For example, s34(2)(g) infers that it is reasonable to tether the animal if it can freely stand up and sit down. However, the minimum care requirements that apply to tethered animals at s13 include providing appropriate opportunities for normal behaviour and exercise. If a tether limits an animal to merely being able to stand and sit this should not be considered reasonable as this does not come close to allowing an animal a fair repertoire of normal behaviour. The ACT approach provided in the table above goes some way to addressing this by making it an offence if the animal is not able to move in a way that is appropriate for the animal because of the confinement.

Additional measures of 'reasonable' should be provided at s34(2) including the requirement in the New Zealand regulations to allow for an animal to have access at all times to an area in which to urinate and defecate away from its lying area; and that faeces or urine do not accumulate.

To emphasise the requirement to tether an animal in a way that protects it from distress and suffering it would also be beneficial to include a provision that refers to a need to consider the suitability of the particular animal for tethering (which may be related to age, personality, experience and training). For example, it is unreasonable to tether an animal where it displays attempts to struggle against or escape the tether. This inclusion would support the government position that outcomes-based animal welfare legislation is preferable.

As the practice of tethering presents many risks to a range of animals, a more detailed approach to the issues could be addressed in regulations or relevant codes of practice. For example, the Department of Primary Industries provides detail on tethering in a policy which could be mandated¹ and in the United Kingdom tethering of horses is dealt with in the Code of Practice for the Welfare of Horses, Ponies, Donkeys and their Hybrids.² This detailed approach allows limits to be set on the ages at which it is appropriate to tether a horse (over two years) and the frequency with which they must be checked (every six hours).

2. **Ms ABIGAIL BOYD:** I just wanted to round that discussion out about animals in cars, and I note that you have commented in your submission that the 28 degrees is not particularly helpful. Can you talk us through that and what you propose as an alternative?.....

The CHAIR: On notice, will you send us a specific proposal as to how that can work and what would be a good way of fixing that problem? Is that alright?

¹ https://www.dpi.nsw.gov.au/__data/assets/pdf_file/0011/1310996/Tethering-animals-Policy.PDF

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/700200/horses-welfare-codes-of-practice-april2018.pdf

Response: Section 37 of the Animal Welfare Bill 2022 would better safeguard animal welfare by including protections for all animals, not just dogs.

The provision should be amended to make it is an offence to leave an animal in a car for:

- any period once the ambient temperature is 32 degrees C.
- for greater than 5 minutes when the temperature is >26 degrees C
- for greater than 10 minutes when the temperature is > 23 degrees C
- for greater than 30 minutes when temperature is > 20 degrees C

The exemption at subsection 37(2)(a) must be removed to acknowledge that the serious risks to an animal of being left unattended in a car in warm weather are not mitigated by parking a vehicle in the shade or the presence of a degree of ventilation.

The exemption at s37(2)(b) should be clarified by defining the term 'cool' to be below 25 degrees C.

3. **The Hon. JOHN GRAHAM:** In that submission in December 2019, you identified the number of staff allocated to the inspectorate at the time—it was 43—and the funding allocated at the time, which was \$6.2 million. What are those updated figures as we sit here today?

KATHRYN JURD: I do not have those. I expect they will be provided on Monday of next week to the ACO inquiry.

The Hon. JOHN GRAHAM: Can I invite you, for the purposes of this inquiry, to take that on notice, acknowledging that you will be providing it elsewhere?

Response: In the 2019 RSPCA NSW submission into the Inquiry into Animal Cruelty Laws in NSW, it was stated that the direct expenses of the RSPCA NSW inspectorate totalled \$6,233,041.41 in 2018/19. In relation to Inspectorate-specific funding, RSPCA NSW issues an invoice to DPI for an agreed annual grant of \$424,000.

Throughout 2020/21 RSPCA NSW had a team of 40 inspectors. The direct inspectorate expenses were \$6.3million. The annual government grant of \$424,000 was received as well as \$400,000 to fund the puppy factory task force.

4. **ELIZABETH ARNOTT:** We can also provide you with a link to a one-minute video that demonstrates a dog undergoing a trans-cervical insemination.

Response: <https://www.vetrepro.com.au/artificial-insemination-canine>

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- 1. There was a comment from an inquiry participant that RSPCA officers frequently come into people's homes with Tasers – can you clarify if any RSPCA officer is ever equipped with a Taser?**

Tasers are prohibited weapons unless permitted by regulation, RSPCA NSW Inspectors are not permitted to carry Tasers, and we do not own any Tasers. We suggest the error relates to the brand of body worn camera used – Taser Axon Body Worn Cameras.

- 2. There was some discussion at the Inquiry about whether there should be an element of “pre-meditation” included in the definition of aggravated animal cruelty. What is your response to this? Would you support this change, or do you believe aggravated cruelty should remain a strict liability offence?**

RSPCA NSW considers that adding an element of pre-meditation to the aggravated cruelty charge is ill advised. That is so for two reasons, firstly it is absolutely vital that a strict liability offence of committing an act of cruelty which results in serious injury or death of animals remain in the new Act. Secondly, to the extent that an intention element is needed, that is covered in the Crimes Act offence. Pre-meditation is an archaic and no longer used element in Criminal Law.