

INQUIRY INTO ANIMAL WELFARE POLICY IN NEW SOUTH WALES

Organisation: Australian Privacy Foundation

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Chair
NSW Legislative Council Standing Committee on State Development
Parliament House
Macquarie Street
Sydney NSW

Inquiry into Animal Welfare Policy in New South Wales.

This submission by the Australian Privacy Foundation (APF) responds to the Committee's invitation to comment on the draft Animal Welfare Bill 2022.

The APF is the country's leading privacy advocacy organisation. A brief backgrounder is attached.

The submission is not made on a confidential basis.

The Bill

The APF endorses efforts to update NSW law and practice regarding non-human animals, for example addressing substantive community concerns and bringing NSW law into line with that in, for example, the Australian Capital Territory.

This submission centres on privacy aspects of the Bill. It thus does not address questions about potential recognition in Australian law of rights for classes of non-human animals and matters such as the implementation of national animal research ethics frameworks. It builds on previous submissions to NSW Parliamentary Committees (in particular regarding surveillance and the privacy of landholders) and to the NSW Law Reform Commission.

Preliminary

The Bill grants significant powers to NSW government officials and representatives of non-government entities such as the RSPCA (under for example Part 7 Division 7). Those powers affect the private realm, i.e. entry to and observation of locations (domestic or otherwise) in which:

- the community reasonably considers to be deserving protection from arbitrary invasion; and
- Australian law appropriately regards as an important aspect of the broader private sphere, where interference with diverse thought and action is inappropriate.

They are accompanied by an immunisation under Part 10 Division 2 of officials and representatives of non-government entities from liability.

It is axiomatic that any legislation authorising or requiring government and/or private interference within that realm must be legitimate rather than simply a matter of enactment by the government of the day or the administrative convenience of law enforcement agencies.

Legitimacy requires lawfulness. It requires proportionality, perhaps best summed up with the principle that 'just because you can do something on the basis of votes in your legislature does not mean you should or must'. Legitimacy also requires accountability, something often overlooked by agencies that mistake administrative convenience for necessity and that disregard transparency about their activity. The community properly expects that agencies will be open to scrutiny: sunlight remains the best disinfectant for corruption and for fears regarding inappropriate behaviour.

1. **It is particularly important that administration of the proposed legislation should be**
 - **underpinned by a vigorous, well-resourced NSW Privacy Commissioner, which is not currently the case, because the Privacy Commissioner is powerless and invisible;**
 - **subject to ongoing and substantive scrutiny by committees of the NSW Parliament and the NSW Ombudsman, rather than relying solely on the Department; and**
 - **accompanied by access under the state's Freedom of Information regime.**

Those requirements are particularly but not exclusively relevant to Part 7 of the Bill, notably Divisions 1 through 4.

Entry Provisions

The Bill provides authorised persons (whether individually authorised or as a member of a class of officials/non-government entity representatives) with extensive powers regarding warrantless access to private premises. The APF is cognisant of the need for timely intervention on an exceptional basis, but it reiterates past cautions about the inappropriateness of warrantless entry to a location and of surveillance of electronic communications. That is of particular concern given the immunisation from liability noted above.

2. **Access without a warrant should not be a standard course of action. It should not be based on administrative convenience. The APF suggests that the Committee should seek advice about the difficulty of gaining warrants (which provide for independent scrutiny by an officer of the court rather than an official), given that in practice warrants are readily obtainable on a timely basis in all Australian jurisdictions.**

Surveillance Aspects

The Bill provides for observation of commercial and non-commercial spaces, irrespective of the wishes of the owners/occupiers of those spaces. It also provides for the mandatory provision of a range of information, some of which is covered by the state's Privacy legislation.

It is fundamental that administration of the proposed legislation should encompass care regarding the collection, storage, dissemination and disposal of video, still image, audio and textual information gained in the course of animal welfare and law enforcement activity.

3. **The APF emphasises the need for:**
 - **Establishment of administrative protocols regarding surveillance under the proposed legislation;**
 - **Independent scrutiny of whether official and non-government entities are adhering to those protocols; and**
 - **Scope under both NSW and national law for action where there has been a serious disregard of privacy.**

The APF notes community concerns (in particular landholder concerns), and a succession of criticisms by law reform commissions, regarding privacy invasions that are lawful but inappropriate.

Community support for the updated NSW regime will be strengthened if officials and representatives of bodies such as the RSPCA are seen to do the right thing and that negligent or malicious behaviour in implementation of the legislation is strongly discouraged.

Yours sincerely

David Vaile
For the Board of the Australian Privacy Foundation

Australian Privacy Foundation

Background Information

The Australian Privacy Foundation (APF) is the primary national association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues that pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions.

The APF's primary activity is analysis of the privacy impact of systems and proposals for new systems. It makes frequent submissions to parliamentary committees and government agencies. It publishes information on privacy laws and privacy issues. It provides continual background briefings to the media on privacy-related matters.

Where possible, the APF cooperates with and supports privacy oversight agencies, but it is entirely independent of the agencies that administer privacy legislation, and regrettably often finds it necessary to be critical of their performance.

When necessary, the APF conducts campaigns for or against specific proposals. It works with civil liberties councils, consumer organisations, professional associations and other community groups as appropriate to the circumstances. The Privacy Foundation is also an active participant in Privacy International, the world-wide privacy protection network.

The APF is open to membership by individuals and organisations who support the APF's Objects. Funding that is provided by members and donors is used to run the Foundation and to support its activities including research, campaigns and awards events.

The APF does not claim any right to formally represent the public as a whole, nor to formally represent any particular population segment, and it accordingly makes no public declarations about its membership-base. The APF's contributions to policy are based on the expertise of the members of its Board, SubCommittees and Reference Groups, and its impact reflects the quality of the evidence, analysis and arguments that its contributions contain.

The APF's Board, Committees and Reference Groups comprise professionals who bring to their work deep experience in privacy, information technology and the law.

The Board is supported by Patrons The Hon Michael Kirby and Elizabeth Evatt, and an Advisory Panel of eminent citizens, including former judges, former Ministers of the Crown, and a former Prime Minister.

The following pages provide access to information about the APF:

- Policy Statements <https://privacy.org.au/policies/>
- Policy Submissions <https://privacy.org.au/publications/by-date/>
- Media Releases <https://privacy.org.au/media-release-archive/>
- Current Board Members <https://privacy.org.au/about/contacts/>
- Patrons and Advisory Panel <https://privacy.org.au/about/contacts/advisorypanel/>

The following pages provide outlines of several campaigns the APF has conducted:

- The Australia Card (1985-87) <https://privacy.org.au/about/history/formation/>
- Credit Reporting (1988-90) <https://privacy.org.au/campaigns/consumer-credit-reporting/>
- The Access Card (2006-07) <https://privacy.org.au/campaigns/id-cards/hsac/>
- The Media (2007-) <https://privacy.org.au/campaigns/privacy-media/>
- My Health Record (2010-20) <https://privacy.org.au/campaigns/myhr/>