

**Submission  
No 62**

## **INQUIRY INTO ANIMAL WELFARE POLICY IN NEW SOUTH WALES**

**Organisation:** Sentient Animal Law Foundation

**Date Received:** 21 February 2022

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## THE DRAFT ANIMAL WELFARE BILL 2022 – ANIMAL WELFARE REFORM NEW SOUTH WALES

### DETAILS OF SUBMITTER

1. Submission of the **SENTIENT ANIMAL LAW FOUNDATION**
  - 1.1. International Non-Government Organisation: Registered animal welfare charity.
  - 1.2. Primary animal welfare interest: **Animal law reform** governing human-animal interactions.
  - 1.3. Focus on **animal law reform** that evolves the current duty of care applying to persons in charge of sentient animals, creating a legal responsibility to:
    - a. Prevent animals from feeling unnecessary pain, distress and suffering ('anticruelty law', 'negative states'); and
    - b. Provide sentient animals with opportunities to experience comfort, interest and pleasure ('positive states', 'positive animal welfare law').
  - 1.4. Website: <https://sentientanimallaw.org/>

### REPRESENTATIVES OF THE SENTIENT ANIMAL LAW FOUNDATION

2. **Dr Ian A. Robertson<sup>1</sup>**
  - 2.1. **Barrister** specialising in animal law (and related areas of biosecurity, food safety, and trade).
  - 2.2. **Professional roles involving animal welfare and law: (a) Prosecutor** of the Ministry for Primary Industries (New Zealand); (b) **State-wide specialist**: Compliance and Enforcement (Livestock), NSW, Australia; (c) **Veterinarian**.
  - 2.3. **Co-Founder of Sentient Animal Law Foundation** focused on animal law reform that evolves the current duty of care beyond anticruelty.
  - 2.4. LinkedIn Profile [available here](#).
3. **Mr Daniel Goldsworthy<sup>2</sup>**
  - 3.1. **Australian Lawyer** and **Legal Academic**, specialising in **Public Law** including constitutional law, administrative law, legal theory and public international law. Admitted as an **Australian Lawyer in the Supreme Court of Victoria**.

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<sup>1</sup> Guardianz Lawyers and Consultants [www.guardianz.law](http://www.guardianz.law); email [ian.Robertson@guardianz.law](mailto:ian.Robertson@guardianz.law); phone +64 (0)21 165 3117; Address P.O. Box 234, Shortland Street, Auckland, New Zealand.

<sup>2</sup> Deakin Law School, Deakin University; email [d.goldsworthy@deakin.edu.au](mailto:d.goldsworthy@deakin.edu.au); phone +61 3 522 73548; Address Locked Bag 20001, Geelong VIC 3220.

- 3.2. **Professional roles involving animal welfare and law:** (a) **Special interest** legal educator in animal law, environmental law, governance (b) General Assembly Member, **Greenpeace Australia Pacific**.
- 3.3. **Co-founder of Sentient Animal Law Foundation** focused on animal law reform that evolves the current duty of care beyond anticruelty with legislated positive animal welfare law.
- 3.4. Academic Profile [available here](#).

## INTRODUCTION

4. Thank you for the opportunity to contribute to the discussion regarding NSW's Draft Animal Welfare Bill 2022 ('the Draft Bill').<sup>3</sup>
5. The Sentient Animal Law Foundation notes its availability to discuss any of the contents of this submission in further detail.

## LEGISLATIVE RECOGNITION OF ANIMAL SENTIENCE LEADS TO THE PIVOTAL QUESTION OF 'POSITIVE ANIMAL WELFARE LAW'

6. These submissions address the issue of **Animal Sentience**.
7. Specifically, these submissions address:
  - 7.1. The Draft Bill's **inconsistency with contemporary scientific knowledge of the Five Domains** which has moved beyond the concepts of the Five Freedoms (**Proposal 3:** Update the definition of animal); and
  - 7.2. The limitation of the Draft Bill in implicitly acknowledging the concept of animal sentience but, contrary to the contemporary science of the Five Domains, **applying a legal duty of care for only half of the sentient animal's life experience**. (**Proposal 2:** Update the objects of the Act).<sup>4</sup>
  - 7.3. The combined effect of these two factors represents a **lost opportunities and detrimental consequences** to NSW industry, consumers and animals alike.

## THE OBJECTIVE OF THE DRAFT BILL IS COMPROMISED BY LIMITING THE DUTY OF CARE TO ANIMALS' NEGATIVE STATES ONLY (AND FAILING TO ADDRESS THE POSITIVE STATES)

8. The objective of the Draft Bill is stated as a "focus on setting out high-level **principles**, expectations and offences. This forms a **single point of reference for people to understand what is expected of them**" (**Proposal 1:** Replace the existing laws with a single, **modern Act**).<sup>5</sup>

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<sup>3</sup> Department of Primary Industries, NSW Government, *Animal Welfare Reform: The Draft Animal Welfare Bill 2022* < <https://www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/animal-welfare-reform>>.

<sup>4</sup> '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.' See Department of Primary Industries, NSW Government, *NSW Animal Welfare Reform: Consultation Outcomes* (December 2021). ('*Consultation Outcomes*') pg 7.

<sup>5</sup> *Consultation Outcomes*, pg 4.

9. The modern animal welfare science of the **Five Domains validates that the sentient animal feels and experiences both negative states (i.e. pain, distress, suffering) and positive states (i.e. comfort, interest, pleasure).**
  - 9.1. The Draft Bill continues to limit legal responsibilities ('duty of care, "*single point of reference for people to understand what is expected of them*"<sup>6</sup>) to protecting animals from unnecessary negative states/suffering ('anti-cruelty law').
  - 9.2. The Draft Bill's limited focus on anti-cruelty demonstrates that the **legal responsibilities established by NSW animal law are inconsistent with the contemporary science** of the Five Domains. (**Proposal 2: Update the objects of the Act**)
10. The concept of **Positive Animal Welfare** arose in animal welfare science in recognition of the excessive focus on avoiding animals' negative states and that **animal welfare is more than just the reduction of an animal's pain and suffering.**
  - 10.1. Positive animal welfare law is **the legal pathway that brings the concept of positive animal welfare into law.**
  - 10.2. The legal reform process of creating a legal responsibility associated with animals' positive ('positive animal welfare law') is based on the scientific authority of the Five Domains. It utilises the **well-established law reform process** that has seen the evolution of animal law move from animal protection to animal welfare as a result of the science of the Five Freedoms.
  - 10.3. It must be noted that **the science of the Five Domains has superseded the science of the Five Freedoms** as the contemporary model of animal welfare assessment, both nationally and internationally.

#### **THE SCOPE OF THE LEGAL DUTY OF CARE IMPACTS EVERY PROPOSED REFORM CONTEMPLATED UNDER THE DRAFT BILL**

11. All other features of the proposed law reform - such as the responsibilities of human caregivers, the purposes and powers of enforcement, and considerations attaching to the penalties - revolve around the question of "**what aspects of the sentient animal's life experience are being protected**"?
12. As the Draft Bill recognises the pivotal question for advanced and astute law reform is NOT 'are animals' sentient?' because **all anticruelty legislation that protects animals from harm<sup>7</sup> implicitly recognises** animals as sentient (defined as 'the ability to feel and experience').<sup>8</sup>
13. Instead, the pivotal question for contemporary animal law reform that is consistent with the Five Domains is "**will animal law in this jurisdiction continue to just protect sentient animals from**

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<sup>6</sup> *Consultation Outcomes*, pg 4.

<sup>7</sup> The Draft states, 'which is defined as including distress, pain, and physical and psychological suffering.' See *Consultation Outcomes*, pg 7.

<sup>8</sup> '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.' See *Consultation Outcomes*, pg 7.

**unnecessary suffering or will this jurisdiction also apply a legal responsibility for an animal's opportunity to experience comfort, interest and pleasure?"<sup>9</sup>**

14. The scope and breadth of the duty of care underpins a **single point of reference for people to understand what is expected of them (Proposal 1: Replace the existing laws with a single, modern Act)**<sup>10</sup> where people includes NSW animal-related industry, retailers, and the public.
15. The breadth of the duty of care established through the proposed legislative 'single point of reference for people' will impact:
  - 15.1. All standards of practice affecting animal welfare; and
  - 15.2. All related areas of industry, consumer, advocate and public interest involving animals
  - 15.3. Animal-related matters including food safety, biosecurity, trade (including practices, assurances, reputations and opportunities) involving NSW animals and animal products.
16. Limiting the duty of care to the animal's negative states is not only inconsistent with modern science but also limits/is foreseeably detrimental to the interests of NSW stakeholders as a consequence of:
  - 16.1. Lost opportunities for **NSW industries**;
  - 16.2. Lost opportunities to strengthen **consumer trust**; and
  - 16.3. Lost opportunities to **establish a strong point of pragmatic agreement** amongst government, advocates, industry and **all those seeking to elevate standards of animal welfare**.

#### **RECOMMENDATIONS TO ENSURE THE DRAFT BILL IS FIT FOR MODERN SOCIETY AND MEETS WITH SCIENTIFIC BEST PRACTICE**

17. Law functions on words and definitions that establish clear and unequivocal legal responsibilities that are enforceable. Consequently, the shortfalls arising from inconsistency with contemporary science – through limiting law's duty of care to just the sentient animal's negative states - can be effectively remedied by:
  - 17.1. **Explicitly recognising animals as sentient in legislation** rather than relying on persons in charge of animals understanding the 'implicit' recognition of animal sentience within NSW legislation; and
  - 17.2. **Legislatively defining sentience in a manner that is consistent with the principles of the Five Domains** by legislatively stating within the Act that: *sentience means that animals experience negative and positive [physical, mental and emotional] states*.<sup>11</sup>
18. The **Sentient Animal Law Foundation further recommends** that in order to use legislation to shape attitudes and practices that (a) continue to prevent animal cruelty (i.e. acts or omissions that because an animal to feel or experience negative states of pain, distress or suffering); and (b) promote positive animal welfare; NSW industry, consumers and animals would also benefit by:

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<sup>9</sup> Positive Animal Welfare.

<sup>10</sup> *Consultation Outcomes*, pg 4.

<sup>11</sup> Further information is available on the website of the Sentient Animal Law Foundation - <https://sentientanimallaw.org/law-reform>

- 18.1. **Defining ‘negative states’** in the Definitions section of the Act as ‘negative states means an animal’s feeling or experience of pain, distress, or suffering’; and
- 18.2. **Defining ‘positive states’** in the Definitions section of the Act as ‘positive states means an animal’s feeling or experience of comfort, interest, or pleasure’; and
- 18.3. Replacing traditional animal welfare legislative references to “pain, distress and suffering” with the term “negative and positive states”.<sup>12</sup>

#### **AVAILABILITY FOR FURTHER DISCUSSION**

19. Sentient Animal Law Foundation reiterates its appreciation for the opportunity to participate in review process, and further notes its availability for consultation regarding any aspect of the submissions made, and/or further topics, with a representative of the NSW Government.

#### **Ian A. Robertson**

Barrister and Solicitor, Veterinarian  
Co-founder of Sentient Animal Law

#### **Daniel Goldsworthy**

Australian Lawyer and Legal Academic  
Co-founder of Sentient Animal Law

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<sup>12</sup> Further information available at Sentient Animal Law Foundation - <https://sentientanimallaw.org/law-reform>.