

**Submission
No 69**

INQUIRY INTO ANIMAL WELFARE POLICY IN NEW SOUTH WALES

Organisation: NSW Government

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NSW Government Submission to the Standing Committee on State Development inquiry into animal welfare policy in NSW

PREPARED BY THE NSW GOVERNMENT

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Executive summary

The Draft Animal Welfare Bill 2022 (Draft Bill) sets out a contemporary animal welfare legislative framework to replace NSW's ageing animal welfare laws – consistent with commitments made under the NSW Animal Welfare Action Plan.

The Draft Bill consolidates and replaces the current *Prevention of Cruelty to Animals Act 1979* (POCTAA), *Animal Research Act 1985* (ARA), and *Exhibited Animals Protection Act 1986* (EAPA) – focusing on promoting the welfare of animals, preventing animal cruelty, and providing oversight of higher-risk activities through licensing schemes.

The existing welfare framework was developed 40 years ago and has been amended over the years. The Draft Bill modernises the definitions, language and the structure of the animal welfare laws, so that people can better understand how the laws apply to them and to animals.

The development of the Draft Bill has been informed by significant targeted and public consultation. There have been multiple opportunities for key stakeholders and the community to have their say on the shape of animal welfare legislation in NSW - in total, almost 6,000 submissions have been received throughout the reform process in response to the NSW Animal Welfare Reform – Issues Paper (Issues Paper) and NSW Animal Welfare Reform – Discussion Paper (Discussion Paper).

This inquiry marks a third opportunity for stakeholders and the public to have their say on the future of animal welfare laws in NSW by providing feedback to the Standing Committee on State Development (the Committee) on the content of the Draft Bill. This provides an opportunity to comment on proposed changes which have been added for community consideration in response to feedback provided on the Discussion Paper.

The NSW Government looks forward to the outcomes of the Committee's review of the Draft Bill and remains committed to introducing a set of modern animal welfare laws that reflect the evolution of science and community expectations that have occurred since the introduction of the current laws.

Response to terms of reference

The Committee's inquiry will be conducted in two halves:

- considering the Draft Bill upon its publication and producing an interim report on the Draft Bill by 30 May 2022
- considering the draft Regulations associated with the Animal Welfare Bill 2022 upon their publication and producing a final report on the draft Regulations as soon as is practicable.

The NSW Government notes that the timeframes for the second half of this inquiry have not been stated in the Terms of Reference, in recognition that the development of draft Regulations is contingent upon the outcomes of the inquiry's interim report and the subsequent passage of the final Animal Welfare Bill 2022 through NSW Parliament.

Modernising NSW's animal welfare legislative framework

The NSW Animal Welfare Action Plan

In May 2018, the NSW Government released the [NSW Animal Welfare Action Plan](#) (Action Plan), which sets out a framework to modernise NSW's animal welfare policy and legislative framework. This is consistent with the NSW Government's commitment to safeguarding animal welfare and promoting responsible animal ownership and care in NSW.

The commitments made under the Action Plan support the development of a contemporary animal welfare legislative framework in consultation with stakeholders and the community, to replace legislation that is almost 40 years old. This reflects that the science and community expectations around animal welfare have evolved significantly since the current laws were introduced. In addition, the current laws are unnecessarily complex and prescriptive after countless amendments and modifications over the years.

The approach to animal welfare reform

The NSW Government is taking a three-stage approach to modernising the animal welfare policy and legislative framework:

- Phase 1: Developing a new Act (that is, the Animal Welfare Bill 2022)
- 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

Consistent with the commitments under the Action Plan, the NSW Government will consult with stakeholders and the community at all stages of the reform program. This includes the Regulations and Standards, which will be developed in future phases of the project.

Consultation

Public consultation

The Draft Bill, which is available on the [NSW DPI website](#), has been informed by two rounds of public consultation:

- the Issues Paper was released for public consultation from February to June 2020
- the Discussion Paper was released for public consultation from August to September 2021.

Both rounds of public consultation received significant community feedback – with over 1,100 responses on the Issues Paper and over 4,800 responses on the Discussion Paper. These responses reflected a broad range of stakeholder and community views.

Feedback received on the Issues Paper was used to inform the development of the Discussion Paper, and feedback received on the Discussion Paper was used to inform the development of the Draft Bill.

The inquiry process is an important opportunity for the community to have their say on the Draft Bill which includes proposed changes incorporating feedback from the Discussion Paper process. This is consistent with the NSW Government's commitment to consult with the community throughout the development of the new animal welfare laws.

The NSW Government has published a report on the outcomes of public consultation on the Discussion Paper – it is also available on the [NSW DPI website](#).

Targeted consultation

In addition, the NSW Government has undertaken targeted consultation with a selection of key stakeholders – including:

Current POCTAA enforcement agencies	Stakeholders with a legislated role	Other key stakeholders
<ul style="list-style-type: none">• RSPCA NSW• Animal Welfare League NSW• NSW Police Force• Greyhound Welfare Integrity Commission	<ul style="list-style-type: none">• Animal Research Review Panel• Exhibited Animals Advisory Committee• NSW Farmers Association¹• Veterinary Practitioners Board of NSW²	<ul style="list-style-type: none">• Australian Veterinary Association• DOGS NSW• Animal Care Australia

In addition to the targeted consultation processes, the NSW Government has also sought independent, scientific advice from the Animal Welfare Advisory Council while developing

¹ NSW Farmers Association provide representatives for Stock Welfare Panels in certain situations, as outlined at clause 31A of the Prevention of Cruelty to Animals Regulation 2012

² There are interactions between animal welfare laws and the *Veterinary Practice Act 2003* (VPA), particularly as it relates to restricted acts of veterinary science (established under section 7 of the VPA and prescribed in the Veterinary Practice Regulation 2013)

the Draft Bill. The NSW Government has also continued to work closely with the POCTAA enforcement agencies throughout the development of the new legislation.

About the draft Animal Welfare Bill 2022

What is the draft Animal Welfare Bill 2022 aiming to achieve?

The Animal Welfare Bill 2022, once passed by Parliament, will replace POCTAA, ARA and EAPA.³ The Draft Bill consolidates the existing provisions within these three Acts into a single piece of legislation.

The main objects of the Draft Bill are to promote the welfare of animals and to prevent cruelty to animals.⁴ These objects are consistent with the current objects of POCTAA but have been updated to provide greater clarity to the courts and the public about the purpose of the new animal welfare laws.

How does the Draft Bill achieve the objects?

Preventing cruelty and promoting welfare

The two main ways that the Draft Bill protects animals from cruelty and promotes their welfare is through setting out a baseline acceptable standard of care for animals – the minimum care requirements – and by prohibiting cruelty to animals.

The Draft Bill carries over and modernises the existing provisions of POCTAA which require people who are responsible for animals (such as owners of animals, people caring for animals, licence holders, employees etc.) to ensure that minimum care requirements for the animals in their care are met.⁵ The minimum care requirements reframe existing provisions from POCTAA as a positive obligation. This sets out a baseline standard of care for animals – for example, requiring a person to:

- provide access to appropriate food, drink and shelter (e.g. an appropriate amount of food of a type suited to the needs of the animal) – based on section 8 of POCTAA
- provide appropriate opportunities to exercise and display normal behaviours, considering the animal's species, environment, behavioural needs and particular circumstances – based on section 9 of POCTAA, and broadened in response to Discussion Paper feedback
- ensure an animal is provided with appropriate treatment for disease, illness or injury – such as preventative treatments and timely veterinary treatment when necessary – based on section 5(3)(c) of POCTAA
- keep the animal in an appropriate environment (e.g. ensuring the animal's living conditions are clean and hygienic) – based on provisions in clause 26 of the POCTA Regulation
- handle and transport the animal appropriately – based on section 7 of POCTAA.

The minimum care requirements have been designed to be flexible and recognise that the ways of meeting the needs of different animals vary depending on a range of factors – including their species, environment, behavioural needs and particular circumstances.⁶ By

³ See section 165 – Repeals (page 62 of the Draft Bill)

⁴ See section 3 – Objects of Act, section 4 – How objects are to be achieved (page 2 of the Draft Bill)

⁵ See section 12 – Meaning of “responsible person” (page 6 of the Draft Bill)

⁶ See section 14 – What is appropriate for minimum care requirements (page 7 of the Draft Bill)

including this specific guidance on what factors should be taken into account when considering whether something is ‘appropriate’, the Draft Bill supports clear and consistent enforcement in a way that is sensitive to the facts of individual cases. It is an offence to fail to meet the minimum care requirements.

The minimum care requirements are complemented by a streamlined framework for setting mandatory Standards for certain species or activities involving animals, which simplifies the approach taken under current laws.⁷ These Standards provide an additional layer of detail for keeping or using animals in particular settings to ensure a good standard of welfare and minimise animal welfare risks.

The Draft Bill ensures that it continues to be an offence to commit an act of cruelty on an animal.⁸ It provides a definition of what constitutes cruelty, based on the current laws, which covers unacceptable outcomes (including acts or omissions that result in an animal being abused, caused unreasonable or unnecessary harm, tormented, or overworked) and also outlines certain specific unacceptable activities (including riding animals that are unfit for that purpose and operating game parks).⁹ This consolidates a range of different offence provisions contained within the existing laws.

The Draft Bill also carries across the existing offence for committing an act of aggravated cruelty,¹⁰ and sets out that an act of cruelty becomes an act of aggravated cruelty if it results in the death, deformity or serious disablement of the animal, or the animal being left in such a state that it is cruel to keep it alive.¹¹

Additionally, the offences available under the *Crimes Act 1900* for reckless serious animal cruelty and intentional serious animal cruelty remain unchanged.¹² These are more serious charges that respond to the most severe cases of animal cruelty – creating a clear escalating pathway to respond to more serious forms of offending.

Finally, the Draft Bill includes a range of specific offences to provide additional certainty around practices that are particularly prevalent or have particularly significant welfare impacts – for example, the Draft Bill introduces new, specific provisions relating to the transport of dogs in hot vehicles.¹³

Ensuring oversight of higher-risk activities

The Draft Bill sets out a framework for licensing higher-risk activities involving animals, including exhibiting animals and animal research – which are currently licenced under the EAPA and ARA respectively. The operational detail of licensing schemes will be set out in the supporting Regulations.¹⁴ This approach is based on the model set out in the *Food Act*

⁷ See section 20 – Requirement to comply with standards (page 9 of the Draft Bill)

⁸ See section 25 – Cruelty to animals (page 11 of the Draft Bill)

⁹ See section 7 – Meaning of “act of cruelty” (page 4 of the Draft Bill)

¹⁰ See section 8 – Meaning of “act of aggravated cruelty” (page 4 of the Draft Bill)

¹¹ See section 26 – Aggravated cruelty to animals (page 11 of the Draft Bill)

¹² See *Crimes Act 1900*, section 530

¹³ See section 37 – Requirements for transporting dogs (page 15 of the Draft Bill)

¹⁴ See Part 5 – Licensing and approvals (pages 19-21 of the Draft Bill)

2003. Licensing schemes provide greater oversight of activities that may pose higher risks to animals – for example by assessing applicants before they can commence the activity and enabling regular compliance programs to ensure that licence holders are complying.

How will the Animal Welfare Bill 2022 be administered and enforced?

Providing certainty for lawful activities

The Draft Bill outlines a set of exemptions that provide certainty for people undertaking lawful activities like fishing, hunting, pest management and agriculture.¹⁵ They are based on the defences available under the current laws.¹⁶ The inclusion of exemptions in the new laws provides certainty to the community that lawful activities do not constitute an animal welfare offence, as long as they are done appropriately (i.e. in a way that causes no unnecessary harm).

Streamlined compliance powers based on modern legislation

The Draft Bill provides a consistent set of powers for authorised officers that enable enforcement agencies to undertake appropriate compliance and enforcement activities.¹⁷ This consolidates the different sets of powers under POCTAA, EAPA and ARA, with the powers also being updated to reflect powers available under other contemporary NSW legislation, like the *Biosecurity Act 2015*.

This provides authorised officers with a range of different approaches to respond to non-compliance – from lighter-touch means of addressing issues like informal warnings and written notices through to penalty notices and prosecutions.

The Draft Bill also provides authorised officers with a range of updated powers and tools to protect the welfare of animals – this includes being clearer on when and how officers can seize animals and introducing a new power to administer pain relief or a sedative when it is required to allow the animal to be treated by a veterinary practitioner. Further, the Draft Bill also modernises the current provisions allowing courts to make a range of different orders to help prevent further harm to animals.¹⁸

Improved approach to penalties

In June 2021, the NSW Government passed the *Prevention of Cruelty to Animals Amendment Act 2021*, which increased penalties for some of the most common animal welfare offences under the existing animal welfare laws. These interim amendments made NSW's penalties some of the highest in Australia. The Draft Bill sets out a consistent penalties framework for offences under the new laws, based on the higher penalty amounts established by the interim amendments.¹⁹ This provides a clear escalation where

¹⁵ See section 119 – Specific exemptions (page 43 of the Draft Bill)

¹⁶ See POCTAA, section 24

¹⁷ See Part 7, Division 2 – Information gathering powers; Part 7 Division 3 – Powers to enter premises; Part 7 Division 4 – Investigation and risk management powers (pages 26-33 of the Draft Bill)

¹⁸ See Part 8 Division 3 – Court orders (pages 44-49 of the Draft Bill)

¹⁹ See sections 108-112, which outline the Category 1 through to Category 5 penalties (page 41 of the Draft Bill)

maximum penalties increase based on the severity of the offence – including through to the most serious offences under the *Crimes Act 1900*.

Improved enforcement arrangements

Under the current laws, a number of agencies have compliance and enforcement responsibilities:

POCTAA	ARA	EAPA
<p>Administration:</p> <ul style="list-style-type: none"> NSW Department of Primary Industries 	<p>Administration:</p> <ul style="list-style-type: none"> NSW Department of Primary Industries 	<p>Administration:</p> <ul style="list-style-type: none"> NSW Department of Primary Industries
<p>Enforcement:</p> <ul style="list-style-type: none"> RSPCA NSW Animal Welfare League NSW NSW Police Force Greyhound Welfare and Integrity Commission (greyhound-related issues only) 	<p>Enforcement:</p> <ul style="list-style-type: none"> NSW Department of Primary Industries 	<p>Enforcement:</p> <ul style="list-style-type: none"> NSW Department of Primary Industries

The current enforcement arrangements reflect the unique combination of animal care expertise, animal care infrastructure and law enforcement experience possessed by RSPCA NSW and Animal Welfare League NSW. As a result, the Draft Bill does not propose to make changes relating to who administers or enforces animal welfare laws in NSW.

The Draft Bill clearly sets out the roles and limitations on each enforcement agency.²⁰ It also outlines an improved approach to oversight of enforcement activities by RSPCA NSW and Animal Welfare League NSW by establishing a complaints handling process through the NSW Ombudsman, clarifying that they are subject to the *Government Information (Public Access) Act 2009* in relation to their enforcement functions, and strengthening requirements around annual reporting on their enforcement activities.²¹

What matters will be covered in the Regulation?

General Regulations

The Draft Bill will be supported by Regulations that will provide further detail on matters outlined in the Bill. For example, the Regulations will include 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

²⁰ See section 59 – Purposes for which functions under Part may be exercised (page 26 of the Draft Bill)

²¹ See section 102 – Annual reports (page 39 of the Draft Bill) and Schedule 4 – Consequential amendments of other legislation (4.14 on page 78 and 4.19 on page 80)

- content to be included in the annual reports of the approved charitable organisations.

Licensing schemes

The Regulations will also cover matters relating to the operation of the animal research and exhibited animals licensing schemes. This includes details like:

- the process for applying for licences, and things 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 licensing schemes
- processes for suspending or cancelling licences.

These examples are not intended to be exhaustive. As noted above, draft Regulations will be published following the release of the Committee's interim report.

More information

For more information on the Draft Bill, visit the [NSW DPI website](#).