

**Submission
No 70**

INQUIRY INTO ANIMAL WELFARE POLICY IN NEW SOUTH WALES

Organisation: Dogs NSW

Date Received: 25 February 2022

Inquiry into Animal Welfare Policy in NSW: Submissions on the draft *Animal Welfare Bill 2022*

DOGS NSW welcomes the opportunity to provide feedback to the Draft Animal Welfare Bill 2022. DOGS NSW supports and appreciates the premise behind the creation of the Draft Animal Welfare Bill 2022, our feedback and concerns are provided herein.

1. Dogs NSW, a State member of the Australian National Kennel Council Ltd, is the largest independent body of dog breeders and shows in NSW. It currently has approximately 9,500 active members, and of these members 3,550 hold a breeding prefix.
2. The objects of Dogs NSW are¹:
 - (a) Promote and raise the standards of breeding purebred dogs.
 - (b) Maintain the Register of purebred dogs.
 - (c) Promote responsible dog ownership amongst the Members and community.
 - (d) Promote the various activities of Dogs NSW, which include Dog Shows, Obedience, Agility, Working and Sporting Dog Trials.
 - (e) Dogs NSW and its members support best breeding practices and assist and make contributions to canine veterinary research.
3. The welfare of animals is a primary concern of Dogs NSW and its members. Dogs NSW has a Code of Ethics and Regulations (the **Dogs NSW Regulations**)² which set a standard of obligations for its members to maintain the responsible care and treatment of animals in the course of breeding, selling and showing dogs.
4. Pursuant to the Dogs NSW Regulations, members of Dogs NSW are required to observe and comply with the *Companion Animals Act 1998* (NSW) (the **Companion Animals Act**) and the *Prevention of Cruelty to Animals Act 1979* (NSW) (the **Prevention of Cruelty Act**). A failure to comply with the above Legislation is a contravention of the Dogs NSW Regulations and a contravening member is subject to disciplinary action, including disqualification of membership and breeding rights, from Dogs NSW.
5. The Draft *Animal Welfare Bill 2022* (the **Draft Bill**), particularly as it repeals the Prevention of Cruelty Act, has a real impact upon the largest body of independent breeders and sellers of dogs in NSW.
6. It is noted the NSW Department of Primary Industries (**NSW DPI**) sought community feedback on a Consultation Paper for the Licensing and Regulation of Cat and Dog Breeders between 16 November and 31 December 2021 (the **Licensing Consultation Paper**). Dogs NSW submitted its feedback to the Licensing Consultation Paper and is currently awaiting further proposals from the NSW DPI.³

¹ Introduction to Dogs NSW: https://www.dogsnsw.org.au/media/1542/lecture_1a-introduction.pdf

² Dogs NSW Code of Ethics: <https://www.dogsnsw.org.au/media/4103/part-13-code-of-ethics-july-2021.pdf>
Dogs NSW Regulations: <https://www.dogsnsw.org.au/members/regulations/>

³ A copy of Dogs NSW Submissions on the Licensing Consultation Paper can be located at:
https://www.dogsnsw.org.au/media/4318/final-dogs-nsw-feedback-dpi-consultation-paper_20211231.pdf

7. Dogs NSW sets out the following submissions for consideration by the Committee as part of its Inquiry process with respect to the Draft Bill:

Part 2: Interpretation

Section 10: Meaning of “exhibiting an animal”

8. The current wording of section 10 is unclear as to whether the exhibiting of an animal at a dog show will fall under the operation of the Draft Bill. This is compounded by subsections 10(1)(b) and 10(3)(c) referring to purposes prescribed by the regulations, which have yet to be drafted and submitted for feedback.

Exhibited Animals under the Exhibited Animals Act and Exhibited Animals Regulations

9. It is noted the *Exhibited Animals Protection Act 1986* (NSW) (the **Exhibited Animals Act**) will be repealed by the Draft Bill. However, the *Exhibited Animals Protection Regulation 2019* (NSW) (the **Exhibited Animals Regulations**) may remain in force under the transitional provisions of the Draft Bill.⁴ As the wording of section 10(1) of the Draft Bill is substantially similar to that of the *Exhibited Animals Act*⁵, guidance as to the proper intention and interpretation of section 10 of the Draft Bill can therefore be obtained from the *Exhibited Animals Regulations*.
10. The *Exhibited Animals Regulations* provide that an animal that is a lawful captive and is part of a competitive display of household pets is exempt from the operation of the *Exhibited Animals Act*.⁶
11. The exemption of working dogs under the *Exhibited Animals Act* is covered by sections 5(c) and (k) of the *Exhibited Animals Regulations*.

Submission on the meaning of “exhibiting an animal”

12. The current legislative framework draws a clear distinction between the exhibition of animals at establishments such as zoos, aquariums, circuses, and wildlife parks; opposed to the exhibition of animals at dog shows and agricultural events.
13. The current wording of section 10 of the Draft Bill specifically mentions the former establishments in the definition of *exhibiting an animal*.⁷ However, the broad ambit of sections 10(1)(a) and (b) create uncertainty as to whether this distinction will remain under the proposed legislation.
14. It is submitted that the Draft Bill maintain this distinction either through a direct amendment to section 10(3) or that the exemptions provided under the *Exhibited Animals Regulations*, insofar as they related to dog shows and agricultural shows, be preserved in the same or substantially similar form.

⁴ *Draft Animal Welfare Bill 2022*, Schedule 2 Part 2

⁵ *Exhibited Animals Act*, section 5(1), definition of “exhibit”.

⁶ *Exhibited Animals Regulations*, section 5(1)(b).

⁷ *Draft Bill*, section 10(2).

15. Should dog shows and agricultural shows fall under the ambit of section 10(1) of the Draft Bill, there is a real and substantial risk of detriment being caused to the recreational and commercial interests of Dogs NSW and its members. This is particularly so considering the licensing requirements of Part 5 of the Draft Bill, which is addressed in detail below.

Part 3: Requirements for care of animals

Division 3: Prohibited and restricted procedures

Section 22: Prohibited procedures

16. It is noted that in February 2022, Minister Saunders announced that surgical artificial insemination would be removed from the Draft Bill. While Dogs NSW awaits confirmation of the removal of section 22(1)(e) from the Draft Bill, it makes the following submissions on the current wording of the section.
17. Section 22(1)(e) prohibits a person from carrying out a surgical artificial insemination of a dog.
18. The practice of artificial insemination is a common practice amongst dog breeders which allows for a safe and effective means of breeding being conducted. It is the usual practice that artificial insemination is conducted by a veterinary practitioner.
19. The wording of section 22(1) does not, however, exempt a veterinary practitioner from conducting the procedure. Section 22(2) provides definitions of words used in section 22(1) which include caveats of the prohibited procedures being conducted by a veterinary practitioner.
20. While the Draft Bill amends the *Veterinary Practice Regulation 2013* (the **Veterinary Regulations**) to provide that surgical artificial insemination of a dog is not a restricted act of veterinary science,⁸ the wording of section 22 is at odds with this amendment.
21. If it is the intention of the Draft Bill to prohibit a person other than a veterinary practitioner from conducting surgical artificial insemination on a dog, this should be expressly stated as an exception under either section 22(c) or under schedule 1 for the purposes of section 23.
22. There is currently a contradiction between the prohibition of the procedure under section 22 of the Draft Bill and the amendment to the Veterinary Regulations.
23. As artificial insemination is a widely practiced and common procedure utilised by the members of Dogs NSW, who are small independent breeders, clarity must be provided on what procedures are prohibited and if exceptions are granted, how and when these procedures can be conducted.

⁸ *Draft Bill*, Schedule 4, section 4.23 [1].

Section 23: Restricted Procedures

24. Schedule 1 of the Draft Bill states the restricted procedures under section 23 and the exceptions allowing those procedures to be performed. The restrictions of the procedures of debarking and declaw removal on a dog refer only to the procedures being performed in circumstances prescribed by the regulations.
25. As the regulations have not yet been drafted, there is no guidance as to what circumstances will warrant the procedures being undertaken.
26. The performance of debarking and declawing of dogs is not uncommon and is done so by members of Dogs NSW acting in the best interests of the animal.
27. It is submitted the provisions of section 21 of the *Prevention of Cruelty to Animals Regulation 2012 (NSW)* (the **Prevention of Cruelty Regulations**) be replicated in its current terms in the regulations envisioned by the Draft Bill for the purposes of section 23.
28. In the absence of any correlating provisions under the Prevention of Cruelty Regulations for the procedure of a declaw removal on a dog, Dogs NSW will await the draft regulations under the Draft Bill to make submissions on the procedure. However, it notes that it does not oppose declaw removal on a dog being performed by veterinary practitioner.

Part 4: Offences relating to animal cruelty

Division 6: Offences involving prohibited items

Section 40: Prohibition on prohibited items

29. Section 40(1)(a) states a person must not possess, use, sell, lease or give away an electrical device other than an electrical device of a type permitted by the regulations. It is the position of Dogs NSW that the current terms of the Prevention of Cruelty Regulations adequately provide for the welfare and best interests of animals regarding the use of electrical devices.
30. It is submitted the terms of schedule 3 of the Prevention of Cruelty Regulations be replicated in its current terms in the regulations envisioned by the Draft Bill for the purposes of section 40.

Part 5: Licensing and approvals

Section 42: Requirement to be licensed

31. As stated in paragraphs 8 through 15 above, Dogs NSW submits the distinction between the exhibition of animals at establishments such as zoos, aquariums, circuses, and wildlife parks; opposed to the exhibition of animals at dog shows and agricultural events, as set out under the current legislative framework is to be maintained.
32. Provided this distinction is maintained, Dogs NSW and its members will not be covered by section 42(1)(b) of the Draft Bill, and no licensing requirements will apply.

33. It is submitted dog and agricultural shows should not be activities prescribed by the regulations requiring licensing and approvals under the Draft Bill.⁹
34. The conduct and obligations of members at dog and agricultural shows conducted by Dogs NSW are governed by the terms of the Dogs NSW Regulations.¹⁰ The Dogs NSW Regulations adopt the current provisions of the Companion Animals Act and Prevention of Cruelty Act and will continue to abide by the terms of the Draft Bill.
35. If licensing requirements were introduced for members of Dogs NSW to enter dog and agricultural shows, insofar as they related to the 'exhibiting' of dogs, it would be an unintended consequence which goes beyond the intention and scope of the Draft Bill.
36. If, however, the definition of *exhibited animal* reflects the current legislative framework, and this is replicated under Part 5 of the Draft Bill, any ambiguity regarding the requirements of licensing for dog and agricultural shows will be alleviated.
37. The removal of the ambiguity of a requirement of licensing for members of Dogs NSW will also address the concerns regarding the powers to enter premises as discussed below.

Part 7: Enforcement and compliance

Division 3: Powers to enter premises

38. Part 7 of the Draft Bill seeks to grant broad powers to authorised officers to administer the Act.¹¹ This includes authorised officers who are employed or otherwise engaged by an approved charitable organisation.¹²
39. Importantly, these powers include powers of entry to premises, including residential premises.

Section 66: Powers of authorised officers to enter non-residential premises

40. Section 66 prescribes the circumstances in which an authorised officer may exercise their powers of entry to non-residential premises, or part of a premises not used for residential purposes.
41. Firstly, it is noted subsection (e) allows these powers to be exercised at any reasonable time at which a licensed activity is carried out. Should members of Dogs NSW fall under the ambit of Part 5 of the Draft Bill, it would cause a real and serious apprehension that they could be subjected to powers of entry under section 66 at any undefined time.

⁹ *Draft Bill*, section 42(c).

¹⁰ *Ibid.*, 2.

¹¹ *Draft Bill*, section 59.

¹² *Ibid.*, section 59 (b).

42. The use of the powers of entry in this circumstance goes beyond the intended scope of the Draft Bill. While there is an ambiguity of who is required to be licensed under Part 5, the intended meaning of '*exhibited animal*', interpreted in accordance with the current legislative framework in the absence of the proposed regulations, makes clear that it is not the policy intention of the Draft Bill for members of Dogs NSW to be subjected to this provision.
43. Secondly, it is not uncommon for members of Dogs NSW who breed litters to use part of their residential premises for this purpose. Many of these members will sell pups of the litters for fee or reward. As *commercial* is an undefined term under the Draft Bill and it is intended to carry its ordinary meaning,¹³ it is uncertain how the Draft Bill is to operate in circumstances where a dog breeder uses part or parts of their residential premises for the purposes of conducting the breeding.
44. The word *commercial* regularly carries the connotations of 'concerned with or engaged in commerce' and 'for making a profit or relating to making a profit'.
45. It is often difficult to ascertain or prescribe a particular part of a residential premises as having a *commercial* characteristic. For example, it is not uncommon for breeding to occur in an outside space on the land owned by the breeder, with the litter being born inside the residential premises, but the transaction of selling a pup of the litter occurring within the main domicile of the residential premises. As it currently stands, there is no guidance under the Draft Bill as to what part of the residential premises in this scenario may be attributed a *commercial* characteristic and therefore satisfy the requirements of a non-residential premises or commercial activity.
46. A dog breeder may engage in the practice for the purpose of promoting the lineage or persevering a particular breed of a dog. During the course of the practice, it is common for pups of litters to be sold to meet the ongoing costs associated with providing the dogs with the standards of minimum care that Dogs NSW promotes to all of its members. The purpose of this breeding is not the pursuit of profits. While the sale of a pup from a litter is, in its strictest sense, a commercial transaction, it is ancillary and a by-product of the dominant purpose of the breeder engaging in the practice. The breeder may ultimately not turn a profit and the costs of engaging in the practice will exceed any money earned by the sale of pups. The current use of *commercial* in the Draft Bill does not reflect the reality of many of the dog breeders who are members of Dogs NSW.
47. It is therefore unclear as to whether it is in the intention of the Draft Bill that a dog breeder, particularly a small dog breeder who may only have one litter in a calendar year or a breeder who does not in fact profit from their endeavors, is to be subjected to the powers under section 66(1)(f).
48. While section 66(2) provides the regulations may prescribe activities that do not fall within the ambit of section 66(1)(f), the wording of the regulations is not yet known and therefore there is no certainty as to how the section as a whole will operate with respect to the members of Dogs NSW.

¹³ *NSW Animal Welfare Reform Consultation Outcomes*, Department of Primary Industries, December 2021, page 35.

49. It is noted the NSW DPI has sought community feedback on the Licensing Consultation Paper and further information from the NSW DPI has not yet been published. The Licensing Consultation Paper proposes a licensing scheme for the breeding of dogs in NSW, including additional exemptions under the *Animal Welfare Code of Practice Breeding Dogs and Cats* made under the Prevention of Cruelty Regulations.
50. In the absence of a definition of *commercial* being included in the Draft Bill, it is submitted any exemptions provided under section 66(2) must be consistent with the Prevention of Cruelty Regulations and any outcomes of the Licensing Consultation Paper.
51. Until certainty is obtained on these issues, there is a real concern that the powers granted under section 66 could be used to circumvent the protections provided by section 67.
52. It is submitted that, subject to the outcomes of the Licensing Consultation Paper, further consideration will need to be given to the definition of *commercial* and how the powers granted under section 66 of the Draft Bill are to relate to dog breeders in NSW.

We thank the Committee for the opportunity to provide feedback to the Draft Bill. We are happy to provide any further information as may be needed and please do not hesitate to contact me on should you wish to discuss these submissions further.

We look forward to working with the Committee and the NSW DPI to develop legislation and regulations that promote visibility, accountability, and transparency for the welfare of animals.

Yours sincerely,

Lyn Brand
President Dogs NSW