

Submission
No 72

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

Organisation: Name suppressed

Date Received: 27 February 2022

Partially
Confidential

The _____ wishes to register with the Department of Primary Industries its deep and extensive concerns with the Draft Animal Welfare Bill that has been released for comment.

STATEMENT OF SUPPORT

As an organisation that has a long standing history of care and dedication to the welfare of the Pure Bred Dogs in Australia, it is without need to state that we are in support of any effort to improve the outcomes for animals, all animals, in Australia.

But it also goes without saying that we have intimate experience of the injustice of legislation based on bias and minority hysteria. This resulted in Federal legislation against the German Shepherd Dog in Australia from 1929 to 1971. The laws of the day were based on a lack of evidence, a lack of sound principle in law and government bias.

We acknowledge that there have been great advances in consultation and law making processes, but we are very much alarmed that the stated objectives of this legislation has been hijacked and our intent in making this submission is to contribute to the development of a bill that furthers the needs of animals whilst taking account of the rights of all stakeholders.

CONCERNS WITH THE DRAFT BILL

- 1. The stated objective of this bill was to produce a piece of “modern” unambiguous legislation.*

We contend that far from being clear, concise and “user friendly” the bill we have before us is open to subjective interpretation and bias on the part of those making determination. The definitions are unclear and very broad, whether by intent or design and place anyone subject to the rule of the bill in a position of vulnerability.

To illustrate:

Terms such as “unnecessary” “unreasonable” “commercial” “lawful” are all very broad and open to interpretation. They are open to subjective bias and will vary from person to person.

Confusion is also likely to arise in regard to the term “lawful”: - does this only apply to statute in this area or does it capture the broader sense of lawful.

For this bill to be acceptable, we believe that a great deal of work is yet to be done to improve the scope of meaning and the inclusion of definitions that have clear boundaries. We argue that for the ordinary person to be bound by the Act, they must be able to understand easily what is captured and what is excluded.

2. *The repeated reference to and reliance on regulations that as yet do not exist.*

Experience has taught us all that there is frequently a great deal of difference between aspirations and reality when it comes to legislation. With a Bill proposed with such broad terms and constant references to future regulations, we believe that there can be no genuine consultation or meaningful inclusion of those who will be governed by this Act should it proceed.

To illustrate:

Division 2 Standards

20 Requirement to comply with standards

(3) In this section—

***prescribed standard* means a standard prescribed by the regulations for the purposes of this section.**

In ordinary terms, this really is impossible to understand or interpret. There are no Regulations so how can anyone possibly understand what a prescribed standard is or means?

Our concern also extends to the fact that Acts of Parliament form the legislative basis on which government departments develop and frame regulations, generally within their organisation and there is no requirement to return these to the Parliament for endorsement.

In the case of this draft with such poor quality definitions, this leaves the regulatory document open to departmental officer bias and uncontested mandates that make for an inequitable and impractical set of regulations.

We object very strongly to this approach.

3. *The proposed bill does not take account of the breadth of activity in this sector*

The draft bill takes a singular view of all animals kept by humans as “livestock”, a term that clearly infers that all animals are for human consumption and produced for profit.

Quite clearly, this is not the case and denies a motivation for something other than financial gain. This has a twofold outcome:

- It excludes the activities of organisations that over many decades have a demonstrable track record of ongoing improvement and oversight through education and membership regulation.
- It assumes that production for profit is a better outcome for the animals produced.

Failing to acknowledge that there are very different motivations for activities with animals and placing unreasonable demands on the hobbyist will result in indiscriminate breeding practices in an illicit environment where the cost of the animals being produced will place ownership of a companion animal beyond the reach of most NSW residents.

We would suggest that supporting the creation of a new class of stakeholder i.e. hobbyist and proposing a different level of performance by those qualifying, through membership of a recognised organisation will in fact be beneficial, as it will provide intending owners with an alternative to purchase from illicit markets mor breeding factories and will offer the NSW Government a reliable and known partner in its goals to secure better outcomes for animals.

4. The proposed bill seeks to empower enforcement officers beyond what is acceptable and without the oversight of legal systems

Sections 67 (1) and the entire area covered by Division 4 and Division 5, Section 70 create a framework for intimidation and enforcement overreach. There are no avenues for appeal and our experience of the manner in which powers such as these have been used in Victoria, leaves all with a sense of serious trepidation.

To illustrate:

There have been instances in Victoria where, without external oversight or assessment, without the animal being given the benefit of the doubt, animals have been destroyed through the intimidation of enforcement officers.

In one instance, an elderly visitor to a private home kicked the resident dog; the dog reacted with a single puncture bite, requiring a visit to the hospital. This gave rise to a visit by Local Government enforcement personnel who without reference to the offence by the visitor deemed the dog "Dangerous". When the owner indicated that they would defend the actions of the dog, they were threatened that unless they put the dog down and desisted from any defence, the Council would take them to Court and send them "broke" in the process. The Council would also ensure that the animal was destroyed on their terms, not the owners.

There are numerous instances of this occurring in Victoria.

As it stands, this draft bill empowers bullying and denial of justice for animals and their owners alike. Whilst it does not deal with "dangerous dogs" we use this example to illustrate the behaviour of enforcement personnel when they are accorded powers such as these sections of the proposed bill will provide.

5. The NSW Government has previously demonstrated a lack of resolve to enforce the provisions of other acts with any alleged offender other than "low hanging fruit" or newsworthy opportunities. We are concerned that outcomes achieved by this legislation will focus on those least able to defend themselves (elderly, poor) or those who do not understand this piece of legislation. The profiteers will simply go underground or mutate!

To illustrate:

The Companion Animals Act 1997 S. 16, 17 & 18, prohibits various activities that incite, encourage or train an animal to attack a human or other animal. And yet, several groups in NSW publicly advertise and promote IPO pursuits which train and encourage "bite work" and do so with impunity.

We regard this activity as "cruel" in the truest sense of the word because animals temperamentally unsuited to this activity are at risk of coercion and mental stresses in order to

undertake the role. Not every animal is motivated to do this and when forced to this work, it may lead to an animal that is both fearful and unpredictable.

There is also the risks of injury arising from the nature of this work.

In our view, these two elements are clearly “cruel” with outcomes of death for an animal that is trained but found wanting in IPO and serious spinal and other orthopaedic injury arising from the pursuit.

And yet, the activity continues in relatively open view whilst elderly pensioners are being bought to account for relatively minor offences.

To summarise what we believe needs to happen-

- Definitions need to be radically improved, tightened and made very concise and not open to subjective interpretation
- We believe that much of what is referred to as the domain of regulation needs to be brought into the Act. We do not support the development of Regulations that will be relied on for the delivery of outcomes as being solely the domain of the Department of Primary Industries to develop without consultation and inclusion of all stakeholders.
- We argue that companion animals are not livestock and that organisations other than welfare organisations need to have standing in this bill and that a “one size fits all” is not appropriate. The recognition of the “hobbyist” needs to be included and the inclusion of our or controlling body is an imperative
- The rights being provided to enforcement officers are too broad, too invasive and lacking in a requirement for legal process. We reject these totally and suggest these need to be re-drafted.
- That the Department needs to look at other Acts and look at opportunities for less contradiction. We also believe that the organisations tasked with enforcement need to be held to account for their actions, be subject to external oversight and that a robust and fair appeals process that does not require the appellant to be affluent in order to participate be established.

As an organisation, we again wish to assure the Department of Primary Industry of our support of any actions that support the welfare of animals. Our concerns are not limited to the above, but these reflect a need for further work before the draft bill is acceptable to our organisation.

We trust that our remarks will assist in the review and improvement of the draft.