

**Submission  
No 92**

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

**Organisation:** Sentient, The Veterinary Institute of Animal Ethics

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## *Sentient Submission to Inquiry into Animal Welfare Policy in NSW*

### Introduction

Sentient is an independent Australian veterinary association dedicated to animal welfare advocacy. Our members are represented in academia, private practice (companion, equine and large animals), non-government, government and industry settings, with expertise in many fields including animal welfare, animal behaviour, clinical medicine, epidemiology and the use of animals in teaching and research. A number are qualified specialists in particular disciplines or have extensive experience within industries such as live export, horse racing and greyhound racing. Sentient has presented at international and national conferences, published papers, contributed numerous submissions to state and federal government inquiries, and provided evidence at parliamentary public hearings. We also host final year veterinary science students for Public, Industry and Community placements in animal welfare advocacy. Sentient is registered with the Australian Charities and Not-for-profits Commission.

Thank you for the opportunity to submit commentary to the proposed *Animal Welfare Bill 2022*.

### Division 2 Key Concepts

#### **7 Meaning of “act of cruelty”**

- (1) An act of cruelty is an act or omission that results in an animal being— (a) unreasonably or unnecessarily harmed, or (b) unreasonably or unnecessarily killed, or (c) abused, beaten, infuriated, kicked, maimed, mutilated, terrified, tormented, tortured or wounded, or (d) overloaded, overworked, overdriven, overridden or overused, or (e) unreasonably or unnecessarily exposed to excessive heat or excessive cold

**Commentary:** The use of the words ‘unreasonably or unnecessarily’ in points a) and b) implies that animals can be reasonably harmed or killed. There needs to be more clarity around these subjective terms, as otherwise they allow for justification of harm or killing on trivial grounds such as economic interests. The worth of an animal should not be based on what society deems convenient at any point in time. These qualifiers leave open the possibility of ‘exemptions’ for certain practices or industries that favour profit or human convenience above animal welfare. The same applies to point e) as there is no situation apart from an unpreventable natural disaster where an animal should reasonably or necessarily be exposed to excessive heat or excessive cold. The current wording could be used to justify sheep being exposed to excessive heat during live export voyages.

(2) The following are also acts of cruelty— (a) carrying, conveying, driving, riding or using an animal that is unfit for that purpose, (b) advertising, promoting or taking part in an activity in which an animal is released from confinement for the purposes of people catching, chasing, confining or shooting at the animal, (c) authorising the use of, controlling, managing, receiving payment for admission to or using premises for a game park, (d) advertising, promoting or taking part in an activity in which an animal participates in a steeplechase or hurdle race, (e) another act prescribed by the regulations as an act of cruelty

**Commentary:** Sentient supports the designation of these as acts of cruelty, but advocate the addition of two further acts of cruelty:

- 1) pursuing animals for the purpose of recreational hunting and
- 2) advertising, promoting or taking part in an activity in which an animal is pursued on horseback for entertainment (which would effectively ban rodeos).

## 11 Meaning of “harm”

Harm includes— (a) distress, and (b) pain, and (c) physical suffering, and (d) psychological suffering

**Commentary:** Sentient applauds the inclusion of psychological suffering in the definition of harm to animals. This is consistent with the Five Domains model of animal welfare, the contemporary model now used to scientifically assess welfare, with an animal’s overall welfare being determined by their mental/affective state. This focus on both positive and negative affective states arises from the recognition of non-human animals as sentient beings. As stated in our previous submission to the NSW Animal Welfare Discussion Paper, we urge that as its first object, the *Animal Welfare Bill 2022* should formally recognise animal sentience. The capacity of animals to experience feelings and emotions is well established, including for some invertebrate species. Animal sentience<sup>1</sup> is increasingly being recognised in legislation, such as in the ACT, New Zealand and Canada. To truly uphold animal welfare, the Act must promote awareness of animals as sentient beings, as this helps to identify the needs of animals who are used or affected by humans and shifts the usual priority afforded to the interests of human stakeholders over those of animals.

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<sup>1</sup> <https://kb.rspca.org.au/knowledge-base/what-is-animal-sentience-and-why-is-it-important/>

## Part 3 Requirements for care of animals

### Division 1 Minimum care requirements

#### 13 Responsible person must ensure minimum care requirements for animals met

(1) A responsible person for an animal must ensure the minimum care requirements for the animal have been met. Maximum penalty—category 3 penalty.

(2) The minimum care requirements for an animal are— (a) the animal has access to appropriate food and drink, and (b) the animal has access to appropriate shelter, and (c) the animal is kept in an appropriate environment, and (d) the animal is provided with appropriate treatment for disease, illness or injury, including— (i) veterinary treatment being provided in a timely way when necessary, and (ii) preventative treatment being provided, and (e) the animal is provided with appropriate opportunities to exercise, and (f) the animal is provided with appropriate opportunities to display normal behaviour, and (g) the animal is handled and transported in an appropriate way

**Commentary:** We applaud the inclusion of points f) and g) and advocate there should be no exemptions made for currently legal practices that prevent animals from displaying normal behaviour (examples include but are not limited to the use of battery cages for hens, sow stalls, cattle feedlots, indoor-only access for dairy cows and inappropriately small enclosure sizes in zoos and marine parks) and that handle and transport animals in an inappropriate way (examples include but are not limited to live animal export, rodeos, transporting horses to knackeries and any long distance transport to a place of slaughter).

#### 18 Appropriate exercise

(1) A failure to provide an animal with an opportunity to exercise during the following periods is taken to be a failure to meet the minimum care requirement that the animal is provided with appropriate opportunities to exercise—

- (a) if the regulations prescribe a period for the species, or other class, of animal— the period prescribed,
- (b) otherwise—24 hours.

(2) Subsection (1) does not limit—

- (a) the minimum care requirements for an animal under section 13, or
- (b) the matters that must be taken into account under section 14 in deciding what is appropriate for the purposes of a minimum care requirement for an animal.

(3) This section does not apply to—

- (a) a stock animal, other than a horse, or
- (b) an animal of a species that is usually kept in captivity, if the animal is kept in a cage or tank of a height, length and breadth that provides the animal with an opportunity to exercise

## **Commentary:**

We urge that the exemptions in point 3 be removed. Stock animals and any animals kept in captivity all have species-specific needs for exercise. The ‘appropriateness’ of the exercise they are permitted should depend on their needs, not on human convenience or the context in which they are raised. Simply stating ‘opportunity to exercise’ is too vague to ensure animals will be provided with sufficient exercise to fulfil their needs.

## **Division 3 Prohibited and restricted procedures**

### **22 Prohibited procedures**

(1) A person must not carry out any of the following procedures— (a) tail nick a horse, (b) grind, trim or clip the teeth of an alpaca, llama or sheep, (c) hot iron brand the face of an animal, (d) fire or thermocautery on an animal, (e) surgical artificial insemination on a dog

**Commentary:** Required additions to these prohibited procedures should include: teeth clipping and tail docking in pigs; fire branding anywhere on an animal’s body; beak trimming in poultry (to be specified as an example of point d) and mulesing in sheep. These additions are suggested due to the pain and suffering these unnecessary procedures cause. In the case of mulesing, genetic alternatives are already available and the analgesia and topical anaesthesia that is used only addresses the acute pain so does not prevent pain and suffering that may last from several days to 2 weeks or more. We submit that surgical artificial insemination of dogs should be listed rather as a restricted act of veterinary science for the rare cases where trans-cervical artificial insemination is not possible on medical grounds.

## Part 4 Offences relating to animal cruelty

### **Division 1 Animal cruelty**

#### **29 Injuries to animals struck by vehicle**

The driver of a vehicle that strikes and injures an animal, other than a bird, must—

- (a) take reasonable steps to alleviate any harm caused to the animal because of the injury, and
- (b) if the driver believes, or ought reasonably to believe, the animal is a domestic animal— as soon as practicable, inform an authorised officer or the responsible person for the animal that the animal has been injured

**Commentary:** There no reason why birds should be removed from the requirement for drivers to take reasonable steps to alleviate harm due to injury following a vehicle strike. Birds are just as sentient as other animals. Furthermore, we submit that drivers should also be required by law to contact a wildlife organisation if the animal they have struck by their vehicle is a native animal.

### 30 Poisoning a domestic animal

(1) A person must not—

- (a) administer a poison, or a preparation, product or other thing containing a poison, to a domestic animal, or
- (b) cast, drop, lay, leave or throw a poison, or a preparation, product or other thing containing a poison, in or on a place with the intention of injuring or killing a domestic animal, or
- (c) have a poison in the person’s possession with the intention of using it to injure or kill a domestic animal. Maximum penalty—category 1 penalty.

(2) Subsection (1) does not apply to a person who lawfully administers, possesses or otherwise uses a poison under the Poisons and Therapeutic Goods Act 1966.

(3) In this section— poison includes—

- (a) a substance included in the Poisons List, and
- (b) glass or another thing likely to injure or kill an animal, and
- (c) a substance included in Schedule 10 of the Standard for the Uniform Scheduling of Medicines and Poisons, as in force from time to time, under the Therapeutic Goods Act 1989. Poisons List has the same meaning as in the Poisons and Therapeutic Goods Act 1966

**Commentary:** This should also apply to prevent the poisoning of wildlife, whether they are classified as native or non-native (‘feral’). Poisoning causes an agonising death and is an act of cruelty to any animal. Under the proposed definition of poison (point 3b) this should also include the use of glue traps.

### 32 Prohibition on animal fighting

(1) A person must not—

- (a) cause, encourage or incite an animal fight, or
  - (b) train or otherwise prepare an animal for an animal fight, or
  - (c) possess or sell an animal for fighting another animal or a human, or
  - (d) manufacture, possess, transport or use an animal fighting implement for the purpose of causing or training animals to fight, or
  - (e) organise, advertise or otherwise prepare for, or admit a person to, an animal fight, or
  - (f) be present at an animal fight or preparations for an animal fight.
  - (g) allow premises owned or occupied by the person to be used for an animal fight.
- Maximum penalty—category 1 penalty.

(2) Subsection (1) does not apply to—

- (a) conducting a rodeo in accordance with a standard prescribed by the regulations for this section or a person who does all that the person could reasonably be expected to do to conduct the rodeo in a way that complies with the standard, or
- (b) mustering stock, working stock in yards or another routine animal husbandry activity, or
- (c) conducting sheep dog trials.

(3) To avoid doubt, neither of the following is an act of cruelty—

- (a) conducting a rodeo in accordance with subsection (2)(a),
- (b) participating in a rodeo conducted in accordance with subsection (2)(a)

**Commentary:** Rodeos are clear acts of cruelty due to the risk of injury and the subjection of animals to terror, all for the purpose of human entertainment. They must be banned as acts of animal cruelty. If rodeos do not qualify as a form of animal fighting, they can be included under a new section entitled ‘Prohibition on rodeos’.

### 33 Prohibition on live baiting

(1) A person must not—

- (a) cause, encourage, permit or procure an activity in which an animal is— (i) confined or otherwise restrained for the purpose of the animal being chased, caught or confined by a dog, or (ii) released from confinement for the purpose of the animal being chased, caught or confined by a dog. Page 14 public consultation draft Animal Welfare Bill 2022 [NSW] Part 4 Offences relating to animal cruelty
- (b) advertise the intention to conduct an activity mentioned in paragraph (a), or
- (c) promote, organise or be present at an activity mentioned in paragraph (a), or
- (d) possess, keep or use an animal— (i) for live baiting, or (ii) as a lure or kill for trialing, training or racing a coursing dog. Maximum penalty—category 1 penalty.

(2) For subsection (1)(d), an animal includes a part of an animal, including a carcass, skin or reproductive material.

(3) In proceedings for an offence against subsection (1), written evidence by a veterinary practitioner that an animal was alive at the time of its attack by a dog is evidence the animal was alive at the time of the attack unless rebutted.

(4) In proceedings for an offence against subsection (1)(d) evidence the person charged with the offence was— (a) in possession of an animal that appeared to have been used for live baiting, or as a lure or kill for trialing, training or racing a coursing dog, is evidence the person used the animal for live baiting or as a lure or kill unless rebutted, and (b) the responsible person for an animal of a species prescribed by the regulations at a place for the trialing, training or racing a coursing dog is evidence the person was in possession of, kept or used an animal for use as a lure or kill unless rebutted.

(5) Subsection (1) does not apply to anything done in the course, and for the purpose, of— (a) mustering stock, working stock in yards or another routine animal husbandry activity, or (b) sheep dog trials.

(6) In this section—

coursing dog means a dog used to chase, catch or confine an animal (a) confined or otherwise restrained, or (b) released from confinement.

live baiting means using an animal as a lure or kill for the purpose of bleeding greyhounds.

**Commentary:** Live baiting should apply not just to greyhound racing but to dog fighting, as it is common for the perpetrators to obtain small domestic animals to use during training.

## Division 4 Transport of dogs

### 37 Requirements for transporting dogs

(1) A person must not— (a) leave a dog unattended in a vehicle in hot weather for more than 5 minutes, or (b) transport a restrained dog on the tray of an open-backed vehicle in hot weather unless insulating material is used to provide protection from the heat of the surface of the tray. Maximum penalty—category 3 penalty.

(2) Subsection (1)(a) does not apply— (a) if the dog left unattended in the vehicle is not affected by the hot weather because the vehicle is adequately ventilated and shaded, or (b) in the following circumstances— (i) the vehicle is fitted with a cooling system that keeps the interior temperature of the vehicle cool, and (ii) when the dog is left unattended in the vehicle, the cooling system is operating in a way that ensures the dog is not affected by the hot weather. Page 16 public consultation draft Animal Welfare Bill 2022 [NSW] Part 4 Offences relating to animal cruelty

(3) A person must not carry or convey a dog on the open back of a moving vehicle on a public street unless the dog is restrained or enclosed in a way that prevents the dog from falling from the vehicle. Maximum penalty—category 3 penalty

(4) Subsection (3) does not apply to a dog being used to control or protect stock animals.

(5) To avoid doubt, this section does not limit the operation of section 25

(6) In this section— hot weather means an ambient temperature of 28°C or more.

**Commentary:** The exemption on working dogs should be removed as they are at just as much risk of injury as non-working dogs and it reasonable to expect that people should protect them accordingly.



## Part 8 Legal proceedings

### Division 2 Exemptions and related matters

#### 119 Specific exemptions

(1) A person's act or omission in relation to an animal is not an offence under this Act or the regulations if the act or omission occurred—

(a) in the course of, and for the purpose of, performing prescribed animal husbandry in a way that inflicted no unnecessary harm on the animal, or

(b) in the course of, and for the purpose of— (i) fishing, hunting, shooting, snaring, trapping, catching or capturing the animal in a way that inflicted no unnecessary harm on the animal, or (ii) destroying the animal, or preparing the animal for destruction, for the purpose of producing food for human consumption in a way that inflicted no unnecessary harm on the animal, or

(c) in the course of, and for the purpose of, destroying the animal that is a pest, within the meaning of the Biosecurity Act 2015, in a way that— (i) is reasonable having regard to the species of animal, and (ii) causes no unnecessary harm to the animal, or

(d) in the course of, and for the purpose of, undertaking aquaculture, within the meaning of the Fisheries Management Act 1994, or

(e) in the course of, and for the purpose of— (i) carrying out animal research in accordance with a licence, or (ii) supplying animals for use in connection with animal research in accordance with a licence, or

(f) for the purpose of feeding a predatory animal lawfully kept by the person if— Page 44 public consultation draft Animal Welfare Bill 2022 [NSW] Part 8 Legal proceedings (i) the act was the release of live prey for the predatory animal, and (ii) the diet of the predatory animal included animals of the kind released, and (iii) the person believed on reasonable grounds the feeding of live prey to the predatory animal was necessary for the predatory animal's survival because the predatory animal would not eat a dead animal or meat from a dead animal, or

(g) for the purpose of using a live fish, decapod crustacean or cephalopod as bait or as a lure to take, or attempt to take, fish, or

(h) in accordance with the precepts of— (i) the Jewish religion, or (ii) another religion prescribed by the regulations for this paragraph.

(2) Subsection (1) does not apply to— (a) an act or omission offence against section 20 or 40, or

(b) for subsection (1)(b) and (c)— an act or omission that is an offence involving a game park

**Commentary:** Every exemption listed here makes a mockery of the purported intent of this Bill, which is: "An Act to establish minimum requirements for the care and protection of animals; to prevent cruelty to animals; and for related purposes." It maintains the status quo that currently exists in many industries whereby the human use of an animal overrides that animal's protection from cruelty. A contemporary animal welfare Act must be underpinned by a recognition of animal sentience and its implications for our use of animals. These exemptions are designed to protect those in the agricultural industry (where painful, invasive husbandry procedures and intensive confinement are the norm, despite alternatives to both), the sporting and entertainment industry, animal research and environmental management to continue to subject countless animals on a wide scale to treatment that, in other contexts, would be considered cruel. This is all to support

human profit and convenience above animal welfare. Furthermore, religious exemptions show no recognition of animal sentience or our duty to protect animals from harm. An animal's needs do not change according to how they are used or affected by humans or the religious persuasion of those humans.

## Schedule 1 Restricted procedures

We agreed with the following being listed as restricted procedures: ear cropping, declawing, clitoridectomy of a dog, tail docking of cattle, a horse or a dog, debarking, dewclaw removal on a dog and pinioning.

**Commentary:** This list of restricted procedures should include the following, which should only be performed by a veterinary practitioner:

- the practice of sewing up horse's vulvas to prevent them from "undesirable" matings
- tail docking sheep
- mulesing sheep
- dehorning cattle
- disbudding calves
- castration of livestock
- surgical artificial insemination of dogs with the proviso that this is not routinely performed on racing greyhounds, which is currently the case

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