

**Submission  
No 98**

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

**Organisation:** NSW Cat Fanciers Association Incorporated

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# NSW Cat Fanciers Association Inc.

28 February 2022

Standing Committee on State Development  
Parliament of NSW

## **Inquiry into Animal Welfare Policy in New South Wales**

NSW Cat Fanciers' Association Incorporated (NSWCFA) welcomes the opportunity to provide feedback on the Draft Animal Welfare Bill 2022. We understand, and appreciate, the need to streamline several Acts into one for consistency and convenience. Our feedback is contained in our response.

NSWCFA is one of the largest and most active Feline Registering Bodies in Australia with a professional administration office which processes thousands of registrations per year. Through our Affiliated Clubs, there are approximately 20 Championship Shows for members to showcase their breed. The Championship Shows cater for breeders as well as pet owners of both pedigree and non-pedigree cats.

NSWCFA is a founding member of the Co-Ordinating Cat Council of Australia (CCCA) which is one of the two umbrella national recommendatory bodies in Australia. NSWCFA holds a stakeholder position on the Office of Local Government Responsible Pet Ownership Reference Group. In addition, NSWCFA has been providing submissions for many years across a variety of Inquiries, Committees and Reviews of many aspects of Pet Ownership and Animal Welfare Act Reforms.

NSWCFA's purpose is to:

- To promote and raise the standards of breeding of pure bred cats;
- To promote and encourage the breeding of pure bred cats;
- To promote and encourage the showing of pure bred and companion cats;
- To educate the members and the general public in all aspects of cat ownership
- To promote, encourage and assist feline veterinary research.

NSWCFA requires its members to adhere to all relevant legislation under our Code of Ethics

- Prevention of Cruelty to Animals Act 1979
- Companion Animals Act 1998
- NSW DPI Breeding Code of Practice for Dogs and Cats

[http://www.nswcfa.asn.au/notices/notices/forms/2014\\_%20Code\\_of\\_Ethics-Amended\\_Nov2014\(1\).pdf](http://www.nswcfa.asn.au/notices/notices/forms/2014_%20Code_of_Ethics-Amended_Nov2014(1).pdf)

Our feedback and concerns relating to specific Sections of the Animal Welfare Bill 2022 are noted below, but in general NSWCFA appreciates that it is a challenging task to combine three pieces of legislation together and simplify the Acts.



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## **Lack of Accountability, Oversight and Presumption of Innocence until Proven Guilty**

One of the major concerns is the seeming lack of accountability this legislation places on those entities who are empowered to enforce it as evidenced in Section 160 which provides protection from liability.

It is equally concerning that there is no independent body to address complaints about authorised officers or charitable organisations, and no way to appeal at any stage of the process. There is no fairness in the process for the person who is accused when the only entity they can complain to is the actual entity they are complaining about. There is no ability for a person to defend themselves when evidence is not disclosed and shared.

There is a right to the presumption of being innocent until proven guilty under many criminal offences, and some of the methods used to gather information, evidence, seize animals, refusal to allow independent evaluations or assessments appear to be geared in favour of the authorised officer/charitable organisation.

<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/presumption-innocence#what-is-the-presumption-of-innocence>

The current structures used to prosecute do not allow for those accused under this Bill to defend or appeal the charges laid against them before the matter is brought before a court, and denies the accused the right for a fair trial when they are unable to obtain independent evaluations, assessments and do not have access to prosecution material before the day the matter is before a judge in court.

The process to investigate, charge and prosecute under this Bill differs in every way to the process under other legislation. The process under this Bill result in charges being laid with no right of reply, high costs charged by charitable organisations and the unfortunate situation where owners accept the charge and forfeit their animals as they can't afford to defend themselves. This mindset needs to change quickly. As a society, we need to afford everyone accused with an offence the right to a fair trial and to be able to defend themselves.

## **Application of Bill with respect to Breeders in NSW**

Whilst NSWCFA also acknowledge that currently breeding of companion animals is not a licensed activity, there has been a recent consultation paper seeking community feedback on the specific issue of licensing and regulation of dog and cat breeding.

It is uncertain as to how the Animal Welfare Bill 2022 is to be applied to members of Recognised Bodies (such as NSWCFA) who use their residential home wholly or partly for the purpose of conducting the activities associated with breeding.

It is common for members registered with Recognised Bodies who breed puppies or kittens to use their residential premises (ie their home) to house and raise their dogs and cats including puppies and kittens. Many of these members sell their puppies or kittens for fee or reward.

Many of these members do not meet the Australian Tax Office or ASIC definitions of a "business" but are deemed to be a commercial entity for the purposes of enforcing the NSW Breeding Code of Practice for Dogs and Cats. A high proportion of any funds received from the sale of kittens for members of NSWCFA go towards meeting ongoing costs of providing the necessary care for all the animals in the care of the owner.



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Feedback on certain specific Sections in the Draft Animal Welfare Bill 2022:

**Section 4(c) – The primary objects of the Act are to be achieved by.....providing a licensing framework to regulate and oversee the conduct of certain activities involving animals, including.....the keeping and use of animals for the purposes of exhibition**

There is no clarity in the Animal Welfare Bill 2022 about the definition of 'exhibition of animals' and whether this encompasses events such as cat, dog or agricultural shows. The existing Exhibited Animals Act and Regulations have clear distinctions that an "exhibited animal" is one held at locations such as zoos, wildlife parks, aquariums and circuses.

The Exhibited Animals Regulations, section 5(1)(b) provides that household pets that are part of a competitive display are exempt from the Exhibited Animals Act. The wording of the Animal Welfare Bill 2022 is unclear whether there is any change, and the Bill should be consistent with the Exhibited Animals Act to avoid confusion by all parties.

The confusion continues under the broad scope of Section 10.1(a) and 10.1(b) against the specific scope of Section 10.2(a to d) and Section 10.3(c). Other than 10.2, the other two sections are vague and unhelpful for anyone to identify if their animal falls within the scope or not and therefore whether the activity complies with the relevant legislation, as the examples are only inclusive.

Further confusion continues under Section 42.1(b) which states a person cannot exhibit animals in an event which is a licensed activity without holding a license.

**Section 11(d) - The meaning of 'harm' includes psychological suffering.**

This is extremely difficult to identify and is subjective based on the person conducting the assessment of the animal. There are no prescribed methods of assessing or identifying psychological suffering in the Animal Welfare Bill 2022 or how an authorised officer would interpret or apply methods of assessment. Pain is specific to each individual animal or species and is very difficult to measure, and it remains unclear what the methods of determining the cause and extent of psychological suffering are.

The definition of psychological suffering is associated with feelings of guilt, anguish, fear, panic, angst, loneliness, and helplessness. A number of these feelings are human in nature.

Any animal may show signs of fear, panic, anxiety and stress being in an unfamiliar environment such as with strangers in a holding facility with unfamiliar smells, loud noises, other animals etc, but this cannot be used as a method to assess whether an animal has been subject to psychological suffering.

**Section 20.3 – Requirement to Comply with Standards**

It is an unrealistic expectation for the Animal Welfare Bill 2022 to be reviewed comprehensively and for feedback to be sought by this Committee without the Draft Regulations to accompany the Bill being available at the same time.

Further consultation must be sought on the Animal Welfare Bill 2022 once the Draft Regulations are released for public comment. It is not practical to progress the Bill when all the Draft Regulations are unknown.



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## **Section 22.1(e) – Prohibited Procedures – Artificial Insemination**

It is noted that it is a prohibited procedure for any person to artificially inseminate dogs. Whilst NSWCFA cannot comment specifically on this practice, it is concerning that a safe and effective means of breeding, performed by a trained veterinarian, is considered under Prohibited Procedures.

Artificial insemination represents an important technique for increasing the contribution of genetically valuable animals in specific circumstances such as conserving rare breeds of cats and dogs.

The wording of this Section 22.1(e) conflicts with the proposed wording amendments listed under 4.23 – Veterinary Practice Regulation 2013 – Item 1 (page 82) and needs to be clearly articulated and further public consultation sought.

## **Section 42.1(b) – Requirements to be licensed**

Following on from Section 4(c) above, there should be specific clarification of whether dog, cat and agricultural exhibitions (shows) fall under the banner of being a licensed activity, with clear guidance on the proper intent and interpretation.

Cat, dog and agricultural shows should not be included in activities listed by the Regulations or Bill and should not be required to be licensed or require approval.

If cat, dog and agricultural shows fall under Section 10.1 of the Animal Welfare Bill 2022, there will be significant detriment felt by all exhibitors who attend these shows. It will create a financial impact on NSWCFA and our Affiliate Clubs and will eliminate the recreational interests of our members and the public generally. It will also impact the wellbeing of members who attend these shows to catch up with friends and talk to other breeders. The significant impact of this has been established by the disruption to these shows during the COVID-19 epidemic. The opportunity to educate people on responsible pet ownership will also be lost, as well as the ability of people to see breeds that they may otherwise not have access to.

## **Section 45 – Regulations may provide for licensing scheme**

There are no current licensed activities for dogs and cats despite a recent consultation about a Breeder Licensing Scheme at the end of 2021. It is noted that there have been no updates on when any further review of that option will be conducted.

If a breeder license scheme is to be created, new consultation with stakeholders (including recognised registration bodies such as NSWCFA) should be conducted as becoming a licensed activity has more significant consequences than what was indicated in the consultation paper. In addition, any changes or information obtained via this Committee Inquiry and the Puppy Farm Inquiry will need to be taken into consideration.

There is significant concern that if breeding dogs and cats falls under Section 45.1(c) as a licensed activity, members who house their animals & raise their litters in their residential home will be subject to the same powers of entry as commercial premises in Section 66.1(e).



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## **Section 46 – Regulations may provide for advisory committee for licensing scheme**

Stakeholders should be engaged in the advisory committees to ensure accurate and actual information is provided to such committees when making decisions. Committees should include representation for those people who keep and care for the animals being licensed.

## **Part 7 – Enforcement and Compliance**

This entire section is about increasing powers of authorised officers and entities to ensure compliance with the Act and appears to place all responsibility on the person responsible for the animal, and none on those who are charged with enforcement.

Whilst NSWCFA acknowledge that the Animal Welfare Bill 2022 is not aimed at the specifics for breeding of companion animals, this Bill is the overarching piece of legislation that provides authorised officers powers to ensure enforcement and compliance, and it remains unclear as to how breeders will be impacted.

## **Division 3 – Power to enter premises**

### **Section 66**

What constitutes a “reasonable” time for attendance to inspect premises? If an authorised officer is solely wanting to enter the premises to check whether compliance is being met, it should be at an agreed time with the person responsible for the animals. If the purpose of entering premises is to investigate animal cruelty, there are already provisions set out for those circumstances.

This section does not provide any details as to what activities are prescribed or not as the draft regulations are not available, and whether a breeder with a Recognised Body falls within the scope of this section?

It is uncertain as to how the Animal Welfare Bill 2022 is to be applied to members of recognised bodies (such as NSWCFA) who use their residential home wholly or partly for the purpose of conducting the activities associated with breeding.

On page 35 of the NSW Animal Welfare Reform – Consultation Outcomes document prepared by Dept of Primary Industries and published in December 2021, the below response about commercial premises is listed. Whilst this suggests authorised officers have limited abilities to enter residential premises regardless of whether commercial activity takes place, the intent of the Bill is not clear and needs to be to avoid causing continuous undue uncertainty, stress and anxiety.

*“The term ‘commercial’ is not specifically defined in the draft Bill – it will take its normal meaning. Notably, the power to enter commercial premises does not override protections regarding entry to residential premises (where entry can only be affected with consent or a search warrant – or to provide urgently-needed care in an emergency, noting entry in these circumstances cannot be used for investigative purposes).”*



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## **Section 67 – Entry into residential premises only in certain circumstances**

Under 67(c), the use of 'reasonable' does not provide any certainty and is open to interpretation. To be transparent and accountable, the authorised officer must provide evidence to support that entry under this clause is valid. In addition, the authorised officer must provide details of the record of entry, the inspection, documented evidence in photographic or video format and details of any subsequent action that is required.

If the evidence of the inspection is provided in photographic or video format, the authorised officer must provide raw footage so that there can be no dispute that images were adjusted, cropped or edited in any way.

## **Section 69(2) – Additional provisions regarding entry of premises**

This provision allows authorised officers to use reasonable force to gain entry to premises with no outlines as to what situation this would be used in. Reasonable force is dependent on the circumstances in NSW.

This appears to be a provision given to charitable organisations and authorised officers that is not currently afforded to NSW Police who do not have a search warrant. If the intention is to allow authorised officers and charitable organisations to act with the same powers as NSW Police, then they must be held accountable in the same way including rights and the ability to lodge appeals and complaints to independent bodies.

## **Section 71 – Powers of authorised officers generally to examine, inspect or observe animals**

NSWCFA objects to the use of the psychological condition in Section 71(b)(iii) and Section 71(b)(iv) on the basis that an assessment of psychological condition should be assessed by an independent qualified and trained professional (such as a veterinarian or a trained behaviouralist).

Evaluations must be done to a professional and recognised standard to ensure the correct diagnosis is identified. Incorrectly diagnosed conditions lead to assessments being inconclusive and unsubstantiated, and this results in the animal being euthanised and the responsible owner charged with animal cruelty.

Animals that are thought to be suffering psychological conditions should not be seized until an independent evaluation has been completed and should be housed appropriately to avoid further decline in the wellbeing and health of the animal.

## **Section 78 – Receipt for seized things**

This section provides no mechanism for the reason why a thing is seized to be documented. The receipt must include these details to allow a person to defend the seizure.



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## **Section 79 – Return of seized things**

The owner must be given the option of having a deceased animal returned to them with a set time frame. It is not appropriate that a person must make an immediate decision and a time frame of no less than 48 hours would be considered reasonable.

If the owner chooses to have the deceased animal returned to them, this should occur within a short period of time such as 3 working days of the death of the animal. The charitable organisation should take all necessary precautions to be able to return the animal to allow the owner to dispose of the animal in their preferred way (burial or cremation).

There may be valid exemptions such as contagious disease, but this should be confirmation by a third party such as an examination performed by a vet appointed by DPI.

There should be a mechanism embedded that allows for the prompt notification being given to the owner of the death of an animal in the care of a charitable organisation

## **Section 85 – Recovery of fee for action taken**

Section 85.2 allows for fees to be charged to the responsible person for the animal without any agreement on costs. It is not appropriate to enforce costs incurred by the 'entity' when there is no discussion or agreement to the value of the charges. Is it fair and appropriate if an entity wished to charge \$1,000 per day to house an animal they seized whilst they complete their investigation?

This provides no clarity as to what fees might be charged, and whilst the Bill should not set these costs, it should set a provision that the owner is made aware of the costs involved. An owner found innocent should not have to pay these costs to have their animals returned.

## **Section 101 – Approval of charitable organisations**

With the increase of Animal Rights activists and extremists today, a clear process of how charitable organisations are approved and appointed must exist. Allowing one person to make unilateral decisions is a risk to the ongoing enforcement of this Bill.

The names of approved charitable organisations authorised under this Bill should be documented in the Bill. If any changes are required, public consultation must be sought.

Imagine if the Minister responsible for this Bill in their portfolio (now or in the future) was an animal rights activist or was able to be influenced by those who believe that people should not have pets and chose to appoint an organisation like PETA to enforce animal cruelty legislation.

## **Section 124 – Court may order production of animal**

If an owner can be ordered to produce an animal, then the same should be applied to a charitable organisation or authorised officer. It is unfair that an owner would be required to provide their defense without being able to have their animals independently assessed.

This section must include that a court may order the charitable organisation and/or authorised officer to produce the animal to be returned to its owner for the purposes of defending the charges.





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## **Section 140 – Membership of the Animal Welfare Advisory Committee**

The Advisory Committee must include a variety of members to ensure a balanced approach is met. Stakeholders such as NSWCFA whose members are actively involved in the keeping of cats are often ignored or consulted by smaller committee's that have no ability to influence the policies or discussions that directly impact their members.

## **Section 153 – Information required when dogs and cats are advertised for sale or for giving away**

It is unclear how this directly impacts to the prevention of animal cruelty. The requirements for selling or giving away a dog or cat is documented in the Companion Animals Act 1988. If there is no direct correlation to animal welfare or animal cruelty, this Bill is not the right avenue and should be removed.

## **Section 159 - Compensation not payable**

If the owner of an animal charged under this Act is found to be innocent, compensation should be payable in certain circumstances such as the animal being euthanised unnecessarily or sold. Paying compensation when mistakes are made is a consequence of doing the wrong thing. If charitable organisations were required to compensate owners when it is clearly proven, it might help to influence the changes to education and not prosecution which is required to improve welfare outcomes for animals.

## **Section 160 – Protection from liability**

This section suggests that the people protected by it can make mistakes and there are no consequences. More worryingly, the Bill does not allow for them to be held accountable in any way.

In every other part of our society, community and lives, people are required to be accountable for their actions. If we do not want individual employees or people to be held accountable, the organisation they work for must take accountability for the actions of their staff.

The NSW Police Force are held accountable for their actions. Businesses are held accountable for their employees' actions. Most people in society expect those upholding legislation be accountable, and yet this Bill removes that accountability providing it was done in "good faith" or for the "purpose of exercising a function under this Act".

It is concerning that there is no mechanism in the Animal Welfare Bill 2022 to hold those with Powers accountable or liable for their actions. It is equally concerning that there is no mechanism for complaints to be addressed, and there is no appeal process.

This could be resolved by having an independent body who does not report to the Minister that this Act sits under such as an Ombudsman or Commission.



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## **Section 161 – Disclosure of information**

Penalties for charitable organisations and/or authorised officers allowing information about specific cases, identities or locations should be applicable. Given that they are collecting personal information about individuals, they have a duty to ensure that information is protected and are accountable under the Privacy Act 1988 (Cth).

Trial by any form of media taints reputations and opinions before any of the actual facts are known, and this is seen in all areas of the community for nearly every situation that arises. A person has poor service at their local café and posts on Facebook which is then shared countless times with a likely result that the businesses reputation suffers. What is not always posted in a verifiable account of what happened.

In summary, NSWCFA supports the majority of the draft Animal Welfare Bill 2022 and understands that there is a need to have right level of legislation in place to allow authorised officers and charitable organisations to effectively educate, investigate and prosecute animal cruelty.

A large proportion of the animal loving members of the community are not aware of their rights when a charitable organisation knocks on their door to investigate a complaint. In many instances, the organisation does not disclose the reason they are attending until they are inside the home.

Animal cruelty is not acceptable in any way; but the infiltration of animal rights activists must not be allowed to twist the narrative and influence legislation. This legislation must allow all parties involved the opportunity to investigate, review, prosecute and defend as required.

Thank you for your time and we look forward to working with relevant Committee's and DPI over the course of the remainder of the Animal Welfare Review process.

If you have any queries or questions about our response, please do not hesitate to contact NSWCFA and the appropriate member of the Management Committee will be in contact.



Michelle Grayson  
On behalf of NSW CFA Executive Committee