

**Submission  
No 99**

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

**Organisation:** Tree of Compassion

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Tree of Compassion

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Charitable Fundraising Authority

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## **SUBMISSION INTO THE NSW ANIMAL WELFARE BILL - 28 FEBRUARY 2022**

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Tree of Compassion welcomes animal welfare reforms in NSW but considers that overall, this draft Bill falls short of any meaningful change.

### **TREE OF COMPASSION SUPPORTS:**

- The inclusion of a cephalopod and decapod crustacean in the definition of animal (schedule 3 (a)(ii) and (iii))
- Taking into account the psychological condition of animals when considering their welfare (sections 8(b) and 11(c) of the Bill).
- Establishing minimum care requirements for animals, which includes their behavioural needs (sections 13, 14 of the Bill).
- Requiring that a person in charge of an animal must comply with animal welfare standards (section 20(1)).
- Ensuring the RSPCA and Animal Welfare League (enforcement agencies) are subject to 'freedom of information' laws (Schedule 4).

### **TREE OF COMPASSION DOES NOT SUPPORT:**

- The failure to acknowledge **animal sentience**. This is out of step with contemporary laws in Australia (e.g., the ACT & soon also Victoria) and other countries (e.g., the UK and Spain). The Bill must explicitly acknowledge in its objects clause (section 3) that animals are sentient and have intrinsic value.
- The definition of 'recognised research purpose'. Schedule 3 (b) should also include the field of conservation and include the use of conservation detector dogs.
- Allowing people to comply with animal welfare 'standards' that are lower than the minimum care requirements in the Bill (Part 3, Division 1). Section 20(2) should be removed from the Bill.

- Prohibited procedures (section 22 (b)) - grind trim or clip teeth - should extend to other species not just alpaca, llama and sheep.
- Making the offence of abandoning animals too broad. It could criminalise letting a stray dog out of a person's back yard or desexing stray cats. Section 27(2)(a)(ii) of the Bill ('intentionally allowing the animal to escape') should be removed.
- Excluding birds from the requirement to alleviate harm to animals struck by vehicles. The exclusion of birds in section 29 of the Bill should be removed.
- Excluding non-domestic animals from the offence of poisoning animals. The offence should be broadened to apply to all animals. The reference to 'domestic' in section 30 of the Bill should be removed.
- Exempting rodeos from the prohibition on animal fighting in the Bill. Sections 32(2)(a) and 32(3) should be removed. The proposed offences involving 'animal cruelty material'. They are too broad and could apply to people wanting to expose animal cruelty. They are also unnecessary because possessing obscene material such as crush or bestiality videos are already offences under the *Crimes Act*. Division 5 ('Animal cruelty material') must be removed from Part 4 of the Bill.
- The failure to deal with backyard breeding of cats and dogs. Backyard breeding must be explicitly specified as a commercial activity in section 66 of the Bill so that inspectors can investigate properly.
- Exemptions to cruelty offences. If there are to be exemptions, they must all be subject to a 'no unnecessary harm' requirement in section 119 of the Bill. This would mean that conduct can only be exempted if it inflicts 'no unnecessary harm' on an animal.
- Exemptions to cruelty offences - Section 119 (g) - Using live fish, decapod crustacean or cephalopod as bait or a lure should be prohibited. This is not consistent with the objects of the Bill. The exemption of living bait in fishery is not justifiable given that fish, decapod crustaceans and cephalopods have the capacity to experience pain and suffering and demonstrate obvious signs of a sentient being. The legislation's protection should extend to fish, crustaceans, decapod crustaceans (all animals) in order to maintain consistency and avoid confusion.
- The exemption of animal research is not justified simply by its compliance with the current *Animals Research Act 1985* or a licence under this Bill when in force. It is well documented that the result of animal research is often not reflected in human trials (including in case of closer biological relatives such as chimpanzees). As a minimum, a requirement to avoid unnecessary or unreasonable harm should be introduced in relation to this defence, as well as a requirement that the defence only applies when the relevant act is carried out in accordance with the terms of a relevant research licence.

- Exemptions to cruelty offences. - section 119 (i) remove reference to using live animals for Jewish or other religious purposes. Cruelty is not acceptable regardless of religion or culture. If an exemption for religious practices is to be included, a Code(s) of Practice should be prepared outlining the preferred approach in animal handling and introducing concepts of animal sentience and animal cruelty.
- Part 9 - there is no provision in the Bill for the establishment and function of Animal Ethics Committees (AEC). Instead, it states that these will be dealt with in the Regulations. These should be included in the Act just as it does for an Animal Welfare Advisory Committee, the Animal Research Review Panel and Exhibited Animals Advisory Committee. AECs have an important role in animal welfare and as such should not be relegated to Regulations but be established in the Act.
- The reliance for regulation and enforcement of animal protection remains under the control of a charity - no other public interest law is overseen by an underfunded charitable organisation.

#### **IN ADDITION:**

- The definition of cruelty should include omissions and failures to maintain the minimum care requirement.
- Painful procedures on farmed animals such as dehorning, castrating, ear tagging, mulesing, and branding should be added to the list of 'restricted procedures' in Schedule 1 so that pain relief is mandatory.
- Trimming the beaks of hens should be listed as a 'prohibited procedure' in section 22
- A stand-alone offence to ban pig-dogging should be added to Part 4, Division 2. It could be modelled on the ACT's ban on 'violent animal activities' in the *ACT Animal Welfare Act 1992* (section 17).
- The Bill should allow people to rescue animals locked in vehicles in hot weather, as in the *ACT Animal Welfare Act 1992* (section 109A).
- The Bill should establish an independent office of animal protection to administer and enforce the Act and to ensure consistency and accountability.
- The Bill should establish an animal cruelty offenders register accessible to relevant entities.
- The Bill must prevent the differential treatment of animals based on their species or their intended purpose - the law must apply equally without prejudice or discrimination

- The Bill should include provisions that prohibit the export of animals for entertainment purposes unless the exporter can ensure certain animal welfare conditions are met.
- Greyhound racing should be banned.
- The provision that a person must not leave a dog unattended in a vehicle in hot weather (section 27 (1)) should be extended to all species. As in many states in the USA, this should be extended to include not leaving animals unattended in a vehicle in conditions that could endanger the health or wellbeing of that animal.
- Penalties for corporate perpetrators of animal cruelty offences should be increased in order to better serve the objects of the amended legislation and act as a more effective deterrent to offending
- Part 6 - Stock Welfare Panels should include a stronger animal welfare and animal care presence amongst their personnel. This will ensure that the Panels' focus remains on the welfare and the prevention of cruelty of animals, rather than maintaining commercial interests.
- Part 6 - Stock Welfare Panels Departmental members and Local Land Services representatives of these Panels should have veterinary experience. This will reduce the potential for these Government members to focus mainly on business practicality or logistics.
- In order to support the introduction of the standard of “unreasonable or unnecessary harm”, a corresponding requirement of intention or recklessness should also be incorporated. We consider that this will better serve the apparent intention of the changes in that the legislation will not be considered to apply to and capture situations, which occur as a result of actions outside the control of the relevant person (e.g. arising out of the nature of animals rather than from any human action or omission).
- In addition to minimum welfare outcomes, unacceptable outcomes should also be established. It is crucial that omissions/failures are also recognised as forms of cruelty, and not just positive acts.
- Minimum care requirements - the Bill should add an obligation to provide appropriate pain relief for an animal, whether they can personally provide pain relief or require veterinary assistance to do so, in certain circumstances –particularly in procedures performed on livestock, like mulesing. This obligation should exist in addition to the proposed obligation to provide for the treatment of disease or injury.
- Minimum care requirements - should be more detailed to establish a standard below which the requirements would not be maintained, and include the intention of the person in assessing the relevant standards of reasonableness and necessity.

## **GENERAL COMMENTS**

The Bill fails to recognise sentience which is not in keeping with contemporary laws in Australia such as the ACT (and soon also Victoria) and other countries including the UK and Spain. Instead it claims that merely acknowledging animals experience pain is sufficient to meet scientific evidence, international standards or community expectations. This is not the case.

The framework continues to permit inadequate and weak codes of practice. This reliance legalises actions and practices that would otherwise constitute cruelty, including routine husbandry procedures without pain relief and the intensive confinement of animals in crates and cages.

It seems that this new Bill is simply an amalgamation and slight reworking of the outdated legislation that it is to replace. It appears to still largely protect the people inflicting cruelty instead of the animals they harm.

We hope that this consultation process will provide insights and direction for the Government and authors of the Bill to provide stronger and more relevant legislation. We look forward to animal sentience, the five freedoms and a focus on animal capabilities informing the new legislative framework that supports both humans and animals.

Kind regards,

Phil Hunt  
Secretary  
Tree of Compassion