

**Submission
No 103**

INQUIRY INTO ANIMAL WELFARE POLICY IN NEW SOUTH WALES

Organisation: New South Wales Bar Association

Date Received: 28 February 2022



Our ref: 21/238

28 February 2022

Chair, the Hon Catherine Cusack MLC
Standing Committee on State Development
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

By email state.development@parliament.nsw.gov.au

Dear Chair

Inquiry | Animal Welfare Policy in New South Wales

1. The New South Wales Bar Association (**the Association**) welcomes the Standing Committee on State Development's (**the Committee's**) inquiry into animal welfare policy in New South Wales (**the inquiry**).
2. In this submission, the Association will comment on the inquiry's term of reference two, namely the Committee's review of the exposure draft Animal Welfare Bill 2022 (NSW) (**the draft Bill**).
3. The Association supports the draft Bill, and in particular these aspects of its provisions:
 - (i) the proposed consolidation of the various pieces of legislation dealing with animals into one Act.
 - (ii) the inclusion in the draft Bill of not only a list of objects (cl 3) but also an explanation of how the proposed legislation's objects are to be achieved (cl 4);
 - (iii) the prohibition on certain actions and activities that will always constitute animal cruelty (cl 4(b)(i));
 - (iv) the draft Bill's clear definition of '*person responsible*' (cl 12);
 - (v) the clear definition of '*minimum care requirements*' (Pt 3); and
 - (vi) the clear gradation of penalties in the draft Bill that ensures punishments under the proposed law are understandable and proportionate to the level of harm caused by applicable offences (Pt 8)■
4. The Association is also supportive of the decision not to include in the draft Bill mandatory minimum sentencing or clauses relating to the maintenance of a register of animal cruelty offenders, both of which were considered as part of the consultation process.
5. The Association raises two issues regarding the Bill:
 - (i) **First**, the definition of 'animal cruelty' in cls 7(1)(a), (b) and (e) refers to an act of cruelty involving an animal being '*unreasonably or unnecessarily* harmed. The word '*or*' is problematic.

An act may be '*unnecessary*' but may, nevertheless, still be reasonable in the circumstances. The current drafting would mean conduct such as this would be caught by the definition of '*animal cruelty*'.

The Association recommends the wording '*unreasonably and unnecessarily harmed*' instead of '*unreasonably or unnecessarily harmed*'.

- (ii) **Second**, the maximum penalty for breach of the '*minimum care requirements*' (cl 13(1)) is 6 months' imprisonment. This offence carries the same maximum penalty as: performing prohibited procedures (cl 22), performing restricted procedures (cl 23), cruelty to animals (cl 25), abandoning animals (cl 27), and possession of animal cruelty material (cl 39(1)(b)). An offence under cl 13(1) is qualitatively different to these other offences. If the breach of the minimum care requirements was particularly serious, the offence could be charged as an act of cruelty or aggravated act of cruelty.

For these reasons, the Association suggests that the maximum penalty for breach of cl 13(1) should not include a term of imprisonment.

6. The Association thanks the Committee for the opportunity to comment on the draft Bill. Should members of the Committee have any questions about this submission, please contact senior policy lawyer Mr Richard Easton

Yours sincerely

Michael McHugh SC
President