

**Submission
No 106**

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

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Inquiry into animal welfare policy in New South Wales

Legislative Council Standing Committee on State Development, Parliament of New South Wales

Thank you for the opportunity to make a further submission in the ongoing reform process and to make comments regarding the Exposure Draft Animal Welfare Bill 2022. Please find below my comments which include, at some points, a restatement of certain issues already raised in response to the Issues Paper and Discussion Paper last year. Please note I do not support the use and exploitation of animals for food, research, competitions, or entertainment. However, while these uses remain legal this is my response to the Draft legislation.

I have read the Draft NSW Animal Welfare Bill 2022 and NSW Animal Welfare Reform Consultation Outcomes Report and wish to make the following comments.

Preliminary comments - Replacing the three existing laws with a single Act.

- The three Acts cover three different fields. The *Prevention of Cruelty to Animals Act 1979* (NSW) (“POCTAA”) contains animal cruelty provisions. The other two Acts, the *Animal Research Act 1985* (NSW) (“ARA”) and the *Exhibited Animals Protection Act 1986* (NSW) (“ARA”) are mainly licensing regimes.
- In considering submissions made by other parties to the Issues Paper in 2020 I am now of the opinion it would be better to strengthen the protections within each Act, and to make sure there are no exemptions to allow any form of cruelty whatsoever, rather than to incorporate the three Acts within a new single Act.
- It is important to have a strong standalone Act that prohibits animal cruelty to which other animal law refers.
- I also ask that the NSW Government carefully reconsider its decision not to create an Independent Office of Animal Protection (IOAP). It is important to take on board the fact there is strong community support for an IOAP that could be set up via an Independent Office of Animal Protection Bill.
- In the interests of probity, it is vital that there is no conflict of interest or perceived conflict of interest on the part of those overseeing parties who create policy, codes of practice and, at the same time, also support the creation of significant profits by the industries which they oversee. It is of strong concern that the Department which is overseeing this review of the legislation has an interest in weakening cruelty protections to support the financial viability of industries who profit from the cruel treatment of animals. The community is very aware of this.
- The tone and focus of the Discussion Paper showed that animal industry cruelty would still be favoured by the proposed reforms via:
 - cruelty exemptions,
 - industry interpretations of reasonable and allowable harm,
 - the intention that certain cruel activities, unacceptable to the community, remain lawful.

- The Draft Legislation appears to continue to tip the balance in favour of industry's objective to make profits over the rights of animals to not be subjected to cruelty. This is of strong concern.
- If the NSW Government acted to remove this conflict of interest by supporting the creation of a new independent overseeing and prosecuting body, it would give the community more confidence in this reform process.

PART 1 – Division 1 - Preliminary

Failure to acknowledge animal sentience in the Objects of the Act, s3

- It is extremely concerning that the Objects do not contain any reference to animal sentience or the intrinsic value of animals.
- An Act that promotes and protects animal welfare should contain recognition of animal sentience and the intrinsic value of animals by ensuring all animals are kept in conditions in which they flourish, are not stressed or afraid, and can engage in all their natural behaviours.
- Such an Act should also promote a standard of care that is consistent with community expectations. This should be reflected in the Objects of the Act.
- To date the development of purely scientifically based welfare outcomes has led to the development of cruel animal husbandry practices with extremely poor animal welfare and biosecurity outcomes. For example, current practices regarding chickens include the following:
 - confining hens to indoor battery cages with no ability to engage in normal and instinctual behaviours.
 - burning off the beaks of battery cage chickens leaving them with lifelong chronic pain.
 - forcing chickens to stand on wire floors which causes them to develop osteoporosis as well as foot and leg problems.
 - leaving hens who die next to living chickens with no concern about the effect this will have on other sentient beings of the same species.
 - lack of hygiene in the battery cage facilities is a significant bio-security risk both to the hens and workers as the sheds become full of ammonia from the waste of the birds.
 - hens who can no longer lay eggs and have no value to the farmer are treated as waste and slaughtered with no consideration of the fact they are sentient beings rather than objects of production.
 - killing one day old male chicks and weak female chicks by macerating them using industrial grinders, suffocating them with CO2 gas or killing them by cervical dislocation soon after being hatched as they are of no value to the egg industry. These practices are shockingly cruel and unacceptable to the community.
 - forced moulting to increase egg-laying capacity of battery hens, where chickens are starved and deprived of water, also gives rise to serious animal welfare concerns.
 - depriving chickens of access to sunlight and fresh air.
- The use of genetic engineering for intensive egg and poultry meat production, and the resultant unnatural and painful effects on growth and physiology, also attracts strong community concern.

- Therefore, it is extremely important that community expectations, that animals be treated with a proper and publicly acceptable standard of care, be given significant weight in the objects of POCTAA, ARA and EAPA or any new animal welfare law that replaces them, and in all animal industry Codes of Practice. There is a significant body of documentation by whistle blowers that illustrates failures of publicly acceptable standards of care in animal agriculture in NSW.

How objects are to be achieved, s4

- Section 4(a) - I support the establishment of minimum care requirements, the development of comprehensive standards for the care of animals, and certain actions or activities involving animals, and the establishing of a mechanism to give effect to the standards. I also support the requirement that information be provided about cats and dogs when they are sold or given away.
- Section 4(b)(ii) “restricting when and by whom certain activities that may cause harm to animals may be performed” refers to activities that may cause harm. It is concerning that “restricting when and by whom certain activities may be performed” will still allow certain cruel activities to be carried out on animals. How will such restrictions be policed? Every activity that is cruel to an animal should be prohibited without excuse or exception. For example, debeaking is cruel as, even if carried out with anaesthesia, it could still result in lifetime pain and discomfort for the bird and prevent the bird from performing natural behaviours.
- I do not support the scientific or educational use of animals or use of animals for exhibition. I submit that the scientific or educational use of animals should be phased out as soon as possible consistent with the OIE principles of replacement, reduction, and refinement. The use of animals for exhibition should also be phased out.

PART 2 - Division 2 - Key concepts

Meaning of “act of cruelty,” s7

- Section 7(1)(a) “Unreasonably or unnecessarily harmed”. This use of language is still concerning as it suggests that a certain degree of harm may be considered reasonable and necessary. No degree of harm should be allowed by an Act or Acts protecting animal welfare. All harm to animals should be considered unreasonable and unnecessary.
- Who will be determining what is reasonable and necessary harm? Will it be a body that is independent of animal industry, research, or entertainment interests?
- Section 7(1)(b) refers to “unreasonably or unnecessarily killed”. Who will be determining what is reasonable and necessary killing? The killing of animals for human consumption or convenience should always be seen as unreasonable and unnecessary in an enlightened society that is truly opposed to animal cruelty.
- Section 7(2) - I would also suggest adding being “restrained, caged and unable to express natural behaviours”, “releasing infant animals into the wild to later return to shoot them when they reach adulthood” (as occurs with pigs), and “riding or roping animals in rodeos”, and

“racing greyhounds” to the definition of an act of cruelty or elsewhere in the Act (as referred to later in this submission).

Meaning of “harm,” s11

- I support the inclusion of psychological suffering.

Meaning of “responsible person,” s12

- There needs to be clarity in the legislation about the definition of “responsible person” in the following situation.
- A new owner, having rescued an animal from an abusive situation, and begun rehabilitating that animal and ensuring that animal has adequate veterinary care and treatment, and being the current person in charge of that animal or having delegated the day-to-day care of that animal to a foster carer, should not be held liable for past animal cruelty offences committed by a previous owner who neglected or was cruel to that animal.
- In other words, a rescuer and a foster carer should not be held liable and prosecuted for animal cruelty offences committed by another party that previously owned an animal who is now in the rescue’s care, and who is now receiving proper veterinary care and treatment while in their care. Only the individual who committed the animal cruelty offence should be liable for prosecution.
- I am aware of one situation where a rescuer, who had not committed any offence of animal cruelty, was charged for the offence committed by a previous owner towards an animal now in their care. Even though that animal rescuer would have had a clear defence, it is concerning that they were prosecuted in the first place.
- I am not sure that s12(2) would cover this situation and it is not clear whether that would be the intention of that sub-section.

PART 3 - Division 1 – Minimum care requirements

- Until the new Draft Regulations are released the details of the new minimum requirements are not available. Therefore, it is not possible to comment in depth at this point. However, there is significant community concern about the following two issues:

Appropriate shelter, s17

- There is significant community concern about the lack of shade and shelter for stock animals in extreme weather conditions, including in feedlots.

Appropriate exercise, s18

- There is significant community concern about the confinement of birds in cages or pigs in sow stalls with no opportunity to exercise.
- It is concerning that there are exemptions for stock animals and for animals kept in captivity, s18(3).

Division 3 - Prohibited and restricted procedures

Prohibited procedures, s22

More procedures should be prohibited as referred to above when discussing the need for a standard of care consistent with community expectations to be included in the Objects of the Act. The maceration of one day old male or weak female chickens, for example, should be prohibited as has recently occurred in Germany.

Restricted procedures, s23

Painful animal husbandry procedures should be added to the list in Schedule 1 so that pain relief is mandatory.

PART 4 - Offences relating to animal cruelty

Division 1 – Animal cruelty

Abandoning animals, s27

- A community cat carer who is working with a cat colony in an urban or peri-urban location should not risk being charged with abandonment when working to humanely and non-lethally reduce the unowned cat population using Trap Neuter Release (TNR).
- Community cat carers desex and vaccinate unowned cats at their own expense and provide ongoing monitoring of cat colonies to provide any future necessary veterinary care, again at their own expense.
- The carer is providing a community and environmental service that should be fully supported at the local and state government level.
- A community cat carer should not risk being charged with the offence of abandonment when releasing a newly desexed cat back to their responsibly managed colony.
- Community cat carers are not abandoning animals but conscientiously and humanely managing them with a view to gradually reducing the colony via desexing and rehoming.
- There should be an exemption in the Act that acknowledges and protects their animal management role in the community.

Poisoning a domestic animal, s30

The use of poisons should be prohibited for all animals

- At present the prohibition on administering poisons to animals refers to domestic animals only. This should be expanded to include all animals (domestic, livestock, native, non-native and “pest”).

Division 2 – Animal fighting and live baiting

Should also include a new standalone s34 prohibition on pig-dogging.

Division 4 – Transport of dogs

Requirements for transporting dogs, s37

This section should apply to the transport of all animals not only dogs

Division 5 – Animal cruelty material

Offences involving animal cruelty material, s39

Whistle-blowers

- It is crucial that whistle-blowers who document animal cruelty for the purposes of exposing the existence of this cruelty and raising community awareness are protected, regardless of whether the material is eventually used as evidence for a prosecution.
- Whistle-blowers should be exempt from prosecution when they film or photograph and distribute incidences of animal cruelty. It is noted that there is a proposed exemption to this effect. The wording of such an exemption should leave no margin for misinterpretation.
- No whistle-blower, who is recording and exposing animal cruelty in any context via any form of media, in the interests of, and with the intention of, promoting transparency about cruel practices involving animals, should be prosecuted for an offence.
- The new offence of production of animal cruelty material should only apply to materials such as animal crush videos and videos of dogfighting.

PART 7 – Enforcement and Compliance

Division 3 – Powers to enter premises

Powers of authorised officers to enter non-residential premises, s66

Could this section be amended to specifically include backyard breeding of domestic animals as a commercial activity so this activity can be investigated?

PART 8 - Legal proceedings

Division 1 – Criminal proceedings generally

Authority to prosecute, s115

- The ability for any individual to bring proceedings for an animal welfare offence should be reintroduced into the Act as suggested by the Animal Defenders Office.

Division 2 - Exemptions and related matters

Specific exemptions s119(1)(f)

De-beaking birds should be prohibited as it is in the *Animal Welfare Act 1992* (ACT), s9C .

I do not support the exemption regarding the feeding of live prey to a predatory animal.

There should be no exemption for the use of live bait in fishing.

There should be no exemptions for harming animals classified as pest animals.

There should be no exemptions for acts of animal husbandry performed without pain relief.

Former defences now exemptions

Existing defences will now be re-framed as exemptions. This may close off the possibility of prosecuting animal cruelty where in the past prosecution may have occurred and been successful if a defence had not been upheld by a court. That is highly concerning.

The inclusion of more exemptions than before

In effect there should be no exemptions to animal cruelty offences.

PART 9 - Committees

At the time of writing, it is noted there is no inclusion of animal welfare or animal rights members on the Animal Welfare Advisory Council. There is currently no information available on the Department of Primary Industries website about the membership of the Exhibited Animals Advisory Committee. The Animal Research Review Panel does have animal welfare members, but no members designated as animal rights members. It is essential that there is broader community representation, including animal welfare and animal rights members, on all these committees.

Banning the Draize and LD50 tests

- The following tests should be banned outright in the Act on the grounds of animal cruelty.
- Draize test – “the animal research procedure involving the application of any material or substance to the eye of an animal for the purpose of determining the irritancy of that material or substance to the eye.”¹
- LD50 test – “the animal research procedure in which any material or substance is administered to animals for the purpose of determining the concentration or dose of the material or substance which will achieve any predetermined death rate.”²

Approval of lethality tests by ethics committees should no longer be permitted

- Lethality test – “meaning an animal research procedure in which any material or substance is administered to animals for the purpose of determining whether any animals will die or how many animals will die.”³ This test should also be banned in the Act.

Additional concerns

The setting up of an Independent Office of Animal Protection (IOAP)

- There is no provision for this in the Draft legislation although it was recommended by the Inquiry into animal cruelty.

¹ *Animal Research Act 1985* (NSW) (“ARA”), s3.

² Ibid.

³ ARA s56A.

Protection of feral or “pest” animals from cruelty

- There need to be clear protections of feral or “pest” animals from cruelty within the Act.

Prohibition of other acts of cruelty need to be included in the Act

- A prohibition on rodeos is needed due to the cruelty of rodeo practices, especially calf-roping.
- A prohibition on greyhound racing should be included as in the ACT.
- A prohibition on the intensive breeding of cats and dogs should also be included.

CASE STUDY

The Stockton Breakwall mass shooting of community cats

On 17 December 2020 a colony of community cats who lived at the Stockton Breakwall, in Newcastle NSW, were shot by pest controllers contracted by the Port of Newcastle Council.⁴ Although being cared for by a rescue group, who had been working to desex, vaccinate, socialise, and rehome them, these community (semi-owned) domestic cats had wrongly been defined as “feral” cats by a council employee. No one from the council attempted to contact the carers even though it was public knowledge that people were working with these cats. The pest management contractor put food down for the cats to eat and then callously shot them. The number of cats had already been reduced by the carers from one hundred to forty through humane fertility management and rehoming. Only thirteen of the forty cats remaining in the colony survived the shooting. Some of the thirteen surviving cats were severely wounded including one who was shot in the eye and blinded.

This appalling attack on the cats attracted strong public condemnation and the community rallied to support the rescue group carers who were also severely traumatised by what had occurred. These carers are dedicated, caring people who knew the cats as individuals and were working to gradually trap, desex, socialise and rehome them. The broader cat rescue community in NSW and around Australia was shocked to learn that the RSPCA found that no animal cruelty crime had occurred and that no one could be prosecuted. The surviving cats and their carers have suffered ongoing trauma since this appalling incident.⁵ I am attaching a link to a social media post containing photos of cats that were killed. These cats were not “feral” nor “pests.” They were beautiful community cats who had people who loved and cared for them and were working to get them into homes.⁶ They had names. I challenge any politician or legislator, who would like to dismiss them as expendable pests, to look at their photos and think deeply about their sentience and the fact they were loved, cared for as individual sentient beings, and people were working hard to get them into safe homes.

It is extremely concerning that this cruel mass shooting and wounding of domestic animals has not yet been prosecuted. It has been claimed that there is no authority to do this under POCTAA. It seems this may hinge on the cats still being incorrectly defined as “feral” and “pest” animals rather than community (semi-owned) domestic cats. Will the new legislation give better protection for animals

⁴ “One year on: community members gather for the memorial of the Stockton Breakwall cats.” *News of the Area*, December 28, 2021. <https://www.newsofthearea.com.au/one-year-on-community-members-gather-for-memorial-of-the-stockton-breakwall-cats-84644>

⁵ Memorial for the Stockton Breakwater cats, 18 December 2021. <https://www.facebook.com/Thestraycatsproject/posts/3019717664943221>

⁶ Notice about the memorial for the Stockton Breakwater cats with photos of those killed. <https://www.facebook.com/Thestraycatsproject/posts/3016932031888451>

than occurred here? If not, the legislation should be amended to ensure semi-socialised colony cats who are being well-managed and will eventually be rehomed by carers, can be legally protected. The law should never permit such cruelty or protect the shooter or council who ordered the killing. This heinous act of cruelty still should be prosecuted.

Thank you for considering my views.

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