

Submission
No 146

INQUIRY INTO ANIMAL WELFARE POLICY IN NEW SOUTH WALES

Organisation: Animal Defenders Office

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Animal Defenders Office

Using the law to protect animals

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Dear Sir/Madam

Submission to the Animal welfare policy in New South Wales Inquiry

Thank you for the opportunity to provide a submission to the Animal welfare policy in New South Wales inquiry (“the Inquiry”) by the New South Wales (“NSW”) Legislative Council’s Standing Committee on State Development. The Inquiry relates to the NSW Government’s draft Animal Welfare Bill 2022 (“the draft Bill”).

Our comments on the draft Bill are set out below.

About the Animal Defenders Office

The Animal Defenders Office (“ADO”) is a nationally accredited not-for-profit community legal centre that specialises in animal law. The ADO provides pro bono animal law services to the community. The ADO is a member of Community Legal Centres NSW Inc., the peak body representing community legal centres in NSW.

Further information about the ADO can be found at www.ado.org.au.

Support for this submission

This submission is supported by the Australasian Animal Law Teachers’ and Researchers’ Association.

The Association’s support is acknowledged at the end of this document.

General comments

The draft Bill aims to replace the *Prevention of Cruelty to Animals Act 1979* (NSW) (“POCTAA”), the *Animal Research Act 1985* (“ARA”), and the *Exhibited Animals Protection Act 1986* (“EAPA”) (“the existing laws”) with a single Act.

The ADO submits that the benefit to animals in replacing the existing laws with the draft Bill would be minimal. The draft Bill is conservative and, in most cases, merely replicates the existing laws. While there are some positive features of the draft Bill, in other areas it provides even less protection for animals than in the existing laws.

The ADO also notes that it is difficult to evaluate critical parts of the proposed new regulatory framework, as large parts of that framework will be in regulations that have not been publicly released.

It is therefore impossible to determine whether the NSW Government is on track to meet its ‘commitment to streamline and modernise NSW’s animal welfare legislative framework’.¹ On the strength of the draft Bill, the ADO submits that this objective has not been met.

Comments on the draft Bill

Draft Bill (section)	Comments
Part 1 Introduction	
Division 1 Preliminary	
1 Name of Act	<p>The proposed title of the new law is the ‘<i>Animal Welfare Act 2022</i>’. This is a conservative title.</p> <p>The first use of the name ‘Animal Welfare Act’ for an anti-cruelty statute in Australia was in 1992 (ACT).² Since then, four other jurisdictions have used that name for their anti-cruelty statutes.³ The most recent anti-cruelty statute in Australia is the <i>Animal Protection Act</i> (NT) (awaiting commencement).</p> <p>The ADO suggests that the proposed name reflects the conservative nature of the draft Bill.</p>
3 Objects of Act	<p>The ADO submits that the proposed ‘Objects’ of the Act are too limited and are inappropriate for a modern animal protection law in 21st-century Australia.</p> <p>The objects refer only to promoting animal welfare and preventing cruelty. They do not acknowledge the sentience of animals.</p> <p>Failing to acknowledge animal sentience explicitly in the Bill’s object clause is out of step with contemporary animal welfare legislation in other common law jurisdictions such as the UK where the Animal Welfare (Sentience) Bill was introduced in the House of Lords in May 2021 (“the UK Bill”)⁴. The UK Bill would enshrine sentience in domestic animal welfare law and establish an ‘Animal Sentience Committee’ to ensure government policy considers animal sentience.</p> <p>In Australia, the ACT’s Animal Welfare Act was amended in 2019 to acknowledge animal sentience and the intrinsic value of animals as the Act’s first object.⁵</p>

¹ NSW Department of Primary Industries (“DPI”), ‘NSW Animal Welfare Reform – Consultation Outcomes’, December 2021, p2, https://www.dpi.nsw.gov.au/_data/assets/pdf_file/0006/1381812/NSW-Animal-Welfare-Reform-Consultation-Outcomes.pdf. This publication will be referred to as “Consultations Outcomes paper” in this submission.

² The use of this name by the ACT for its anti-cruelty statute marked a break from the previous anti-cruelty statutes named ‘Prevention of Cruelty to Animals’ Acts (NSW, SA, VIC).

³ Tasmania (1993), Northern Territory (1999), Western Australia (2002), South Australia (2008).

⁴ <https://bills.parliament.uk/bills/2867>. As at 26/02/2022 the Bill had passed the House of Lords and was at the Report stage which occurs after the 2nd reading in the House of Commons.

⁵ *Animal Welfare Act 1992* (ACT), s4A(1). The first clause of the objects clause in this Act states:

Draft Bill (section)	Comments
	<p>Victoria has committed to recognising animal sentience as part of modernising its animal welfare laws.⁶</p> <p>On 24 February 2022 a Private Members Bill was introduced in the NSW Legislative Council to amend POCTAA to recognise the sentience of animals and their intrinsic value.⁷ This is an indication of contemporary community expectations that our animal protection laws will acknowledge what science and philosophy have long accepted – that animals are sentient beings.</p> <p>The Consultation Outcomes paper proposes an ‘implicit acknowledgement’ approach to animal sentience.⁸ In light of legislative developments regarding animal sentience in Australia and internationally, the ADO submits that the approach to animal sentience in the draft Bill is manifestly inadequate and that animal sentience must be acknowledged explicitly. The ADO also supports acknowledgement of the intrinsic value of animals as in the <i>Animal Welfare Act 1992</i> (ACT).</p>
Recommendation	The ADO recommends that animal sentience must be acknowledged explicitly in NSW’s new animal protection law and preferably in its Objects clause.
Part 2 Interpretation	
Division 2 Key concepts	
7 Meaning of “act of cruelty”	<p>The ADO supports:</p> <ul style="list-style-type: none"> • The use of the term “harm” in s7(1)(a). • Omitting the term “unjustifiably” in ss7(1)(a), (b), (e). <p>The ADO does not support:</p> <ul style="list-style-type: none"> • Exempting from the meaning of “act of cruelty” the release of fishes into a body of water so that the fishes may be caught by humans (s7(3)). Fishes are included in the definition of “animal” in both POCTAA and the draft Bill.⁹ The act of catching a fish during ‘recreational fishing’ would harm the animal. Recreational fishing is unnecessary given that it is a hobby and entertainment (inherent in the term “recreational”). It is unreasonable because reasonable alternatives exist both in terms

- (1) The main objects of this Act are to recognise that—
- (a) **animals are sentient beings that are able to subjectively feel and perceive the world around them;** and
- (b) **animals have intrinsic value and deserve to be treated with compassion and have a quality of life that reflects their intrinsic value;** and
- (c) people have a duty to care for the physical and mental welfare of animals.

⁶ ‘Victorians In Favour Of New Animal Welfare Act’, The Hon Daniel Andrews, Premier of Victoria, Press Release, 29 April 2021, <https://www.premier.vic.gov.au/victorians-favour-new-animal-welfare-act>.

⁷ Prevention of Cruelty to Animals Amendment (Animal Sentience) Bill 2022, introduced by Abigail Boyd MLC (NSW Greens), <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3946>.

⁸ The Consultation Outcomes paper p7: ‘The draft Bill acknowledges the concept of animal sentience through reference to protecting animals from harm, which is defined as including distress, pain, and physical and psychological suffering.’

⁹ The definitions of ‘animal’ include ‘fish’ in POCTAA s4(1), subparagraph (a)(iii), and ‘a fish’ in Schedule 3 to the draft Bill, sub-subparagraph (a)(i)(C).

Draft Bill (section)	Comments
	of recreational activities and food sources. Inflicting harm on a sentient animal for this purpose is contrary to the proposed object of the draft Bill to promote the welfare of animals (s3(a)).
Recommendation	The ADO recommends that subsection 7(3) be omitted.
8 Meaning of “act of aggravated cruelty”	The ADO supports the reference to an animal’s <i>psychological</i> condition, in addition to the physical condition, in the proposed definition of “act of animal cruelty” (s8(b)).
9 Meaning of “animal research”	<p>The ADO notes the following proposed exemption from the definition of “animal research”:</p> <p><i>s9(3)(a): displaying an animal, or keeping an animal for display, for educational or scientific purposes that does not involve an experiment, inquiry, investigation, procedure, study or test in connection with the animal,</i></p> <p>The ADO does not support this proposed exemption (which does not appear to be in the AR Act) if it would exempt hatching projects from the animal research regulatory framework. Hatching projects are acknowledged around the world as having serious animal welfare concerns.¹⁰ If hatching projects are not proscribed completely in the draft Bill, then they should at least be included in the animal research regulatory framework.</p>
11 Meaning of “harm”	The ADO supports the proposed definition of “harm” because it includes ‘psychological suffering’ which is an essential aspect of an animal’s wellbeing.
12 Meaning of “responsible person”	<p>The ADO submits that the scope of the proposed definition of “responsible person” in s12 of the draft Bill is too limited and unnecessarily complex.</p> <p>To address this issue, the ADO submits that the provision could be amended in the following ways:</p> <ul style="list-style-type: none"> • The separate provisions dealing with ‘stock animals’ in saleyards (s12(1)(d)) and abattoirs (s12(1)(e)) could be replaced with a single provision that refers to the owner, lessee, operator or manager of premises where animals are held for commercial purposes or where animals are agisted. Such a provision could be based on the <i>Animal Welfare Act 1993</i> (TAS), ss3A(1)(c), (d). This would ensure that all commercial premises rather than merely saleyards and abattoirs are covered by the definition. • If the person mentioned in s12(1)(b) of the draft Bill is a member of the staff of another person, the proposed definition could be extended to cover that other person, as in the <i>Animal Welfare Act 2002</i> (WA) s5.

¹⁰ See RSPCA Australia: <https://kb.rspca.org.au/knowledge-base/what-are-the-animal-welfare-issues-with-chick-hatching-in-schools/>; Animal Kind (UK): <http://animalkind.org.uk/wp-content/uploads/2019/10/AA-Hatching-Worksheet.pdf>; United Poultry Concerns (USA): <https://www.upc-online.org/hatching/>.

Draft Bill (section)	Comments
	<ul style="list-style-type: none"> The definition could include the occupier of a place or vehicle where the animal was at the relevant time.
Recommendation	<p>The ADO recommends that an additional paragraph be inserted after paragraph 12(1)(c) to provide that if the person mentioned in paragraph 12(1)(b) is a member of the staff of another person, the proposed definition includes that other person.</p>
Recommendation	<p>The ADO recommends that paragraphs 12(1)(d) and (e) be omitted and that a single provision be inserted instead that refers to the owner, lessee, operator or manager of premises where animals are held for commercial purposes or where animals are agisted.</p>
<p>Part 3 Requirements for care of animals</p>	
<p>Division 1 Minimum care requirements (“MCR”)</p>	
<p>13 Responsible person must ensure minimum care requirements for animals met</p>	<p>The ADO supports the minimum care requirements specified in s13(2) of the draft Bill, while noting that they are minimum requirements.</p> <p>The ADO strongly supports the inclusion of ‘appropriate opportunities to display normal behaviour’ in the MCRs as proposed in s13(2)(f).</p>
<p>14 What is appropriate for MCR</p>	<p>The ADO supports the matters specified in s14 that are to be taken into account when deciding what is appropriate for the purposes of an MCR for an animal. In particular, the ADO supports the reference to an animal’s behavioural needs in paragraph 14(c).</p>
<p>16 Appropriate drink</p>	<p>This provision is based on the ‘deeming’ provision in POCTAA that deems the failure to provide ‘clean water’ for 24 hours to be evidence of an offence against the requirement to provide drink that is ‘proper and sufficient’ (POCTAA s8(1); which has become ‘appropriate’ in the draft Bill s13(2)(a)).</p> <p>The draft Bill would allow a different period to be prescribed for a specified species or class of animal in relation to ‘appropriate drink’ (s16(1)(a)). This is different from POCTAA, which does not provide for a different period to be prescribed for a specified species or class of animal in relation to what is proper and sufficient drink.</p> <p>The ADO does not support allowing longer periods to be prescribed as it may lead to longer periods being specified for certain farmed animals such as layer hens subjected to forced moulting or bobby calves being transported to slaughter, indirectly sanctioning these situations and the harm they would inflict on the animal. This concern also applies to the proposal to allow longer periods to be prescribed in relation to food, shelter and exercise (ss15, 17, 18 of the draft Bill).</p> <p>The ADO also notes that the reference to ‘clean water’ in s16(1) of the draft Bill fails to take into account where the appropriate drink for an animal is not water, such as when young animals still rely solely on their mother’s milk. While the clarification in s16(2) of</p>

Draft Bill (section)	Comments
	the draft Bill may go some way to ensure these specific factors are considered, the issue could nonetheless be addressed by including a reference to 'clean water <i>or other appropriate drink</i> ' in s16(1) or by allowing other types of drink to be prescribed for a species or class of animal. This would allow a prosecutor to rely on the deeming provision in s16(1) to prove that appropriate drink had not been provided as required under the proposed MCR in s13(2)(a).
18 Appropriate exercise	The ADO does not support exempting 'stock animals' from the proposed deeming provision in s18 of the draft Bill (s18(3)). This is an arbitrary exemption and therefore conflicts with the draft Bill's proposed object to promote the welfare of [sentient] animals (s3(a)).
Recommendation	The ADO recommends that the word 'shorter' be inserted between 'a period' in paragraphs 15(1)(a), 16(1)(a), 17(1)(a), and 18(1)(a) so that only periods shorter than 24 hours can be prescribed.
Recommendation	The ADO recommends that paragraph 18(3)(a) be omitted.
Division 2 Standards	
20 Requirement to comply with standards	<p>Section 20 sets out a requirement to comply with standards prescribed by the regulations. It is not known what standards will be prescribed.</p> <p>Subsection 20(2) proposes that a responsible person for an animal would not commit an offence against the Act for an act or omission relating to the animal if the act or omission is in accordance with a prescribed standard.</p> <p>To ensure the integrity of the MCRs, the draft Bill must provide that standards cannot allow a standard of care that is lower than those provided for in the MCRs. Without such a safeguard, the proposed exemption in s20(2) has the potential to undermine the protections provided by the MCRs in the draft Bill.</p>
Recommendation	The ADO recommends that Part 3, Division 2 be amended to require that a prescribed standard must not be inconsistent with the minimum care requirements.
Division 3 Prohibited and restricted procedures	
	<p>Division 3 of Part 3 specifies procedures that must not be carried out on animals or must be carried out in restricted circumstances.</p> <p>Prohibited procedures are specified in s22 of the draft Bill.</p> <p>Restricted procedures are specified in Schedule 1 to the draft Bill.</p> <p>The ADO supports the extension of the proposed prohibition against grinding, trimming or clipping teeth in s22 to alpacas and llamas in addition to sheep.¹¹ However, as these practices are also carried out on farmed pigs, the ADO submits that these procedures should also be prohibited in relation to pigs.</p>

¹¹ The equivalent offence in POCTAA applies only to sheep (s12(1)(e)).

Draft Bill (section)	Comments
	<p>The ADO is concerned that harmful procedures that no longer meet community expectations of animal welfare have not been prohibited or restricted in the draft Bill.</p> <p>For example:</p> <ul style="list-style-type: none"> • Removing or trimming the beaks of hens should be a prohibited procedure. It is already banned in the ACT.¹² • Hot iron branding an animal should be prohibited on any part of an animal, rather than just the face (s22(1)(c) of the draft Bill). <p>The following procedures should be specified as restricted procedures that must be carried out only by a veterinarian and/or as a minimum with pain relief:</p> <ul style="list-style-type: none"> • Mulesing sheep (already restricted in Victoria¹³); • Dehorning farmed animals including cattle and goats; • Castrating an animal at any age, including pigs; • Ear tagging an animal. <p>A requirement to use pain relief when carrying out the above procedures would reinforce the reported 'high industry uptake of voluntary use of pain relief'.¹⁴</p>
Recommendation	The ADO recommends that paragraph 22(1)(b) be amended to refer to 'a pig' in addition to the animals already specified.
Recommendation	The ADO recommends that the words 'the face of' be removed from paragraph 22(1)(c).
Recommendation	The ADO recommends that the procedures of trimming and removing the beaks of hens be inserted into subsection 22(1) as prohibited procedures.
Recommendation	<p>The ADO recommends that the following procedures be inserted in Schedule 1 to the draft Bill as restricted procedures that must be carried out only by a veterinarian and/or with pain relief (as appropriate):</p> <ul style="list-style-type: none"> • Mulesing sheep; • Dehorning farmed animals including cattle and goats; • Castrating an animal at any age, including pigs; • Ear tagging an animal.

¹² *Animal Welfare Act 1992* (ACT) s9C.

¹³ *Prevention of Cruelty to Animals Regulations 2019* (Vic) reg 8(2).

¹⁴ Consultation Outcomes paper p22.

Draft Bill (section)	Comments
Part 4 Offences relating to animal cruelty	
Division 1 Animal cruelty	
27 Abandoning animals	<p>Section 27 sets out the proposed offence of abandoning animals.</p> <p>Subsection 27(2) provides guidance on what constitutes abandoning an animal. There is no equivalent provision in POCTAA. Providing additional guidance is potentially a positive aspect of the draft Bill.</p> <p>The ADO is concerned, however, that the circumstances specified in ss27(2)(a)(i) and (ii) of the draft Bill are too broad. Under these provisions, ‘deliberately dumping [an] animal at a place’ and ‘intentionally allowing [an] animal to escape’ would constitute an offence of abandoning an animal. Unlike the proposed animal cruelty offences in ss25 and 26 of the draft Bill, these offences would require proof of a ‘fault element’, or mental state (<i>‘deliberately dumping’</i> and <i>‘intentionally allowing’</i>). In addition, ‘escape’ is not defined and could criminalise letting out a stray animal who has wandered into a person’s home, as can happen with stray dogs and cats or even birds.</p> <p>Even the third example (‘inappropriately releasing the animal into the wild’ in s27(2)(a)(iii)) is vague, as the term “wild” is not defined.</p> <p>The ADO submits that the actions specified in s27(2)(a) should be removed on the grounds that they are too broad, are vague, and are out of character with the other offences proposed in Division 1 of Part 4 of the draft Bill in that they would require proof of a fault element (ss27(2)(a)(i) and (ii)).</p> <p>At most, s27(2)(a)(iii) could be converted to an explanatory note on the grounds that the provisions in ss27(3)(b) and (c) may provide some context to the concept of ‘inappropriately’ releasing an animal into the wild.</p>
Recommendation	The ADO recommends that paragraph 27(2)(a) be omitted.
29 Injuries to animals struck by vehicle	<p>The offence proposed in s29 of the draft Bill is based on s14 POCTAA (‘Injuries to animals to be reported’).</p> <p>The proposed offence in the Bill continues to exclude birds. This means that there would be no obligation on drivers to alleviate any harm caused to a bird who has been struck and injured by the driver’s vehicle. The ADO submits that this is an anachronism and out of step with contemporary animal welfare expectations. The provision should therefore be amended to remove the exclusion of birds.</p>
Recommendation	The ADO recommends that the words ‘other than a bird’ in section 29 be omitted.
30 Poisoning a domestic animal	<p>Poisoning animals invariably involves inflicting significant harm on the animals.</p> <p>The ADO therefore submits that the draft Bill should make poisoning any animal an animal cruelty offence.</p>
Recommendation	The ADO recommends that the word ‘domestic’ in section 30 be omitted.

Draft Bill (section)	Comments
Division 2 Animal fighting and live baiting	
32 Prohibition on animal fighting	<p>Section 32 of the draft Bill would prohibit various actions associated with animal fights. However, s32(2) of the Bill explicitly exempts rodeos from the offence proposed in s32(1), provided the rodeo is conducted in accordance with ‘a standard prescribed by the regulations’.</p> <p>It is accepted that rodeos cause harm to the animals involved.¹⁵ For this reason, rodeos have been banned under ACT animal welfare laws since 1992.¹⁶</p> <p>In light of the serious animal welfare concerns inherent in rodeos, the ADO submits that rodeos should not be exempt from the proposed prohibition on animal fighting in s32 of the draft Bill, or from being considered an act of cruelty (as proposed in s32(3)).</p> <p>Paragraphs 32(2)(b) and (c) of the draft Bill also exempt ‘mustering stock, working stock in yards or another routine animal husbandry activity’ and ‘conducting sheep dog trials’ from the proposed ‘animal fighting’ offence. In the absence of explanatory material for the draft Bill, it is impossible to assess any purported justification for these proposed exemptions.¹⁷</p> <p>The proposed exemption of ‘another routine animal husbandry activity’ (s32(2)(b)) is extremely broad.</p> <p>Moreover, the offence of ‘animal fighting’ from which all these activities would be exempted is extremely serious. It carries the highest proposed maximum penalty (‘category 1 penalty’).¹⁸ Any proposed exemption from such a serious offence would therefore need to be thoroughly justified and explained and construed as narrowly as possible.</p> <p>For these reasons the ADO does not support the proposed exemptions in s32(2).</p> <p>NB There appears to be a drafting error at the end of s32(1)(f). The fullstop should be replaced by “, or”</p>
Recommendation	The ADO recommends that subsections 32(2) and (3), which propose exemptions to the prohibition on animal fighting, be omitted.

¹⁵ RSPCA Australia: ‘RSPCA Australia is opposed to rodeos and rodeo schools because of the potential for significant injury, suffering or distress to the animals involved. The use of painful devices such as flank straps, spurs and electric prods contributes to suffering associated with this sport.’ *RSPCA Policy Co8 Rodeos* (2016), <https://kb.rspca.org.au/knowledge-base/rspca-policy-c08-rodeos/>.

¹⁶ *Animal Welfare Act 1992* (ACT) s18(1): ‘A person commits an offence if the person conducts or takes part in a rodeo.’

¹⁷ The ADO has been unable to find mention of these exemptions in the Consultation Outcomes paper. The previous *NSW Animal Welfare Reform – Discussion Paper*, DPI, July 2021, merely states that the DPI will ‘ensure the new offence does not result in unintended consequences for lawful activities like mustering stock, sheep dog trials, ...’ (p40). This states an intended outcome and is not an explanation or justification.

¹⁸ Draft Bill, s108 stipulates that the category 1 penalty for an individual is 1000 penalty units [\$110,000] or imprisonment for 2 years, or both, or 5000 penalty units [\$550,000] for a corporation.

Draft Bill (section)	Comments
33 Prohibition on live baiting	<p>Section 33 of the draft Bill would prohibit various activities associated with, or similar to, live baiting.</p> <p>However, s33(5) of the Bill would exempt ‘mustered stock, working stock in yards or another routine animal husbandry activity’ and ‘conducting sheep dog trials’ from the ban on live baiting and related activities in s33 of the draft Bill.</p> <p>Mustered stock and conducting sheep dog trials have been a defence to the POCTAA offence of ‘live baiting, coursing and other similar activities’ since at least 2005 (s21(3)).</p> <p>The exemptions proposed in s33(5) of the draft Bill are much broader than the exemptions in POCTAA s21(3). This is a significant concern if it would mean that activities similar to live baiting would be able to be practised. Community awareness of and attitudes to these activities have changed considerably since the abhorrent practices of live baiting in the greyhound industry were exposed on national television in 2015.¹⁹ The ADO submits that in 2022, live baiting and related activities should be banned in any form or context.</p>
Recommendation	The ADO recommends that subsection 33(5), which proposes exemptions to the prohibition on live baiting (and related activities), be omitted.
Division 4 Transport of dogs	
37 Requirements for transporting dogs	<p>This provision of the draft Bill would make it an offence to leave a dog unattended in a vehicle in hot weather for more than 5 minutes (s37(1)(a)), or to restrain a dog in a tray of an open-backed vehicle in hot weather without using insulating material (s37(1)(b)).</p> <p>The ADO notes that s37 of the draft Bill deals with the issue of hot weather in its provision about requirements for transporting dogs but does not provide for the <i>rescue</i> of the dog in the hot weather.</p> <p>This is a serious omission given the short amount of time in which a dog or other animal captured in a vehicle in hot weather can suffer and die, as indicated by the proposed time of 5 minutes in s37(1)(a).²⁰</p> <p>The ADO submits that the draft Bill should explicitly allow persons to rescue animals from vehicles in hot weather. Australia already has a precedent for such a provision. The ACT has a separate provision in its <i>Animal Welfare Act 1992</i> that deals with rescuing an animal from a vehicle, and it applies to all animals: s109A ‘Rescuing animal at risk in locked vehicle’. This effectively allows a person to rescue an animal if the animal appears to be ‘at risk of serious injury or death’ due to being locked in a motor vehicle.</p>
Recommendation	The ADO recommends that a provision be inserted in the draft Bill to clarify that a person does not incur criminal or civil liability if the person forcibly enters a motor vehicle, or assists another person forcibly to enter a motor vehicle, to release an animal

¹⁹ ‘Making a Killing’, Four Corners – ABC, 16 Feb 2015, <https://www.abc.net.au/4corners/making-a-killing/6127124>.

²⁰ RSPCA Pet Insurance, ‘Why you should never leave your dog in the car!’, <https://www.rspcapetinsurance.org.au/pet-care/responsible-pet-ownership/why-you-should-never-leave-dog-in-car?qs=1>.

Draft Bill (section)	Comments
	locked in the vehicle and appearing to be at risk of serious injury or death. The provision could be modelled on section 109A of the <i>Animal Welfare Act 1992 (ACT)</i>.
Division 5 Animal cruelty material	
38 Definitions 39 Offences involving animal cruelty material	<p>The ADO notes that s547E (uncommenced at the time of writing) has been inserted into the <i>Crimes Act 1900 (NSW)</i> (“CA”) by the <i>Crimes Legislation Amendment Act 2021 (NSW)</i>.</p> <p>Section 547E will make it an offence to produce, disseminate or possess bestiality or animal crush material (ss547E(1) and (2)).</p> <p>The proposed offences involving animal cruelty material in s39 of the draft Bill are overly complex and would overlap the offences in s547E of the CA.</p> <p>The ADO therefore submits that the proposed offences involving animal cruelty material in s39 of the draft Bill are unnecessary and must be removed.</p>
Recommendation	The ADO recommends that Division 5 (‘Animal cruelty material’) of Part 4 of the draft Bill be omitted.
Division 6 Offences involving prohibited items	
40 Prohibition on prohibited items	<p>This provision is based in part on s16 POCTAA (‘Certain electrical devices not to be used upon animals’) and s23 POCTAA (‘Certain traps not to be set’).</p> <p>The substantive content for this provision is impossible to assess as all relevant details (such as the types of prohibited devices, traps or other items that may be used and/or the circumstances in which they may be used) are proposed to be prescribed in regulations which are not yet available.</p> <p>POCTAA specifically prohibits setting, or possessing with intention to use, steel-jawed traps (s23(2)).</p> <p>Under the draft Bill no items would be prohibited in the primary legislation.</p> <p>The ADO submits that steel-jawed traps should continue to be prohibited in the Act.</p> <p>The ADO withholds further comment on the issue of prohibited items until the regulations are released.</p>
Recommendation	The ADO recommends that specific offences of setting a steel-jawed trap and possessing a steel-jawed trap with intent to use it to trap an animal should be inserted in section 40 (‘Prohibition on prohibited items’).
Part 5 Licensing and approvals	
42 Requirement to be licensed	<p>Subsection 42(1) contemplates two main types of licences: (a) animal research and the supply of animals for animal research, and (b) exhibiting animals.</p> <p>Subsection 42(2) would allow regulations to exempt a person from the requirement to hold a licence to carry out a licensed activity.²¹</p>

²¹ There are similar provisions in the EAP Act ([s4 ‘Exemptions’](#)) and AR Act ([s62\(2\)\(d\) ‘Regulations’](#)).

Draft Bill (section)	Comments
	<p>The exemptions regime will be important in that it will set out who will not need a licence and therefore not need to be subjected to the scrutiny that may be involved in the yet-to-be-released licensing schemes. It may also set out what species of animals are exempt from the licensing scheme and any protections it may afford. The ADO withholds further comment on the requirement to be licensed until the licensing schemes in the regulations are released.</p>
<p>45 Regulations may provide for licensing scheme</p>	<p>The ADO notes that the effect of s45 is to move the licensing schemes for research animals and exhibited animals to regulations. The regulations have not yet been released for public comment.</p> <p>Substantive matters such as ‘standard conditions’ will be in the regulations (as per s45(2)(h)(i) of the draft Bill). No comment on the content of the conditions can therefore be made at this point.</p> <p>However, the ADO notes that the proposed subjects for conditions in s45(2)(h) of the draft Bill include ‘requirements to keep records of certain licensed activities carried out under licen[c]es’ (s45(2)(h)(iv)). The draft Bill does not, however, replicate the requirement in the AR Act that records must be kept of all approved lethality tests (AR Act s56A(1)). Given the serious nature of lethality tests and the significant harm they inflict on animals, the ADO submits that the requirement to keep records of all approved lethality tests as currently provided for in s56A of the AR Act should be specifically mentioned in s45(2)(h) of the draft Bill.</p> <p>Similarly, the AR Act currently provides additional requirements for authorising LD50 tests and Draize tests: ss26(3) and (4). There is no reference to these tests in the draft Bill. Given the serious nature of these tests, the significant harm they inflict on animals, and the current additional requirements for their approval under the AR Act, the ADO submits that they should be explicitly mentioned in s45(2) of the draft Bill as matters for which the regulations may provide.</p> <p>Currently s36 of the EAP Act gives the Secretary the power to specify as a term of a licence limitations on the exhibition of dolphins and whales kept in captivity. The exhibition of these animals is not referenced in s45(2) of the draft Bill. Given the recent public scrutiny of the exhibition of these animals in NSW²², the ADO submits that it should be explicitly mentioned in s45(2) of the draft Bill as a matter for which the regulations may provide.</p>
<p>Recommendation</p>	<p>The ADO recommends that a requirement to keep records of lethality tests approved by an animal care and ethics committee or by a subcommittee of the committee be inserted in paragraph 45(2)(h) as matters about which the regulations may provide.</p>
<p>Recommendation</p>	<p>The ADO recommends that the processes for authorising LD50 tests and Draize tests be inserted in subsection 45(2) as specific matters for which the regulations may provide.</p>

²² NSW Legislative Council – Portfolio Committee No. 4 – Industry – Inquiry into the use of exotic animals in circuses and the exhibition of cetaceans in New South Wales, 2019-2020, <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2555#tab-termsofreference>.

Draft Bill (section)	Comments
Recommendation	The ADO recommends that limitations on the exhibition of dolphins and whales be inserted in subsection 45(2) as a specific matter for which the regulations may provide.
Part 6 Stock welfare panels	
Division 1 Preliminary	
50 Definitions	<p>The ADO is concerned that the main definitions proposed in this provision focus on <i>physical</i> suffering of farmed animals, especially suffering stemming from physical deprivation (as in the proposed definition of “stock animal in distress”) and are silent about mental and psychological suffering. This is unjustified when the proposed definition of “harm” in the draft Bill specifically includes ‘psychological suffering’ (s11(d)).</p> <p>The ADO therefore submits that the definition of “distress” include a reference to psychological suffering (as per s11(d) of the draft Bill), and the definition of “stock animal in distress” include the circumstance where an animal has not been provided with ‘appropriate opportunities to display normal behaviour’ (as per s13(2)(f) of the draft Bill).</p> <p>The ADO notes that the defined terms “distress” and “stock animal in distress” are not included in the Dictionary in Schedule 3 to the draft Bill, although the term “stock welfare panel” is included in the definitions. The ADO suggests that all terms defined in s50 be referenced in the Dictionary in Schedule 3 to the draft Bill.</p>
	<p>The application of the panels has been widened. In POCTAA, the panels apply only in relation to ‘a stock animal depastured on rateable land’ (s24O(1)). This would not include <i>intensively raised animals</i> or animals on ‘smaller landholdings’.²³ The restriction in s24O(1) POCTAA has not been carried across to the draft Bill.</p> <p>It is not clear how expanding the scope of the panel process to include all ‘stock animals’ would result in better animal welfare outcomes.²⁴ For example, where the condition of animals in intensive facilities is poor there may be no time to establish a panel, especially considering that animals are often kept in intensive facilities for relatively short periods of time. In other situations (eg battery cage facilities, where the hens are kept for many months), it could mean that large numbers of animals would continue to suffer for relatively lengthy periods of time during the panel process and given their intensive confinement, the animals would be unable to escape or move away from the source of the pain and suffering over that time.</p> <p>The ADO would welcome explanatory material for the Bill that would clarify how expanding the scope of the panels would result in better animal welfare outcomes for the new types of animals to whom the process would apply under the Bill.</p>
Recommendation	The ADO recommends that a reference to psychological suffering be inserted in the proposed definition of “distress” in section 50.

²³ NSW Animal Welfare Reform – Discussion Paper, DPI, 2021, p30.

²⁴ The proposed definition of ‘stock animal’ in the draft Bill specifies 12 different types of animals, compared with seven in POCTAA, and a provision to prescribe more in the regs (Schedule 3 to the draft Bill). This means that far more animals may be subjected to the panel process.

Draft Bill (section)	Comments
Recommendation	The ADO recommends that the words ‘been provided with appropriate opportunities to display normal behaviour’ be inserted as a separate paragraph after paragraph (c) in the proposed definition of “stock animal in distress” in section 50.
Division 2 Official warnings	
51-53 [Official warnings scheme]	<p>The proposed panel scheme in Part 6 of the draft Bill would operate where the Secretary reasonably suspects a ‘stock animal’ is (a) a ‘stock animal’ in distress or (b) likely to become one (s51(1)).</p> <p>According to the Consultation Outcomes paper, it is not intended that the panel process <i>replace</i> the usual investigation, compliance and enforcement processes in relation to animal welfare offences involving farmed animals.²⁵ This policy is reflected in the draft Bill which does not mandate the exclusive use of the panel process when there are animal welfare concerns about farmed animals.</p> <p>To avoid doubt, however, the ADO submits that the draft Bill clarify this issue by explicitly stating in Division 2 of Part 6 that establishing a panel does not prevent other authorised officers from investigating an animal welfare offence regarding the same ‘stock animals’.</p>
Recommendation	The ADO recommends that a clarification be inserted in Division 2 of Part 6, whether in a provision or legislative note, to make clear that establishing a stock welfare panel in relation to a stock animal does not prevent an authorised officer from exercising functions under Part 7 (‘Enforcement and compliance’) regarding the same animal.
Division 4 Miscellaneous	
58 Constitution and procedure of stock animal welfare panels	<p>This provision specifies who could be on a stock welfare panel.</p> <p>The membership of a panel as provided for in s58 of the draft Bill is a concern because it may allow a situation where no ‘animal welfare’ expert is on the panel.²⁶</p> <p>The ADO submits that membership of the panels must include a certain number of experts in animal welfare, including an independent representative for animals selected from an animal protection organisation. This would avoid the panel consisting exclusively of people who either represent, or are or may be captured by, industry.</p>

²⁵ ‘The Stock Welfare Panel process does not prevent an enforcement agency from commencing a prosecution for an animal welfare offence, if it is warranted in the circumstances.’ *Consultation Outcomes*, p53.

²⁶ This would appear to be possible because:

- ‘Authorised officer’ is defined as a ‘public service employee’, or a person from an ‘approved charitable organisation’, or a class of such employees/persons (draft Bill s89); therefore, an authorised officer on the panel could be a departmental employee with little or no animal welfare expertise; and
- The persons ‘employed in the Department’ and the Local Land Services representatives must have expertise in either animal welfare or stock management so those appointed to a panel could have expertise in stock management rather than animal welfare.

Draft Bill (section)	Comments
	<p>Subsection 58(2) of the Bill replicates POCTAA in specifying that the ‘procedure of a stock welfare panel is decided by the Secretary’.</p> <p>There do not appear to be any transparency or accountability provisions regarding panels.</p> <p>This is a concern. The ADO has commented previously on this issue:</p> <p style="padding-left: 40px;">The use of, and outcomes from, the panels must be transparent. The DPI and enforcement agencies must be required to report on and provide detailed information about the panels, their duration, their outcomes, and the fate of all animals involved (including those who do not survive), and this information must be made publicly available.²⁷</p> <p>The ADO submits that Part 6 (‘Stock Welfare Panels’) should require panels to be transparent and accountable, including mandatory reporting requirements (such as to the Minister and Parliament), especially in relation to the outcomes for the animals in question.</p>
Recommendation	<p>The ADO recommends that requirements for:</p> <p style="padding-left: 40px;">(a) at least one person who has expertise in animal welfare; and</p> <p style="padding-left: 40px;">(b) at least one representative from a charitable organisation (other than an approved charitable organisation);</p> <p>be inserted in subsection 58(1) as persons who must be appointed to a stock welfare panel.</p>
Recommendation	<p>The ADO recommends that a requirement for a stock welfare panel to give to the Secretary a report of its work, including the outcomes for the animals, and for the Secretary to publish relevant non-sensitive information, including the outcomes for the animals, on the Department’s website, be inserted in section 58 or as a separate provision in Division 4 of Part 6 (‘Stock welfare panels’).</p>
Part 7 Enforcement and compliance	
Division 1 Preliminary	
59 Purposes for which functions under Part may be exercised	<p>The ADO submits that the draft Bill does little to streamline or modernise the enforcement of animal welfare laws in NSW. Instead it would establish an unnecessarily complex enforcement regime in which it would be difficult to determine who has responsibility in what context. The proposed regime is arguably made more complex by having the rules involving different parties and contexts in a single provision in a single statute.</p> <p>The ADO notes that any increased investigation and enforcement powers for police officers will be wasted if the increased powers are not supported by education and</p>

²⁷ ADO submission on the NSW Animal Welfare Reform – Discussion Paper, 17 September 2021, p15.

Draft Bill (section)	Comments
	<p>training. This would help ensure police officers are aware of their new (and existing) powers and know how to use them. They would also need to be adequately resourced.</p> <p>The ADO submits that the continued complexity and convoluted nature of the rules in the draft Bill emphasise the need for an independent office of animal protection. Nothing in the Consultation Outcomes paper or the draft Bill responds to or addresses the need for a single, independent enforcement agency.²⁸ As it is, the draft Bill simply replaces one allegedly complex regime (the current framework) with another complex regime (s59 of the draft Bill).</p> <p>The ADO notes and supports the recent introduction in the NSW Legislative Council of a Bill proposing to establish an independent office of animal welfare in NSW.²⁹</p> <p>In the absence of an independent statutory body, an alternative amendment would be to remove the proposed distinctions in s59(1) of the draft Bill and to allow all authorised officers to be able to investigate all animal welfare offences. Under an allegedly modern, streamlined approach it is difficult to see why complex distinctions between who can investigate what should be maintained.</p>
Recommendation	<p>The ADO recommends that Part 7 establishes an independent office of animal protection and provides that an officer of such an entity to be able to exercise functions under Part 7 that are similar to those specified in paragraph 59(1)(a) in relation to a public service employee or a police officer.</p>
Division 3 Powers to enter premises	
<p>66</p> <p>Powers of authorised officers to enter non-residential premises</p>	<p><i>Power to enter land/premises where animals are kept</i></p> <p>The current power to enter land (excluding a dwelling) under POCTAA is broad: ‘An inspector may enter land for the purpose of exercising any function under this Division.’³⁰</p> <p>The draft Bill would replace this with a power to enter non-residential premises in certain circumstances (s66(1)). The term “premises” is defined in the Bill to include ‘land’ but also ‘a building’ and ‘a structure’ (Schedule 3). While the powers proposed under the draft Bill are still relatively broad, they nonetheless would fetter the power more than is currently the case.</p>
	<p><i>Commercial premises</i></p> <p>The Bill proposes to create a general power to enter non-residential premises in which commercial activities may be taking place, to investigate, monitor and enforce compliance with the legislation: s66(1)(f).</p>

²⁸ The ‘response’ in the Consultation Outcomes Paper to this issue merely describes the status quo and fails to justify its continued existence (p40).

²⁹ Prevention of Cruelty to Animals Amendment (Independent Office of Animal Welfare) Bill 2022, introduced by Abigail Boyd MLC (NSW Greens), 22 February 2022, <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3942>.

³⁰ POCTAA s24E(1): ‘An inspector may enter land for the purpose of exercising any function under this Division.’

Draft Bill (section)	Comments
	<p>The power is enlivened if the authorised officer ‘reasonably suspects’ that ‘an agricultural, commercial or industrial activity relating to animals is being carried out’ on the premises.</p> <p>Once enlivened, the only limit to this broad power is that it be exercised ‘at any reasonable time’. The ADO notes that this may be unnecessarily limiting in respect of premises in which commercial activities involving animals are taking place.</p> <p>While the ADO supports the power proposed under s66(1)(f), the regulation-making power proposed in s66(2) causes concern. This provision would allow the regulations to ‘prescribe activities that do or do not constitute agricultural, commercial or industrial activities’ (emphasis added). This is a concern because it could be used to weaken the ‘pro-active inspection power’ relating to non-residential land or premises where agricultural, commercial or industrial activities are taking place. This could happen if activities that would ordinarily be regarded as agricultural, commercial or industrial in nature are prescribed as <i>not</i> constituting such activities.</p> <p>Once an activity is prescribed as not constituting an agricultural, commercial or industrial activity, an authorised officer would need to fall back on the other non-residential entry powers in s66(1) of the Bill, which may militate against making a decision to inspect what would, but for the prescription, be an agricultural, commercial or industrial activity.</p> <p>This mechanism is arguably unnecessary. The ADO submits that the default position should be that an activity is agricultural, commercial or industrial unless proven otherwise, and the onus should be on an animal user trying to stop entry to persuade an authorised officer or other authority that an activity in a particular matter is <i>not</i> agricultural, commercial or industrial. However, the ADO acknowledges that it may help with the enforcement of the Bill if some ambiguous activities were prescribed as being agricultural, commercial or industrial activities. The ADO would therefore support limiting the regulation-making power in s66(2) to prescribe only activities that do constitute agricultural, commercial or industrial activities.</p>
Recommendation	The ADO recommends that the words ‘do or do not’ be omitted from subsection 66(2).
Division 4 Investigation and risk management powers	
70 Powers that can be exercised on premises	<p>Paragraph 70(7)(a) currently states: ‘an offence includes a reference to an offence that it reasonably suspected has been committed’. The meaning of these words is not clear.</p> <p>The ADO suggests the paragraph be redrafted to improve clarity.</p>
72 Powers of authorised officers in relation to care of animals	<p>The ADO notes that the proposed powers in relation to the care of animals by authorised officers include the power to destroy an animal (ss72(1)(f) and (3)(b)). In the absence of explanatory material it is not clear in what situations it is anticipated that the proposed powers to destroy an animal would be used.</p> <p>A potential problem is that the proposed powers are not accompanied by the prerequisite that they be used only ‘if it is cruel to keep the animal alive’, and as such the proposed powers to destroy an animal seem too broad. It could lead to situations where</p>

Draft Bill (section)	Comments
	<p>an animal who is being harmed but able to be treated or rehabilitated is instead destroyed because it is more convenient at the time to do so.</p> <p>This could be avoided by linking the powers in ss72(1)(f) and (3)(b) to the circumstance specified in s71(b)(iv) of the draft Bill (ie where it is cruel to keep an animal alive).</p>
Recommendation	The ADO recommends that the circumstance specified in subparagraph 71(b)(iv) be inserted in paragraphs 72(1)(f) and (3)(b) so that the latter powers to destroy an animal would be able to be used only in the specified circumstance.
74 Seizure of animals held in contravention of certain orders or by disqualified persons	The ADO notes that this provision may lack clarity regarding what can be done with an animal once the animal is seized under the proposed power.
Division 5 Functions in relation to seized things	
77 Definitions	To avoid doubt, the ADO suggests that s77 clarify that the term “things” does not include an animal.
Division 9 Local authorities—critical situations	
104-107	<p>This Division is important because it could lead to persons who are not veterinarians or authorised officers being responsible for the welfare and killing of large numbers of animals.³¹ This is possible because the Division would give local authorities (ie councils) the power to appoint ‘authorised officers’ to assist with ‘critical situations’ (s106), and local authorities can delegate and subdelegate their functions (s107).</p> <p>Therefore there must be strict checks and balances on this power.</p> <p>Anyone appointed under this Division should be required to undertake comprehensive training on a regular basis. The Consultation Outcomes paper states that part of the appointment process ‘will involve ensuring that the individual officer has undergone appropriate training.’³² This requirement is not in the draft Bill. The ADO therefore submits that the draft Bill should require that persons appointed under s106 to assist with critical situations must have undergone appropriate training.</p> <p>The ADO also submits that there should be comprehensive reporting requirements for actions taken under Division 9, including species and numbers of animal affected, the</p>

³¹ For example, the 2018 truck crash near Yass involving 108,000 day-old chickens was attended by council workers, and ultimately resulted in large numbers of vulnerable animals being euthanased. The ADO was later advised by a veterinarian that humanely euthanasing day-old chicks can be difficult. Several animals were found buried alive after the ‘clean up’. See: <https://www.yasstribune.com.au/story/5317310/truck-carrying-thousands-of-chicks-crashes-on-burley-griffin-way-near-binalong-photos/?cs=5768>; <https://www.abc.net.au/news/2018-04-06/investigation-launched-after-baby-chicks-buried-canberra-yass/9627212>.

³² Consultation Outcomes paper p38.

Draft Bill (section)	Comments
	outcomes for the animals, and the nature of the critical situations. Reports should be made frequently, such as annually, to the Secretary and published on the Department's website, so that the use of these emergency powers can be monitored and evaluated by the community. This requirement could be based on the requirement for the Animal Research Review Panel to provide annual reports under s145 of the draft Bill, or a mechanism such as the 'disclosure log' under the <i>Government Information (Public Access) Act 2009</i> (NSW) s25.
Recommendation	The ADO recommends that a provision be inserted in section 106 requiring authorised officers appointed to assist with critical situations to have undertaken appropriate training.
Recommendation	The ADO recommends that a requirement for local authorities to report on their activities regarding critical situations be considered.
Part 8 Legal proceedings	
Division 1 Criminal proceedings generally	
114 Time limit for proceedings	<p>The ADO supports the proposed statutory time limits for proceedings in s114 of the draft Bill.</p> <p>The ADO suggests that the transitional provisions of the draft Bill specify whether the proposed statutory time limits for proceedings operate retrospectively.</p> <ul style="list-style-type: none"> For example, if an offence is alleged to have happened before the limitation period in s34 of POCTAA was amended, could the new limitation period in the Act apply if evidence of the offence is given to an authorised officer within the relevant period proposed in s114(1) of the draft Bill?
Recommendation	The ADO recommends that transitional aspects of the time limit for proceedings in section 114 be clarified in Schedule 2 to the draft Bill ('Savings, transitional and other provisions'), or in a transitional provision in the regulations made in accordance with Part 1 of Schedule 2 to the draft Bill.
115 Authority to prosecute	<p>This provision would replicate the authority to prosecute in s34AA of POCTAA.</p> <p>The ADO submits that this fails to modernise NSW's animal welfare laws. The Consultation Outcomes paper attempts to justify maintaining the status quo regarding who can take proceedings for an animal welfare offence merely by asserting that it 'ensures a consistent approach to prosecutions, which is the most effective and efficient approach to dealing with animal welfare cases.'³³ No evidence is provided to support this assertion.</p> <p>It means the law will fail to develop as existing prosecuting authorities rarely, if ever, undertake test cases in the public interest and to develop the law regarding the protection of animals. It also means that allowing the Minister to take proceedings for offences against the Act (s115(1)(b)), or another person with the Minister's consent</p>

³³ Ibid p51.

Draft Bill (section)	Comments
	<p>(s115(1)(d)), politicises the process of initiating prosecutions and undermines the perception of prosecutorial independence.</p> <p>The ADO notes that while POCTAA allows another person or body to be prescribed for the purposes of initiating proceedings (s34AA(1)(f)), no person or body appears to have been prescribed in POCTAR since 2007 when s34AA was inserted in POCTAA.³⁴ Therefore, while this power is replicated in the Bill (s115(1)(c)), there appears to be little prospect of any person or entity being prescribed.</p> <p>The ADO also notes that private prosecutions are authorised under s14 of the <i>Criminal Procedure Act 1986</i> (NSW):</p> <p style="padding-left: 40px;">A prosecution or proceeding in respect of any offence under an Act may be instituted by any person unless the right to institute the prosecution or proceeding is expressly conferred by that Act on a specified person or class of persons.</p> <p>The ADO submits that the failure to modernise the authority to prosecute provisions in the draft Bill again emphasises the need for an independent office of animal welfare or protection, and/or a specialised police unit, to take proceedings for an offence against the Act or the regulations.</p>
Division 2 Exemptions and related matters	
<p>119 Specific exemptions</p>	<p>This provision would exempt certain acts or omissions in relation to an animal so that they do not constitute an offence under the Act or the regulations. Without the exemptions, the conduct in question would constitute cruelty or aggravated cruelty to animals.</p> <p>The ADO rejects the exemptions on the grounds that they are inherently harmful practices, they are inconsistent with any recognition of animal sentience (implied or otherwise), and that harm to animals should be condoned only if it is in the interests of the animal (eg surgery to treat an illness or injury).</p> <p>However, as it is unlikely that the exemptions specified in s119 will be omitted, the ADO submits that in most cases the exemptions should be subject to the ‘no unnecessary harm’ requirement.</p> <p>Currently several proposed exemptions do not have this (weak) limitation, which means that the draft Bill would allow the exempted harmful practices to be carried out on an animal with no checks or balances. The ‘no unnecessary harm’ requirement at least provides some opportunity for community standards to determine what is ‘necessary’.</p>
<p>Recommendation</p>	<p>The ADO recommends that the words ‘in a way that inflicted no unnecessary harm on the animal’ be inserted in paragraphs 119(1)(d) (undertaking aquaculture), 119(1)(e) (animal research), 119(1)(g) (using a live fish or other animal as fishing bait), and 119(1)(h) (religious slaughter).</p>

³⁴ POCTAA section 34AA was inserted in 2007 to require that proceedings for offences under POCTA legislation may only be instituted by certain limited parties, including approved charitable organisations, the police, and the relevant Minister.

Draft Bill (section)	Comments
Division 5 Ancillary offences	
135 Liability of directors etc for offences by corporation— executive liability offences	The reference in s135(3)(e) to ‘131(4)’ should be ‘131(5)’.
Part 9 Committees	
Division 1 Animal Welfare Advisory Council [AWAC]	
138-140	<p>The AWAC is currently a non-statutory body. The ADO supports establishing AWAC in legislation which would put it on a much firmer basis.</p> <p>Section 139 specifies that AWAC’s functions include ‘to provide scientific advice to the Minister on matters relating to animal welfare’ (s139(1)(a), emphasis added).</p> <p>The ADO is concerned that this risks giving ‘animal welfare’ an exclusively scientific focus, and would exclude other relevant voices such as animal protection organisations.</p> <p>The ADO notes that the ACT’s equivalent statutory body, the Animal Welfare Advisory Committee, has a much broader focus, and includes membership from various animal sectors as well as at least two animal protection categories (including ‘a person nominated by a community-based organisation involved in animal welfare, other than the RSPCA...’).³⁵</p> <p>The ADO submits that consideration should be given to including individuals with expertise in the areas of law, ethics, public policy, veterinary science, and animal protection advocacy as members of AWAC.</p>
Recommendation	The ADO recommends that the word ‘scientific’ be omitted from paragraph 139(1)(a) (in relation to advice to be provided to the Minister).
Recommendation	The ADO recommends that consideration be given to including individuals with expertise in the areas of law, ethics, public policy, veterinary science, and animal protection advocacy as members of the Animal Welfare Advisory Council.
Division 2 Animal Research Review Panel [ARRP]	
145 Annual reports	This provision replicates s11 of the AR Act and requires the ARRP to give an annual report to the Minister and for the Minister to lay the report before both Houses of Parliament. The ADO supports this requirement as helping to ensure transparency and accountability regarding the operation of the ARRP.

³⁵ *Animal Welfare Act 1992 (ACT)*, s109; *Animal Welfare (Advisory Committee) Establishment 2020 (No 1) (ACT)*, s5(7).

Draft Bill (section)	Comments
	However, the ADO submits that as all three committees established by the draft Bill (AWAC, EAAC and ARRP) would have the same statutory basis under the Bill, all three committees should be required to provide annual reports to the Minister and ultimately Parliament. This would increase the accountability and transparency of the committees and their activities.
Recommendation	The ADO recommends that a requirement for annual reports be inserted in Division 1 (AWAC) and Division 3 (EAAC) of Part 9 ('Committees').
Part 10 General	
Division 1 Other matters relating to animals	
152 Prohibition for persons convicted of certain offences	The ADO notes that this provision does not include the new 'bestiality or animal crush material' offence under s547E of the Crimes Act.
153 Information required when dogs or cats are advertised for sale or for giving away	The ADO notes that the reference to 'that Act' in s153(1)(c) is not clear. The ADO suggests that it refer to the <i>Companion Animals Act 1998</i> by its full name as in other clauses in this provision (eg ss153(1)(a)(i) and (b)(i)).
154 Sale of certain animals by charitable organisations	<p>Section 154 of the draft Bill would apply to animals who are seized, abandoned, stray or surrendered, and in the possession of a charitable organisation or the Greyhound Welfare Integrity Commission ("GWIC"). A charitable organisation is defined in Schedule 3 to the draft Bill as an animal protection organisation (not limited to RSPCA or AWL).</p> <p>Section 154 would allow charitable organisations or GWIC to sell, rehome (temporarily or permanently), or euthanase an animal.</p> <p>A charitable organisation or GWIC would be allowed to euthanase an animal if the entity 'has considered alternative actions' and is satisfied the actions 'are not reasonably practicable' (s154(2)(b)). This is based on a similar requirement that currently applies to councils under the <i>Companion Animals Act 1998 (NSW)</i> ("CAA") (ss64(5), 64A(2)).</p> <p>The ADO submits that no animal should be euthanased for convenience. Section 154 should therefore be updated to mirror the newly passed s64B of the CAA that applies to councils. In particular, the limited exemption allowing euthanasia only when, in the opinion of a veterinary practitioner, the animal is so severely injured, so diseased or in such a physical condition that it is cruel to keep the animal alive (s64B(8)), could apply to</p>

Draft Bill (section)	Comments
	<p>charitable organisations and GWIC in relation to animals dealt with under s154 of the draft Bill.³⁶</p> <p>If this is not accepted, the ADO submits that the draft Bill should specify an additional holding period in which all animals (including surrendered) held by charitable organisations or GWIC must be kept before the organisation or GWIC can choose to euthanase the animal. The purpose of this period would be to encourage organisations and GWIC to rehome (temporarily or permanently) rather than kill the animal.</p> <p>The record-keeping requirements in s64B(5) CAA should be replicated in s154 of the draft Bill so that, if organisations or GWIC choose to euthanase, the actions the organisations or GWIC took to rehome the animal are recorded.</p>
Recommendation	The ADO recommends that section 154 be updated in line with section 64B of the <i>Companion Animals Act 1998 (NSW)</i>.
Division 3 Miscellaneous	
166 Regulations	<p>Section 166 of the draft Bill is based on s35 of POCTAA, both of which create a broad power to make regulations under the primary legislation.</p> <p>Subsection 35(1) of POCTAA stipulates that ‘The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required...’ (emphasis added).</p> <p>The emphasised words have, however, been omitted from s166 in the draft Bill.</p> <p>The ADO submits that this qualification should be included in the regulation-making power in the draft Bill to ensure that the regulations cannot prescribe practices or standards that conflict with the Act.</p>
Recommendation	The ADO recommends that the words ‘not inconsistent with this Act’ be inserted after the word ‘regulations’ in subsection 166(1).
Schedule 3 Definitions	
<i>Animal</i>	<p>The ADO supports the inclusion of ‘a cephalopod’ and ‘a decapod crustacean’ in the definition of the term “animal” in the draft Bill.</p> <p>The ADO suggests, however, that the proposed power to prescribe other animals or forms of animals (par. (b) of the definition) apply to animals in all contexts rather than merely animal research. The ability to add animals or forms of animals to the general definition by prescribing in regulations is commonplace in other jurisdictions eg the <i>Animal Welfare Act 2006 (UK)</i>, s1.³⁷</p>

³⁶ Companion Animals Amendment (Rehoming Animals) Bill 2022:

<https://legislation.nsw.gov.au/view/pdf/bill/c1a6e516-4562-47d3-b44c-d3e3db0144a2>

³⁷ *Animal Welfare Act 2006 (UK)*, s1:

(3) The appropriate national authority may by regulations for all or any of the purposes of this Act—
(a) extend the definition of “animal” so as to include invertebrates of any description;

Draft Bill (section)	Comments
Recommendation	The ADO recommends that the words 'in relation to animal research' in paragraph (b) in the definition of "animal" be omitted.
Schedule 4 Consequential amendments of other legislation	
4.7 Crimes Act 1900	[6] Section 547E Bestiality or animal crush material If section 39 is omitted, this consequential amendment should also be omitted.
4.14 Government Information (Public Access) Regulation 2018	The ADO supports declaring approved charitable organisations to be agencies for the purposes of the <i>Government Information (Public Access) Act</i> . This is an important measure that may go some way to making the administration and enforcement of the animal welfare regulatory framework in NSW more open and accountable.

Matters not covered in the draft Bill

The ADO submits that the following matters should be addressed in the draft Bill.

Issue	Comments
Backyard breeding	Breeding companion animals for profit in residential premises could be specified as a commercial activity under proposed s66 of the draft Bill. This would help ensure that the full entry powers under s66 would be available to authorised officers exercising their investigation and enforcement functions under the draft Bill.
Pig-dogging	A stand-alone offence provision prohibiting pig-dogging could be inserted in Part 4, Division 2 of the draft Bill. The offence provision could be modelled on the ACT's offence relating to 'violent animal activities' in the <i>Animal Welfare Act 1992 (ACT)</i> , section 17.
Animal cruelty offenders register	The draft Bill should establish an animal cruelty offenders register accessible to relevant entities including police officers, approved charitable organisations' inspectors, and relevant government agencies.

The ADO submits that the draft Bill needs to be amended along the lines recommended in this submission if the Bill is to improve protections for animals in NSW rather than merely replicate the status quo.

Thank you for taking these submissions into consideration.

Tara Ward
Executive Director and Managing Solicitor (Volunteer)
Animal Defenders Office

28 February 2022

(4) The power under subsection (3)(a) ... may only be exercised if the appropriate national authority is satisfied, on the basis of scientific evidence, that animals of the kind concerned are capable of experiencing pain or suffering.



AALTRA
AUSTRALASIAN ANIMAL LAW TEACHERS
AND RESEARCHERS' ASSOCIATION INC

The Australasian Animal Law Teachers' and Researchers' Association supports the substantive law reform recommendations made in this submission.

The Australasian Animal Law Teachers' and Researchers' Association (AALTRA) is an incorporated association dedicated to using law and policy as a means of improving animal well-being. AALTRA's members comprise university teachers, researchers, personnel from non-government bodies, corporate bodies and students whose work or research demonstrates an interest in improving animal well-being by means of animal law teaching, animal law research or animal law practice. AALTRA supports the substantive recommendations made by the Animal Defenders Office in this submission.