

Submission
No 153

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

Name: Name suppressed

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Partially
Confidential

DRAFT ANIMAL WELFARE BILL 2022 (the Bill) (DEPARTMENT OF PRIMARY INDUSTRIES)

To the Standing Committee on State Development Parliament of NSW in its inquiry into the Bill.

Response of past President of Dogs NSW, member of Dogs NSW,
 Veterinarian Member of Dogs NSW , member of Dogs NSW
and Solicitor Penrith collectively being concerned persons with a long
association with Dogs NSW.

The NSW Government is committed to replacing the existing laws in relation to animal welfare with a single modern Act. This will involve the repeal of the Prevention of Cruelty to Animals Act 1979, Exhibited Animals Act 1986 and Animal Research Act 1985 and the replacement of these Acts with a single piece of Legislation which will be called the "Animal Welfare Act". A draft of the Act is set out in the Animal Welfare Bill 2022, a copy of which is to be found in the links below

See link https://www.dpi.nsw.gov.au/data/assets/pdf_file/0003/1381791/b2021-081-d09.pdf
A summary of the consultation outcomes in relation to the proposal for NSW Animal Welfare Reform is set out in the document entitled "NSW Animal Welfare Reform Consultation Outcomes"

NSW Animal Welfare Reform - Consultation Outcomes.

The following is of note:

The Government received 4,812 total responses to the discussion paper. Stated that the breakdown was 2,452 survey responses and 2,360 written submissions. The Government considers that when reviewing those responses, that were 66% positive delivered a mandate to proceed with the reform of Animal Welfare Law. We do not accept the statistical findings as to a mandate as conditional agreement has been recorded as agreement in full to the Governments proposals.

The process of new Legislation such as the Animal Welfare Bill is a political one and within that process there is an important inquiry that is being undertaken in relation to Animal Welfare Policy in NSW – see link Animal welfare policy in New South Wales (nsw.gov.au)

Originally the timetable for a response called for a December deadline, has been extended now to 28 February 2022. There will be two (2) days of hearings in relation to the inquiry, the first being 16 March 2022 and the second 21 March 2022. The inquiry's report will be handed down in late May 2022 of all steps proceed in conformity with the proposed timetable.

SUMMARY: THE MOST RELEVANT AND SIGNIFICANT ISSUES:

- Of great significance and concern is that the Bill is not a document that contains the Regulations which would be imposed after the passing of the Bill. The failure to provide draft Regulations has the effect that it is virtually impossible to predict, for example, exactly what the proposed licencing scheme will be. The regulations will be critical in determining the exact effect of the new legislation to be known as the Animal Welfare Act until it becomes law and the regulations are passed. However, the drafting of the regulations requires no public or stakeholder consultation or approval of the Parliament.
- Not relative to Companion Animals, the draft Bill seeks to combine three areas of legislation that govern very different industries with different licensing and regulatory requirements. The Animal Welfare Bill 2022 should have updated the Companion Animal Legislation and should deal with companion animals and pets separately from exhibited and animal usage within research.

- Companion Animal regulation needs to be fit for purpose which is the keeping of pets in NSW to enhance animal welfare outcomes.

- The draft bill completely misses the mark when considering the following and the result of combining of the three acts, is inappropriate to apply to Companion Animals and will only serve to confuse the average member of the public and is inappropriate to apply to companion animals and will result in voluminous regulations.

- We submit that in fact The Draft Animal Welfare Bill is contradictory to the Terms of Reference in that it, does not streamline, produces considerable confusion, particularly with Companion Animal Owners and does not reduce regulation or clarify it.

See: Inquiry into animal welfare policy in New South Wales TERMS OF REFERENCE 1. That the Standing Committee on State Development inquire into and report on the State's animal welfare policy, regulatory and legislative framework, including any measures required to:

(a) streamline animal welfare laws in New South Wales,

(b) reduce and remove unnecessary regulation, and (c) ensure existing policy and regulatory arrangements remain appropriately balanced

- The Bill is confusing, has poor definitions and is open to subjective judgements. The terms “reasonable” and “reasonably” are frequently used throughout the draft. This is contentious and subjective.

- The Bill should be re-drafted to remove:

Companion Animals who are not well catered for within this Bill;

Confusion and create an equitable understanding of the rights and responsibilities for the sector.

- Licensing

The imposition of a licencing regime to breeding dogs which is to be found in Part 5 of the Bill; is a matter of some conjecture as to the exact nature of the Licensing Scheme is unknown? The question of whether or not there will be an exemption given to Members of Dogs NSW for the licencing scheme and if so what will be the nature of that exemption. In the development stages of this draft, it has been suggested that dog breeding would require licencing. Even the hobbyist would require such licence, however this is not disclosed in the Bill.

If this is the case, then it has been mooted that were a breeder to breed dogs in their home, then the provisions of S67.1 and the protections afforded to the resident would not apply. The holding of a licence would automatically remove the protections for residential property.

Hobby Breeder registration/ licensing is an unjustifiable attempt at shifting the costs of welfare and Companion Animal management to breeders, who have done the right thing - simply because they are an identifiable target, placing the costs of a hobby and responsible dog ownership beyond the reach of most. In turn destroying a legitimate pursuit, significantly lowering the standards of animals produced for sale, whilst increasing the cost of animals to the average Australian.

We submit this is a blatant attempt to destroy a culture and social environment of many years standing. For many members of DOGS NSW, Dog Breeding, exhibition and sporting activities provide the social network for their life and for many, the loss of this backdrop will lead to social isolation, loneliness and the loss of sense of community.

Clarification is sought on:

1. Whether or not hobbyist breeders will require a licence

2. Whether or not this would negate the operation of the provisions of S67. 1

- Powers of entry.

Generally, the proposal is to continue to recognise that the power to enter a residence by an Authorised Officer is contingent upon receiving a Search Warrant to do so. There are exceptions, for example, under present Law where an animal has suffered or is in imminent risk of suffering significant physical injury or has a life threatening condition requiring immediate veterinary treatment. The draft Bill does not permit an Authorised Officer to enter residential premises when exercising investigative powers. There is a dire anomaly with the Bill in its inter-relationship with the licencing of premises, consequently, it may be: -That if a residential dwelling is part of the licenced area to keep and breed dogs that this then will have the result that those premises lose their purely residential status and as such Authorised Officers can enter any portion of the house where dogs are kept or breeding of dogs is undertaken. There is no present interpretation in relation to this and it would appear that there may well be some argument in relation to this particular issue in the future, either in the State Development Committee Inquiry referred to above, or if the Bill passes before the Courts if a dispute arises as to interpretation of the power of entry granted to Authorised Officers.

Clarification is sought regarding:

1. “reasonable” – is the definition to mean a reasonable lay person or is it to be the subjective opinion of a regulatory bias?

- Without the appropriate assurances clarity being a set out we would challenge the right of entry clauses of the draft bill as unacceptable and open to overreach and intimidation. There would need to be extensive safeguards in the bill for the protection of privacy and natural justice.

Division 3 Powers to enter premises

66 Powers of authorised officers to enter non-residential premises

(1) An authorised officer may enter premises, or a part of premises, not used for residential purposes—

(a) at any time, if the officer reasonably suspects an offence against this Act is about to be, is being or has been committed, on the premises or the part of the premises,

Division 4 Investigation and risk management powers

70 Powers that can be exercised on premises

Division 5 Section 70

- This provision as a whole provides free rein for an authorised officer once inside premises. Entry is gained on the basis of subjective assessment and then unrestrained access to all “things” inside the premises is provided. This section provides unfettered opportunity for breaches of privacy and rights in private property.

The term “things” and “seized things” need to be properly scoped and defined.

- A “mechanism” to prohibit or restrict other items that pose an “unacceptable” risk to animal welfare. This means that the Prohibited and Restricted list could then be updated at any time with minimal input from the general public. This could be applied to a range of sporting activities that involve animals. Technically, this area should be subject to consultation when the draft Regulations are developed and published, however there is no sign of the Regulations, nor if would there be any further public input.

- The definition of cruelty has been significantly broadened, leaving it to individual interpretation and open to inconsistencies, between what is and what is not acceptable across a large number of activities, many of which are “lawful”. This includes specific activities or procedures, which are currently not defined, may be banned or have to prove they are justified in some circumstances.

11 Meaning of “harm”

Harm includes—

- (a) distress, and
- (b) pain, and
- (c) physical suffering, and
- (d) psychological suffering.

Division 2 Key concepts

7 Meaning of “act of cruelty”

(1) An act of cruelty is an act or omission that results in an animal being—

- (a) unreasonably or unnecessarily harmed, or
- (b) unreasonably or unnecessarily killed, or
- (c) abused, beaten, infuriated, kicked, maimed, mutilated, terrified, tormented, tortured or wounded, or
- (d) overloaded, overworked, overdriven, overridden or overused, or
- (e) unreasonably or unnecessarily exposed to excessive heat or excessive cold.

• The definition of harm and psychological harm is extremely broad and problematically open to interpretation. (d) and (e) could impinged currently approved sporting activities.

• Exhibition of animals - including the Showing of Dogs – requires a clearer detailed definition around this activity. Exemptions must be provided to approved activities organised and conducted under the regulation of approved organisations e.g. Canine Control Bodies and Agricultural Societies.

10 Meaning of “exhibiting an animal”

- (1) Exhibiting an animal means displaying the animal, or keeping the animal for display for—
- (b) another purpose prescribed by the regulations

AND

(2) Without limiting subsection (1), exhibiting an animal includes the following—

- (c) displaying an animal, or keeping an animal for display, in a way or for a purpose prescribed by the regulations.

Schedule 1 Restricted procedures section 23

Column 1: Procedure Column 2: Restriction

dewclaw removal on a dog performed in circumstances prescribed by the regulations.

• The clarification of Prohibited and Restricted procedures-. should clearly articulate the circumstances in which they are allowed, and the reasons for any proposed bans. Stakeholders should be given the opportunity to provide feedback on the circumstances in which these procedures may be permitted to be performed.

Division 2 Standards

20 Requirement to comply with standards

(1) A responsible person for an animal in relation to which a prescribed standard applies must comply with the standard.

Maximum penalty—category 3 penalty.

(2) A responsible person for an animal does not commit an offence against this Act for an act or omission in relation to the animal if the act or omission is in accordance with a prescribed standard.

(3) In this section—prescribed standard means a standard prescribed by the regulations for the purposes of this section.

- Mandatory Standards - framework and content –Input by key stakeholders or any guidelines are completely lacking - these appear to have been removed. If this bill allows internal review of the mandatory Standards, it must include regular input by key stakeholders affected by such mandatory Standards.

Prescribed standards must be included in the Act so that this becomes the single point where those to be mandated by the Act will know what is expected. The inclusion of the “standard” is an imperative to the reading of the Bill.

- Significant Government overreach- there are numerous areas where there are very wide definitions that could be applied.

For example: The overreach of preventing a qualified veterinarian surgeon, using the appropriate drugs and pain control. A trained veterinarian must be able to make the best welfare decisions in this area.

Division 4 Transport of dogs

37 Requirements for transporting dogs

(1) A person must not—

- (a) leave a dog unattended in a vehicle in hot weather for more than 5 minutes, or
- (b) transport a restrained dog on the tray of an open-backed vehicle in hot weather unless insulating material is used to provide protection from the heat of the surface of the tray.

- Road transport of dogs- this is a follow on from Europe where dog trailers have been banned in some countries. The Australian Land Transport of Livestock Standards and Guidelines will be applied Australia wide with this proposed Act. Currently greyhound trailers have to be air conditioned and the implication is that this may be applied to all dog transportation. This needs to be clearly defined as to how we would be affected. There should be an Australian standard for dog trailers - providing suitable air circulation and ventilation for road travel and while stationary.

- Thermal shock can be a significant threat when travelling dogs in air conditioning- if they exit air conditioned cars/trailers and suddenly hit high external temperatures, some breeds /individuals may experience thermal shock and go into heat stress, particularly brachycephalic breeds.

- Tethering - does this apply to all dogs, including farm dogs - the current understanding is it could apply to all dogs.

4 How objects are to be achieved

(c) providing a licensing framework to regulate and oversee the conduct of certain activities involving animals, including—

- (ii) the keeping and use of animals for the purposes of exhibition.

- The Draft Bill lacks a definition of what species may or may not require a licence to be exhibited. The way it is currently drafted will include every species under this Bill.

The Bill in Division 4 grants power to authorised officers to issue Penalty Notices if it appears to the officer that a penalty notice offence has been committed which we submit should be a power expressly drafted to adopt the recommendations of the NSW Law Reform Commission Consultation Paper number 10 as adopted by the NSW Department of Attorney General and Local Governments across NSW to prevent abuse and overreach by Authorised and approved entities such as the RSPCA.