

**Submission
No 175**

INQUIRY INTO ANIMAL WELFARE POLICY IN NEW SOUTH WALES

Name: Miss Michelle Stendara

Date Received: 25 February 2022

To whom it may concern,

I would like to put forward several concerns I have with the Draft Proposal for the new Animal Welfare Bill 2022. My concerns arise from the practicality of the proposed law, the actual animal welfare implications, and the ability to enforce the legislation.

My first concern is as follows:

Division 2

5 Act to bind Crown

(2) However, this Act does not apply to—

(a) the use and handling of police dogs or police horses by police officers in the course of the officers' duties,

(b) or the use of dogs by correctional officers to assist in maintaining the good order and security of correctional centres and correctional complexes under the Crimes (Administration of Sentences) Act 1999, section 78.

(3) In this section— correctional officer has the same meaning as in the Crimes (Administration of Sentences) Act 1999. Division 3

The provisions of the act must include protecting all animals including those handled by police and corrective services officers, in the course of their duties and all parts should be applied.

From training to management of their dogs, there is no justifiable reason to be exempt from the same governing rules that would apply to any other animal or working animal. A working dog if anything should be considered more at risk of being "over worked" than a companion animal and more at risk of potential cruelty through under skilled training techniques or beliefs. If there is a reason that these animals be exempt from a part of this legislation, why not all animals? At the end of the day these animals feel the same physical and psychological suffering as any other of the same species, the role the animal performs should not decide on what they are exposed too.

Historically it has been known for these animals to be subjected to breaches of POCTA by their handlers and therefore these animals must continue to be protected from the dishonorable few that shouldn't hold such positions.

- Corrective services drug detection dog handler PETERSON, left "Rookie" a Border Collie correctives services, detection dog, in a car on a 30'C+ day, between March 22 2007 to March 26, 2007, at the John Maroney Correctional Facility, the dog died as a result, likely within hours of the offence period. PETERSON was charged and later convicted of animal cruelty in Windsor Local Court.

<https://amp.news.com.au/national/officer-left-dog-to-die-in-car/news-story/4f67e9cfe7423002139639119cbaa314>

- Police and corrective services animals should not be exempt, to ensure the training they undergo is in line with the most current, human, scientifically proven techniques. The use of E-collars and other pain inflicting devices is not necessary to enable desirable outcomes. Trainers of such animals should not be allowed to use such devices when there are proven ways to train dogs to the task of police and corrections roles, that don't require force, pain or harm. Often government trainers are viewed to be on a higher professionalism than trainers of non-government roles and therefore should be capable of achieving the same results as non-government trainer of animals.

Allowing police and corrections to be exempt of this act undermines Division 1 part 3 of the act. Such handlers should be just as capable of following the Act, as any other person. If there is a justifiable argument to sections of the act where a police or corrections animal was required, by its job, to perform a task that would otherwise be in breach of the Act or regulations, then this area alone should be highlighted and exempted, with a valid explanation for the exemption.

What justification is made to allow an exemption to these animals?

What protection would be otherwise offered to such animals?

Part 3, division 1.

It is difficult to comment on a proposed Act that refers to a regulation that is not available to view. The minimum care requirements talk of “appropriate” then refer to the regulations, which are not available to view. How can one decide if the new proposed Act, is in line with minimum community standards and is written in a way that is easy to understand, if the information is not available to view?

In regard to appropriate exercise for animals ordinarily confined, e.g., a bird. What is considered exercise? Is movement alone exercise? Would a minimum enclosure size not be more appropriate for animals based on the animal’s species and size? How would an individual know if they comply or not if the wording is grey and not black and white? How can this part of legislation be enforced if it’s written in a way which allows for differing perceptions?

Division 2

32 Prohibition on animal fighting

animal fight means an event at which an animal is caused, encouraged or incited to fight another animal or a human.

(1) A person must not—

- (a) cause, encourage or incite an animal fight, or
- (b) train or otherwise prepare an animal for an animal fight, or
- (c) possess or sell an animal for fighting another animal or a human, or
- (d) manufacture, possess, transport or use an animal fighting implement for the purpose of causing or training animals to fight, or
- (e) organise, advertise or otherwise prepare for, or admit a person to, an animal fight, or
- (f) be present at an animal fight or preparations for an animal fight.
- (g) allow premises owned or occupied by the person to be used for an animal fight.

What is meant by fighting a human?? Wording should be clear to ensure that dogs trained to bite protective clothing and equipment are not confused for animals being used to harm animals or be harmed in return.

Will it be illegal to train a dog to use bite equipment worn by a person? If so at what point when a dog bites a person wearing a sleeve is the dog subjected to pain/suffering?

Animal fighting is barbaric but not to be confused with a dog displaying prey driven behaviors in pursuit of a trained activity, that doesn't result in the dog suffering or being inflicted with unforeseeable harm. Trained correctly a dog biting a sleeve or other equipment, is a form of positive reinforcement for the dog. Trained correctly it will not create an aggressive dog or a danger for the community. Should the latter occur there is already legislation to deal with such animals under the Companion Animals Act 1998.

If the dog is not being subjected to an act of cruelty, how can the definition include human in the description and not explain context, leaving this written as is, creates an area of legislation without justification to cause, as the word human then covers a context of engagement that has no justification to be outlawed as cruelty – IF a dog fights a human (without equipment on), the human would be in pain/fear – not necessarily the other way round and again there is legislation already in place to prevent a person harming an animal and when dogs unlawfully attack people, the overwhelming majority of dog attacks are not the result of trained animals but animals reacting from a perceived threat, more often than not through lack of socialization and lack of training.

Part 4, division 1, 25, already lists several descriptions of what is cruel, if a person retaliated towards a dog unlawfully, the section covering animal cruelty will cover the interaction of humans towards dogs without the need to confuse the action with division 2, 32. The word "Human" should be removed from the description of an animal fight.

Division 3, 34 – tethering – the animal can't be tethered for more than 24hours? Is this in a week/ per day?

If the dog can be tethered for a period of 24 hours, before it is an offence, would that mean the animal can be detached from the tether and reattached to the tether and the offence continue for another 24 hours thereafter? The ability to stop the animal from suffering from being continually tethered is therefore impossible to enforce.

This section of the draft act is as impractical as it is currently. Why list a timeframe that is practically impossible to prove and enforce. In other parts of the world tethering is limited to a few hours, if we are going to match legislation on banning surgical AI of dogs, why don't we match the timeframe of how long a dog is left tied up? Or better yet, instead of trying to cover all reason a dog is tethered with one law, have different criteria for different forms of tethering.

e.g. A dog can be tethered unattended for no more than 1 hour without constant access to shelter/water – to allow for a dog left at a shop while an owner buys milk. If the owner is with the dog while tethered, nil requirements, e.g dog tethered next to person watching children play at the park. Or a dog tethered as a means of confinement at a place of residence, must have constant access to shelter and water, must be walked or otherwise exercised off the tether for a minimum of 30 minutes once per 24-hour period, must have access to forms of environmental enrichment such as toys – there are ways of improving the minimum standards and in turn the life of the animals. Trying to cover all scenarios with one governing rule only makes the rule utterly pointless and enforcement unachievable.

Division 6. 40 - prohibited devices – what are those described in (c)?

Are we going to get with the time and name Prong collars in the regulations as a prohibited device? As they cause pain when used. The collars are widely documented as having a detrimental effect on the welfare of the animal subjected to their use. In NSW the collars are becoming more commonly distributed, despite being a product listed as prohibited from importation in to Australia

<https://www.abf.gov.au/importing-exporting-and-manufacturing/prohibited-goods/list-of-items> If the item is prohibited to import, why allow their use to continue in NSW. Unless prong collars are specifically named in legislation, like they are in Victoria, the regulation of the device and its use becomes harder to enforce and any attempts to prevent cruelty will be weak at best.

Part 7

Division 3

67 Entry into residential premises only in certain circumstances

Why remove the power to enter land? Entering a backyard is not invading privacy, public opinion on this matter has more to do with trying to get away with being caught, than any legitimate reasoning for not allowing access. All this change sets to achieve, is lesser animal welfare outcomes and more opportunity for people to hide animals and evade detection of their crimes.

A person who is breaking the law is not likely to provide consent to enter their property. If a person is not home, they cannot provide consent either. The Inspector is then going to need to have a search warrant to enter and inspect animals. This is time consuming both on the part of the inspector and the local courts, time that the animals may not have in their favor. Given Inspectors currently have the power to enter residential Land under 24E of POCTA, why change this and restrict their ability to perform their function?

Do the local court have the time to keep up with the number of properties an Inspector enters that they will require to obtain a search warrant for, if their powers change? Applying what is being suggested into a practical aspect and realizing the real-life implications, would make the suggested change considerably problematic.

Keeping the power of entry to what is currently written in POCTA, will see better animal welfare outcomes, reduce red tape, allow both the local court and the RSPCA/AWL to continue to function with proper respect to what is really important, law enforcement and prevention of crime.

There's not much point in changing the legislation, if enforcing it is no longer functional in a real-world scenario. Being unable to enter a residential premises (which in this act a premise is defined as including land) without consent is a hindrance to investigating animal welfare matters, with timely outcomes. In the case of a dying animal, it's not likely to be in plain sight. If an inspector can't enter and search for animals and evidence, how are they supposed to do their job?

Unlike people, you can't call out to a bird and ask it to come to the door, when it is locked in a cage. A dog can't tell you where it is or ask to leave. The victims in these complaints can't speak and can't help themselves. The legislation shouldn't be changed to match other enforcement roles, as other roles are not the same.

Warrants can't be easily obtained on the spot. In the time taken to obtain a warrant, the animal or evidence can be removed from the scene. The current legislation provides an inspector with the element of surprise and the ability to act on the spot, a requirement for successful animal welfare outcomes. Without the ability to enter residential land, without the need for consent or a warrant will lead to cases where animals are not rescued from cruel situations in time or at all.

Here is a list of scenarios where the objective outcome of preventing animal cruelty will be hindered if the power to enter residential land is with consent or search warrant:

1. An inspector attends a property and advises of their report. The property occupant replies, "I don't have XYZ pet" yet if the inspector looks in the backyard, or advises they will be doing that, the story changes. – Without the power to enter without consent this property owner can just stick with "I don't own it, prove it otherwise"

2. If a dog is sighted over a fence looking like a walking skeleton, yet is mentally bright, it's not life threatening but certainly in the threshold of an animal that requires to be seized from the property and provided with immediate care and treatment. Is the occupier going to give an inspector consent to enter the garden and seize the dog? If they are not home should the inspector be waiting for the owner to come back and call them to take away the dog, will they be home by the time the inspector has a warrant and then prove to be difficult? The matter would have been simply and effectively dealt with if the officer had the power to enter land and seize the dog, while the occupier was not home or without the need for a warrant if they are home. The dog would be in a place of care far quicker and no altercation need arise to hinder the event at the time, due to not being given consent. Entering a backyard is not an invasion of privacy, it's a requirement to adequately investigate and provide appropriate welfare outcomes for vulnerable animals.

3. If an animal is severely injured and locked in the backroom of the house, the Inspector is not going to be able to see the animal unless they can access the back of the house and look through a window. Consequently, if the animal is dying inside a kennel in the backyard or some other area of obscured view, they also will not be able to find it unless they can enter and search for the animal. Once an animal is found, it can be seized and provided immediate assistance. How can the Inspector assess if the animal is there or not unless they can locate it. Is it not better to find it and immediately assist it? On the other hand, if the inspector got the warrant, as that was necessary to search the yard, then no dog is found, what a waste of the courts time issuing a warrant.

4. If an inspector attends a property where the report is "dog left in backyard, no one has been seen for 4 days", how can the inspector determine if the animal has food/ water/ shelter available, without entering the backyard to check. Sure, they can leave notification and come back in 24hours, but then they still can't do anything without a warrant. The evidence of the offence is stronger, if on the first instance, they could look in the yard and confirm the animal had no food/water/shelter, provide what they can, place notifications on the property and then return after 24hours later and see no change and no entry made by any persons to alleviate the problem. The change to entry power will mean all the inspector can prove is after 24hrs they found no food and water but not to suggest food and water were not there to begin with and the dog consumed it during that period.

5. The dog is described as "limping on the back leg" the inspector attends the property, no one is home and the dog can't be seen or it can be seen but won't get up from where it is at the back of the property. Therefore, it can't be determined if the dog is just lazy or so injured it can't raise. With the power to enter land the inspector can go in and look for the dog and assess its movement, determine if it is injured or not, determine how bad the injury is and either seize the dog and get it to a vet or leave a notification, whichever is in the best welfare outcome for the dog. A commonsense approach, that should not involve taking the courts time to obtain a warrant first.

6. The dog is tethered without shelter, its 24°C at 9am and set to get to 40°C by noon. The Inspector can see the dog in the backyard tethered to a clothesline with no access to shade or shelter, the water bucket has tipped over, no one is home and at this point the dog is fine. The inspector could enter and set the dog up with shelter and water and leave notification. Without being able to enter to provide the dog with its needs, there is no choice but to get a warrant or leave the dog and wait for its condition to deteriorate?? That's not exactly in keeping with preventing cruelty and obtaining a warrant is also a waste of the courts time and more likely to lead to a dog being seized, as in the time to get the warrant, the conditions will worsen for the animal, that would otherwise have been aided and left. This is the reality of an inspector losing the power to enter residential "land/premises excluding a dwelling".

If anything, Inspectors could be allocated more powers of entry, to do the job effectively with minimum hindrance from those that have done the wrong thing and want to evade detection. Things not included in the proposed replacement of the prevention of cruelty to animals act that would aid officers in investigating animal cruelty would include:

- The ability to perform covert surveillance of suspected person or premises in breach of the act.
- The use of CCTV or other covert video surveillance under a warrant, to film persons or property suspected of breaching the act – e.g persons or business's suspected of performing acts of cruelty towards animals, especially in cases where witness are too frightened to give statements. Or where the ability to see in is not possible but evidence of animal noise consistent with cruelty is happening.

Currently there are no provisions for the above and yet in other acts, such opportunities can be undertaken to infiltrate and detect offences. Rather than make the legislation harder to enforce with limited powers, that in turn will reduce the effectiveness of truly preventing animal cruelty but instead enhancing powers and the ability of officers to enact the law and protect animals and hold those responsible to justice.

That is my submissions

Michelle Louise Stendara