

Submission
No 194

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

Name: Name suppressed

Date Received: 27 February 2022

Partially
Confidential

I object strongly to the Draft Animal Welfare Bill 2022 being brought before the NSW Parliament.

Having reviewed the document with which I will be obliged to comply, I am confused and concerned at some of the proposals included in the Bill. This is a government that expects to put the powers in place and then, after the fact, tell us all what that will mean. For example:

Is this legislation intended to replace the current Prevention Of Cruelty To Animals (POCTA) or is it to be an amendment to the POCTA.

Additionally I have listed the relevant sections from the proposed act and my areas of concern.

From the Act

1. Page 2, Part 1 Introduction, Division 1 Preliminary section 4 (c).

4 How objects are to be achieved

The primary objects of the Act are to be achieved by—

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

- (i) the use of animals for research purposes consistent with the principles of replacement, reduction and refinement, and*
- (ii) the keeping and use of animals for the purposes of exhibition*

Concern

The act refers to “certain activities involving animals including animal research and keeping animals for the purposes of exhibition”.

Does this include dog sports such as confirmation showing Obedience trailing Agility and other dog sports. Neither of these are included in the definition of Exhibiting an animal. However additionally they are not listed as being exempt from the definition

From the ACT

2. Page 4, Part 2 Interpretation, Division 2 Key concepts, section 7 (e)

7 Meaning of “act of cruelty”

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

- (e) unreasonably or unnecessarily exposed to excessive heat or excessive cold.*

Concern

How is Excessive heat or cold defined. Different breeds of dogs are adapted to different environments. AS an example certain breeds such as Akitas, Alaskan Malamutes and Siberian Huskies are breed and adapted to snow conditions such as experienced in arctic regions of the world yet they cant tolerate hot dry conditions whereas other breeds can tolerate the hot weather better but cannot tolerate colder climates.

From The ACT

3. Page 4, Part 2 Interpretation, Division 2 Key concepts, section 7 (d) and (e)
The following are also acts of cruelty—

(d) advertising, promoting or taking part in an activity in which an animal participates in a steeplechase or hurdle race,

(e) another act prescribed by the regulations as an act of cruelty

Concern

Definition of “Another act” This lack of definition means an Authorised Officer can interpret any act to be an act of Cruelty.

From The Act

4. Page 5, Part 2 Interpretation, Division 2 Key concepts, section 10, (1) (b)
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

Concern

No mention of if Dog Sports, Shows etc are included as exhibition or are exempt. This needs better definition or clarification

From The Act

5. Page 5, Part 2 Interpretation, Division 2 Key concepts, Section 10, (3) (c)
10 Meaning of “exhibiting an animal”

(3) Exhibiting an animal does not include the following—

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

Concern

No mention of if Dog Sports, Shows etc are included as exhibition or are exempt. This needs better definition or clarification

From The Act

6. Page 9, Part 3 Requirements for care of animals, Division 2, Section 20 (3)
20 Requirement to comply with standards

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

Concern

Does this refer to POCTA. What is a standard prescribed by the regulations. Where am I supposed to find these standards. They are not listed within the legislation. If this refers to POCTA then shouldn't this be stated. This section is too vague and misleading.

From The Act

7. Page 9, Part 3, Division 3 Section 22.

22 Prohibited procedures

(1) A person must not carry out any of the following procedures—

- (a) tail nick a horse,
- (b) grind, trim or clip the teeth of an alpaca, llama or sheep,
- (c) hot iron brand the face of an animal,
- (d) fire or thermocautery on an animal,
- (e) surgical artificial insemination on a dog.

Concern

Surgical Artificial Insemination (AI) was not mentioned in the original proposal.

Eliminating or restricting Surgical AI will be detrimental for many breed that have very small gene pools in Australia and will greatly reduce the ability to eliminate hereditary problems in some breeds, which is exactly what registered breeders trying to do. This legislation will actually lead to dogs with health issues while currently enthusiasts are trying to improve their chosen breeds health.

Surgical Ai gives much higher success rate than Transcervical Insemination (TCI). A key factor when costs are considered. I am also concerned that TCI may be risky with a dog that is nervous and not confident around strangers as would be experienced in a vets room.

This will also impact on the veterinary industry especially those that invested huge amounts of money to become reproduction specialists.

Additionally if Surgical AI is being targeted due to it being an invasive surgery does this mean that desexing an animal will also be banned as it is also an invasive surgery. Furthermore will this mean performing caesarean section births be banned as it is invasive.

From The Act

8. Page 15, Part 4 Offences relating to animal cruelty, Division 4 Section 37 (1)
(a)

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

Concern

This section needs more detail. Leaving a dog in a dog float with outer doors open and fresh water supplied is not as severe as leaving a dog in a closed up car with no ventilation. While I am in agreement with this requirement (especially when referring to locked vehicles with no ventilation), I feel it does lack specific detail.

Where and by what system is the temperature to be measured. Is it according to BOM at their appointed weather station or is it determined at the exact location that the vehicle is parked. Also is this using the wet bulb in a cabinet method of temperature measurement or is it by using a standard thermometer placed in the vehicle

From The Act

9. Page 29, Part 7 Enforcement and compliance, Division 3, Section 66 (1) (f)
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, or*
 - (b) *under the authority of a search warrant, or*
 - (c) *with the consent of the occupier of the premises, or*
 - (d) *at any reasonable time to check compliance with a direction or order given under this Act or the regulations, for example, a disqualification order, or*
 - (e) *at any reasonable time, if the premises are premises at which a licensed activity is carried out,*
 - (f) *at any reasonable time to investigate, monitor and enforce compliance with this Act or the regulations, if the authorised officer reasonably suspects an agricultural, commercial or industrial activity relating to animals is being carried out.*

Comment

What is the definition of Non residential. To my understanding a residential place is my home address at which I reside. This includes the house building and any sheds or outbuildings at my residential address. Does the act accept this interpretation or do any out buildings at my residential address become non residential.

I also do not agree with “at any time, if the officer reasonably suspects an offence against this Act is about to be committed”. This provision allows an officer to enter premises at any time with no supporting evidence of a breach of the act. This factor will allow for an officer to abuse their power as they do not have to justify their actions for entering premises beyond saying “I thought something was about to happen”. Surely there needs to be some evidence collected first to authorise entry onto premises.

By my reading of this, an officer can enter my lands and then my kennel area and his only justification is “ I thought an act of cruelty was about to occur.” With no supporting evidence required.

From The Act

10. Pages 30, 31, 33, 34, 35, Part 7 Enforcement and compliance, Division 4, section 70

Division 4 Investigation and risk management powers

70 Powers that can be exercised on premises

- (1) An authorised officer may, at any premises lawfully entered including a public place, do anything that in the authorised officer’s opinion is necessary for an authorised purpose, including—
- (a) the things specified in subsection (2), and
 - (b) the exercise of additional specific powers under this Division in relation to animals.
- (2) An authorised officer may do 1 or more of the following—
- (a) examine, inspect and observe things,
 - (b) take and remove samples of things,

- (c) make examinations, inquiries or tests the authorised officer considers necessary,
- (d) take photographs, films, videos, audio or other recordings that the authorised officer considers necessary,
- (e) require documents to be produced for inspection,
- (f) examine and inspect documents,
- (g) copy documents,
- (h) seize things that the authorised officer reasonably believes are connected with an offence against this Act or the regulations,
- (i) move seized things from the place where they are seized or leave them at the place where they are seized and take reasonable action to restrict access to them,
- (j) direct the occupier of the premises where things are seized to keep the things at the premises or at another place under the control of the occupier,
- (k) do anything else authorised by or under this Act.

Note— See section 86(3) which provides that a person is not guilty of an offence of failing to comply with a requirement to give a document or to answer a question unless the person is warned that a failure to comply is an offence.

(3) The power to examine and inspect a thing includes power to use reasonable force to break open or otherwise access a container or other thing being used, or suspected of being used, to hold or contain an animal.

(4) The power to seize a thing connected with an offence includes a power to seize—

- (a) a thing in relation to which the offence has been committed, and
- (b) a thing that will afford evidence of the commission of the offence, and
- (c) a thing that was used for the purpose of committing the offence.

(5) A power to do something under this section includes a power to arrange for the thing to be done.

(6) A power to do something under this section in relation to a thing may be exercised without the consent of the owner of the thing.

(7) In this section, a reference to—

- (a) an offence includes a reference to an offence that it reasonably suspected has been committed, and
- (b) a thing includes part of an animal and animal reproductive material but does not include an animal.

Concern

“do anything that in the authorised officer’s opinion is necessary” this is a very broad definition which can easily lead to an officer exceeding their reasonable power. As an example an officer can forcibly enter a vehicle parked in a public place simply by stating they believe an illegal device may be contained within the vehicle even though there may be no evidence to support such a claim, simply because an officer formed an opinion.

“Take photographs, films, videos, audio or other recordings that the authorised officer considers necessary” and “copy documents” may cause an invasion of privacy. As an example I may retain documents that identify a purchaser of a pup These documents may contain information which should not be in a public arena, such as home address of purchaser, The copying of these documents (either physical or digital) can put the purchaser at risk. As example is I once sold a pup

to a correctional services officer. I am not allowed to give that persons address to any person because of their employment yet copying of my records will mean I no longer have control of the person information

From The Act

11. Division 5 section 70, sections 77, 78, 79, 80, 81, 82, 83 "THINGS" and "SEIZED THINGS" require a clear definition

71 Powers of authorised officers generally to examine, inspect or observe animals

An authorised officer may examine, inspect or observe an animal if—

- (a) the officer has, for an authorised purpose, entered the premises where the animal is kept, or
- (b) the officer reasonably suspects—
 - (i) an offence against this Act or the regulations is being, has been or is about to be committed in relation to the animal, or
 - (ii) the animal has not been provided with appropriate food or drink during the following periods and is still not being provided with the food or drink—
 - (A) if the regulations prescribe a period for the species, or other class, of animal—the period prescribed,
 - (B) otherwise—the previous 24 hours, or
 - (iii) the animal is so severely injured, so diseased or in so poor a physical or psychological condition that it is necessary for the animal to be provided with veterinary treatment and the animal is not being provided with that treatment, or the animal is so severely injured, so diseased or in so poor a physical or psychological condition that it is cruel to keep it alive, and the animal is not about to be destroyed or is about to be destroyed in a way that will inflict unnecessary harm on the animal.

72 Powers of authorised officers in relation to care of animals

(1) If, after examining, inspecting or observing an animal under section 71, an authorised officer reasonably suspects the animal is being or has been harmed or any of the circumstances referred to in section 71(b) exist in relation to the animal, the authorised officer may do 1 or more of the following—

- (a) seize the animal or, if the animal is dead, the animal's carcass,
- (b) if the animal is seized,
 - (i) move the animal or carcass to another place the authorised officer considers appropriate,
 - (ii) leave the animal or carcass at the place and restrict access to the animal or carcass in the way the authorised officer considers appropriate,
- (c) provide the animal with necessary drink, food, veterinary treatment and routine animal husbandry
- (d) administer a sedative or pain relief to the animal,
- (e) take and remove samples from the animal,
- (f) destroy the animal in a way that causes it to die quickly and without unnecessary harm.

(2) An animal or carcass to which subsection 1(a) applies may be kept by an authorised officer for a period—

- (a) of no more than 60 days, or
 - (b) if, within the 60-day period, proceedings are started in relation to an offence against this Act or the regulations—until the proceedings are finally decided, unless the court otherwise directs.
- (3) Despite subsection (2), an animal that is being or has been harmed that is kept under this section or to which section 71(b) applies may—
- (a) be kept for the period necessary for the animal to be provided with appropriate drink, food or veterinary treatment, or
 - (b) be destroyed in a way that causes it to die quickly and without unnecessary harm.
- (4) For subsection (1)(d), an authorised officer must—
- (a) if reasonably practicable, obtain advice from a veterinary practitioner before administering the sedative or pain relief, and
 - (b) as soon as practicable after administering the sedative or pain relief, arrange for the animal to be examined by a veterinary practitioner, and
 - (c) if the animal is a stock animal—as soon as practicable after administering the sedative or pain relief, give the responsible person for the animal a record that the sedative or pain relief has been administered
- Notices in relation to contravention of Act (1) If an authorised officer is satisfied on reasonable grounds a person is contravening a provision of this Act or the regulations, the authorised officer may give the person a written notice requiring the person to take specified action the authorised officer considers necessary to avoid a further contravention.
- (2) A person must not, without reasonable excuse, fail to comply with the notice. Maximum penalty—category 4 penalty.

74 Seizure of animals held in contravention of certain orders or by disqualified persons

- (1) This section applies if an animal is—
- (a) being held in contravention of an order made under any of the following provisions—
 - (i) section 54(2),
 - (ii) section 129,
 - (iii) section 130,
 - (iv) section 131, or
 - (b) being held by a person to whom section 152 applies
- (2) An authorised officer may seize the animal.

75 Powers to detain vehicle or vessel

- (1) This section applies if an authorised officer who is a police officer reasonably suspects a moving vehicle or vessel contains
- (a) an animal in relation to which an offence against this Act or the regulations has been or is being committed, or
 - (b) an animal that is being harmed.
- (2) The authorised officer may do any of the following the officer considers necessary—
- (a) stop the vehicle or vessel,

- (b) enter the vehicle or vessel,
- (c) enter land for the purpose of entering the vehicle or vessel,
- (d) examine the animal.

(3) For the purpose of entering the vehicle or vessel or examining the animal, the police officer may direct the person operating the vehicle or vessel to do 1 or more of the following—

- (a) to manoeuvre the vehicle or vessel in a specified way or to a specified place, including a place that is appropriate for examining the animal,
- (b) to park or secure the vehicle or vessel in a specified way,
- (c) to remain in control of the vehicle or vessel while the police officer is exercising the officer's functions.

(4) A person must comply with a direction given to the person under this section. Maximum penalty—category 5 penalty.

76 Extension of certain powers of officers

The powers of an authorised officer under this Division may be exercised in relation to an offence, or suspected offence, against the Veterinary Practice Act 2003, section 9(1).

Division 5 Functions in relation to seized things

77 Definitions

(1) In this Division— owner of a thing includes a person entitled to possession of the thing. responsible person for a seized thing means—

- (a) the apparent owner of the thing, or
- (b) the apparent occupier of premises where the thing is seized. seized thing means a thing seized by an authorised officer under this Part. (

2) For the purposes of this Division, the continued retention of a seized thing in custody is not justified only if it is not necessary to retain the thing as evidence of an offence.

78 Receipt for seized things

(1) As soon as practicable after an authorised officer seizes a thing, the authorised officer must give a receipt for it to the responsible person for the thing.

(2) If it is not practicable to comply with subsection (1), the authorised officer may leave the receipt at the premises where the thing was seized in a conspicuous position and in a reasonably secure way.

(3) A receipt is not required if—

- (a) the thing is seized in a public place, and
- (b) the apparent owner of the thing cannot be located after reasonable inquiry.

(4) A receipt must describe generally the seized thing and its condition.

(5) This section does not apply if it is impracticable or would be unreasonable to give a receipt given the nature, condition or value of a seized thing.

79 Return of seized things

(1) An authorised officer must return a seized thing to its owner if the authorised officer is satisfied that—

- (a) it is lawful for the owner to have possession of the thing, and
 - (b) the continued retention of the thing in custody is not justified.
- (2) A requirement to return a seized thing to its owner includes a requirement to remove or lift restrictions on an owner's access to a seized thing.
- (3) This section does not apply if an authorised officer certifies under section 80 that the authorised officer is unable to return the seized thing to its owner.

80 Certification of inability to return seized thing

- (1) An authorised officer may certify in writing that the authorised officer is unable to return a seized thing to its owner if—
- (a) the authorised officer cannot find the owner of the thing after making all reasonable inquiries, or
 - (b) the authorised officer cannot, for another reason, return the thing to its owner after making all reasonable efforts to do so.
- (2) A thing's nature, condition and value must be considered in deciding—
- (a) whether it is reasonable to make inquiries or efforts, and
 - (b) what inquiries or efforts, if any, are reasonable in the circumstances.
- (3) The Secretary may give directions about the inquiries or efforts that must be made by authorised officers in relation to the return of a seized thing or a class of seized things.
- (4) Compliance with a direction under subsection (3) is evidence that all reasonable inquiries or efforts were made.

81 Court order requiring delivery of seized thing

- (1) A court may, on application by a person, make an order directing that a seized thing be delivered to the person.
- (2) A court may make such an order only if satisfied that—
- (a) the person is the owner of the seized thing, and
 - (b) it is lawful for the person to have possession of the thing, and
 - (c) the continued retention of the seized thing in custody is not justified.
- (3) In deciding an application, the court may make—
- (a) a finding or order about the ownership of the thing, and
 - (b) necessary incidental or ancillary findings or orders.
- (4) An application under this section may be made to—
- (a) the Local Court, if the estimated value of the thing is not more than \$100,000, or
 - (b) the Supreme Court, if the estimated value of the thing is greater than \$100,000.
- (5) Despite subsection (4), a court hearing proceedings for an offence may deal with an application relating to a seized thing connected with the offence despite the estimated value of the thing.
- (6) A court cannot make an order under this section about a seized thing that has been forfeited to the Secretary under section 82.
- (7) A requirement to deliver a seized thing to its owner includes a requirement to remove or lift restrictions on an owner's access to a seized thing.

82 Forfeiture of seized thing

- (1) The Secretary may, by written order, declare a seized thing to be forfeited to the Secretary.
- (2) The Secretary may make an order only if—
 - (a) the Secretary is satisfied the continued retention of the thing in custody is not justified, and
 - (b) the thing cannot be returned to its owner.
- (3) A thing cannot be returned to its owner if—
 - (a) the Secretary is satisfied it is not lawful for the owner of the seized thing to have possession of the thing, or
 - (b) an authorised officer certifies under section 80 that the authorised officer is unable to return the seized thing to its owner.
- (4) The Secretary must give notice of the Secretary's intention to declare a seized thing to be forfeited to the Secretary.
- (5) The notice must be given at least 21 days before the order is made.
- (6) The Secretary gives notice by—
 - (a) publishing the notice on the Department's website, and
 - (b) serving the notice on the apparent owner of the thing.
- (7) However, it is not necessary to serve the notice on the apparent owner of the thing if an authorised officer has certified under section 80 that the authorised officer is unable to return the seized thing to its owner.

Note— Notice of the intention to make the declaration gives the owner of the thing an opportunity to seek a court order for the return of the thing

83 Dealing with forfeited things

- (1) When the Secretary makes an order under section 82 declaring a seized thing forfeited to the Secretary, the seized thing—
 - (a) is forfeited to the Secretary, and
 - (b) becomes the Secretary's property.
- (2) The Secretary may deal with the thing as the Secretary considers appropriate.
- (3) Without limiting subsection (2), the Secretary may destroy, sell or dispose of the thing or authorise its destruction, sale or disposal.

Concern

Need a provision that any seized animal or object will not be disposed of until legal proceedings have completed and all avenues of appeal have been exhausted by any parties concerned

Also need a greater level of what the term "Things" means. Further more what appeal process is available to appeal a seizure of an item by the legal owner of the item

From The Act

12. Page 36, Division 6 General, section 85 (1) (a) (b) (c), (2), (3), (4)

85 Recovery of fee for action taken

- (1) This section applies if 1 or more of the following entities incurs costs in relation to an authorised officer's exercise of a function under this Act in relation to an animal—

- (a) the authorised officer,
 - (b) the Crown, if the authorised officer is—
 - (i) a public service employee, or
 - (ii) a police officer, or
 - (iii) an inspector under the Greyhound Racing Act 2017,
 - (c) an approved charitable organisation, if the authorised officer is an employee of, or otherwise engaged by, the organisation.
- (2) The entity may charge the responsible person for the animal a fee for the authorised officer's exercise of the function in relation to the animal.
- (3) The fee must be no more than is reasonable to cover the costs incurred in connection with exercising the function.
- (4) The fee is a debt payable to the entity that may be recovered in a court of competent jurisdiction.

Concern

What is the definition of "reasonable to cover the costs incurred" WE have seen in the past where a certain organisation has charged up to \$1000.00 per day to feed and house a dog while legal proceedings are undertaken. This is not a reasonable cost. A scale of charges needs to be formulated to ensure costs are kept a reasonable level. Any additional costs such as medical bills need to be provided to the owner through an itemised invoice. There also needs to be an external appeal process in place to ensure these costs are realistic and maintain accountability.

Further more the charitable organisation is usually awarded costs for boarding of animals involved in court cases. Surely a charitable organisation that assists in the creation and enforcing of any act which also benefits from the resulting prosecutions has a conflict of interest with in the whole process.

From The Act

13. Page 37, Part 7 Enforcement and compliance, Division 7 section 89 (1) (a)
89 Appointment of authorised officers

- (1) The Secretary may, by written instrument, appoint the following persons as an authorised officer for this Act—
- (a) a public service employee

Concern

What qualifications will an authorised officer be required to hold. AS it is possible that the Secretary may, by written instrument, appoint a person as an authorised officer for this Act simply based on the fact the appointed person is a public service employee.

This means any member of the Public Service can become an authorised officer with no formal qualifications and experience in animal welfare simply because The Secretary (a faceless bureaucrat) signed a written document authorising it with what appears to be no method of accountability.

I also object to a Charitable organisation being used to enforce the laws of the state. It is well known that the charitable organisation currently implied is the RSPCA. However a charitable organisation should not be empowered to have the same level of authority as the state police

force. However this act and the previous POCTA gives this organisation these powers in relation to enforcing laws pertaining to animals.

Also the Charitable organisation has been involved in the creation of this act (and the previous POCTA) and can be involved in the prosecution under this act and POCTA. Should a charitable organisation be allowed to be involved in creating, enforcing and prosecuting these laws?

There should be a separation of powers to provide transparency in the legal process. If the charitable organisation is involved in developing the act they should not be able to enforce or prosecute the same act.

Also it should be noted that the charitable organisation has no accountability for its actions and as such any individual has no right of appeal or complaint process that is external to the organisation and can be used to force accountability on the charity.

Further more having the charity involved in creation, enforcing and prosecuting of the act with no separation of powers creates a conflict on interests for the charitable organisation.

From The Act

**14. Page 65, schedule 1 Restricted procedures "Dewclaw removal on a dog"
dewclaw removal on a dog performed in circumstances prescribed by the regulations.**

Comment

This procedure needs to be allowed for the safety of the dog. I had a dog that ripped his dew claws from jumping on the security door of the house. He had to have them surgically removed to prevent further injury and pain. I believe this practice should still be allowed and left to the choice of the owner as to conducting this procedure providing it is done by a veterinary Surgeon. I do not agree with any non qualified person performing this function.

In Conclusion How do we know what "Prescribed standard" will mean? There are no regulations presented with this Bill and it appears these are yet to be developed by the same policy makers that gave us this Bill. On many pages we are confronted with some confusion and vagueness.

If the current Bill proceeds without addressing our concerns, I will have an opportunity in March 2023 to let the government and its supporters know just how I feel.

I love animals. I care about animals. I truly support efforts to protect them, however this Bill is so overreaching by a lack of providing clear, concise and limited definitions as well as the open ended potential for regularity interpretation. I am particularly worried that regulations will be developed after this Bill has been passed without the opportunity to consult.

Additionally there are no safeguards in this proposal to protect ordinary hobbists, like myself who are trying to preserve our chosen breed of dog.