

**Submission
No 229**

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

Name: Ms Yvonne Yun
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GERMAN SHEPHERD DOG COUNCIL OF AUSTRALIA



SUBMISSION FOR PUBLIC COMMENT ON DRAFT ANIMAL WELFARE BILL 2022

AREA	ISSUE	WHAT IS THE PROBLEM	WHAT DO WE WANT	OUR SOLUTION
1. SPECIFIC CLAUSES OF CONCERN	1.1 Throughout the Bill, terms are used that are not clearly defined, nor are they concise.	1.1.1. Part 1 Introduction, Division 1 Preliminary section 4 c The term “exhibition” Part 2 Interpretation Division 2, section 7 (d) and (e) Part 2 Interpretation Division 2, section 10 section 1 (b), Section 10 (3) (c)	A clear definition of what is to be included under this area of activity – in the act, and not in as yet undrafted Regulations	Provide exemptions to approved activities organised and conducted under the regulation of approved organisations e.g. Canine Control bodies, show societies
		1.1.2 Part 3, Division 2, Section 20 (3) “In this section— prescribed standard means a standard prescribed by the Regulations for the purposes of this section.”	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.	We argue that inclusion of the “: standard” is an imperative to the reading of the Bill. This section is nothing but double speak
		1.1.3 Division 3 Prohibited & restricted procedures 22 Prohibited procedures (1) A person must not carry out any of the following procedures— (e) surgical artificial insemination on a dog	It is noted that the Minister has provided to the Greyhound Racing fraternity assurances that this has been withdrawn.	Written assurance that this clause is withdrawn across the board and that it will not be enforced under other prohibitions such as “unnecessary harm”
		1.1.4 Division 4 Transport of dogs 37 Requirements for transporting dogs (1) A person must not—	In terms of routine activities within our fraternity, dogs are	That an Australian Standard is developed for the construction and compliance of transport trailers. The

		<p>(a) leave a dog unattended in a vehicle in hot weather for more than 5 minutes,</p>	<p>transported in dog trailers. There has been a suggestion that under other codes not included here, there will be a mandated requirement for air-conditioned trailers. Were this to occur, we have real and significant concerns for the welfare of animals</p> <p>If air conditioning were mandated, there is a very real risk of equipment failure whilst in transit and the driver being unaware that this has occurred, potentially leading to Thermal Shock and death. We are also alarmed at the possible impacts for animals leaving this environment to come out into the outdoors during heat of the day.</p> <p>Generally, Australian trailers are designed for our conditions, with air flow and ventilation, and insulation</p>	<p>standard should mandate construction elements that provide for ventilation, natural cooling and insulation.</p>
		<p>67 Entry into residential premises only in certain circumstances (1) An authorised officer may only enter premises, or a part of premises, used for residential purposes— (a) with the consent of the occupier of the premises, or</p>	<p>In the development stages of this draft, it has been suggested that dog breeding would require licencing. Even the hobbyist would require such licence.</p>	<p>We require clarification on:</p> <ol style="list-style-type: none"> 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

		<p>(b) under the authority of a search warrant, or (c) if the authorised officer reasonably believes— (i) an animal has experienced significant physical injury, is in imminent danger of experiencing significant physical injury or has a life-threatening condition that requires immediate veterinary treatment, and (ii) it is necessary to exercise the power to prevent further or significant physical injury to the animal or to ensure the animal is provided with veterinary treatment</p>	<p>We require clarity around whether this is an intent of Regulations, as it is not evident from the draft Bill.</p> <p>If this is the case, then it has been mooted that were a breeder to breed dogs in their home, <i>then the provisions of S67.1 and the protections afforded to the resident would not apply.</i> The holding of a licence would automatically remove the protections for residential property.</p> <p>Also, the terms “reasonable” and “reasonably” are frequently used throughout the draft. This is contentious and subjective. We require concise and specific definition, that places limits on these powers.</p>	<p>3. Clarity and further definition of “reasonable” – is the definition to mean a reasonable lay person or is it to be the subjective opinion of a regulatory bias?</p> <p>4. What evidence must there be of concern on the part of the Regulatory Officer.</p> <p>5. Without these assurances and a set of draft Regulations 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.</p>
		<p>67 Entry into residential premises only in certain circumstances (1) An authorised officer may only enter premises, or a part of premises, used for residential purposes— (a) with the consent of the occupier of the premises, or</p>	<p>We acknowledge that other legislation may require licencing of breeders of companion animals. We hold real concerns that the operation of these Acts may be used as a</p>	<p>Included protection in the Proposed Draft that the protections contained in the draft will override such interpretation.</p>

		<p>(b) under the authority of a search warrant, or</p> <p>(c) if the authorised officer reasonably believes—</p> <p>(i) an animal has experienced significant physical injury, is in imminent danger of experiencing significant physical injury or has a life-threatening condition that requires immediate veterinary treatment, and (ii) it is necessary to exercise the power to prevent further or significant physical injury to the animal or to ensure the animal is provided with veterinary treatment</p>	<p>justification to regard a hobbyist activity as not warranting the protections of proposed S 67 (1).</p>	
		<p>Division 4 Investigation and risk management powers</p> <p>70 Powers that can be exercised on premises</p> <p>Division 5 Section 70</p>	<p>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 is totally rejected as providing unfettered opportunity for breaches of privacy and rights in private property.</p>	<ul style="list-style-type: none"> - That the terms “things” and “seized things” are properly scoped and defined - That these powers are reviewed and curtailed to what is reasonable in the eyes of the ordinary person. - That these powers may only be undertaken on the basis of a duly issued search warrant - That the rights of the alleged offender are safeguarded – i.e they have the right to have legal representation present, that they have the right to record and use in any defence records (digital, voice recording or filmed) of any activities undertaken by the authorised officer whilst executing the search warrant. - That the Regulatory Officer must be accompanied by an officer of the crown when executing this warrant.
		<p>85 Recovery of fee for action taken</p>	<p>Whilst it may be fair and reasonable to recover costs for action under this</p>	<p>We believe that any fees to be levied by this Bill must be scheduled and fixed. They must be publicly available</p>

		<p>(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—</p> <p>(a) the authorised officer, (b) the Crown, if the authorised officer is—</p> <p>(i) a public service employee, or (ii) a police officer, or (iii) an inspector under the <i>Greyhound Racing Act 2017</i>, (c) an approved charitable organisation, if the authorised officer is an employee of, or otherwise engaged by, the organisation.</p>	<p>Bill, experience has demonstrated that the fees charged in many instances are extreme and excessive. There is also the perception with some alleged offenders that if they attempt to defend themselves against charges, these fees will increase exponentially. There is opportunity for intimidation and bullying. (We have cases from Victoria to evidence this claim)</p>	<p>and scheduled on the basis of fair <i>per diem</i> rates that can be substantiated with evidence.</p> <p>Any veterinary expenses must be according to a fee schedule that is readily available to scrutiny.</p>
		<p>Division 7 Authorised officers</p> <p>89 Appointment of authorised officers (1) The Secretary may, by written instrument, appoint the following persons as an authorised officer for this Act—</p> <p>(a) a public service employee, (b) a person employed or otherwise engaged by an approved charitable organisation</p>	<p>We object strongly to any appointment that does not meet the measures of transparency, accountability and the NSW Government guidelines for employment.</p> <p>The roles being appointed will effectively make these officers <i>de facto</i> employees of the Crown. They must therefore be selected based on essential criterion to carry out their duties.</p>	<p>-Make the selection process competitive - Recommendations for appointment on the basis of panel selection, the panel to include community representation. - Recommendations are made to the secretary and published for objections to be made.</p>

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<p>2. GENERAL STANDARDS NOT SATISFIED</p>	<p>THE RIGHTS OF AN ALLEGED OFFENDER TO DEFEND THEMSELVES</p>	<p>Throughout Part 7 – Enforcement and Compliance – the rights of the authorised officer are clearly and definitively stated. The alleged offender is not accorded any such rights to gather evidence for a defence.</p>	<p>From what is proposed, it appears that once the authorised officer has gained entry to the premises, he enjoys absolute freedom of access to every “thing” present. He has the right to record, to have support present and to seize anything he believes could be used in evidence.</p> <p>This is just plain unfair and unjust. Even suspected criminals have rights in interviews.</p>	<ul style="list-style-type: none"> -That the alleged offenders enjoys the right to record the visit of the authorised officer, to have counsel or the physical support of at least one advocate on their behalf. -That the alleged offender has the right to demand the basis on which the authorised officer is entering the premises -That the alleged offender be entitled to receive, before the premises are entered a written statement of cause and a written record of the names of all persons attending the premises for the purposes of inspection and evidence gathering.
	<p>THAT THERE ARE NO RIGHTS OF APPEAL CONTAINED WITHIN THIS DRAFT</p>	<p>The manner in which this Bill was developed was through the distribution of an Issues Paper, then a consultation and finally a draft Bill.</p> <p>We are advised that there was assurance within that process that an Ombudsman would be included as part of the Bill and that an appeals process would be included.</p>	<p>Our reading of this draft does not suggest that this is envisaged.</p> <p>48 Administrative review of certain decisions</p> <p>(1) An aggrieved person for a reviewable decision may apply to the Civil and Administrative Tribunal under the <i>Administrative Decisions Review Act 1997</i> for an administrative review of the reviewable decision within 28 days after receiving</p>	<p>This protection is entirely contingent on the decision being “reviewable”. We would require that <i>all decisions are subject to appeal and independent scrutiny and</i></p> <p>That where an alleged offenders does not fit the definition of “commercial” the following will apply</p> <ul style="list-style-type: none"> -An appropriate appeals process must be developed - An Ombudsman must be appointed with powers that allow redress of overreach, intimidation and loss - With regard to the “Administrative review of certain decisions”, there is again a reliance on “a decision under this Act prescribed by the Regulations for this definition” These Regulations need to be available before this could

			<p>notice of the reviewable decision.</p> <p>(2) In this section— aggrieved person, for a reviewable decision, means the person prescribed by the Regulations as being the aggrieved person for the reviewable decision. reviewable decision means a decision under this Act prescribed by the Regulations for this definition.</p>	<p>become a matter for consultation or discussion. We categorically reject 48 (1) and (2) as satisfying adequate right of appeal.</p>
	<p>DEFINITIONS ARE UNCLEAR, PHRASES ARE OPEN ENDED AND BOTH ARE OPEN TO SUBJEC</p>	<p>The promoted objective of developing this Bill was to create a modern Act.</p>	<p>In terms a of being “user friendly” we see this Bill as open to biased interpretation, unclear and cumbersome and generally not a document that those to be governed by it can refer to with any confidence of comprehension or that they would be able to capture all provisions relating to a single issue with a layman’s understanding..</p> <p>Whether this has been done by accident or design, it places the ordinary reader at a distinct disadvantage.</p>	<p>Definitions need to be tight, better explained and concise.</p>
	<p>LACK OF DRAFT REGULATION</p>	<p>Frequent reference is made in the Bill to matters being dealt with in the Regulations.</p>	<p>We object to the lack of Regulations not being</p>	<p>Any document relied upon or to form part of this Bill must be made available</p>

			<p>made available on the following grounds:</p> <ol style="list-style-type: none"> 1. With a Bill that is so flawed with opportunities for subjective interpretation, it is essential that the Regulations are available for comment. 2. Throughout the Bill, references are made to unseen documents 3. e.g Division 2 Standards 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. <p>Either by intent or accident, this eliminates any possibility of comment or objection to the “standards” These need to be made available.</p>	to be reviewed in conjunction with any review of the draft Bill.
	CLARITY OF INTENT IN SOME AREAS	It is unclear in the Bill as to whether there will be any separation of function with regard to the inspectorate i.e the	Any understanding of the operational mechanisms that will appoint the	We propose that these organisations must be separate and have no relationship across these functions. This

		organisation that inspects premises and standards and the organisation that is charge with delivering regulation and compliance.	organisations to deliver what appears will be increased activities in the area of routine inspection, as distinct from enforcement functions is absent from the Bill.	will eliminate the possibility of vested interest and will insure objectivity and probity.
	CONFLICT OF INTEREST	It is public domain knowledge that some organisations likely to be charged with enforcement of this Bill are in receipt of donations from commercial organisations that may be the subject of investigation.	This goes against all principles of probity and justice.	The Bill must contain provisions that: <ul style="list-style-type: none"> - Force declaration of conflict of interest - Report any income streams from any industry group or organisation - Require full disclosure of all grant funding and service fees, the amount and the purpose of these funds.
	ACCOUNTABILITY AND TRANSPARENCY	It is only good practice that any organisation receiving any form of revenue from the public purse and undertaking service delivery under this Bill should provide full disclosure.	The provision of the Bill does not adequately address a need for data to be publicly available and for public funding to be fully disclosed	The Bill should require that any organisation receiving funding to undertake a service in the delivery of this Bill must : <ol style="list-style-type: none"> 1. Must be audited by NSW Audit Office on an annual basis 2. Must have publicly available grant registers that detail origin of grant, purpose for which funding was made available and how much has been made available. 3. Operational data must be made publicly available as part of the reporting process. Items such as number of investigations, the nature of the offence, number of successful prosecutions etc.

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3. GENERAL OBSERVATIONS	<p>The one size fits all approach</p>	<p>The Bill fails to adequately recognise that there are many levels of activity in this sector – commercial, farming, hobbyist, competitor and several others.</p> <p>It fails to recognise that activities are motivated for different reasons.</p> <p>It fails to recognise that there are organisations that have for many decades been applying better practice and self-regulation than has ever been required by law.</p>	<p>Recognition of more specific areas of activity – we note the term “micro breeder” but query what this means and why no differentiation has been made. The proposition that a single set of standards should apply is unacceptable.</p> <p>Organisations that have proven track records of achievement must be allowed accreditation and a role in the delivery of some of the functions of this Bill.</p>	<ol style="list-style-type: none"> 1. The provision of separated levels of activity e.g create a stakeholder “hobbyist” or a stakeholder “competitor” for example and structure realistic standards that these stakeholders should meet and standards that address only the risk they give rise to. 2. Where an organisation can provide evidence of self-regulation, effective management and process, they are recognised as a resource and are given standing in this Bill.
	<p>The Bill is confusing, has poor definitions and is open to subjective judgements</p>	<p>Throughout the Bill there are terms such as “unreasonably” , “unnecessary”</p>	<p>This makes this Bill confusing, open to biased interpretation and challenge.</p>	<p>We believe the Bill should be re-drafted to remove confusion and create an equitable understanding of rights and responsibilities for the sector.</p>