

Submission  
No 231

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

**Name:** Name suppressed

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Partially  
Confidential

Standing Committee on State Development Parliament of NSW Inquiry into Animal Welfare Policy in NSW:

Submissions on the draft Animal Welfare Bill 2022 I thank you for the opportunity to provide feedback to the Draft Animal Welfare Bill 2022.

As a DOGS NSW member, I abhor puppy farms and all they stand for, so I do support and appreciate the creation of the Draft Animal Welfare Bill 2022. I do have some feedback and concerns which are:

-The welfare of animals is a primary concern of Dogs NSW and its members. Dogs NSW has a Code of Ethics and Regulations (the Dogs NSW Regulations) which set a standard of obligations for its members to maintain the responsible care and treatment of animals in the course of breeding, selling and showing dogs.

-I am as a DogsNSW member required to observe and comply with the Companion Animals Act 1998 (NSW) (the Companion Animals Act) and the Prevention of Cruelty to Animals Act 1979 (NSW) (the Prevention of Cruelty Act). A failure to comply with the above Legislation is a contravention of the Dogs NSW Regulations and a contravening member is subject to disciplinary action, including disqualification of membership and breeding rights, from Dogs NSW. The Draft Animal Welfare Bill 2022 (the Draft Bill), particularly as it repeals the Prevention of Cruelty Act, has a real impact upon the largest body of independent breeders and sellers of dogs in NSW.

- Interpretation Section 10: Meaning of “exhibiting an animal” The current wording of section 10 is unclear as to whether the exhibiting of an animal at a dog show will fall under the operation of the Draft Bill. This is compounded by subsections 10(1)(b) and 10(3)(c) referring to purposes prescribed by the regulations, which have yet to be drafted and submitted for feedback.

- It is noted the Exhibited Animals Protection Act 1986 (NSW) (the Exhibited Animals Act) will be repealed by the Draft Bill. However, the Exhibited Animals Protection Regulation 2019 (NSW) (the Exhibited Animals Regulations) may remain in force under the transitional provisions of the Draft Bill As the wording of section 10(1) of the Draft Bill is substantially similar to that of the Exhibited Animals Act , guidance as to the proper intention and interpretation of section 10 of the Draft Bill can therefore be obtained from the Exhibited Animals Regulations. The Exhibited Animals Regulations provide that an animal that is a lawful captive and is part of a competitive display of household pets is exempt from the operation of the Exhibited Animals Act.

-The current legislative framework draws a clear distinction between the exhibition of animals at establishments such as zoos, aquariums, circuses, and wildlife parks; opposed to the exhibition of animals at dog shows and agricultural events. The current wording of section 10 of the Draft Bill specifically mentions the former establishments in the definition of exhibiting an animal. However, the broad ambit of sections 10(1)(a) and (b) create uncertainty as to whether this distinction will remain under the proposed legislation. If the Draft Bill maintains this distinction either through a direct amendment to section 10(3) or that the exemptions provided under the Exhibited Animals Regulations, insofar as they related to dog shows and agricultural shows, be preserved in the same or substantially similar form.

-Should dog shows and agricultural shows fall under the ambit of section 10(1) of the Draft Bill, there is a real and substantial risk of detriment being caused to the recreational interests of the

members of Dogs NSW. This is particularly so considering the licensing requirements of Part 5 of the Draft Bill,

-Requirements for care of animals Division 3: Prohibited and restricted procedures Section 22: It is noted that in February 2022, Minister Saunders announced that surgical artificial insemination would be removed from the Draft Bill. While I wait for confirmation of the removal of section 22(1)(e) from the Draft Bill. Section 22(1)(e) prohibits a person from carrying out a surgical artificial insemination of a dog. The practice of artificial insemination is a common practice amongst dog breeders which allows for a safe and effective means of breeding being conducted. It is the usual practice that artificial insemination is conducted by a veterinary practitioner. The wording of section 22(1) does not, however, exempt a veterinary practitioner from conducting the procedure. Section 22(2) provides definitions of words used in section 22(1) which include caveats of the prohibited procedures being conducted by a veterinary practitioner. While the Draft Bill amends the Veterinary Practice Regulation 2013 (the Veterinary Regulations) to provide that surgical artificial insemination of a dog is not a restricted act of veterinary science the wording of section 22 is at odds with this amendment. If it is the intention of the Draft Bill to prohibit a person other than a veterinary practitioner from conducting surgical artificial insemination on a dog, this should be expressly stated as an exception under either section 22(c) or under schedule 1 for the purposes of section 23.

There is currently a contradiction between the prohibition of the procedure under section 22 of the Draft Bill and the amendment to the Veterinary Regulations. As artificial insemination is a widely practiced and common procedure utilised by the members of Dogs NSW

-The removal of the ambiguity of a requirement of licensing for members of Dogs NSW will also address the concerns regarding the powers to enter premises as discussed below.

- Part 7 of the Draft Bill seeks to grant broad powers to authorised officers to administer the Act. This includes authorised officers who are employed or otherwise engaged by an approved charitable organisation. Importantly, these powers include powers of entry to premises, including residential premises. Section 66: Powers of authorised officers to enter non-residential premises. Section 66 prescribes the circumstances in which an authorised officer may exercise their powers of entry to non-residential premises, or part of a premises not used for residential purposes. Firstly, it is noted subsection (e) allows these powers to be exercised at any reasonable time at which a licensed activity is carried out. Should members of Dogs NSW fall under the ambit of Part 5 of the Draft Bill, it would cause a real and serious apprehension that i could be subjected to powers of entry under section 66 at any undefined time

-The use of the powers of entry in this circumstance goes beyond the intended scope of the Draft Bill

- I use part of my residential premises on the rare occasions that I have a litter. As commercial is an undefined term under the Draft Bill and it is intended to carry its ordinary meaning, 13 it is uncertain how the Draft Bill is to operate in circumstances where a dog breeder uses part or parts of their residential premises for the purposes of conducting the breeding. The word commercial regularly carries the connotations of 'concerned with or engaged in commerce' and 'for making a profit or relating to making a profit'. It is often difficult to ascertain or prescribe a particular part of a residential premises as having a commercial characteristic A dog breeder may engage in the practice for the purpose of promoting the lineage or persevering a particular breed of a dog.

- The purpose of my breeding is not the pursuit of profits. While the sale of a pup from a litter is, in its strictest sense, a commercial transaction, it is ancillary and a by-product of the dominant purpose of engaging in the practice. I ultimately do not ever turn a profit and the costs of engaging in the practice will exceed any money earned by the sale of pups. The current use of commercial in the Draft Bill does not reflect the reality of many of the dog breeders who are members of Dogs NSW. It is therefore unclear as to whether it is in the intention of the Draft Bill that a dog breeder, particularly a small dog breeder like me who may only have one litter in a calendar year and is a breeder who does not in fact profit from my endeavors, is to be subjected to the powers under section 66(1)(f).

-While section 66(2) provides the regulations may prescribe activities that do not fall within the ambit of section 66(1)(f), the wording of the regulations is not yet known and therefore there is no certainty as to how the section as a whole will operate with respect to the members of Dogs NSW.

It is noted the NSW DPI has sought community feedback on the Licensing Consultation Paper and further information from the NSW DPI has not yet been published. The Licensing Consultation Paper proposes a licensing scheme for the breeding of dogs in NSW, including additional exemptions under the Animal Welfare Code of Practice Breeding Dogs and Cats made under the Prevention of Cruelty Regulations. In the absence of a definition of commercial being included in the Draft Bill, any exemptions provided under section 66(2) must be consistent with the Prevention of Cruelty Regulations and any outcomes of the Licensing Consultation Paper.

Until certainty is obtained on these issues, there is a real concern that the powers granted under section 66 could be used to circumvent the protections provided by section 67. Subject to the outcomes of the Licensing Consultation Paper, further consideration will need to be given to the definition of commercial and how the powers granted under section 66 of the Draft Bill are to relate to dog breeders in NSW.

I thank the Committee for the opportunity to provide feedback to the Draft Bill.