

**Submission
No 251**

INQUIRY INTO ANIMAL WELFARE POLICY IN NEW SOUTH WALES

Organisation: NSW Farmers' Association

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NSW Farmers Submission to the Draft NSW Animal Welfare Bill (2022)

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About NSW Farmers

NSW Farmers is Australia's largest state farming organisation, representing the interests of its farmer members in the state. We are Australia's only state-based farming organisation that represents farmers across all agricultural commodities. We also speak up on issues that matter to farmers, whether it's the environment, biosecurity, water, animal welfare, economics, trade, or rural and regional affairs.

Agriculture is an economic 'engine' industry in New South Wales. Farmers across the state produce more than \$17 billion worth of food and fibre every year, or around 25 per cent of total national production, and contribute significantly to the state's total exports. Agriculture is the heartbeat of regional communities, directly employing almost two per cent of the state's workers and supporting roles in processing, manufacturing, retail, and hospitality across regional and metropolitan areas. The sector hopes to grow this contribution even further by working toward the target of \$30 billion in economic output by 2030.

We have teams working across regional New South Wales and in Sydney to ensure key policies and messages travel from paddock to Parliament. Our regional branch network ensures local voices guide and shape our positions on issues affecting real people in real communities. Our Branch members bring policy ideas to Annual Conference, our Advisory Committees provide specialist, practical advice to decision makers on issues affecting the sector, and our 60-member Executive Council makes the final decision on the policies we advocate on.

As well as advocating for farmers on issues that shape agriculture and regional areas, we provide direct business support and advice to our members. Our workplace relations team has a history of providing tailored, affordable business advice that can save our members thousands of dollars. Meanwhile, we maintain partnerships and alliances with like-minded organisations, universities, government agencies and commercial businesses across Australia. We are also a proud founding member of the National Farmers' Federation.

Executive summary

The health and care of animals is important to farmers. As the primary care givers to animals in their production systems, farmers play the central role in protecting and improving animal welfare outcomes.

NSW Farmers supports a concept and definition of animal welfare that is holistic in nature and underpinned by science. The concept of animal welfare is highly complex. Animal welfare must be based on a holistic view of health and care. A holistic view is preferable because it allows a wider examination of health and care across the entire industry. Each production system has a different mix of conditions or circumstances that contribute to the ability of an animal to thrive in its immediate circumstances.

NSW Farmers remains concerned over a lack of definitions within the draft Bill and a lack of clarity of those contained within it. This includes the continued exclusion of a clear definition of 'animal welfare' for NSW. It is foundational that the concept is clearly defined in order to effectively regulate animal welfare. We also have concerns relating to the definition of cruelty, the explicit referencing of psychological suffering within a definition of harm and the interpretation of a 'responsible person'.

Our primary concern is the scope of the regulation making powers. NSW Farmers are concerned with the ability for standards and guidelines to be mandated under regulations. We do not support prescribed standards being mandatory, which we believe to be a fundamental change from POCTA. We also believe that the regulation making power allowing the prescription of additional animal welfare offences and acts of cruelty should be omitted. NSW Farmers believes that all acts of cruelty and animal welfare offences should be specified in the Bill, with no additional regulatory powers to prescribe additional acts or animal welfare offences in the Regulation.

Animal Welfare

NSW Farmers supports a concept and definition of animal welfare that is holistic in nature and underpinned by science. The concept of animal welfare is highly complex. Owing to this complexity it is vital that scientific evidence is the basis to the determination of health and care requirements.³ Any regulatory regime must focus on physical pain and suffering. Well-developed methodologies to ascertain the physical welfare of animals exist. Any extension of the welfare concept beyond physical indicators is not appropriate, as it risks developing requirements not based in science and creating standards that cannot be objectively determined.

Animal welfare must be based on a holistic view of health and care. This is necessary because a point in time view can mischaracterise actions and lead to adverse health outcomes. For instance, mulesing⁴ can be perceived to produce poor animal welfare outcomes because the practice causes pain. However, this narrow, point in time, welfare conceptualisation fails to recognise the practice as a preventative measure for flystrike. A holistic view of animal welfare takes into account this larger picture.

A holistic view is also preferable because it allows a wider examination of health and care across the entire industry. Each production system has a different mix of conditions or circumstances that contribute to the ability of an animal to thrive in its immediate circumstances. A narrow approach to welfare tends to degrade certain production systems or practices, without understanding how they can facilitate greater welfare outcomes. For example, caged egg production systems protect animals from the risk of predation and produce superior biosecurity outcomes.

Defining Animal Welfare

Animal welfare is a complex concept broadly open to interpretation. To effectively regulate animal welfare, it is critical that the concept is clearly defined. NSW Farmers supports a science-based approach to animal welfare. Science should sit at the bedrock of all animal health and care requirements.

NSW Farmers remains concerned over the continued exclusion of a clear definition of ‘animal welfare’ for NSW. Recognising that welfare was not defined in the Prevention of Cruelty to Animals Act 1979 (NSW), this critical shortcoming is carried over into the draft Bill. It is foundational that the concept is clearly defined to regulate animal welfare. Once one understands and agrees on what animal welfare means, one can construct an architecture to a regulatory framework that represents best practice scientific understandings.

NSW Farmers has developed a definition of animal welfare and recommends adopting a similar definition that gives appropriate weight and clarity to animal welfare. Our definition captures the complexities of the

critical relationship between welfare and animal health, the need for a holistic rather than a point in time view, and the integral role of science in underpinning welfare metrics. The definition is as follows.

Animal welfare refers to the protection of health and well-being of animals.

Animal welfare means how comfortable an animal is with the conditions in which it lives.

An animal is in a good state of welfare if (as indicated by scientific evidence) it is well nourished, comfortable, healthy, and able to express normal patterns of behaviour, and it is safe and free from suffering.

Good animal welfare is supported by knowledge and skilled management through species-appropriate prevention of disease and injury, veterinary treatment, appropriate shelter, nutrition, and recognised Australian industry best practice with regard to handling, transport, slaughter and euthanasia.

The World Organisation for Animal Health (OIE), the intergovernmental body that is responsible for improving animal health globally and to which Australia is one of 182 global members, has its own definition of animal welfare.¹ NSW Farmers policy on animal welfare was based on this definition.

The concept of animal welfare is highly complex, and as such, scientific evidence must be the basis for the determination of health and care requirements. Any regulatory regime must focus on physical pain and suffering. Well-developed methodologies to ascertain the physical welfare of animals exist. Any extension of the welfare concept beyond physical indicators is not appropriate, as it risks developing requirements not based in science and creating standards that cannot be objectively determined.

Definition of Cruelty

NSW Farmers highlights our ongoing concern relating to the definition of cruelty provided. Although the draft Bill provides assurances to protect lawful activities like fishing, hunting or agriculture when performed appropriately, concerns remain especially in the absence of regulations and that offences contained within them.

¹ OIE Terrestrial Animal Health Code, https://www.oie.int/en/what-we-do/standards/codes-and-manuals/terrestrial-code-online-access/?id=169&L=1&htmlfile=chapitre_aw_introduction.htm

Harm

NSW Farmers remains concerned by the explicit referencing of psychological suffering within a definition of harm. Building on our feedback related to defining animal welfare, the usage of ‘unreasonable’, ‘unnecessary’, and ‘psychological suffering’ further ingrains uncertainty into NSW’s animal welfare regulation that will diminish animal welfare outcomes. It is not clear what would constitute psychological suffering, nor how this term may be understood in a legal setting. Research addressing the science of assessing mental suffering and distress in animals is not currently clearly understood.

NSW Farmers recommends adopting a modern animal welfare policy and definition based on scientific principles. We also recommend that the term ‘psychological suffering’ be removed from the definition of harm provided in the Bill.

Person Responsible

Animal welfare should be promoted at all stages of animal handling. While the ‘responsible person’ provisions in the draft Bill seeks to achieve this, its usefulness in preventing cruelty may be impaired by a lack of clarity around when a person becomes responsible for the animal’s welfare. The definition provided is inclusive, providing a number of examples of persons who may be considered to be the ‘responsible person’ in relation to an animal, however those categories are not exhaustive. There is a requirement to establish a nexus between that person and the animal, in that is the person answerable or accountable for the treatment of the animal by way of their power, control, or management over the animal and its circumstances.

To address this issue, NSW Farmers believes the inclusion of a ‘control’ test in the legislation could help remove some of this ambiguity. A ‘control’ test could consider factors like the authority of the person to make welfare decisions, buy fodder for the animal/s, and arrange treatment. Instead of relying on the definition of the ‘responsible persons’, a control test could help a court judge how much actual power a person had over the welfare of an animal at the time of an alleged breach of the Act.

Minimum Care Requirements

Farmers are dedicated to caring for their animals and achieving high welfare standards. For farmers to do their job effectively it is critical that the health and care requirements of their animals is clear. We are concerned that the draft Bill provides no detail as to what might constitute “appropriate” and “adequate”

shelter and “appropriate” exercise that considers behavioural needs. These are complex terms subject to reasonable disagreement. In its current form, they do not provide clarity

It is important to remember that farming occurs in a complex and changeable environment. Certain situations, such as drought and other adverse weather events, can have unintended and unforeseen detrimental impacts on welfare outcomes. Other events, such as the threat of predation, place further pressures on farmers to protect the care and health of their animals. If a minimum standard is adopted, it must be flexible to account for extenuating circumstances which may compromise the ability to provide sufficient food, water, shelter etc. The factors outlined in section 14 are important in representing the complex and changeable environment that farming occurs in. These factors must be adequately weighed and accounted for through other mechanisms to support the function of animal welfare laws without negatively impacting agricultural enterprises.

Scope of Future Regulations

NSW Farmers also has concerns over what is explicitly not included in the draft Bill. Within the draft Bill, numerous provisions contain a regulation-making power. Reliance on future regulations creates uncertainty and poses the potential that ill-fitting laws not bound to the parliamentary review process will be implemented. Several of our major concerns are set out below:

- Any proposed regulation must receive concurrence from NSW Farmers and other key industry stakeholders, or be publicly exhibited for a reasonable period, with any submissions received to be considered before the regulation is made.
- Animal welfare codes: The process for Standards and Guidelines to be mandated under regulations is not addressed. Our concerns centre around who will have the decision-making power to mandate a code and how this may occur.
- Prescribed standards and regulatory powers: Schedule 20 and 21 describe that compliance with prescribed standards will become mandatory when applied, adopted or incorporated under the Regulations. The draft Bill currently provides assurances for prescribed animal husbandry practices and conduct undertaken in compliance with a Mandatory Standard, but in the absence of drafted regulations, there is no assurance that current practices will not be outlawed.
- The skills and qualifications of members of the Animal Welfare Advisory Council: NSW Farmers is concerned about the recent restructure of the Animal Welfare Advisory Council (AWAC) which has removed NSW Farmers dedicated position and diminished the Council’s expertise on commercial agricultural production. Recognising the importance of AWAC in providing advice to the Minister on

animal welfare-related matters, it is important an understanding of agriculture be given appropriate weight and representation.

- The functions of authorised officers appointed by a local authority, including a local council or Local Land Services, in critical situations represented by section 106 of the Bill. NSW Farmers believes that it is important to ensure that relevant bodies such as Local Land Services and local council rangers are able to minimise welfare issues in emergencies.

Our issues with the uncertainty surrounding the definition of animal welfare and acts of cruelty are accentuated by the regulation-making power in the Bill. Regulation making powers present in the Bill allow for an expansion of the definitions of ‘act of cruelty and ‘animal welfare offence’ without requiring an act of Parliament. This may result in a number of the existing offences in the Prevention of Cruelty to Animals Act 1979 and potentially new offences being created under the Regulation without consultation or notice.

NSW Farmers believes that all acts of cruelty and animal welfare offences should be specified in the Bill, with no additional regulatory powers to prescribe additional acts or animal welfare offences in the Regulations.

Mandatory Animal Welfare Standards

A concern of NSW Farmers relates to the process for Standards and Guidelines to be mandated under regulations. This creates uncertainty around who will have the decision-making power to mandate a code and how this may occur. The Bill does not detail the process for animal welfare standards to be mandated under a future regulation to the Bill. Similarly, it does not detail how the standards themselves are to be drafted. However, it does note that compliance with prescribed standards will become mandatory where they are applied, adopted or incorporated under the regulation (s20(1)). NSW Farmers would not support prescribed standards becoming mandatory under regulation or being made without public consultation.

Powers of Officers and of Entry

NSW Farmers supports the proposed amendments to provide authorised officers with new powers to administer sedatives and/or pain relief. The reformed legislative framework needs to ensure that the welfare of animals can be effectively protected in emergencies. To protect the welfare of animals in these instances, the legislation needs to give the relevant authorities the capacity and resources to take effective action and provide clarification for under which circumstances these powers can be utilised.

However, we are concerned about the scope and extent of the power of entry of authorised officers in relation to farms. There is a degree of uncertainty concerning the definition of ‘residential premises’, as well as the degree of power of entry afforded. The proposed powers of entry are a wider power of entry than afforded under other Acts. The current terminology allows the interpretation that the land as a whole is ‘residential premises’.

Given that there remains some uncertainty about how the approach to ‘residential premises’ for the purposes of providing a power of entry will be construed, NSW Farmers believes this circumstance needs to be reviewed and amended to reflect or closely align to the existing powers of entry within the EPA Act.

Approved Charitable Organisations

Effective enforcement is key to building community trust in the legislative framework and confidence in the outcomes produced. NSW Farmers considers that several principles must be adhered to for enforcement agencies to be effective. First, enforcement agencies must be impartial and avoid conflicts of interest¹¹. Enforcement bodies should not engage in political advocacy, activism or public campaigns.¹² Second, enforcement bodies must focus on animal welfare outcomes rather than enforcement of the criminal law. They must be adequately resourced and possess the necessary expertise and skills to ensure that they can effectively undertake their role. Finally, as these agencies carry out public functions their operations and expenditure of government funds must be transparent and accountable.

NSW Farmer believes that the special constable status of the RSPCA and Animal Welfare League should be removed in regard to commercial livestock. We support enforcement powers under NSW animal welfare legislation being held by government authorities such as the Department of Primary Industries (DPI). They possess the appropriate animal welfare knowledge while having no actual or apparent conflict of interest in fulfilling this role.

NSW Farmers supports the DPI as the administrative department responsible for POCTA and animal welfare policy more broadly. DPI has the necessary technical knowledge and established relationships to deliver on animal welfare and ensure that positive health and care outcomes are achieved. Biosecurity and disease legislation have an obvious nexus to welfare outcomes in production animal industries and it is important that DPI has oversight of both. Both the DPI and Local Land Service (LLS) must be adequately resourced to ensure their capacity to fulfill their role efficiently and comprehensively as the administrators of animal welfare in NSW. We are opposed to establishing an independent animal welfare office or any entity similar in name or purpose.

Court Orders and statutory limitation periods

Instances of animal cruelty must be investigated as soon as possible. NSW Farmers believes that individuals with credible evidence of animal cruelty must be compelled to report and supply any evidence to the responsible authorities within a 48-hour timeframe. This will support the intent of the Act.

NSW Farmers maintains concerns with the recently extended 3-year statutory limitation period. We believe that alleged adverse welfare situations should be addressed quickly. Evidence of animal welfare offences are time sensitive. Extending the statutory limitation period hinders the chance of conviction. We believe that the 3-year limitation period made in 2021 reflects more resourcing constraints rather than animal welfare outcomes. NSW Farmers recommends addressing the resourcing issue in place of slowing animal welfare proceedings and reporting times.

Additionally, we support enforcement bodies maintaining a focus on animal welfare outcomes rather than criminal law prosecution. Alleged adverse welfare situations should be addressed quickly and effectively. Evidence of animal welfare offenses are time-sensitive and any extension to the statutory limitation period beyond twelve (12) months hinders the chance of conviction in instances of clear violations of animal welfare.

New Offences

While an exemption exists in the draft Bill relating to the animal cruelty material offences for agricultural and animal husbandry practices, the terminology used may cause difficulty and uncertainty in the public understanding of what is/isn't acceptable.

Appendix

Appendix 1:

Section	Regulation making power
7(2)(e)	Regulation prescribing an act as an act of cruelty
9(3)(e)	Regulation prescribing use of animals for a scientific or educational purpose that is not considered animal research
10	Regulation prescribing purpose and way of exhibition for the definition of exhibiting an animal
12(1)(i)	Regulation prescribing a 'person' for the purpose of 'the responsible person'
15 - 18	Regulations prescribing a period for species specific feeding, drinking, shelter, exercise so as to meet the minimum care requirement for an animal
20 - 21	Regulations may prescribe standards ('prescribed standard'), required to be complied with under the act.
31	Regulation to prescribe the definition of 'rodeo'
34	Circumstances in which an animal, subject of a licence, may be tethered.
40	Regulation may permit and control use of some electrical devices, traps or other items that can be possessed, used, sold, leased or given away.
42	Regulation prescribing activity requiring licence or exempting person from requirement for licence
45	Regulation may prescribe licensing scheme to carry out licensed activity
46	Regulation may provide for advisory committee for licensing scheme
47	Regulation may prescribe process for secretary's approval of prescribed premises and what can be prescribed premises
48	Regulation may prescribe definition of 'aggrieved person' and 'reviewable decision'
49	Regulation may prescribe a complaints scheme
58	Regulation may prescribe person who can be appointed to a stock welfare panel
66	Regulation may prescribe activities that do or do not constitute agricultural, commercial or industrial activities
102	Regulation may prescribe matters to be included in the annual report or an approved charitable organisation
106	Regulation may provide for exercises by an authorised officer appointed by a local authority.
115	Regulation may prescribe entity who can take prosecution proceedings under the Act
119	Regulation may prescribe acts or emissions exempt from offence provisions by way of religious exemption
134	Regulation may prescribe amount payable under a penalty notice
139, 140	Regulation may prescribe number of members, function and procedures of the animal welfare advisory council
142, 143	Regulation may prescribe functions, number of members and procedures of animal research review panel, and code of practice in relation to regulating animal research and the supply of animals or use in animal research
148, 149	Regulation may prescribe number of members, function and procedures of the exhibited animals advisory committee
157	Regulation may prescribe method of service of documents or notice under the Act.
161	Regulation may prescribe 'relevant agency' for the purposes of disclosure of information
163	Regulation may prescribe person or class of persons to whom Minister's/Secretary's functions can be delegated to
166	General regulation making power
Schedule 2	Regulations may contain provisions of a savings or transitional nature
Schedule 3	Regulation may prescribe: <ul style="list-style-type: none">• offences that are or are not 'animal welfare offences'• a 'recognised research purpose'• a 'stock animal'