

**Submission
No 116**

INQUIRY INTO POUNDS IN NEW SOUTH WALES

Organisation: Animal Defenders Office

Date Received: 19 August 2023



Animal Defenders Office
Using the law to protect animals

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The Animal Defenders Office is accredited by Community Legal Centres Australia Inc.

The Chair
Portfolio Committee No. 8 – Customer Service
Parliament House
Macquarie Street
Sydney NSW 2000

18 August 2023

By email: portfoliocommittee8@parliament.nsw.gov.au

Dear Sir/Madam

Re: Inquiry into Pounds in New South Wales

Thank you for the opportunity to provide a submission to the Inquiry into Pounds in New South Wales (“the Inquiry”) by the Portfolio Committee No. 8 – Customer Service.

Our comments on the Inquiry’s terms of reference are set out below.

About the Animal Defenders Office

The Animal Defenders Office (“ADO”) is a not-for-profit community legal centre that specialises in animal law. The ADO provides pro bono animal law services to the community. The ADO is a member of Community Legal Centres NSW Inc., the peak body representing community legal centres in NSW.

Further information about the ADO can be found at www.ado.org.au.

THE ADO'S SUBMISSIONS AND RECOMMENDATIONS IN RESPECT OF THE INQUIRY INTO POUNDS IN NEW SOUTH WALES

Recommendations

The ADO recommends that the laws and codes governing New South Wales pounds be amended as follows:

1. That section 64(5) and relevant provisions under section 64B of the *Companion Animals Act 1998* (NSW) ("the Act") requiring councils to take steps to rehome animals be made offence provisions with appropriate maximum penalties for corporations.
2. That the 7-day timeframes for an animal to be made available for rehoming (section 64B(2)), and after which an unowned animal may be destroyed (section 64(1)(b)), be extended to 14 days, and that councils be required to specify the anticipated euthanasia date of an animal to facilitate better triaging by rehoming organisations (section 64B(2)).
3. That the timeframe in section 64B(4)(a) of the Act allowing councils to destroy an animal if not picked up by a rehoming organisation be increased from 7 to 14 days.
4. That a requirement be inserted in the Act to make records about animals destroyed by pounds available for inspection.
5. That in order to reduce the overcrowding in pounds, desexing cats and dogs be made mandatory in NSW unless the animal's owner holds a permit to keep the animal entire, with appropriate exceptions for rescuers.
6. That the prohibition on transferring ownership of dangerous and menacing dogs in the Act be removed.
7. That the euthanasia section of the animal boarding code be updated to provide strong guidance on rehoming cats and dogs rather than euthanasing them.

Background

1. Despite a reported decrease in the number of dogs and cats being euthanased in council pounds in recent years,¹ an unacceptable number of dogs and cats is still being put down rather than rehomed.² Compounding the problem is that current cost-of-living pressures are starting to reverse the decline and to drive up the number of cats and dogs being surrendered to pounds.³ The ADO's submissions to the Inquiry are based on the view that the current legislative and regulatory frameworks in NSW must be improved to curtail the unacceptable practice of killing healthy dogs and cats in pounds rather than rehoming them.

Terms of reference and the scope of these submissions

2. The Committee's terms of reference for the Inquiry include proposals to examine "*the adequacy of the laws, regulations and codes governing New South Wales pounds, including the Companion Animals Act 1998 (NSW) and the NSW Animal Welfare Code of Practice No 5 – Dogs and cats in animal boarding establishments (1996)*" and "*the adequacy of the current enforcement and compliance regime*" (Term of Reference (d)). The Inquiry also proposes to examine "*euthanasia rates and practices in New South Wales pounds, including the adequacy of reporting of euthanasia rates and other statistics*" (Term of Reference (f)). The ADO's submissions for the purpose of the Inquiry are principally directed towards Terms of Reference (d) and (f).

¹ See Second Reading Speech (LA), Companion Animals Amendment (Rehoming Animals) Bill 2021, <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-122352>.

² Ibid.

³ Mikala Theocharous, "Save a life instead": Outcry to adopt as 264 dogs and cats are killed in Australia every day, 9 News, 3 February 2023, <https://www.9news.com.au/national/animal-shelters-outcry-to-adopt-246-dogs-and-cats-killed-every-day-exclusive/53fd16ca-6cc2-49e8-a655-3cc75c1c0223>.

Adequacy of section 64B of the *Companion Animals Act 1998* (NSW) (“the Act”)

3. In 2022 the NSW Parliament passed the *Companion Animals Amendment (Rehoming Animals) Act 2022* which amended the (principal) Act to insert section 64B ‘Rehoming seized or surrendered animals’ (“the amendment”). The amendment was designed to further the policy objective of ensuring “that euthanasia of an otherwise healthy animal in a council pound or shelter is an option of last resort.”⁴ The amendment aims to achieve this primarily by outlining actions that councils must take towards rehoming seized or surrendered cats and dogs rather than destroying them. In doing so, the amendment builds upon section 64(5) of the Act, which stipulates:

Before destroying a seized or surrendered animal as authorised by subsection (1), it is the duty of the council concerned to consider whether there is an alternative action to that of destroying the animal and (if practicable) to adopt any such alternative.

Sections 64(5) and 64B are referred to together as the “rehoming provisions” in these submissions.

4. As stated in the Second Reading Speech (LA) for the amendment Bill, “[t]he new requirement on councils and pounds as a result of the bill would be *minor and reasonable*.”⁵ It is the ADO’s view that these new requirements are a good start, but the legislative framework needs further amendments to ensure more effective compliance and enforcement, and therefore more positive outcomes for animals.

The rehoming provisions are not offence provisions

5. The ADO notes that neither of the rehoming provisions is an offence provision with penalties. It is the ADO’s view that this is a serious impediment to the efficacy of the rehoming provisions, especially regarding enforcement and compliance.

6. A council’s failure to comply with the rehoming provisions could lead to unnecessary, preventable, and inhumane deaths of companion animals. Based on feedback provided to the ADO by animal rescue organisations in NSW, the absence of enforcement measures in

⁴ <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-122352>
Wendy Tuckerman.

⁵ <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-122352>
Alex Greenwich. Emphasis added.

relation to the rehoming provisions can lead to a culture of noncompliance with the provisions by councils. The resulting negative animal welfare outcomes from these preventable deaths are compounded when considering the impact on other animals, including separation anxiety when one of a pair of closely bonded animals is killed, or if a litter of puppies or kittens loses their mother and vice versa.

7. The ADO therefore submits that breaches of the rehoming provisions ought to be sanctioned commensurably with other breaches of animal management and welfare legislation. For example, under section 4(2) of the *Prevention of Cruelty to Animals Act 1979* (NSW) ('POCTAA'), the unreasonable, unnecessary, or unjustifiable killing of an animal as a consequence of any act or omission is deemed an act of cruelty. Section 5(1) of POCTAA prohibits the commission of 'an act of cruelty upon an animal.' The maximum penalty for a corporation (such as a council administering a pound) is 2,000 penalty units,⁶ equivalent to \$220,000⁷. Evidently, there is an enormous discrepancy between the sizeable financial penalty for committing an act of cruelty under POCTAA and the lack of *any penalty* for breaching section 64 of the Act when such breaches are arguably a harbinger of acts of cruelty. The ADO submits that this inconsistency should be rectified by making the rehoming provisions offence provisions with an appropriate maximum penalty for a corporation such as a minimum of 1000 penalty units.

Recommendation 1:

The ADO recommends that section 64(5) and relevant provisions under section 64B are made offence provisions, with an appropriate maximum penalty for corporations.

Strengthening the rehoming notice requirements in section 64B

8. Sections 64B(1) and 64B(2) of the Act are as follows:

(1) A council must, before taking action under section 64 or 64A to destroy a seized or surrendered animal—

(a) give written notice to at least 2 rehoming organisations that the animal is available for rehoming, and

(b) take reasonable steps to advertise on a webpage or through a social media platform that the animal is available for rehoming.

(2) The notice given under subsection (1)(a) must specify the period of time, not less than 7 days from the date the notice is given, during which the animal is available for rehoming.

⁶ POCTAA s 5.

⁷ The value of 1 penalty unit under the *Crimes (Sentencing Procedure Act) 1999* (NSW) s 17 is \$110.

9. While these provisions are welcome, the ADO submits that there are important improvements that could be implemented.
10. The first relates to the self-imposed limits on pounds' advertising that an animal is available for rehoming (as required under section 64B(1)(b)). For example, the ADO understands that some pounds do not offer interstate rehoming options. Moreover, while pounds do reach out to local animal rescue groups, some pounds have refused the suggestion by these groups to use 'rescue pledge pages' as a way for the pounds to maximise the rehoming opportunities.⁸ These self-imposed restrictions inevitably limit the opportunities for pound animals to be rehomed.
11. The ADO notes the context in which the amendment legislation containing section 64B passed through Parliament.⁹ The return of workers to offices as the community emerged from the Covid pandemic resulted in 'pounds overflowing' as workers gave up the animals who had kept them company during lockdowns.¹⁰ To add to this, rising interest rates are placing increasing strain on animal rescue shelters to the point where some have reportedly been forced to close.¹¹ The combination of pounds' self-imposed limitations on rehoming 'outreach' (ie who they reach out to about the animal), the post-pandemic influx of animals to pounds, and difficulties in keeping rescue shelters operating, has created a perfect storm for volunteer-based and resource-poor animal rescue groups that are already under immense strain as they struggle to meet rehoming demands.
12. In order to alleviate this pressure and enable the rehoming of more animals, the ADO supports the broadening of the scope of section 64B(1). For example, the provision of written notice is limited to 'at least 2 rehoming organisations'.¹² This inevitably represents only a portion of bodies capable of facilitating rehoming; if such organisations are at full

⁸ Pledge pages are online pages where members of the public can make commitments to donate money for a pound animal if the animal is rescued. By pledging funds the 'pledger' alleviates the inevitable expenses involved in saving the animal.

⁹ Companion Animals Amendment (Rehoming Animals) Bill 2021, introduced in the Legislative Council on 20 October 2021, passed by both Houses on 17 February 2022, <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3905>.

¹⁰ Julie Power, "'Pounds overflowing": Dogs being dumped as workers return to office,' *Sydney Morning Herald*, 10 January 2022, <https://www.smh.com.au/national/pounds-overflowing-dogs-being-dumped-as-workers-return-to-office-20220106-p59m8y.html>.

¹¹ See, eg, Mikala Theocharous, 'Dog rescue shelter saving kill-list pups forced to close as interest rate hikes hit hard,' *9 News*, 11 May 2023, <https://www.9news.com.au/national/dog-rescue-saving-kill-list-pups-forced-to-close-in-cost-of-living-crisis/74ca7244-4290-4a28-a2f2-831d2e071bc8>.

¹² 'Rehoming organisations' is defined in ss 5 and 64B(9) of the Act to include AWL (NSW), the Cat Protection Society of NSW, RSPCA (NSW), and any other body designated by the Departmental Chief Executive.

capacity, then writing to them is arguably pointless. The ADO would therefore support widening the definition of 'rehoming organisation' in consultation with the rescue sector to relieve already overburdened rehoming organisations and to spread the rehoming burden as far and as equitably as possible.

13. Another implication of the mounting burden on animal rescue groups is the incompatibility of the groups' triaging systems with the time limits specified in section 64B(2). Under this provision the council must specify in its written notice to an organisation the period of time 'during which the animal is available for rehoming'. The ADO submits that pounds should (also) be required to specify the date (or an approximate date range of 3-4 days) on which a pound is planning to euthanise an animal. This submission is based on feedback from rescue groups that animals can be flagged for rehoming but the pounds refuse to specify when the animals are likely to be euthanised if not taken. This means the rescue groups are unaware of the urgency of the situation which leads to the animals being placed lower on the groups' waitlists and subsequently being killed despite being rehomeable.
14. In the interests of promoting certainty, clarity and transparency, the ADO submits that it would be preferable for pounds to designate explicitly, or as closely as possible, the planned or likely date for euthanasia if the animal is not taken, so that rescue organisations can triage accordingly.
15. Another reason why section 64B(2) hinders rehoming organisations' triaging systems is the timeframe of 'not less than 7 days'. Considering the pressures faced by animal rehoming and rescue groups, the ADO submits that 7 days is too short a minimum timeframe in which to make animals available for rehoming. The ADO submits that the timeframe should be standardised to 14 days as in section 64(1)(a) for owned animals. The shorter timeframe of 7 days in section 64(1)(b) penalises apparently 'unowned' animals who may be just as capable of being rehomed and living meaningful lives as 'owned' animals. For this reason the ADO submits that the time period specified in section 64(1)(b) also be increased to 14 days.

Recommendation 2:

The ADO recommends that the 7-day timeframe in sections 64B(2) and 64(1)(b) be extended to 14 days, and that section 64B(2) be amended to include an obligation for a pound to identify the anticipated euthanasia date of an animal.

Inadequate timeframe in section 64B(4) (time after which a council may destroy an animal)

16. The effect of section 64B(3) of the Act is that a council must not destroy an animal if a rehoming organisation notifies the council in writing that it is able to rehome the animal. Under section 64B(4) of the Act, the prohibition in section 64B(3) does not apply if the organisation fails to take custody of the animal within 7 days of giving the written notice, or a longer period if the council and the organisation agreed to one in writing.
17. It is the ADO's view that the 7-day minimum timeframe specified in section 64B(4)(a) is too short and, for the reasons discussed above in paragraph 15, should also be standardised to 14 days.

Recommendation 3:

The ADO recommends that the timeframe in section 64B(4)(a) be increased to 14 days.

Inadequate record-keeping requirements in section 64B(5)

18. Section 64B(5)(b) prescribes that, for animals destroyed under section 64 or 64A, the council must keep a record identifying the animal and the actions the council took to rehome the animal.
19. Notably, the original draft of section 64B(5)(b) included a requirement that councils 'make available for inspection' records identifying 'alternative action the council considered before destroying the animal'.¹³ The requirement was later omitted as part of Government amendments to the Bill on the grounds that councils already have 'a statutory duty to consider whether there is an alternative to destroying an animal and, where practicable, to adopt that alternative'.¹⁴
20. In the ADO's view this rationale is inadequate because, in and of itself, a duty to 'consider' alternatives is effectively worthless as an accountability measure in the absence of compliance and enforcement mechanisms and/or sanctions for non-compliance. The duty needs to be supplemented by a mechanism that helps ensure it is complied with and that allows councils to demonstrate that they have complied with the duty. An obligation to

¹³ First print of the Bill, proposed s 64B(5)(b)(iii).

¹⁴ <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-122352>.

make available for inspection relevant information about rehoming and destroying animals is a reasonable mechanism. The ADO submits that the requirement to make such information available for inspection should be resurrected and inserted in the Act. Furthermore, the ADO would support a positive duty being placed on councils to submit their reports to a regulatory authority or for them to be tabled in Parliament.

Recommendation 4:

The ADO recommends that a requirement to make available for inspection the records kept in accordance with section 64B(5) be reinstated in the Act.

Mandatory desexing requirement

21. Section 64B is designed to render the euthanasia of surrendered dogs and cats a last resort. However, such a provision necessarily deals with treating a symptom, rather than a cause, of the overcrowding of pounds.
22. The ADO submits that a measure to deal effectively with the overcrowding of pounds would be to reduce the population of cats and dogs by mandating desexing for pet dogs and cats in NSW unless the animal's owner holds a permit to keep an undesexed dog or cat.¹⁵ Mandatory desexing legislation already exists in the ACT (dogs and cats), South Australia (dogs and cats), Western Australia (dogs), and Tasmania (cats).¹⁶ The NSW scheme could be based on the regulatory framework in place in the ACT under the *Domestic Animals Act 2000*.¹⁷ Under the ACT scheme, it is an offence to keep an undesexed dog or a cat if the person does not hold a permit to keep the animal entire. The maximum penalty for the offence is 50 penalty units (currently \$8,000). Any scheme introduced in NSW would need to include exemptions for anyone involved in rescuing and rehoming dogs and cats such as foster carers, individual rescuers, small rescue groups, and rehoming organisations.

Recommendation 5:

The ADO recommends that desexing cats and dogs be made mandatory in NSW unless the animal's owner holds a permit to keep the animal entire.

¹⁵ J Rand and J Morton, 'Australian shelters and pounds kill 50,000 mostly healthy cats and kittens in a year. There's a way to prevent this pointless killing', *The Conversation*, 29 May 2023, <https://theconversation.com/australian-shelters-and-pounds-kill-50-000-mostly-healthy-cats-and-kittens-in-a-year-theres-a-way-to-prevent-this-pointless-killing-201947>.

¹⁶ See <https://kb.rspca.org.au/knowledge-base/is-desexing-mandatory-for-cats-and-dogs/> and *ADO Fact Sheet: Puppy and kitten farms—are they legal in Australia?* (last updated May 2023), available at <https://tinyurl.com/2p8899um>.

¹⁷ *Domestic Animals Act 2000* (ACT), Part 3, Division 3.2.

Removal of ban on transferring ownership of declared dangerous or menacing dogs

23. Section 52A(1) of the Act makes it an offence to sell¹⁸ or advertise the sale of a dangerous or menacing dog or proposed or menacing dog, while section 52B makes it an offence to accept ownership of a dangerous or menacing dog or a proposed dangerous or menacing dog. These provisions amount to a ban on transferring ownership of a dog who has been declared dangerous or menacing. The only exemption is if the person surrenders the dog to a council pound or approved animal welfare organisation¹⁹ (s 52A(2)). Therefore, people who can no longer care for their declared dangerous or menacing dogs are shoehorned into giving them up to the pound or an approved animal welfare organisation, contributing to the overpopulation issue in pounds and shelters and leading to the dogs being euthanised rather than successfully rehomed.
24. The ADO submits that the Act should be amended to remove the ban on the transfer of dangerous or menacing dogs to enable individuals to transfer ownership of dangerous or menacing dogs where appropriate. NSW is the only jurisdiction in Australia that prohibits the transfer of dangerous or menacing dogs to new owners.²⁰ Other jurisdictions have adopted various ways of regulating the transfer of dangerous dogs rather than an outright ban. The ADO submits that these alternative measures are preferable to what amounts to a blanket ban on transferring ownership in the NSW Act.
25. The ADO's submission on this issue is supported by the recognition that dog aggression can be affected more strongly by the characteristics and practices of an owner than the dog's breed,²¹ and that dogs declared to be dangerous or menacing can be rehabilitated over time. The capacity for behaviour improvements is recognised within NSW's own regulatory framework, which allows councils to revoke the declaration of a dog as menacing or dangerous after 12 months.²²

¹⁸ Section 52A(1) Note: 'The term "sell" extends to the transfer of owner by any means, including by gift.'

¹⁹ Currently these are the RSPCA (NSW), the Animal Welfare League (NSW), the Cat Protection Society of NSW, and any other gazetted organisation (s 5 of the Act).

²⁰ *Domestic Animals Act 2000* (ACT) s 12; *Domestic Animals Act 1994* (Vic) s 37A; *Animal Management (Cats and Dogs) Act 2009* (Qld) s 67; *Dog and Cat Management Act 1995* (SA) s 57; *Dog Control Act 2000* (Tas) ss 34A and 34B; *Dog Act 1976* (WA) ss 33F(1) and 33K(2)(c).

²¹ R Eveleth 'Owners, Not Breeds, Predict Whether Dogs Will Be Aggressive' *Smithsonian Magazine*, 4 March 2014, <https://www.smithsonianmag.com/smart-news/owners-not-breeds-predict-whether-dog-will-be-aggressive-180949962/>.

²² The Act, section 39.

Recommendation 6:

The ADO recommends that the prohibition on transferring ownership of dangerous and menacing dogs in sections 52A and 52B of the Act be removed.

Adequacy of the NSW Animal Welfare Code of Practice No 5 – Dogs and cats in animal boarding establishments (1996) (NSW) (“the animal boarding code”)

Euthanasia of unclaimed cats and dogs

26. The ‘Euthanasia’ guidelines in section 6.5 of the animal boarding code²³ are as follows:

- 6.5.1 Euthanasia should be considered where an animal becomes seriously ill or injured during boarding and where it is recommended by a veterinarian who has examined the animal.
- 6.5.2 Permission from the animal's owner or nominee, preferably in writing, should be obtained.
- 6.5.3 Euthanasia should only be performed by a veterinarian.

27. The ADO submits that these guidelines fall short of providing any meaningful guidance on euthanasia practices in the context being considered by the Committee—namely, dogs and cats put down in council pounds due to a (perceived) lack of rehoming options. The ADO submits that this part of the animal boarding code should be updated to provide best-practice guidelines on avoiding what is known as the ‘convenience killing’ of dogs and cats in pounds.²⁴

Recommendation 7:

The ADO recommends that the euthanasia section of the animal boarding code be updated to provide strong guidance on rehoming cats and dogs rather than destroying them.

Thank you for taking these submissions into consideration.

**Jake Fitzgerald and Tara Ward
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Animal Defenders Office**

²³ <https://www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/animal-care-and-welfare/other/companion-animal-files/nsw-animal-welfare-code-of-practice-no-5-dogs-and-cats-in-animal-boarding-establishments>.

²⁴ ‘Convenience killing’ refers to when councils choose to kill healthy animals because killing them is easier than holding them until they are rehomed: Companion Animals Amendment (Rehoming Animals) Bill 2021 (NSW), Second Reading Speech (LA), Alex Greenwich:
<https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1323879322-122352>.