



Strategy and Policy,
Office of the Director General
NSW Department of Primary Industries
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Dear Sir/Madam,

Animal Protectors Alliance Submission to NSW Department of Primary Industries' Consultation on Improving NSW Animal Welfare Framework

Thank you for the opportunity to provide feedback to the NSW Department of Primary Industries' Consultation on Improving NSW Animal Welfare Framework.

The Animal Protectors Alliance (APA) speaks on behalf of an informal affiliation of several hundred individuals who are committed to the protecting all animals from all forms of human cruelty and oppression, irrespective of whether they are kept as companions, farmed or produced in factory facilities, experimented upon or used in teaching, exhibited in zoos or used in other forms of entertainment or recreation, persecuted as so-called "pests", or living wild in their native environment.

If Australia wishes to call itself a civilised society, we must use our laws to protect animals from any potential harm human actions may cause. Since animal protection legislation is currently a State/Territory responsibility, civilised society in NSW begins with the State's animal welfare legislation.

In regard to the *NSW Animal Welfare Reform – Issues Paper*, our specific concerns are detailed below.

Principles of streamlining the framework

APA supports a streamlined, rational, coherent, internally consistent but (above all) compassion-driven legislative framework to protect animals from intentional, careless/reckless or accidental cruelty by humans.

- The legislative framework for animal protection must begin by recognising that all vertebrate (and also many invertebrate) animals are conscious and sentient beings. Their suffering and pleasure derive from the same basic model of sensory organs and nervous system as our own. Indeed, were we not animals ourselves, we would have no capacity for experiencing suffering or pleasure. Morally, as thinking animals, humans must recognise the intrinsic worth of each individual animal, just as the individual animal itself recognises its personal experience of pain or pleasure.



- The new framework would recognise the interests of animals to live according to the internationally recognised “five freedoms”: freedom from hunger, thirst, discomfort, pain, injury and disease, and the freedom to express normal behaviours.
- The new framework must be based on present understanding (ie as of 2020) of animal suffering and animal capabilities, and be capable of adapting rapidly to changes in scientific understanding as they come to light.
- There is no justification, for any reason or purpose whatsoever, in permitting a regulatory framework that entrenches animal suffering at the hands of humans.

Recommendations for a streamlined system

- All NSW animal-related laws would be combined in one piece of legislation incorporating: the Prevention of Cruelty to Animals Act 1979 (POCTA), the Exhibited Animals Protection Act 1986 (EAPA) and the Animal Research Act 1985 (ARA).
- All other NSW legislation (eg relating to planning, environmental protection, industry, economic policy etc) must be tested for compliance with any new animal protection legislation formed under this framework, and amended where necessary to comply with it.
- No regulatory or legislative instrument, including regulations, "standards", "guidelines" or "codes of practice", would provide any exemption or defence for any action that causes suffering to an animals. These instruments should exist to provide species and industry specific information to persons engaged in actions which might potentially harm animals; they should never be an excuse for harming animals (which appears to be their chief function at the moment).
- The regulation of animal protection in the horse and greyhound racing industries, and any other industry or uses of animals which impacts on animals (eg for any other entertainment purpose), would be included in the single piece of legislation developed under this framework.
- The regulation of actions which harm wild animals, either directly or indirectly, would be included in the single piece of legislation developed under this framework.
- There would be no exemptions or defences for any action or inaction which causes pain or suffering to animals considered to be "pests" (eg cats, brumbies, foxes, rabbits, Indian mynas, pigeons etc).

Failures of NSW current Animal Welfare laws

- Current animal welfare legislation is not merely useless, it actively encourages acts of wilful cruelty to animals. By exempting acts of blatant cruelty from the protection of the Prevention of Cruelty to Animals Act, it renders these actions as lawful. The animal agricultural industry is rife with acts of cruelty that are essentially lawful, eg confining animals without exercise, crowding them together in harsh and unsanitary conditions where they are unable to engage in natural movement and behaviour, mutilating them without painkillers or anaesthesia in procedures such as dehorning, castration, tail-docking and tooth extraction.



- Similarly, agonising death is routinely inflicted on "pest" animals with poisons, gas, disease, traps and aerial shooting.
- The codes of practices for killing of kangaroos for both commercial and non-commercial reasons are obscenely inadequate, allowing: the killing of female kangaroos with dependent young; the bludgeoning to death and decapitation of joeys; and trauma to survivors of the slaughter of family groups.
- The regulatory framework in regards to animal exhibitions completely fails to safeguard animal interests.
- The current legislation for animals used in testing and research is nothing more than an administrative handbook affording no protection at all to the animals themselves.
- There is no regulatory framework at all to protect "pest" animals from cruelty.

Recommendations for changes across all laws which impact adversely on animals

APA makes the following recommendations for improving the legislative framework for protecting the wellbeing of animals.

- The gaping flaws in the current system (as discussed above) must be corrected, and all loopholes (eg guidelines, standards, codes of practice, regulations etc) which are currently used as defences or exemptions allowing or excusing cruelty to animals should be removed.
- Wild animals, both native and naturalised, including any deemed to be "pests", should be explicitly protected from cruelty, including cruel control measures, under the new framework.
- All and any other NSW legislation, such as the *Biodiversity Conservation Act 2016*, which currently issues permits to directly harm animals (eg for the practices of the commercial kangaroo industry or "management" slaughter of kangaroos) or indirectly harm animals (eg through permits to clear native animal habitat) should be amended to comply with prohibitions against causing harm under the new animal protection framework.
- Legislation relating to planning and development approval processes should be amended to comply with prohibitions on the wilful or unintended but reckless/careless harming of animals.
- Legislation and other instruments relating to the measures aiming to prevent bushfires and other natural disasters, and to accommodate refugees from such disasters, should be amended to specifically address the needs of wild, farm and companion animals.
- All animals subject to human activities must be protected by law from cruelty and suffering. The new framework would enshrine a statutory duty of care owed by individuals towards any animal in their control. This duty would include providing sufficient food, water, shelter, healthcare and exercise, and taking all reasonable steps to prevent pain and suffering while the animal is in their care. "Reasonable" in this context would be determined by a court of law, not by compliance with an industry-driven code of practice, standards or guidelines.



- The current treatment of animals as property needs to change. The property model is suited only to inanimate objects. Ideally animals should never, lawfully, be treated as property, but meanwhile, a new legal status for animals needs be introduced, one which recognises that animals who are currently considered property have an inherent interest in their own lives, and that those interests must be protected.
- An agency such as an Independent Office of Animal Protection (IOAP) should be established to advocate for animal interests, examine and review legislation, policy and practices that affect animal health, welfare, care and protection, including all such activities which impact on wild-living animals. An IOAP would be tasked with reporting and making recommendations to parliament on legislative and regulatory changes that affect animals.
- There should open provisions for recognition of standing, which allow animal advocacy organisations such as the Animal Defenders Office to act in matters of public interest in regards to the treatment of animals.
- Legislation should prohibit not only actions that adversely impact on the physical wellbeing of animals but also actions which impact on an animal's emotional or psychological wellbeing. Any action where such impacts cannot be prevented should be unlawful.

Problems with existing powers and tools of compliance

POCTA is currently virtually unenforceable for the following reasons:

- it relies on non-government, approved charitable organisations (ACOs), currently the RSPCA and Animal Welfare League, to investigate and enforce compliance;
- ACOs are inadequately resourced to undertake the policing and prosecution functions under POCTA relying substantially on charitable fund-raising to do the government's job for it;
- the outsourcing to ACOs of the NSW government responsibility for enforcing its own legislation also results in a lack of accountability - ACOs are exempt from providing information to the public under the Government Information (Public Access) Act 2009, and complaints against ACOs for their failures to do their outsourced job cannot be investigated by the NSW Ombudsman;
- ACOs are also not required to release to the public any information about their operations, including providing reasons for why so few investigations lead to criminal charges, nor to respond to complaints made against them, except via expensive civil litigation;
- the police and ACOs are separate organisations with their own data bases - ACOs are unlikely to be aware of police intelligence that may have benefitted their investigations, and vice versa; and
- Evidence given to the NSW Legislative Council's Select Committee Inquiry into Animal Cruelty Laws in New South Wales, which is currently examining the administration and enforcement of POCTA has noted these concerns.



Recommendations for enforcement and compliance

- Responsibility for enforcement of POCTA should return where it belongs, to the government and the government's appropriate enforcement agency, the NSW police.
- Given that the current police force has had zero training in animal welfare law and its enforcement, this transfer of responsibility will naturally involve a substantial investment in training. To ensure that sufficiently sensitive individuals are recruited and available to investigate animal cruelty complaints, some dedicated recruitment would also be necessary. The ACO's, and other animal protection/welfare/rights organisations, could be engaged to assist with recruitment and training of police officers.
- At the very least ACOs and NSW Police should be given the tools to share access to each other's databases.

Problems with POCTA's current system of penalties

- POCTA came into force in the 1970s. Since then, there has been a significant change in community understanding of the capacity for animals to experience pain, fear and suffering.
- Science accepts that animals are sentient and so there can be no doubt that animals suffer when they are physically abused, left without food, water or shelter or are denied necessary veterinary treatment (as if anyone with two brain cells to rub together wouldn't know this just by looking at them).
- Penalties need to be sufficient to (a) deter the individual from re-offending but also to (b) send a signal to society that this behaviour is unacceptable and breaches the norms of civilised society. At the moment penalties are so low they are incapable of doing either.

Here are a couple of examples of the gross inadequacy of current penalties.

- A proprietor directly caused the death of 1000 chickens (with a further 3000 sick or injured hens being seized and sent to slaughter), and was fined only \$16,000 in total, equaling a \$4 fine for each act of cruelty.
- A man who repeatedly filmed himself beating his dog including kicking it in the face was given a 2 year corrections order and banned from having a dog for only 2 years. Obviously, he should have been banned for life.

Recommendations for the system of penalties

- Maximum penalties under POCTA should be increased from two to fifteen years imprisonment, to properly recognise the seriousness of the offence.
- The penalty for a crime of serious or aggravated animal cruelty should be increased to a maximum of twenty years. This would recognise not just of the harm caused to the animal but also the risk



to society given the propensity of offenders to escalate their violence towards human victims, and the need to protect the human community from such escalation.

- Where an animal agricultural business is guilty of cruelty to animals in its care, under a repaired framework, where no exemptions or defences for agribusiness are available, exactly the same penalties, per individual animal harmed, should apply as for less profitable acts of cruelty.
- In the event that the current unjust and irresponsible defences and exemptions are not removed, penalties must be high enough to send Industry a strong message that cutting corners on animal welfare to maximise profits will not be tolerated. There are already so many exemptions for the lawful harming of animals that businesses should be severely penalised for engaging in outright criminal behaviour.

Thank you for considering APA's submission

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on behalf of the Animal Protectors Alliance

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