

**Cat Protection Society of NSW submission to the proposals of the
NSW Animal Welfare Reform – Discussion Paper
NSW Department of Primary Industries, July 2021**

Thank you for the opportunity to provide feedback on the discussion paper. We would be happy to discuss in further detail and look forward to further consultation on this major project to improve the lives of animals in NSW.

Replace POCTAA, ARA and EAPA with a single animal care and protection law

Any replacement law would have to capture and regulate the matters unique to research on animals and the exhibition of animals, it and would need to prioritise animal health, welfare and wellbeing. The “potential object” of “establish a framework for risk-based licensing” suggests a deliberate strategy to minimise oversight and regulation. There are finite resources for regulatory enforcement so application of those resources, by policy and practice, will be risk-based, and what constitutes risk will always be fluid. Unless it is the intention of the Act to minimise regulation it is difficult to understand why a policy approach to licensing would be enshrined and defined in the legislation.

Update the objects of the Act

The “potential objects” in the discussion paper are not focused on positive animal welfare and do not recognise animals as sentient beings.

They lack a broader contextual framework. We would recommend a One Welfare framework that acknowledges the intersections of human, animal and environmental health, safety, welfare and wellbeing. Alternatively references to One Health, or The World Organisation for Animal Health – OIE Global Animal Welfare Strategy could provide a context.

As noted in response to proposal 1, the “potential object” of “establish a framework for risk-based licensing” suggests a deliberate strategy to minimise oversight and regulation. There are finite resources for regulatory enforcement so application of those resources, by policy and practice, will be risk-based, and what constitutes risk will always be fluid. Unless it is the intention of the Act to minimise regulation it is difficult to understand why a policy approach to licensing would be enshrined and defined in the legislation.

The Northern Territory’s *Animal Protection Act 2018* offers clear, plain language objects, as follows -

The objects of this Act are:

- (a) to ensure that animals are treated humanely; and
- (b) to prevent cruelty to animals; and

- (c) to promote community awareness about responsibilities and legal obligations associated with the care and protection of animals; and
- (d) to regulate the activities of persons who use animals for scientific purposes

It is impossible to determine whether the proposed (potential?) objects in the Discussion Paper explain the new laws in the absence of detail about the new laws.

Update the definition of animal

The definition should include cephalopods and crustacea and include provisions for other species that are identified as sentient in any future research.

Minimum care requirement

Care requirements should be linked to animal welfare aims and outcomes. There ought to be an active duty of care on the person responsible for the animal/s to provide the animal/s with care so that the animal/s enjoy positive health, welfare and wellbeing – that they can have a good life. As noted in our first submission, we recommend the work of Professor J Mellor and others on the Five Domains to guide this.

Definition of cruelty

We support the inclusion of psychological suffering. This needs to operate at a level where there is a presumption of suffering if the animal's social and environmental needs are not being met; if the bar for determining psychological suffering is set too high its inclusion in the definition will not add a great deal. We support the removal of 'unjustifiable'. As previously submitted, we believe there ought to be a clause that captures 'other' acts or omissions that are cruel. For example, 'any other act or omission that compromises the animal's health, welfare or wellbeing.'

New offences

Animal fighting offences should include betting (whether or not present at the fight) and attending (as well as being present where preparations are being made) – we assume any video/filming of such fights would be captured by the 'new offence – production or distribution of animal cruelty material'. The paper notes that the new offence will be drafted so as not to create unintended consequences, such as prohibiting recordings for the purpose of reporting a suspected offence; and we believe consideration must also be given to disclosure in the public interest. The new offence 'dogs in vehicles' is, we assume, addressing a specific, known problem. However, it is not clear why only one species of animal would be covered by this offence; perhaps elsewhere in the Act other species will be afforded protection while being transported. Being left shut inside a hot car could certainly be fatal and at the least, distressing for companion animals. The poison 1080 should be included as a prohibited item.

Clarify restricted procedures

We support the reference to AWAC and the regular review to ensure consideration of advances in scientific understanding and community expectations.

Providing certainty for lawful activities

We are not comfortable with the broad array of defences and while we appreciate the complexities of laws that intersect, the proposed defences do not appear to be “only very narrow”. If the Crimes Act includes ‘the most serious animal cruelty offences’ (p8) then why would it offer any defences?

Modern penalties framework

We would still like to see the maximum penalties increased further but are glad to see some strengthening. Given a corporation cannot be given a prison sentence, only the financial penalty applies, and these do not appear to match the severity of maximum penalties that may be imposed on individuals (for example, category 1, maximum penalty for an individual is two years in prison and/or \$110,000 penalty, versus a maximum penalty of \$550,000 for a corporation).

Authorised officers

We support providing authorised officers with new powers to administer pain relief or sedation to animals, and to be provided with enhanced powers of entry.

Enforcement arrangements

We support the establishment of an independent office of animal welfare that would provide coordinated NSW-wide oversight of the government and non-government agencies tasked with implementing animal welfare legislation and that would provide publicly available reports, including on compliance activities and results. In addition, such an office could serve the functions proposed to be given to the NSW Ombudsman, and the information sharing referred to in proposal 14.

Proposal 15: Timeframes consistent with the Companion Animals Act are appropriate and supported.

Proposal 16: We do not see why the commencement of private prosecutions should be precluded by this Act.

Proposal 18: We support these changes

Proposal 19: As stated earlier: there are finite resources for regulatory enforcement so application of those resources, by policy and practice, will be risk-based, and what constitutes risk will always be fluid. Unless it is the intention of the Act to minimise regulation of animals used in research and exhibited animals, it is difficult to understand why a policy approach to licensing would be enshrined and defined in the legislation. If AWAC and/or revived ARRP and EAAC were to be overseeing/advising on licensing, then further consideration needs to be given to transparency and reporting, such as the forementioned independent office of animal welfare. If the variability of licences results in different enforceable standards of animal welfare this is deeply concerning.

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