**NSW Legislative Council Standing Committee on State Development**
**Inquiry into animal welfare policy in New South Wales**

## Submission from the Cat Protection Society of NSW on the draft Animal Welfare Bill 2022

Cat Protection appreciates the opportunity to comment on the draft Animal Welfare Bill 2022. We note that while the consultation period was extended, it is nonetheless a difficult deadline given the enormous pressures placed on the veterinary and animal care sector over the past two years due to the pandemic, and the significant impact on resources arising from the Omicron outbreak.

### General comments

Absent seeing draft regulations, standards and guidelines, it is impossible to assess how the proposed Act would be operationalised. The application of the current Prevention of Cruelty to Animals Act is realised in large part through regulations, and the standards and guidelines made under them. The draft Bill notes that the objects would be achieved by 'developing standards for care of animals …' (s4 (a) (ii)). It is noted that the Committee's Terms of Reference provide that the Committee will inquire into and report on draft regulations associated with the proposed Bill "upon their publication" but it is not clear when or whether draft regulations, and draft standards and guidelines, will be released for public consultation.

Consultation is important and takes time and should be factored into the commencement expectations (which have not been stated) for this Bill/Act and any regulations. Without regulations that set clear standards for the care of animals in different circumstances, for example, pet shops, pounds, shelters, laboratories, breeders, boarding facilities and so on, the Bill/Act merely requires only the most basic level of care to avoid harm, rather than requiring care that promotes animals' health, welfare, and wellbeing.

### Specific sections

**Section 3**, Objects of Act – This states that "The primary objects of this Act are – (a) to promote the welfare of animals, and (b) to prevent cruelty to animals." **Section 4** goes on to explain "The primary objects of the Act are to be achieved by …" There are no 'secondary' objects listed. The use of 'primary' as a qualifier is thus curious. Is there an intention for 'secondary' objects?

**Sections 7 and 8**, meanings of 'act of cruelty' and 'act of aggravated cruelty' might benefit from notes to illustrate the difference. It is noted that **s26** provides a court may find a person guilty of an offence of cruelty even if it is not satisfied the person is guilty of aggravated cruelty. This is an important provision and must be retained, however, clarity on the distinction/threshold for aggravation would be helpful.

**Section 7(2)(c)** refers to 'taking part in an activity' – there are many references to what might be considered 'taking part' in **s32** on animal fighting, for example, being present, promoting, organising. Does 'taking part' have a meaning that includes for

example, livestreaming, or betting? Is there language/terminology in other legislation that might be helpful in ensuring that 'taking part' is a term that is not too limited?

**Section 13** deals with minimum care requirements, including at (2)(a) access to appropriate food and drink. Section 16, while not limiting section 13, does at subsection (1) suggest that appropriate drink is as prescribed in any regulations, or 24 hours. Animals should have access to clean water at all times unless it is inappropriate, for example, pre-anaesthesia or during short transportation; 24 hours is too long for an animal to be without water.

**Section 28** might benefit from some explanatory notes; it appears, for example, to offer protections to pounds and shelters or even good Samaritans who might accept a surrendered injured animal, while (appropriately) banning the sale of an injured or diseased animal.

**Section 29** is laudable but in practice how many drivers would even know who is authorised under the legislation as an authorised officer? Without recompense, an unfair financial burden is placed on veterinarians if they are compelled to accept any injured animal but a system that better encourages drivers to respond to injured or killed domestic animals is important to animal and human welfare. Pet owners whose pets 'disappear' suffer terrible grief – knowing what happened to their pet or being able to decide about treatment or euthanasia is important to a pet owner's mental wellbeing. While the 'reasonable' requirements in the draft Bill might be satisfactory, this is an important area which warrants further policy consideration.

**Section 30** relates to the unlawful poisoning of domestic animals but by what means/laws are other animals protected? We reiterate our call for the poison 1080 to be banned.

**Section 32**, prohibition on animal fighting, and **section 33**, prohibition on live baiting, contain some similar clauses with slightly different language. For example, 32 (1)(e) "organise, advertise or otherwise prepare for or admit a person to, an animal fight, or (f) be present at an animal fight or preparations for an animal fight." In s33, a person must not (1)(b) "advertise the intention to conduct an activity … or (c) promote, organise or be present at an activity …" As referred to in our comments on s7, 'taking part' ought to have a broad meaning and include 'virtual' participation via livestream or video file (which appears to be covered by **s39**) and participation by betting.

The inclusion of **subsection 5 of s33** is understood from a policy point of view but seems inappropriate to include in that section. A note that clarifies or a separate section clarifying the distinction between 'live baiting' (which is an act of cruelty) and mustering/sheep dog trials might be preferable.

**Division 4**, Transport of dogs, spells out in detail at **s37** the requirements for transporting dogs; Division 1, Minimum care requirements, notes at **s13 (2)(g)** that an animal 'is handled and transported in an appropriate way'. While we support the requirements and note the consultation outcomes response that these details are

included in the draft legislation due to the frequency and danger of dogs being left in cars, it is at odds with the other responses that the draft Bill sets 'high-level legal principles and framework' and that 'issues specific to particular industries or forms of animal use … are primarily addressed at the Regulation and Standards stage' (FAQs – Draft Animal Welfare Bill 2022, DPI). As noted in our general comments, in the absence of seeing draft regulations and any standards made under them, it is not possible to properly assess the 'animal welfare reforms' as the Bill/Act (generally) only sets the high-level framework which are minimum, basic requirements.

With respect to **s39** and animal cruelty material, we seek assurances for whistleblower protection and indeed protection for ordinary citizens who might record an offence for the purposes of reporting it. As noted in our submission to the discussion paper, we don't see why the commencement of private prosecutions should be precluded **(s115)**. The response that limiting prosecutions ensures a 'consistent' approach is true but not necessarily a justification. Given the hurdles and expense involved, private prosecutions would likely be exceptionally rare, but given the Act's enforcement depends on charitable funding to a large degree, the capacity for prosecution is already limited by funding, and precluding private prosecutions further limits this law's enforcement.

**Section 42**, regarding licensed activities notes at 42(2) that subsection (1) does not apply to the extent that the regulations exempt the person from the requirement to hold a licence. We assume such regulations might deal with matters such as epidemiology studies for example, where ethics committee approval has been received but the study participants are not captive research animals. We can anticipate situations where the researcher might not require a licence. However, the absence of draft regulations specifying exemptions highlights (again) the difficulty of assessing this Bill in the absence of draft regulations and standards.

**Division 5**, **s77(2)** purely a language issue but it seems "only" is redundant. It would be easier to read without 'only' – there seems to be no reason for a qualifier (ie, retention of the thing is not justified if it is not necessary to retain the thing as evidence). Also just a language issue is the use of 1 versus one; at **s117**, in s117(1) "more than 1 animal" is used but in s117(2) "more than one animal".

Further explanation is sought on the exemptions referred to in **s119**, which seem to suggest, among other things, any person can conduct any slaughter of any animal for the purposes of producing food for human consumption or in accordance with religious precepts, among other things. These appear to be wide-ranging exemptions (and even animal welfare aside, potentially dangerous to people) grouped together as a broad list ranging from religious rites to feeding predator animals to licensed animal research, without complete reference to any other legislation that might apply (food safety? public health?). While the exemptions don't preclude the requirement to comply with any regulated standards (s119(a)) we don't know what any regulations or the standards made under them (if any) might look like.

**Section 130 (and s152)** raises the complicated issue of how to enforce orders of disqualification and surrender of animals; s130(6) certainly makes it an offence for the person against whom the order is made to fail to comply with that order but knowing whether they have complied/comply might be difficult to ensure. We appreciate the legal and privacy issues involved and can offer no easy solution to this problem, though funding to resource compliance monitoring of people at high risk of offending or under orders (such as animal hoarders, puppy farmers) is necessary.

**Section 142** at subsection (1)(d) provides a function of the Animal Research Review Panel being "to ask the secretary to carry out inspections of premises at which animal research is carried out under this Act". Similarly, under **s151**, "The Exhibited Animals Advisory Committee may, at any time, ask the Secretary to arrange for an authorised officer to inspect premises to which a licence relates." However, neither section gives any explanation as to whether this must trigger any response – does the Secretary need to act, or give reasons as to why they will not act to the Panel/ Committee? If an inspection is carried out following a request from the Panel/Committee, is the Panel/Committee entitled to learn of the outcome? Are any of these matters publicly reported? The mere fact that one 'may' ask someone to do something is not a duty and if there is no need for anyone to respond to that request then it is not a power. Without any reference to a process triggered by such a request the clauses appear to hold no meaning.

**Section 153(4)(e)** – Cat Protection is proud to be a rehoming organisation. Our structure changed from incorporated association to company in line with advice from Fair Trading, so we are now The Cat Protection Society of NSW Limited (not Inc). For reference, please see NSW Government Gazette No 57 of 7 June 2019.

Thank you for the opportunity to comment. We acknowledge there's been a great deal of work undertaken in the animal welfare reform process, and we appreciate the rounds of consultation, noting it's been difficult for those of us working in animal care to find the time to participate fully. Working with people and animals, our sector has faced additional challenges from the Covid-19 pandemic. In that context, we would like to note here our sincere appreciation of the NSW Government's recognition of the importance of continued operations of veterinary and animal care services throughout the pandemic. It has benefited animals and the people who love them.

We look forward to further opportunities for input into the development of the reforms, and particularly to comment on draft regulations, standards, and guidelines, as well as any further drafts of the Bill.

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