

1st August 2020

Danielle Cleal
Principal Policy Officer - Strategy and Policy
NSW Department of Primary Industries

Dear Danielle

RE: Additional feedback to POCTAA Review Proposals.

Thank you for inviting Animal Care Australia (ACA) to consult on the proposed changes to POCTAA, we are pleased to see that many of our recommendations have been listened to and potentially included.

ACA has the following recommendations:

Recommendation 1

The Act should include sections specifying the purpose and general nature of Standards and Guideline documents and that specific Standard & Guidelines are to named in the regulations.

Recommendation 2

The new Act must include a section detailing the importance of Education to achieving the aim and objects of the Act, including a commitment from government to fund education activities. Consider s.6 of the Education Act 1990 for guidance -

http://classic.austlii.edu.au/au/legis/nsw/consol_act/ea1990104/s6.html

Recommendation 3

The word sentence should NOT appear in the Act or subordinate regulations.

Recommendation 4

In terms of enforcement, identifying an animal's psychological state is too subjective. Action on the part of the POI that lead to psychological cruelty should be specified in the Standards and Guidelines (or in the Act or Regs if these actions can be shown to apply to all animals).

Further to the above recommendations, we make the following explanations:

1) Regulations & Standards – including the Minimum standards.

We understand that the creation of ‘sub-consultative committees’ as a part of AWAC will allow ACA to contribute to species specific matters as they arise, however this does not address the most fundamental aspect of our submission – that is the ‘species experts’ should be directly involved in the re-drafting/creation of the Standards & Guidelines. Our concern is that there is no mention of this process included anywhere in your proposal. In addition, ACA must have inclusion in the drafting of the Minimum Standards that are to be included in the Act.

The Act is currently written in a manner that is completely non-comprehensible by most animal keepers and the ambiguity in how the current Act is structured has led to many individuals finding

themselves on the wrong side of the enforcement agencies through no actual fault of their own – other than being unable or unaware of the expected standards for keeping their animals.

2) Education – zero inclusion.

The above point brings us to the absence of education and ensuring the public, enforcement agencies and the judicial system will all be educated on the changes and how those changes will affect each of us. ACA's primary focus is on education over prosecution. The better educated all parties are, the lesser the chance of prosecutorial injustice occurring.

- I. **The public:** If the public are aware of their requirements, then theoretically there will be fewer keepers requiring the enforcement agencies intervention.
- II. **The Inspectorate:** If the Inspectorate is better educated and adequately trained then instances of potential cruelty will be immediately recognised, with those requiring assistance & education being separated from those who are true cases of cruelty. The basis of evidence for cruelty will be easier to prove and this will result in lesser appearances within the judicial system for minor incidents that could easily have been resolved outside of the Courts.
- III. **Judicial System:** If those within the judicial system are sufficiently educated in POCTAA, and it's intended outcomes, the enforcement agencies will be able to ensure cases of actual cruelty and the perpetrators are made feel the full force of the penalties that can be applied. Currently, many magistrates and judges are ill-equipped in the understanding of POCTAA which in many circumstances has resulted in 'slap on the wrist' fines, and the general public perception that no one is held accountable for animal cruelty.

We also note the absence of a 'warning system' or instruction on the ability for Inspectorate to use discretion when dealing with reported cases of animal cruelty. This is vital in raising awareness for those, who through no fault of their own, may be experiencing some difficulty in maintaining the welfare of their animals. In this current environment of hardship brought about by droughts, flooding, bushfires & a global pandemic this is crucial – and yet there is no mention within your proposals – while an extremely strong emphasis on prosecuting appears to be headlining!

3) Sentience

ACA acknowledges sentience is proven and in no way disagrees with or objects to the basis of its definition, that being: 'Animal sentience is the capacity of an animal to experience different feelings such as suffering or pleasure'. The concern we have is its inclusion within the Act or the Standards & Guidelines. The Animal Rights Extremist (ARE) movement has successfully hijacked the use of 'sentience' to enforce their own agenda. This agenda has resulted in the ARE's anthropomorphising all animals and their keeping. This anthropomorphism will open a door that may not be so easily closed. In other States this has already occurred. An example of sentience being incorrectly applied to animal welfare legislation can be seen in the Australian Capital Territory where there is a requirement that a dog must be exercised for at least an hour every 24 hours. Theoretically this seems logical – however the insistence that the dog is walked or exercised on the 25th hour is impractical. NSW must be wary of having 'sentience' influence our legislation.

4) Psychological Cruelty

Following a phone conversation from Danielle, ACA understands there is already a precedence of psychological cruelty having been utilised during previous animal cruelty hearings however, the inclusion – no matter how well defined – of this in the Act is in our opinion a ‘dangerous slippery slope’ into the animal rights agenda.

ACA understands scientists have developed “grimace scales,” for some animals. These were initially used for children, and have now been developed for mice, rabbits, rats, and horses. Each animal displays certain physical changes that are indicators of pain. For instance, a hurt rabbit will stiffen their whiskers, narrow their eyes, and pin back their ears.

However these are subjective. The sample of the rabbit above would equally apply when a rabbit is confronted by a stranger (not its known handler) attempting to pick it up. Pain grimace scales have their place in the species they are available for, by persons with behavioural training and experience in the specific species, and leaving other species open to interpretation. Throughout the NSW Inquiry into Animal Cruelty Laws, the enforcement agencies openly acknowledged their Inspectorate do not have the necessary skills or training to accurately assess every species of animal they encounter. They are often reliant on veterinary or other ‘experts’ in the appropriate species’ field. Veterinary Behaviourists will be relied upon to assess an animal and whether or not it has been psychologically mistreated. It will be crucial for this specialist to adequately prove (beyond a reasonable doubt) how, when and to what extent the animal was mistreated.

This reliance on scientific experts will carry a huge financial burden for the enforcement agencies and is fraught with misrepresentation, misuse of evidence and the most obvious result of misinterpretation by a Magistrate or Judge. ACA strongly opposes the inclusion of psychological cruelty UNTIL science can in fact clearly quantify the definition & how it’s measured.

ACA is NOT stating animals are not psychologically mistreated, what we would prefer is for the legislation to clearly ensure the Inspectorate proves the circumstances leading to the psychological state of an animal rather than trying to identify and prove the animal is psychologically affected. By proving an animal’s welfare has been affected by an owner failing to meet the minimum standards and/or the required standards within the Standards & Guidelines will provide a far more effective, understandable cause of cruelty and therefore a more easily prosecutable offence, removing any ambiguity or reasonable doubt.

Kind regards,



Michael Donnelly
President, Animal Care Australia.
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