

19th June 2020

NSW Animal Welfare Reform – Issues Paper

Animal Care Australia strongly recommends the focus of this review should be on improving and ensuring the welfare of animals rather than its current focus on cruelty to animals.

We recommend the new Act be named the “Animal Welfare Act (NSW)”.

Priority should focus on improving animal welfare outcomes throughout NSW, for all species, in all situations governed by the new Act.

The new Act should specifically exclude Animal Rights, as Animal Rights is irrelevant in the context of animal welfare. ACA wishes to highlight removal of the word “protection” from the name of the new Act. This is intentional and is largely due to the recent attempts by Animal Rights Extremist groups to re-focus their promotional activities as “animal protection”. ACA sees this as a manipulative ploy to garner support from a naïve society. There is no place in a new Animal Welfare Act for philosophical belief systems that ultimately aim to prevent the keeping of animals in captivity.

ACA would like see the inclusion of the human value of animal keeping to the mental, physical and social health of our community and the raising of animal welfare outcomes across that community through education as major priorities, followed by compliance and then enforcement, within the context of the Objects of the Act.

Throughout this submission ACA’s focus is on the following priorities:

1. to promote education over regulation
2. to promote positive welfare of animals by prioritizing the 5 freedoms within the Act and all associated Standards & Guidelines
3. Animal welfare standards developed for specific species (or species groupings) should be the baseline upon which compliance is measured. Standards must be specific, understandable and known to those they seek to regulate.
4. to refocus the structure of penalties & offences in a manner that allows clear differentiation between offences due to non-education or social hardship and acts of deliberate neglect.
5. to focus training of the existing Inspectorate as educators and not enforcers
6. to promote stronger penalties & offences for acts of deliberate or aggravated cruelty

Looking forward to further consultation and contribution.

Kind regards,



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Stakeholder Submission

New South Wales Animal Welfare Reform – Issues Paper

**Prepared by Animal Care Australia Inc:
19th June 2020**



New South Wales Animal Welfare Reform – Issues Paper

Below are our responses to the individual questions appearing throughout the Reforms Paper along with additional explanation.

Animal Care Australia strongly recommends the focus of this review should be on improving and ensuring the welfare of animals rather than its current focus on cruelty to animals. This Act should be renamed the NSW Animal Welfare Act.

Objects of the Act

2. Is there anything additional to the current objects that should be included in the objects of new animal welfare laws?

ACA would like see the inclusion of the human value of animal keeping to the mental, physical and social health of our community and the raising of animal welfare outcomes across that community through education as a priority followed by compliance and then enforcement, within the context of the Objects of the Act.

To correctly focus POCTAA and to bring the Act & those who enforce the Act on to the same page there are some recommendations ACA would like to have considered.

- The Objects of the Act:
 - Raising animal welfare outcomes through education, encouragement, improvement and compliance
 - Specifically distinguish between animal welfare and animal rights, and exclude animal rights from the Act.
- The Objects of the Act require the person in charge to:
 - Provide a suitable environment.
 - Provide a suitable diet.
 - Allow the animal to exhibit normal behaviour patterns.
 - Allow for the need of the animal to be housed with, or apart from, other animals.
 - Ensure the animal is protected from pain, suffering, injury and disease.

3. Do you have any comments on the interactions between the *Prevention of Cruelty to Animals Act 1979*, *Animal Research Act 1985*, and *Exhibited Animals Protection Act 1986*?

POCTAA should always be the overarching legislative document, with more in depth information in the other Acts in regards to specific areas. For scientific animals and due to the constant technical changes in the industry, it may be necessary to have a stand-alone Act rather than continually needing to update POCTAA. POCTAA should refer to the minimum standards within the Standards & Guidelines for the

keeping of each type of animal. All Acts refer to these same Standards & Guidelines documents

If all three Acts are to be combined then the resulting 'combined' POCTAA needs to be clear, precise and species specific as possible. The current standards and the manner in which those are described is confusing, lacking in detail and too ambiguous for responsible and effective adherence.

The Inspectorate currently rely on the ambiguity of clauses to 'beef-up' their grievances against individuals who more often than not have simply interpreted said clauses differently. Ambiguity must be avoided for the benefit of all stakeholders and best raise animal welfare generally.

ACA supports and recommends the objectives, structure and outcomes of a NSW Act/s be consistent with those of other States, particularly where overlap of borders restricts and confuses those whose work crosses State borders.

ACA fully supports a national consistency, but does not support a federal body or department taking control animal welfare.

Definitions

5. Should other species be included in the definition of 'animal' and therefore be covered by the new animal welfare laws (e.g. cephalopods, crustaceans in all situations, other species)?

ACA supports the inclusion of other species within the definition only where those species already exist within the current Acts. Therefore the inclusion of cephalopods and crustaceans would be necessary to bring consistency to all Acts or to a combined Act. Crustaceans are kept as pets and accordingly their care should be included, albeit with their own Standards & Guidelines, commensurate with their specific welfare needs.

We strongly discourage the inclusion of all animal species as this will only complicate the Standards & Guidelines and make the Act/s too cumbersome.

Should the need arise for additional species to be added this should be done via a proven scientific need reviewed by key/expert stakeholders, including those who represent keeper breeders of the species.

7. Should a consistent definition of 'animal' be used across the *Prevention of Cruelty to Animals Act 1979*, *Animal Research Act 1985*, and *Exhibited Animals Protection Act 1986*?

ACA's response to this question relies heavily on whether or not all three Acts are combined into one Act or remain as separate Acts.

The presumption of their continued separation would be due to the differences of needs within the Acts – therefore as has been pointed out - the current need to include ‘certain’ species for the purpose of research only provides the scope to not include them in the broader definition.

ACA encourages consistency and accordingly sees the benefit of all current ‘included’ species being included in a broader definition of ‘animal’. This is important should all Acts be combined into one.

The Review document highlights that broadening of the definition would result in a larger total number of individual animals being covered by the animal welfare legislation, which could result in an increase in enforcement workload, and inspectors needing to undergo more training.

It is ACA’s contention that additional training for the Inspectorate is not an unwelcomed outcome of this Review. The notion that an Inspector has complete knowledge of all animal species within the current definition is incorrect and this is acknowledged by the RSPCA NSW CEO. Herein lays the issue with the current training of Inspectors. The persona of Inspectors is the portrayal of expertise in ‘all animal welfare matters’ and this is simply not the truth.

ACA envisages an Inspectorate different than is currently case, please refer to our response for the powers of the Inspectorate for further elaboration.

A larger workload, further training, and subsequently further financial investment to meet those requirements should NEVER be the reason for not pursuing greater animal welfare outcomes.

Cruelty

9. Do you have any comments on how 'cruelty' is currently defined within the *Prevention of Cruelty to Animals Act 1979*?

ACA advocates for education over regulation, with the aim to raise animal welfare standards across NSW. Historically resources have often been spent on enforcement which given funding limitations have been an inefficient use of time, and money. Better outcomes would be achieved if resources are directed to education.

The ambiguity of the definition of cruelty and the additional lists of prohibited acts within the Act, particularly the inclusion of “*Any act or omission as a consequence of which the animal is unreasonably, unnecessarily or unjustifiably*” has resulted in an inadvertent level of non-compliance and therefore requires a more work-able definition which allows for a stronger focus on educating and encouraging the public on how to look after their animals, rather than a perception of ‘assumed cruelty’. As stated it is often left to the judgement of an Inspector and/or a Magistrate to deem what is unreasonable, unnecessary or unjustifiable, which more often than not does not reflect the same understanding of the animal owner or societal norms.

When considering a breach or act of cruelty the consideration should commence with the deprivation of any of the 5 freedoms. That is the deprivation of:

- the freedom to move within an enclosure/enclosed space.
- food and water.
- exhibiting normal behavioural patterns.
- the need of the animal to be housed with, or apart from, other animals (species specific)
- of an environment free from pain, suffering, injury and disease.

The Act should include 3 levels of distinction when considering an act of cruelty:

1. **Neglect** – accidental or unintended neglect for the welfare of an animal. This is a non-offence and would be responded to with assistance, encouragement to improve and education.
2. **Deliberate** – deliberate or intended failure to provide for the welfare of an animal, as specified in the Standards. Utilising fines & penalties, including within the Crimes Act to prosecute.
3. **Aggravated** – willful intent that causes harm resulting in death, deformity or serious disablement of an animal. Utilising existing clauses within the Crimes Act to prosecute along with orders prohibiting future animal ownership.

ACA does not take issue with the list of Prohibited Acts (Box 7) however a closer review of these acts is required. It is noted where these acts apply across multiple species clearer definitions are necessary. Those restricted to single species would be better included within the species specific Standards & Guidelines.

ACA would prefer tethering etc is addressed in species specific Standards & Guidelines, however, if this is not to occur then ACA is seeking a change in the description/definition of tethering. ACA would like to see tethering defined as:

- Tethering animals in an unreasonable manner is prohibited if
 - the tethering is causing pain, discomfort and/or injury.
 - the animal is tethered in a way that deprives it of access to food, water, shelter from the elements and safety.
 - the tethered animal is left vulnerable to predators
 - the tethered animal is unable to stand, lie down, move and stretch comfortably.
 - the tethered animal is left in an unmaintained and unsanitary state that poses risk to its comfort and health.

ACA does not have issue or objection to the list of procedures that may only be performed by veterinarians (Box 8) and we support aligning these with the *Veterinary Practice Act 2003*

10. Would you support introducing a minimum standard of care into the new animal welfare laws?

ACA supports the inclusion of a minimum standard of care within the Standard & Guidelines component of each of the welfare acts (or combined Welfare Act)

We do not support a minimum standard having inclusion in the welfare law. The 'law' should make reference to the Standard & Guidelines. The Standards & Guidelines should specify the minimum standards in a clear and non-ambiguous format. In accordance with the emphasis on education, these standards should be promoted and circulated widely, to ensure they are known and understood within the broader community.

11. Do you have any comments on using existing 'fail to provide' provisions under the *Prevention of Cruelty to Animals Act 1979* as a basis for a minimum standard of care?

ACA does not support the concept of 'fail to provide' – emphasis should be focused on what is required to be provided rather than one's failure to provide – as this sets a negative tone which is less likely to encourage the education of an animal owner.

The establishment of a 'duty of care' which in essence sets a benchmark for the minimum standard of care is a preferred approach. ACA believes setting a 'duty of care' that would be sufficient to cover all animals would only lead to more ambiguity. The Act itself should refer only to the 5 freedoms, while the species specific 'duty of care' is better placed within the Standards & Guidelines with mandatory Standards representing the minimum standards that would be enforceable.

ACA unequivocally agrees developing and maintaining these minimum standards will require extensive ongoing consultation with stakeholders, to ensure that the standards do not result in unintended consequences and they evolve over time.

12. Noting the need for scientifically-based indicators, do you support psychological suffering being explicitly included in the definition of 'pain'?

ACA does not support 'psychological suffering' being included in the definition of pain.

Pain is specific to each individual and therefore very difficult to measure particularly within animals. Determining the cause and extent of psychological pain is unclear. Scientific methods have been proven to provide inaccurate results. Therefore, determining if an offence has been committed is not currently possible.

Guidelines within the Standards & Guideline documents may be the appropriate strategy for addressing methods to reduce psychological pain. If minimum standards are being encouraged and complied with, this will go a long way in preventing pain.

When it comes to matters of animal welfare law, the scientific acknowledgement of 'sentience' within animals should not adopt an anthropomorphic interpretation. Anthropomorphism is a direct animal rights determination which has no place in animal welfare legislation. ACA is opposed to use of the 'sentience' because of such 'animal rights' connotations.

14. Do you have any comments on the definition of 'person in charge', particularly with regard to circumstances where multiple people may have responsibility for, or control over, an animal?

ACA takes no issue with the description of the person in charge of an animal:

- the owner of the animal
- a person who has the animal in the person's possession or custody, or where the animal is under the person's care, control or supervision
- where a person caring, controlling or supervising an animal is under the direction of another person, that other person
- in the case of stock animals in saleyards, the owner or lessee of the sale yard.

At the point of determining a potential act of neglect or cruelty the individual circumstance on a case by case basis is required.

For example:

- Where only a sole owner is found to exist then sole responsibility falls on that person.
- In the circumstances of a trained/experienced staff member who is representing an owner the immediate responsibility falls with the staff member, however, the ultimate responsibility still lays with the business/animal owner. Under Work Safe Laws the business owner is ultimately responsible for the well-being of their staff and this should apply to the animals within their care.
- In circumstances where a staff member is being trained and therefore under the control of a trainer the responsibility falls to the trainer and employer of that trainer.

In general it is the legal responsibility of the owner to ensure their animals are receiving the best care possible, even when not on their own property.

Determining fault requires investigation on a case by case basis and ACA does not see any 'simplified' manner to address the concerns raised within this Review.

15. Are there any activities currently considered as research or teaching activities under the *Animal Research Act 1985* that should be excluded? If so, why?

Threatened species captive breeding programs should not require ethics committee approvals under the ARA. Currently ethics committee approval is a significant red tape hurdle for private keepers and breeders. Private keepers/breeders possess the expertise to breed animals. The irony is the current focus is on zoos and other facilities that engage in threatened species captive breeding, and yet these facilities are utilising husbandry honed by private breeders. ARA requirements are preventing these same experts from contributing directly.

Within the Education sector, the compliance requirements to keep animals is resulting in a steady reduction of schools participating, resulting in our children no longer being exposed to responsible animal husbandry principles as part of their education. More critically the flow-on effect of this is lesser numbers of children are now provided the opportunity to build empathy for animals.

Animal welfare legislation should encourage and promote the keeping of animals, including in schools and education facilities, especially as this is critical to improved animal welfare outcomes for NSW.

Question Title

17. Are there any activities currently included in the definition of 'exhibit' in the *Exhibited Animals Protection Act 1986* that should be excluded?

ACA notes Schedule 1[1] of the Bill associated with the Exotic Animals & Cetaceans in Captivity Inquiry inserted a new definition of "circus" into section 5(1) of the Act. "Circus" is defined to mean "any premises occupied by temporary or moveable structures used for the purposes of a circus, fair, fun-fair, amusement park or similar place of public entertainment."

This new/expanded definition can and will encompass most animal exhibitions - both public and private. Mobile petting zoos, mobile educators, agricultural shows, local fairs, and even animal shows and expos all have the potential to be affected.

ACA opposes the use of this new definition.

It is critical to ensure that all hobbyist activities continue to be exempt from the EAPA. This includes complete exemptions for all competitions and displays at

agricultural shows and for all events run by an association dedicated to the keeping of that type of animal. Further review and clarification on this definition is required.

18. Are there any additional activities that should be included in the definition of 'exhibit' under the *Exhibited Animals Protection Act 1986* ?

ACA does not believe there are further additions required within the definition of 'exhibit' under the EAPA. ACA's focus is on removing activities from the definition as per our response to the previous question.

19. Are there any other terms or concepts used in the existing animal welfare legislative framework that require new or amended definitions?

Referring to our response to the Prohibited Acts (Box 7) ACA recommends a closer review of these acts is required with the goal of including the reviewed descriptions to be included in the Standards & Guidelines for relevant species.

20. Do you have any other feedback, ideas or suggestions you would like to provide regarding definitions of terms used within the existing animal welfare laws?

ACA acknowledges definitions/terms within all Acts are written in 'legal terms', however many animal owners find it extremely confusing and ambiguous to fully comprehend what is meant by the definitions. In the spirit of better educating the public it would be of great benefit if 'Information Sheets' or further descriptive definitions could be provided that are structured in 'laypersons terms'. This would go a long way in assisting to close the gap between animal owner and welfare enforcers.

Clear industry specific definitions should be included in each of the Standards & Guideline documents.

Compliance & Enforcement

22. Do you support aligning compliance powers and enforcement tools across the *Prevention of Cruelty to Animals Act 1979*, *Animal Research Act 1985*, and *Exhibited Animals Protection Act 1986*?

ACA supports the alignment of compliance powers but only where the following recommendations are adopted:

- Compliance organisations such as RSPCA & AWL and their Inspectorate must have more public transparency with clearer, publicly accessible reporting.
- The public and/or permit holders must have an improved 'independent' mode of appeal against decisions made by the enforcement agency.

- The Inspectorate's compliance powers must be assigned based on species expertise.
- The appointment of Inspectors should include qualifications in veterinary studies – as per those required to inspect Scientific Research compliance – thereby creating consistency across the alignment of compliance powers.
- Accreditations for the Inspectorate must be introduced. Currently it is acknowledged that the majority of Inspectors have minimal multiple species animal welfare expertise. Different animal groups/species require vastly different expertise, skills and training. An accreditation system whereby individual inspectors are accredited to perform specific compliance duties which are aligned with specific Standards and Guidelines documents would be appropriate. The Inspectorate would become specialists in species, for example an inspector may be avian, reptile, and amphibian accredited, while another could be solely canine, feline or equine accredited.
- The animal's regular veterinary practitioner who is familiar with the history of the animal must be consulted when any case of cruelty is being investigated, including where cruelty is not clearly identifiable. The diagnosis of this vet must be given equal weight when enforcement options are being considered. This assessment should where possible occur on site and only under veterinary instruction should animals be seized for further testing/examination to be carried out.

ACA strongly believes a review of just the animal welfare laws is not sufficient to alleviate the matters surrounding non-compliance. Clearer welfare laws, utilising peer-driven Standards & Guidelines is just one step in the process. Education is also a vital step in addition to addressing the flaws within the enforcement/compliance component.

24. Should Penalty Infringement Notices be made available under the *Animal Research Act 1985*?

Animal Care Australia is not versed on the exact procedures in ensuring compliance within the animal research sector. The Acts should continue the use of Animal Ethics Committees with government compliance agencies ensuring they comply.

25. Do you have any comments on providing authorised inspectors with powers and tools (e.g. being able to check compliance with an existing direction) to provide proactive support to help prevent adverse animal welfare outcomes?

ACA recommends a review of the powers for enforcement – on the basis of law and the protection of the presumption of innocence until proven guilty. Many accused are pleading guilty or paying fines to avoid the kenneling, stabling, or legal costs.

Animals are being seized on the presumption of guilt – this is not in the animal's best interest.

ACA recommends a stronger focus on welfare over prosecution and accordingly we fully support the notion of inspectors being more pro-active in the prevention of adverse animal welfare outcomes, which would include being able to check compliance with existing directions. This is a vital aspect of the duty of care to the animals and is the due diligence expected of an inspector, and of the owner as well.

ACA does not find any validity for the seizure of animals that do not appear to be abused or in imminent danger. There is no justification for animals to be taken to already over-crowded and under-staffed shelters for testing. ACA strongly recommends the removal of animals where blatant abuse has occurred and where it can be proven without reasonable doubt the animal's welfare is in imminent danger.

ACA strongly supports consideration of alternative approaches to dealing with offenders to improve animal welfare outcomes. Re-adjusting or setting a new scope of investigation that requires an Inspector to provide proactive support to prevent poor animal welfare situations from arising, is in our opinion essential. Ensuring Courts have the capacity/scope to direct convicted persons to forms of training in addition to existing options such as seizing animals or issuing penalties would be of benefit.

26. Should the current provisions that require inspectors under the *Animal Research Act 1985* to be public servants who are also qualified veterinarians be retained, or should they be amended to allow for a more risk-based approach?

As stated previously, ACA believes the entire Inspectorate requires more training not less. Retaining veterinary qualifications is necessary for those inspecting research facilities, and where possible should be applied to the selection criteria of all inspectors.

27. Noting the educational focus of Stock Welfare Panels, would you support further consideration of how the Stock Welfare Panel process could be applied to support better animal welfare outcomes in non-agricultural cases?

If as stated the SWP's are seen by the farming community as a flexible tool to address long term welfare issues for improving outcomes through education and advice, rather than proceeding straight to prosecution, ACA would recommend pursuing the model via consultation with other animal groups.

That consultation should be tasked to take into consideration the necessary processes to allow individuals the opportunity to remedy animal welfare issues prior to having animals seized. This inclusion of 'experts' is welcomed by ACA.

29. Are there any specific issues you would like to raise as we review the penalties for all offences under the Prevention of Cruelty to Animals Act 1979, Animal Research Act 1985, and Exhibited Animals Protection Act 1986?

Public awareness of penalties for offences, in particular for on the spot Penalty Infringement Notices, is critical to raising animal welfare outcomes. There is a great deal of ignorance and apathy within the community of what constitutes an offence and this is increased when it comes to penalties.

As previously stated ACA recommends a stronger focus on education over regulation and conviction, however once this review is finalised, the promotion of the Standards & Guidelines and levels of penalty offences is a vital aspect for educating the public.

Streamlining the Framework

30. Would you support consideration of a risk-based approach to licensing under the *Animal Research Act 1985* and/or *Exhibited Animals Protection Act 1986*, where it would not result in weakened protections for animals?

ACA is on record as supporting the proposed risk-based approach to native wildlife licensing in NSW, and accordingly we will support the risk-based approach to licensing within this review. There are many instances where over regulated licensing of low risk activities is cumbersome and ‘record-keeping’ heavy which achieves little by way of improving animal welfare outcomes and only serves to discourage the keeping of animals. The removal of this burden in the research arena would be of benefit. The risk assessment for a research animal that is just living out its life in a colony with no experimental procedures being undertaken doesn’t need the level of reporting as an animal involved in a study receiving daily meds via oral gavage procedures. The impact of this approach would assist in many facilities being able to improve and become involved in educating the public, via more community-based threatened species projects or having aviaries in schools etc.

32. Which areas within the animal welfare legislative framework could be improved to reduce unnecessary red tape or make requirements clearer?

As suggested in the reform paper, there is an opportunity to review and address some of the complexities in the license arrangements under the EAPA. Smaller operators do appear to find this quite complex and difficult to understand.

As we have previously stated POCTAA is also quite cumbersome with many legislative clauses that are ambiguous or aimed well above the comprehension levels of the general community. The opportunity to provide a clearer and therefore easily understood framework is strongly encouraged.

33. Do you have any comments on what the role of panels and committees should be in supporting the new animal welfare legislative framework?

ACA welcomes the opportunity to comment on the role of the three panels included within this reform paper. However, the decision and re-development of the AWAC has already been undertaken without community consultation, and ACA still questions the usefulness of having a purely scientific-focused AWAC, without the species specific expertise of ‘on-the-ground’ keepers & breeders. We acknowledge there is the intention to create sub-committees and we would hope further consultation is held regarding the structure and specifics of these sub-committees prior to their creation.

ACA strongly recommends the sub-committees be established as ‘expert panels’ and all Standards & Guidelines be developed and maintained in the long term by these expert panels.

Not having direct involvement with the ARRPs we are unable to comment to its effectiveness.

ACA has many members who are wildlife ‘exhibitors’ and it has been brought to our attention that the appointment of the representatives for these exhibitors having been decided by the Minister has left them feeling excluded and discounted. The list of the organisations that qualify to be representatives on the EAAC is in need of review along with the means in which organisations can apply to be representatives.

34. Do you have any other feedback, ideas or suggestions you would like to provide regarding streamlining the animal welfare legislative framework?

Utilise key stakeholders where ever possible. Direct inclusion of animal keepers, whether that is a private breeder, an exhibitor or research project should be encouraged as a means of providing advice. Too often legislation and Acts are written by bureaucrats and not the experts within each arena. The experts are just brought in so that the government can report they “consulted”. Now is the opportunity to allow experts to contribute and have direct input in writing the Standards & Guidelines and maintaining them over time.

35. Do you have any final comments about this reform?

ACA would like to see more streamlined approach to welfare across the states and transparent results on how changes are measured once new rules are implemented.

Again we re-iterate Animal Rights Extremists’ views must be left out of the writing of Acts and codes.

The community has a right to own pets and studies show how well pets improve peoples' mental health and well-being. Too often we hear stories of where people lose animals because of changes in legislation brought about by the people that are opposed to animal ownership.

ACA would like to see the DPI establishing or supporting a program aimed at supporting low income people to improve the welfare of their pets by offering free de-sexing, vet care, and more. An example of this is Beyond Fences <https://beyondfences.org/>

We welcome further consultation as the reforms progress.