

12<sup>th</sup> November 2020  
Jenny Aitchison, MP  
Member for Maitland  
Shadow Minister for Primary Industries

Dear Jenny

**RE: Prevention of Cruelty to Animals (Increased Penalties) Bill 2020 (Bill)**

Thank for reaching out. ACA appreciates the opportunity to comment on this Bill prior to the Labor Party deliberation.

For your information, we have scheduled meetings with other parties and also with Minister Marshall's office in coming days where it is our intention to add this Bill to the agenda.

ACA recommendations:

1. Significant increases to maximum penalties available to the Courts for POCTAA Section 5 (Cruelty) and Section 6 (Aggravated Cruelty) to our knowledge is supported by all stakeholders including ACA. This has been the case for a number of years, so the recent media from both Emma Hurst MP and from Minister Adam Marshall for Section 5 and Section 6 offences are supported in principle and expected. However we find both to be excessive.
2. Animal welfare legislation in NSW is currently under review. It is universally acknowledged that the current Prevention of Cruelty to Animals Act 1979 (POCTAA) and other animal welfare Acts in NSW are antiquated. We are working with the DPI Review Team and remain optimistic that a new fit-for-purpose regulatory regime will emerge from the review process. This will take time, we should be patient and implement increases in penalties appropriately as the new regime is implemented, therefore at this time:
  - 2.1. ACA does not currently support increases in maximum penalties (apart from POCTAA Section 5 and Section 6 offences).
  - 2.2. ACA does not support the addition of minimum penalties.
  - 2.3. ACA does not currently support increases in fines for penalty notice offences.
3. The release of feral animals into the environment is strongly opposed as detailed in our clause [6] comments that follow.
4. We continue to strongly recommend education over enforcement. In the animal welfare space, there is limited funding such that compliance operations are almost entirely reactionary in response to complaints. Inordinate resources are directed towards individual cases whilst many magnitudes more offences are simply undetected. Education can raise animal welfare outcome state-wide.

The following details address all clauses of the Prevention of Cruelty to Animals (Increased Penalties) Bill 2020 (Bill) including more detailed recommendations.

Many aspects of the Act are currently ambiguous and in our opinion should not appear within the Act, rather requiring to be included in the Standards for species specific Codes of Practice. It is ill-advised therefore to take a 'tarred with the same brush' approach to the entire Act and its regulations. The introduction of higher penalties and sentences should not disadvantage the vulnerable in our community, who require assistance to care for their animals and not persecution by aggressive animal rights activists.

Kind regards,



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## ACA Comments and Recommendations

### *Prevention of Cruelty to Animals (Increased Penalties) Bill 2020 (Bill).*

#### Schedule 1 - Amendments to POCTAA

##### Clause [1]

We do not support minimum penalties. The range of severity of offence and extenuating circumstances is enormous, hence Courts to decide on appropriate penalty, if any.

##### Clause [2], [3]

Section 5 and 6 are the two significant offences within POCTAA. All other offences can be viewed as on a continuum below these “Cruelty to animals” and “Aggravated cruelty to animals” offences. Therefore, setting the maximum penalty for these two offences effectively sends out a clear public message that cruelty to animals in all its forms is a serious matter and will not be tolerated.

Minimum penalties are not supported – refer [1].

So what maximum penalties should be set? The following *Table 1* shows the current situation alongside the proposal in AJP’s Bill and the proposal from Minister Marshall reported recently.

		Current POCTAA		AJP's Bill			Minister Marshall		
		Points	Value	Points	Value	Multiplier	Points	Value	Multiplier
Section 5	Commercial	250	\$27,500	1400	\$154,000	5.6	2000	\$220,000	8
	Individual	50	\$5,500	500	\$55,000	10	400	\$44,000	8
Section 6	Commercial	1000	\$110,000	2275	\$250,250	2.275	5000	\$550,000	5
	Individual	200	\$22,000	900	\$99,000	4.5	1000	\$110,000	5
Section 8	Commercial	250	\$27,500	1400	\$154,000	5.6	750	\$82,500	3
	Individual	50	\$5,500	500	\$55,000	10	150	\$16,500	3

*Table 1: Current and Proposed Section 5, 6, 8 Maximum Penalties*

For individuals, we support larger maximum penalties but find AJP’s to be excessive.

For commercial operators again we find the increases to be excessive however we await Minister Marshall’s Amendments Bill before commenting further.

##### Clause [4], [5], [7]

Clauses [4], [5] and [7] deal with raising the maximum penalty significantly for all offences (excluding Section 5 and Section 6) within POCTA.

ACA, does not in principle disagree with raising these penalties, but now is not the time to do so.

Each of these offences has their own issues and difficulties. In some cases, there are sound reasons that mitigate or even should provide exemption - specific situations with specific animals or specific species or even specific breeds. These are important details, they are matters industry experts will be addressing during the animal welfare review process as Standards and Guidelines are drafted, reviewed, and accepted into law under the proposed revised animal welfare legislation.

As part of the POCTAA review process ACA continues to recommend such offences be removed from POCTAA and dealt with more specifically within species/breed/industry specific Standards and Guidelines documents. This will make the offences known to the general public (they are largely unknown currently)

and will greatly simplify the job of compliance officers and the courts when proving offences and assigning penalties.

We have included Section 8 penalties in Table 1 as Minister Marshall has indicated increases in the maximum for this specific “Animals to be provided with food, drink or shelter” offence. Although we do not oppose the Minister on this increase, we question the need at this time.

#### **Clause [6]**

Clause [6] of the Bill is an attempt by Emma Hurst and the AJP to allow the release of feral animals into the environment. Specifically, we suspect, it is to legalise the release of feral species such as feral cats as part of their push for Trap-Neuter-Return (TNR) programs, and their immuno-contraceptive scheme for brumbies – just to highlight two scenarios. ACA is awaiting further peer-reviewed Australian-based scientific data/studies before drawing any conclusions to the success or failure as methods of control of feral cats and brumbies.

We support the release of wild native animals that have been rehabilitated or that form part of threatened species release programs. The release of native animals is dealt with via licensing under Section 2.6 of the Biodiversity Conservation Act 2016.

We oppose Clause [6] of the Bill.

#### **Clause [8]**

Clause [8] deals with proper use of Breeder Identification Numbers (BINs). This is a new system that has a multitude of issues that require attention. At this time it would be inappropriate to raise maximum penalties for a system that is effectively failing to meet many, if any, of its objectives.

The BIN system is the current subject of much evidence gathering and discussion by ACA. We be in contact with a range of recommendations in this regard once we formulate recommendations.

#### **Clause [9]**

Clause [9] proposes an enormous maximum penalty increase for non-compliance with orders made as part of convictions. This proposed increase from 25 to 500 penalty points is excessive and is there not supported by ACA.

A smaller increase would be supported, but as detailed above, now is not the time.

#### **Clause [10]**

Clause [10] proposes to prohibit the owning or keeping of all animals for all time for those convicted of an aggravated cruelty offence under Section 6 POCTAA and/or Section 530 of the Crimes Act 1900. And also for the bestiality offence under Section 79 of the Crimes Act 1900.

Whilst acknowledging the significance of such offences, they too lie on a continuum. A person convicted of such offences is punished and courts can and do make orders to restrict the convicted person’s access to animals. It is right and proper that such decisions are in the hands of the court system, therefore ACA opposes Clause [10].

#### **Clause [11]**

Clause [11] makes it much simpler to create offences within the regulations and also raises the maximum penalty that can apply to such offences.

In a general sense, ACA does not disagree with raising maximum penalties, however we are very aware of many shortfalls and issues within a number of the current “Code of Practice and Standards” documents listed in Column 2 of Schedule 1 of the Prevention of Cruelty to Animals Regulation 2012.

As we have stated above, ACA continue to recommend other offences are dealt with more specifically within species/breed/industry specific Standards and Guidelines documents as they are developed as part of the current wider animal welfare legislative review process.

Whilst acknowledging flaws in the current process of adding offences via POCTA Section 35, now is not the time to change what is in place.

For the above reasons ACA opposes Clause [11].

## **Schedule 2 – Amendments to Crimes Act 1900**

ACA opposes all clauses for the reasons detailed above under Schedule Clause [10].

## **Schedule 3 – Amendments to Prevention of Cruelty to Animals Regulation 2012**

### **Clause [1], [2]**

ACA does not in principle disagree with raising these penalties, however for the reasons provided above in relation to raising maximum penalties within the Act, now is not the time to do so.

### **Clause [3]**

NSW Parliament has recently completed an inquiry into the RSPCA and the process of reviewing all animal welfare legislation is well underway. Both these processes have already uncovered a range of issues with the penalty notice regime as it currently operates. Therefore, now is not the time to arbitrarily increase fines for offences that are not clear and that are not well understood by the public.

ACA strongly opposes increases to penalty notice offences at this current time.