



Animal Care Australia
2022

**Response to proposed
Prevention of Cruelty
To Animals
Amendment
(Prohibition For
Convicted Persons)
Bill 2022**

Approved: 4th October 2022
Animal Care Australia Inc.



Response to proposed Prevention of Cruelty To Animals Amendment (Prohibition For Convicted Persons) Bill 2022

Animal Care Australia submission.

ACA Background:

Animal Care Australia Inc. (ACA) represents the interests of all hobbyist and pet animal keepers nationally. Our members are comprised of most major animal keeping representative bodies including those representing dogs, cats, birds, horses, small mammals, reptiles, fish and exhibited animals.

Overview:

ACA supports the intent of a Prevention of Cruelty To Animals Amendment (Prohibition For Convicted Persons) Bill 2022, that being, persons who have been convicted of a serious animal cruelty offence to be prohibited from owning, breeding, or working with animals, with an additional caveat that the prohibition period be determined by the Courts.

However, in its current form this Bill is completely opposed.

ACA strongly recommends other political parties DO NOT support this Bill without major amendments.

It is our view any amendments or re-writing of a Prohibition Bill should be consulted with key stakeholders.

References:

The Animal Justice Party's Amendment Bill (hereafter referred to as The Bill) is found here...

Amendment Bill

The Prevention of Cruelty to Animals Act 1979 No 200 (the Act) is found here...

The Act

The associated Prevention of Cruelty to Animals Regulation 2012 (the Regulations) are here...

The Regulations

The Exhibited Animals Protection Act 1986 (EAP Act) found here...

EAP Act

ACA's Response:

In general, ...

- i. **ACA opposes changes to the Act whilst the review of animal welfare legislation in NSW is underway.**
- ii. **ACA opposes blanket bans in favour of providing the courts the ability to impose bans appropriate to the circumstances of the case.**
- iii. **ACA opposes the provision of extra powers to officers under the Act until full accountability and oversight provisions are in place.**
- iv. **ACA supports recognition of interstate convictions and court orders where such convictions and orders do not conflict with NSW law.**

The wording and structure of The Bill raises many concerns for us, and these are outlined below.

ISSUE 1

The first apparent omission noted is the definition of or an explanation within The Bill of what constitutes 'certain offences' as stated in the opening title of The Bill:

A Bill for

An Act to amend animal protection legislation to prohibit persons convicted of certain offences from caring for or working with animals, and for related purposes

ACA notes the insertion of sections relating to interstate offences clearly indicate 'serious interstate offences' while the remainder of The Bill states 'an animal cruelty offence.'

- Does this mean that those persons who are charged and convicted within NSW of 'an animal cruelty offence' will be prohibited regardless of the offence?

The opening title reference of 'caring for an animal':

- What constitutes 'caring for' an animal? ACA does not see this as simply 'owning or breeding' an animal. Caring for an animal extends far beyond the scope of owning.
- If a parent is convicted of an animal cruelty offence (**remember:** this does not say 'serious or aggravated' offence) does that now mean the parent can no longer reside at the residence where their children's pets require the parent to assist in the pets' care?
 - Are they not allowed to feed the family dog?

- How do they prove they are complying?
- Should the person not intervene if the dog needs medical help?
- Can they then be convicted for failing to provide veterinary treatment, because they are complying with the disqualification order?
- Or must they move out of the home with animals? Will the state pay for the costs of the family having to move with their animals away from a disqualified person?

ACA strongly recommends the word ‘caring’ be changed to ‘owning’.

For further explanation as to why this change is necessary, please refer to Annexure 2 of this document.

ISSUE 2

The Bill proposes to add code of practice breaches to the list of animal cruelty offences.

[1] Insert “or the regulations” after “this Act” in section 4(1), definition of animal cruelty offence, paragraph (a)

This proposes to alter the definition of an “animal cruelty offence” to include a range of animal trade penalties which are based on the “Code of practice and standards” prescribed in Column 2 of Schedule 1 of the Regulations.

- i. These “Code of practice and standards” include a range of administrative and other clauses that aim to improve animal welfare and prevent cruelty, they are not of themselves examples of cruelty.
- ii. The consequences of adding code violations to the definition of an “animal cruelty offence” are immense. Existing sections 29, 30, 30A, 30B, 31, 33 as well as many of the amendments proposed in this Bill have major significant consequences for code violations. ACA can conceive of numerous instances where application of these sections to code violations is obviously inappropriate.
- iii. Given I and II above, it is inappropriate to alter the definition of a cruelty offence.

Therefore:

ACA strongly opposes the proposed change to the definition.

ISSUE 3

ACA notes the proposed [2] intends to include a listing for ‘serious interstate offences’ from all other states and territories. These offences ONLY apply to bestiality offences, with the exception of Queensland which includes other serious animal cruelty offence convictions (refer to note below) in addition to the bestiality offence.

Note: [2] includes section 242 of Schedule 1 of the Queensland Criminal Code Act 1899 which is the serious animal cruelty offence in that state. Most serious cruelty to animal offences in other states are dealt with by animal welfare acts rather than the state crimes acts referenced in [2].

The term “serious interstate animal offence” is proposed by the Bill to be utilised as follows...

- a. In [3] which inserts Section 24CB and enables officers to seize animals from those convicted of a “serious interstate animal offence”.
- b. In [8] which proposes to insert Section 31AC. which prevents anyone convicted of a “serious animal offence” from any contact with animals.

Therefore:

- Would any person moving from interstate with ANY conviction for animal cruelty be equally prohibited?
- If so, what if an offence existed in another state/territory but is legal in NSW (e.g., use of an e-collar, prong collar)?
- If the intent of The Bill does only apply to ‘serious animal cruelty’ offences and the different states/territories have tiered offence levels, if no prohibition order has been issued at the time of conviction in that interstate jurisdiction, how will NSW determine which tier is considered to be ‘serious’?

ACA agrees that reciprocal arrangements must be in place to recognise convictions for the listed offences in other jurisdictions, however ACA contends this recognition should enforce the orders made by the court in the state of conviction not impose blanket bans such as this proposal.

We contend such recognition described in V. is already in place via Section 118 of the Australian Constitution.

Section 118. Recognition of laws etc. of States

Full faith and credit shall be given, throughout the Commonwealth to the laws, the public Acts and records, and the judicial proceedings of every State.

Therefore,

ACA opposes this change

ISSUE 4

The Bill proposes to enable an officer to seize animals from almost any person convicted of any animal cruelty offence, including code violations and interstate offenders.

ACA supports the ability of officers to enforce disqualification and prohibition orders made by the courts, including those made by courts in other jurisdictions. This is already the case under existing sections 30B, 31, 31AA and 31AB of the Act.

- ❖ It is the person convicted not the animal that is at fault, therefore [3] “Powers to seize animals” as a blanket solution is inappropriate.
- ❖ The courts are the appropriate body to prohibit or disqualify persons convicted of cruelty offences under the Crimes Act 1900, section 79, 80, 530 or 531. The proposed blanket seizure of animals by officers is inappropriate.

Insert after section 24CA —

24CB Powers to seize animals

(2) If a person convicted of an animal cruelty offence breeds an animal or is involved in a business relating to breeding an animal, an officer may seize the animal.

The first main question is, if a person cannot own or work with an animal due to their prohibition/disqualification order, then is not this ‘double-dipping’ in order to prevent them from associating in any manner with other people who own or breed animals?

There are a number of additional concerns with this clause.

- ‘An animal cruelty offence’ means ANY animal cruelty offence. Therefore, those individuals who have been charged with not providing updated veterinary details under the Breeding Code of Practice for Dogs and Cats cannot breed birds, rabbits, or any other animal – ever! If they do, the RSPCA has carte blanche to seize those animals. We all know IF this is legislated – THEY WILL seize the animals.
- Does this ‘known criminal activity’ afford the RSPCA with reason to enter a property without a warrant?
- ‘Cannot be involved in a business relating to the breeding of animal’ – this would require all animal breeding business owners to carry out criminal record checks on all volunteers and employees. The **Human Rights Organisation clearly states, “Criminal record checks should only be conducted with the written consent of the job applicant or current employee.”** This does not include volunteers, relatives, or tenants/boarders.
- What is an animal breeding business?
 - A person who breeds for profit?

- Breeds excess animals?
- The ongoing debate of an animal breeding business vs a hobby/home breeder!
- *'A business related to the breeding of an animal'* – does this mean any individual charged with any animal cruelty offence cannot work as a cleaner in a pet shop, or at a zoo, or as an accountant for the owner of said animal business? Can the owner then have their animals seized because their accountant was charged with an animal cruelty offence? Sounds ludicrous right – that is because it is – and the ambiguity of the wording in The Bill is no doubt designed to be!
- If the convicted person lives on a property where animals are owned by others living on the same property does that:
 - Mean no animals can be bred on that property, regardless of who owns them?
 - Require the other occupants/residents to also complete criminal record checks to ensure their fellow residents are not risking the existence of their breeding animals?
 - How does the RSPCA prove who owns the animals that are being bred? And vice-versa, how does the owner prove the animals belong to them AND NOT the convicted person?
 - If the convicted person is a parent, does that mean the parent can no longer reside there or does it mean the children have to forego owning animals due to the 'sins of the parent'? If the parent cannot reside there, will the Govt cover the expenses of the individual relocating?
 - Who covers the costs of the seized animals, and what becomes of those animals? Particularly, now that we have over-crowded shelters? Should the animals suffer and likely be euthanised simply because another individual (not their owner) happened to be on the same property?

ACA is aware of many convictions obtained based on economics rather than guilt. The person pleads guilty to avoid lengthy and costly court proceedings and costly kennelling charges for seized animals. Therefore, we reiterate our concerns applying blanket seizure to breeders with simple code violations is completely inappropriate overreach.

ACA is cautious of providing blanket powers, such as this proposed power of seizure, to officers under the Act given officers are largely employees of charitable organisations that currently do not have the same oversight and accountability as police and other state employed compliance officers.

ACA strongly opposes the seizure for anyone convicted of an “animal cruelty offence” for breeding an animal as [3] proposes under section 24CB

ISSUE 5

Section 31 Court may make further orders following conviction

Omit section 31(1)–(1B). Insert instead—

(1) If a court has convicted a person of an animal cruelty offence, the court—

(a) must make a disqualification order unless the court is satisfied special circumstances justify not making the order, and

(b) may make a disposal order

The current provision of Section 31 states:

(1) If a court has convicted a person of an animal cruelty offence and the court is satisfied that, were the person to be in charge of an animal, the person would be likely to commit another animal cruelty offence, the court may make either or both of the following orders—

(a) an order for the disposal of an animal of which the person is a person in charge,

(b) a disqualification order.

(1A) An order under subsection (1)(a) may require the disposal by a date or within a period specified by the court.

(1B) An order under subsection (1)(b) ceases to have effect at the end of the period of the order specified by the court.

ACA questions why the current provision requires replacement? The omission and its replacement are blatant mandating.

This is not something that should be considered or encouraged. The additional burden of proof as to why a disqualification order should be applied has been removed from the prosecution (no doubt a pleasing outcome for the RSPCA) and placed onto the defence.

As ACA has constantly stated, the financial burden of appearing to defend oneself has often led to pre-hearing pleas of guilt. This reversal of the burden of proof for a disqualification order will see many ‘innocent’ persons not only charged and fined – but now also banned from owning, caring, or breeding animals. Which is of course the real intent of The Bill.

ACA would re-consider our objection to this Section IF and ONLY IF an additional requirement of legal aid or government financial support was mandatory to mount a defence, for all cases from the moment an individual is charged. If people were able to defend themselves adequately and confidently, then the number of actual guilty individuals would be better understood.

We also note: the costs of the seizure of animals covering the period from first charge to final outcome before the Court **MUST** be covered by the government and not the person being charged

OR the compliance organisation/shelter – just as it is with other criminal charges. Animals seized must not be able to be euthanised without an independent assessment of their health – to be used by the defendant and prosecution to determine guilt or innocence, and they cannot be rehomed (with the exception of fostering) or sold until after the outcome is determined. This protects the animals.

ACA is aware there have been too many times where animals under veterinary care have been seized and euthanised without any consultation with the treating vet and often with ‘claimed conditions’ not supported by the treating vet.

ACA strongly recommends the current POCTAA Section 31 remains. ACA opposes the default disqualification and disposal orders for all persons convicted of an “animal cruelty offence”. The decisions should be left to the courts as is currently the case.

ISSUE 6

Section 31AA(1) and (1A)

Omit section 31AA(1). Insert instead—

(1) An interstate prohibition order applies in New South Wales in the same way it applies in the State or Territory where it was made

ACA would like to know how this will be enforced? Additionally, should there be a prohibition order enacted in a different state or territory where the conviction is for a crime that is of a lesser charge or not an offence in NSW, how could this be legally upheld?

We highlight this due to the suggested omission of *Section 31AA (4) The NSW offence provision applies only to those provisions of the recognised interstate prohibition order that can be included in an order of a kind made under section 31 (1).*

The Bill proposes that interstate prohibition orders apply in NSW without the Minister’s recognition.

- i. Currently to enforce an interstate prohibition order requires the Minister to do so in writing under section 31AA of the Act.
- ii. Currently interstate prohibition orders only hold in so far as they would have been made had the offence been committed in NSW.

ACA does accept that administratively there may be timing issues obtaining the required written recognition from the Minister and hence we have some sympathy in this regard.

However, blanket recognition of interstate prohibition orders is not supported for a range of reasons. It is inappropriate to enforce restrictions made based on offences that are not present in NSW law and the varied nature of orders in other jurisdictions.

Nevertheless, ACA is open to considering a more efficient option should such a proposal come to light.

ACA supports the current situation until a more robust solution can be identified.

ACA does not support blanket recognition of interstate prohibition orders. Rather, we recommend further investigation and research is undertaken.

ISSUE 7

31AD Certain convicted persons prohibited from breeding animals

If a person is convicted of an animal cruelty offence, the person must not—

(a) breed animals, or

(b) be involved in a business relating to breeding animals

Again, we question the prohibition applying to any individual guilty of any animal cruelty offence and NOT the more severe animal cruelty charges.

Additionally, if the person is already prohibited from owning (as we have proposed) or working with an animal – how is it possible they can be breeding an animal?

ACA again reiterates that we are aware of many convictions obtained based on economics rather than guilt. The person pleads guilty to avoid lengthy and costly court proceedings and costly kennelling charges for seized animals. Obviously, such cases should not be prevented from breeding or even keeping animals.

We reiterate our concerns regards applying default breeding bans for simple code violations is completely inappropriate overreach.

Equally, ACA is cautious of providing extra powers to officers under the Act given officers are largely employees of charitable organisations that currently do not have the same oversight and accountability as police and other state employed compliance officers.

ACA opposes blanket bans in favour of providing the courts with the ability to impose bans appropriate to the circumstances of the case.

ACA strongly recommends the proposed Section 31AD be removed

ISSUE 8

Exhibited Animals Protection Act amendments:

31A Prohibition on employing persons convicted of, or charged with, certain offences

(1) The holder of an authority must not knowingly cause or permit a prescribed person to work with, or care for, an animal exhibited under the authority.

Maximum penalty—

(a) for an individual—400 penalty units or imprisonment for 1 year, or both, or

(b) otherwise—2,000 penalty units.

(2) In this section—

prescribed person means—

(a) a person who has been convicted of a relevant offence, or

(b) a person who is charged with a relevant offence until one of the following events occurs—

(i) the charge is heard and determined by a court,

(ii) the charge is withdrawn,

(iii) a decision is made not to take or continue proceedings against the person.

relevant offence means—

(a) an offence under this Act or the regulations in relation to an animal, or

(b) an offence under the Crimes Act 1900, section 79, 80, 530 or 531, or

(c) an offence under the Prevention of Cruelty to Animals Act 1979, or regulations made under that Act, in relation to an animal

This entire section is a clear attempt to pervert the course of natural justice. Natural Justice recognises three principles:

- (i) Nemo debet esse iudex in propria causa (No one should be a judge in his own case)
- (ii) Audi alteram partem (Listen to the other side), and
- (iii) Speaking orders or reasoned decisions.

Section 31A (2) – prescribed person - (b) a person who is charged with a relevant offence until one of the following events occurs—

(i) the charge is heard and determined by a court,

(ii) the charge is withdrawn,

(iii) a decision is made not to take or continue proceedings against the person.

This section violates the course of natural justice. The person has only been charged and there is a presumption of guilt that the employer of that person is being legislated to form. The charged person has no right to continue to be employed and loses their income.

Will the government (or even the Animal Justice Party) provide financial support to the individual and their family while the court proceedings – a known period of two to three years, sometimes longer. No person should be deprived of the opportunity to provide for themselves OR their family under the presumption of guilt.

Section 31A (2) – relevant offence - (a) an offence under this Act or the regulations in relation to an animal, or

Again, this includes ANY offence against the Act or regulations and is not isolated to a ‘serious or aggravated offence.’

ACA strongly opposes the proposal to prevent anyone charged or convicted of any “animal cruelty offence” from being employed by any animal display establishment. ACA supports the ability of the courts to impose court orders restricting employment in animal display establishments appropriate to individual convictions.

Of further note:

- ❖ In all Australian jurisdictions, the age of criminal liability is 10. The current structure of The Bill (including its mandatory requirement for disqualification) means a child may NEVER own or be around an animal for their lifetime.
- ❖ The commencement statement: ***“This Act commences on the date of assent to this Act”*** does not make clear when the offences committed are to be considered. Do convictions prior to the date of assent apply or only convictions following the date of assent to determine whether the prohibition of breeding or working with animals is legitimately able to be enforced? Disqualification orders clearly have periods of time designated to them – however the prohibition sections do not.
- ❖ As outlined throughout this submission the use of the ‘animal cruelty offence’ should not apply to the consideration of issuing prohibition or disqualification orders, within this Bill or any future proposed Bill.

Therefore,

ACA strongly recommends the removal of the words ‘animal cruelty offence’ and replaced with ‘serious or aggravated offence’

Consideration for any future Bill:

A threshold of what constitutes the consideration of a Prohibition Order should be included to remove any confusion. This threshold should be set as:

- POCTAA (NSW) Section 6 offences (aggravated cruelty); and/or
- Crimes Act 79 & 80 (NSW) offences (bestiality); and/or
- Crimes Act 530 or 531 (NSW) offences (serious animal cruelty)

Annexure 1: Explanations for required definition for ‘serious cruelty offence’ and implementation of a threshold for prohibition

- a) It is an offence to injure an animal with your car and not stop and help the animal. If you run over an animal and don't realise that you have, or it is impossible to stop due to traffic conditions and the car behind you has recorded dash cam of you doing it - you can then be convicted of an animal cruelty offence, and now, you will be banned from owning animals?
- b) If someone steps on their puppy's tail by accident - and its injured could this Bill lead to people not attending a vet in case the vet reports them for ANY form of cruelty? Remembering the reporting is an ethical and not legal issue, this opens a pandoras box of animal welfare concerns.
- c) **ACTUAL CASE scenario:** A person had agreed to feed his neighbours animals while they went overseas. The animals had automatic waterers, and the neighbours instructed him to just toss hay over their adjoining fence every day. Things went smoothly until there was two days of pouring rain, and despite having shelter, two animals became waterlogged and died.

The owners were very understanding and accepted that it could have happened whether they were there or not. The man however, feeling upset told his boarder - who happened to work for the RSPCA. He was then prosecuted by the RSPCA as the "responsible person" for aggravated cruelty. This man did not appreciate that he was taking on that much responsibility by saying yes to tossing hay over the fence to help his neighbours.

No disqualification order was issued by the Courts, BUT under The Bill, he would not be allowed to own his own animals. His children would lose their pets because of this Bill.

These examples would NOT be considered if there was a threshold set for the prohibition and there is no mandatory requirement of the courts to issue disqualification orders.

Annexure 2: Explanations for why ‘caring for an animal’ requires further definition as part of the threshold for prohibition

- a) As we know people convicted of crimes have families, friends and loved ones that DO keep animals of their own. If a convicted individual is visiting the home of another person and an animal is injured or requires immediate assistance the convicted individual is prohibited to provide any assistance. This lack of provision of assistance is in itself an offence – so which offence would over-rule the other or would the individual still find themselves charged with an additional offence?
- b) If the convicted individual was driving and saw an animal injured by another vehicle and that other driver did not stop to render assistance, this individual would be unable to stop and assist. Again. commit one crime or commit another?