

14<sup>th</sup> June 2024

**RE: Prevention of Cruelty to Animals Amendment (Transparency and Fit and Proper Persons) Bill 2024**

**Animal Care Australia provisionally supports** the Prevention of Cruelty to Animals Amendment (Transparency and Fit and Proper Persons) Bill 2024 as proposed by the NSW Government.

As you are aware Animal Care Australia has continually opposed the use of the Royal Society for the Prevention of Cruelty to Animals (RSPCA) as an authorised enforcement agency. As an organisation we have provided reasoning for this throughout all consultations relating to POCTAA, Parliamentary Inquiries and during the era of uncontrolled and irrational behaviour perpetrated by the (then) Puppy Farm Taskforce.

Animal Care Australia will continue to hold this position until the RSPCA is removed as an enforcement agency and/ or the enforcement of POCTAA is carried out by officers employed by the government, preferably under the direct responsibility of an Animal Welfare Commissioner or the Chief Animal Welfare Officer.

With that in mind, our responses below, should NOT be regarded as supporting the RSPCA as an Approved Charitable Organisation (ACO), rather as a step in reigning in their behaviour and attempting to create greater accountability for the duration they remain as an ACO under POCTAA.

Animal Care Australia acknowledges this Bill is an attempt to improve transparency of the ACO's, but providing access to an Ombudsman or GIPA does not accomplish this - it only offers an avenue for complaints and disputes.

Redacted reports have recently been made available and add nothing to transparency - they only raise more questions than they answer.

We provide the following feedback:

**Section 24AB Terms on which appointment made**

*An appointment of an appointed officer or appointed inspector may be—*

*(a) unconditional, or*

*(b) subject to conditions or limitations*

This is insufficient. The terms for the appointment SHOULD NOT be unconditional. The Minister must provide a provision that requires the appointed officer/inspector to have animal welfare experience and qualifications. These can be required under an amendment to the regulations, allowing for updates of relevant training courses etc.

**Section 24 AE - Identification**

*(2) In exercising functions under this Act or the regulations, an appointed officer or appointed inspector must, if asked by a person affected by the exercise of the function, produce to the person the officer's or inspector's evidence of authority under this Act.*

Partially supported. The identity card MUST be presented at all times while the officer is carrying out their duties. It should not be an option upon a request.

**Section 31 - Court may make further orders following conviction**

*Omit “paragraph (a).” from section 31(1AA)(b). Insert instead—*

*paragraph (a), (c) or (d), or*

*(c) has found the person guilty of an offence against this Act, section 5 and the person has previously been convicted of an offence against that section, or*

*(d) has found the person guilty of more than one offence against this Act, section 5 and the offences arose out of separate acts or omissions.<sup>1</sup>*

**This is not supported by Animal Care Australia** as this expands on previous amendments made by the Prevention of Cruelty to Animals Amendment (Prohibitions for Convicted Persons) Act 2022 No 69 (Amending Act) which require further amendment and clarification as they extend beyond the intent of the original amendments. Animal Care Australia is seeking further amendments that would resolve the many issues that have occurred due to that Bill before we could consider supporting these amendments. (see Appendix for further explanation)

While Animal Care Australia remains opposed to mandatory issuing of disqualification orders removing the full discretion of the courts, these amendments could be supported where the definition of 'animal cruelty offence' is returned to its original definition prior to the assenting of the Prohibition for Convicted Persons Bill.

**People too often are forced to plead guilty to lesser charges based solely on financial reasons, not actual guilt. This discriminates specifically against the elderly, the young, the poor, the homeless, the disabled and the disadvantaged.**

### **Section 34 Section 34B(5) to (7)**

While Animal Care Australia agrees the Annual Report provided to the Minister must be tabled, we do not believe the information currently required to be reported is sufficient. Please see response to Schedule 2 Amendment to Regulations 2012.

### **Section 34 BA - Collection, use and disclosure of information**

*(d) if, in the relevant agency's opinion, it is appropriate to give the information to the other relevant agency in relation to a significant risk to safety.*

*Where: relevant agency means the following—*

*(a) a government sector agency, within the meaning of the Government Sector Employment Act 2013,*

Animal Care Australia **opposes** the current wording of Section 34 BA (d). There is no logical purpose why the personal information of any person would need to be made available to persons employed within:

- (a) the Public Service – other than those exercising functions under this Act or the regulations in relation to enforcement, compliance or administration of this Act or the regulations,
- (b) the Teaching Service, or
- (e) the Transport Service of New South Wales,

If it is believed there is significant safety at risk then the NSW Police or NSW Health (within Mental Health) should make that determination not an officer of a charitable organisation. This section needs to be re-worded. If a person employed within the public service believes there is a risk to the safety of an animal, they already the ability to report that risk to the NSW Police to be acted upon. This directional flow of information already exists. The reverse directional flow of information is what is opposed by Animal Care Australia.

### **Amendment of Prevention of Cruelty to Animals Regulation 2012**

#### **Clause 34(2)(m)–(o)**

Animal Care Australia supports the additional requirement of the ACO annual reports to include details about their GIPA requests, Ombudsman activity, and any MOUs or service level agreements with Government but this does not go far enough.

Reports MUST also include a breakdown of how all funding is allocated and utilised, particularly in the role of enforcement of POCTAA including inspector wages & expenses, veterinary costs, and shelter expenses for animals seized under POCTAA.

It MUST also provide detailed breakdowns of all animals euthanised, including the reasoning and measures taken to determine the behaviour of an animal euthanised for behavioural reasons. RSPCA has overwhelming and irrationally high kill rates with NO appropriate recording or justification reasons for those rates.

The Minister (and therefore Government) must be able to hold an ACO accountable for the killing of animals by those enforcing its legislation. The Parliament (and therefore the public) must equally be able to hold the government accountable for actions taken under its watch.

**This is particularly important given the exemption (as outlined in Schedule 3 of this Bill) of Section 6 and Part 3 of the Government Information (Public Access) Regulation 2018.**

Please do not hesitate to make contact if we can assist further.

Kind regards,

A handwritten signature in black ink that reads "M Donnelly". The signature is written in a cursive style with a large, looping 'M' and a long, sweeping underline.

Michael Donnelly  
President  
0400 323 843

## Appendix: Prevention of Cruelty to Animals Amendment (Prohibitions for Convicted Persons) Act 2022 No 69 (Amending Act) – Automatic Ban Issues

### The issues:

1. This matter affects anyone convicted of any animal cruelty offence after 1 January 2023, no matter its severity, such that they are banned from breeding or involvement in breeding or related activities. Exhibitor licences will be revoked if anyone involved in the animal display establishment enterprise has ever been convicted of any animal cruelty offence.
2. Animal Care Australia opposed and continues to oppose the Amending Act. Our complete submission discusses the original bill and is on our website <sup>1</sup>
3. We understood the amendments would encourage bans to be imposed by the courts, whilst allowing the courts to use their discretion. This is not what was passed by parliament, and Hansard evidence during the Second Reading Debate on 9 November 2022 indicates this was not the intent of a range of members in the legislative council.
4. Animal Care Australia opposes blanket automatic bans such as those now in force via Section 31AD of the NSW *Prevention of Cruelty to Animals Act 1979* (POCTAA) and Section 30(1A) of the NSW *Exhibited Animals Protection Act 1986* (EAPA).
5. As a result of the Amending Act, the definition of an animal cruelty offence was altered to include offences within the regulations (Section 4 POCTAA). This single change has a range of perverse and far-reaching effects that we believe were not the intent of parliament.
6. Clause 26 of the *Prevention of Cruelty to Animals Regulation 2012* (POCTAA Regulations) makes it an offence under the regulations to fail to comply with a relevant Code of Practice or of the relevant Standards.
7. Animal Care Australia stated in our submission...

*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.*

8. For example, readers should consider the standards within the following documents which are specified in the POCTAA Regulations for pet shops and for dog breeders.

[https://www.dpi.nsw.gov.au/\\_data/assets/pdf\\_file/0012/1310421/Animal-welfare-code-of-practice-animals-in-pet-shops.pdf](https://www.dpi.nsw.gov.au/_data/assets/pdf_file/0012/1310421/Animal-welfare-code-of-practice-animals-in-pet-shops.pdf)

[https://www.dpi.nsw.gov.au/\\_data/assets/pdf\\_file/0013/1310431/INT21-114956-Breeding-Code-Document.pdf](https://www.dpi.nsw.gov.au/_data/assets/pdf_file/0013/1310431/INT21-114956-Breeding-Code-Document.pdf)

9. Many Clause 26 POCTAA Regulation infractions are dealt with by penalty infringement notices (PINs). This is an acknowledgement that such infractions are minor. However, it is now the case that contesting such a PIN and consequently being found guilty will result in an automatic ban on breeding, etc. under Section 31AD of POCTAA.

Animal Care Australia’s concern with the possibility of PINs being a conviction is confirmed by the following:<sup>2</sup>

*“Is infringement a criminal offence?”*

*There is no conviction recorded against you when you have been given an infringement notice (if you pay the fine or not). However, if you elect to take the matter to court, and the court finds you guilty (or you plead guilty) a conviction may be recorded.”*

10. Similar unreasonable consequences will now result for exhibitors for minor infractions under a range of Acts. Although our advice from DPI and others is ambiguous as to whether POCTAA Regulation offences, such as code infractions will in practice be included, there is little ambiguity with regard to EAPA Section 30(1A). EAPA Section 30(1A) means complete loss of licence to operate as an animal display establishment is mandatory once convicted. The ability to maintain the employment of a person within your establishment has also been removed even if that person has only been charged with an offence and not yet found to be guilty.

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<sup>1</sup> [ACA Submission](#)

<sup>2</sup> [North Shore Criminal Law](#)

11. There are many other animal cruelty offences under POCTAA and other Acts where the circumstances do not reasonably warrant an automatic ban on animal breeding, keeping or related activities and operation. Animal Care Australia continues to support providing the court with discretion on all bans.
12. The problem outlined by Natalie Ward MLC in her contribution to the Second Reading Debate (Hansard 9 November 2022 p7249) is now a reality. Contesting a PIN is now a very risky undertaking as it could result in an automatic ban for life.
13. Emma Hurst MLC made the following comment (Hansard 3 October 2022 p7248). Her comment opposes the notion of blanket legislated consequences of crime, in direct conflict with the matters discussed here and put to parliament by Emma Hurst MLC in her support of the Amending Act.

*What is known, however, is that wrongfully convicted people, who are already subject to significant harm in the criminal system, would be further punished by the bill. The bill would provide no leniency for people who are unable to provide information about the location of a victim's body or remains. This presents an impossible situation for wrongfully convicted persons.*

14. The Legislative Review Committee (Legislation Review Digest No. 48/57 - 11 October 2022, p13) expressed concern regarding the above matters, specifically regarding Section 31AD of the POCTAA and Section 30(1A) of the EAPA.
15. Given the concerns of the Legislative Review Committee, members from both sides and cross bench of the chamber during the Second Reading debate, and our advice from members during consideration in the chamber, it is clear the above matters deserve urgent reconsideration.
16. Note this is a different matter to the optional disqualification orders available to the courts under POCTAA Section 31. Although we have some concerns regarding Section 31, they are different and not as pressing as this matter.
17. Animal Care Australia notes during testimony at the 2023 Inquiry into the operation of the approved charitable organisations under the Prevention of Cruelty to Animals Act 1979, Emma Hurst MLC asked witnesses from the Department of Primary Industries to clarify points raised by Animal Care Australia during our testimony.

The response from the Department of Primary Industries<sup>3</sup> includes the following:

*b) The Private Members Bill, the Prevention of Cruelty to Animals Amendment (Prohibitions for Convicted Persons) Bill 2022<sup>4</sup> (the Private Member's Bill) introduced section 31AD of the Prevention of Cruelty to Animals Act 1979 (POCTAA): 31AD Certain convicted persons prohibited from breeding animals*

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

- a) breed animals, or*
- b) manage or control a business relating to breeding animals, or*
- c) work with, or care for, animals in a business relating to breeding animals*

*The Private Member's Bill also amended and expanded the definition of animal cruelty offence under POCTAA to include an offence under the Regulations in relation to an animal.*

*2 The Private Member's Bill also amended the Exhibited Animals Protection Act 1986 (EAPA) to introduce restrictions in relation to persons convicted of relevant offences. The Private Member's Bill defined relevant offences to include:*

- a) an offence under this Act (EAPA) 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.*

*There are numerous offences in relation to an animal under POCTAA, EAPA and their respective Regulations that are penalty notice offences.*

<sup>3</sup> [QON response to Inquiry from Dept Primary Industries](#)

<sup>4</sup> [POCTAA \(Prohibitions for Convicted Persons\) Bill 2022](#)

*Concerns have been raised by stakeholders with the Department of Primary Industries regarding the wording of the above provisions of the Private Member's Bill. General information/advice that is consistent with the Department website content<sup>5</sup> regarding the Private Member's Bill has been provided to stakeholders. The Department has not provided legal advice to stakeholders regarding the operation of the Private Member's Bill provisions.*

*It is noted that the NSW Government has committed to reviewing POCTAA and if necessary, there is an opportunity to clarify the intent of these provisions as part of that process.*

### **The solution:**

It is clear to Animal Care Australia the original intent of the POCTAA amendment is not being met by current wording within the Act and that wording is providing an unacceptable level of ambiguity and discord when examining the possible outcome of the inclusion of all aspects of POCTAA Regulations when issuing a disqualification order that permanently bans anyone from breeding animals or working with breeding animals.

There is no ambiguity as to the consequences of amendments to the Exhibited Animals Protection Act – the amendments are far more consequential including prohibiting a person from being employed or associated with the keeping and breeding of animals AND applies to those who haven't even been found guilty of any offence – they have just been charged with a matter yet to be dealt with. The Legislative Review also highlighted this as an issue.

### **Additional References**

The Amending Act is here...

<https://legislation.nsw.gov.au/view/pdf/asmade/act-2022-69>

And details of the Amending Act passage through parliament is here...

<https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=4001>

POCTAA is here...

<https://legislation.nsw.gov.au/view/html/inforce/current/act-1979-200>

POCTAA Regulations are here...

<https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2012-0408>

EAPA is here...

<https://legislation.nsw.gov.au/view/html/inforce/current/act-1986-123>

Hansard Legislative Council 9 November 2022 is here (from p7244)...

<https://api.parliament.nsw.gov.au/api/hansard/search/daily/pdf/HANSARD-1820781676-91011>

Hansard Legislative Council 13 October 2022 is here (from p7248)...

<https://api.parliament.nsw.gov.au/api/hansard/search/daily/pdf/HANSARD-1820781676-90544>

Legislative Review Digest 48 is here...

<https://www.parliament.nsw.gov.au/ladocs/digests/684/Legislation%20Review%20Digest%20No.%2048%20-%2011%20October%202022.pdf>

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<sup>5</sup> [Dept Primary Industries website page relating to matter](#)