

24/02/2026

The Hon. Tara Moriarty MLC  
NSW Minister for Agriculture

**RE: Automatic Breeding and Exhibiting Ban Issues**

Thank you for reconsidering this matter.

Animal Care Australia’s concerns relate to amendments to the NSW *Prevention of Cruelty to Animals Act 1979* (POCTAA) and NSW *Exhibited Animals Protection Act 1986* (EAPA) which passed into law as part of the final session of the previous parliament – 9 Nov 2022 in the Legislative Council and 16 Nov 2022 in the Assembly. We believe they were not given due consideration at the time, such that natural justice consequences were not as the parliament intended.

Animal Care Australia (ACA) supports bans at the discretion of the courts. Currently there are mandatory breeding and exhibiting bans whenever a person is convicted of any offence including offences under the regulations, likely including simple code of practice breaches.

The relevant amendments altered the definition of an animal cruelty offence in POCTAA Section 4 to include offences under the regulations (not just the Act itself). It also added Section 31AD to POCTAA and Section 30(1A) to the EAPA.

The definition of an animal cruelty offence in POCTAA Section 4 currently reads as follows:

***animal cruelty offence*** means—

- (a) an offence under this Act or the regulations in relation to an animal, or
- (b) an offence against section 79, 80, 530 or 531 of the Crimes Act 1900.

Currently POCTAA Section 31AD reads as follows:

**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.

Currently EAPA Section 30 reads as follows:

**30 Suspension and cancellation**

- (1A) The Secretary must, by written notice served on the holder of an authority, cancel the authority if the holder is, after the commencement of this subsection, convicted of—
  - (a) an offence, in relation to an animal, against one of the following Acts—
    - (i) this Act,
    - (ii) the Animal Research Act 1985,
    - (iii) the Biodiversity Conservation Act 2016,
    - (iv) the National Parks and Wildlife Act 1974,
    - (v) the Prevention of Cruelty to Animals Act 1979, or

- (b) an offence, in relation to an animal, against an instrument made under an Act specified in paragraph (a), or
- (c) an offence against the Crimes Act 1900, section 79, 80, 530 or 531.

ACA recommends the following amendments to correct the issue.

[1] In POCTAA Section 4:

Delete the words “or the regulations” from the definition of an animal cruelty offence.

[2] In POCTAA Section 31AD (1):

Replace the words “If a person is convicted of an animal cruelty offence, the person must not—”

With the words “If a court has found a person guilty of an animal cruelty offence, the court may make orders the person must not—”

[3] In EAPA Section 30 (1A):

Replace the words “The Secretary must, by written notice served on the holder of an authority, cancel the authority if the holder is, after the commencement of this subsection, convicted of—”

With the words “If a court has found a person guilty of one of the following offences, the court may order the cancellation of an authority issued under this Act.”

To explain the issue in detail, consider the following response sent to Emma Hurst MLC regarding her question (p16,17 of the transcript) to ACA at the *2023 Inquiry Into The Operation Of The Approved Charitable Organisations Under The Prevention Of Cruelty To Animals Act 1979* at Macquarie Room, Parliament House, Sydney on Friday 26 April 2024.

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 (ACA) opposed and continues to oppose the Amending Act. Our complete submission discusses the original bill and is on our website [https://www.animalcareaustralia.org.au/wp-content/uploads/2022/10/NSW\\_Prohibition-for-convicted-persons-bill.pdf](https://www.animalcareaustralia.org.au/wp-content/uploads/2022/10/NSW_Prohibition-for-convicted-persons-bill.pdf)
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 what was passed was not the intent of a range of members in the legislative council.
4. ACA 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) essentially makes it an offence under the regulations to fail to comply with a relevant Code of Practice or of the relevant Standards.
7. We 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 and convicted will result in an automatic ban on breeding, etc. under Section 31AD of POCTAA.
10. ACA sought and received the following advice from Director of Policy and Industry Insights, NSW Department of Primary Industries (DPI) on 20/11/23 regarding PINs.

*The below is some general information about the issue and should not be considered legal advice. If there is a specific issue / matter up for consideration, then legal advice should be sought by the affected individuals.*

- *The Fines Act 1996 applies to PINS issued under POCTAA, and payment is not regarded as an admission of liability.*
- *PINS can be reviewed via an internal review process (separate to court electing) and either confirmed or withdrawn. I understand the RSPCA NSW have previously advised a parliamentary committee this can be done via a Revenue NSW process - <https://www.nsw.gov.au/money-and-taxes/fines-and-fees/fines/request-a-review#toc-how-the-review-process-works>*
- *Most convictions in NSW are capable of becoming spent under the Criminal Records Act 1991. If a conviction is spent, a person is not required to disclose it, and it cannot be taken into account in a question concerning the persons criminal history (except for certain professions such as working with children). If a Court finds an offence proven, or that a person is guilty of an offence, without proceeding to a conviction, the conviction is spent immediately, or at the end of a period, or compliance with conditions, imposed by the Court (such as a conditional release order or good behaviour bond).*

*I would like to note that as per our discussion, we are aware there is some ambiguity around the wording of the relevant provisions of POCTA. As you know the NSW Government has committed to reviewing POCTA and there is an opportunity to clarify the intent of this provisions and its application as part of that process.*

11. The above advice indicates significant ambiguity regarding contesting PINs via the courts, and other informal verbal legal advice concurs. Given the possible and likely extreme consequences, it would be unwise for a person to contest a PIN.
12. Similar unreasonable consequences will now result for exhibitors for minor infractions under a range of Acts. Again, it remains 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.
13. 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. ACA continues to support providing the court with discretion on all bans.

14. 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.
15. 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.*
16. 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.
17. Given the concerns of the Legislative Review Committee, members from both sides and cross bench of the chamber during the Second Reading debate, our advice from members during consideration in the chamber, and subsequent DPI and legal advice it is clear the above matters deserve urgent reconsideration.
18. 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.

ACA notes that there are other less pressing issues as a consequence of the Amending Act. We look forward to discussion and resolution of these additional matters as part of the considerations of our Animal Welfare Commission proposal.

We look forward to Parliament resolving these issues.

Regards,



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## **About Animal Care Australia**

As a nationally recognised animal welfare organisation, Animal Care Australia encourages continued development of animal welfare standards and Codes of Practice for animal husbandry, breeding, training, sale, and sporting exhibitions for a wide range of animal species, including pets, companion animals, animals used for educational or entertainment purposes or kept for conservation.

Animal Care Australia was founded in early 2018 to establish an organisation run solely by volunteers to lobby for real animal welfare. With extreme animal rights and animal liberationist ideologies influencing government legislation, regulation, and policy at our expense and to the detriment of our animals and pets, it has become necessary to provide government with a balancing voice.

By uniting the broad spectrum of animal groups, collectively we offer an experienced, sensible approach to animal welfare.

By educating our members and the public about the importance of treating animals with kindness and respect for their needs and promoting the humane treatment of animals to improve animal welfare outcomes, Animal Care Australia is in the unique position of lobbying and advocating for all animals within our care.

Animal Care Australia provides priority to the following:

- advocating for stronger welfare outcomes
- advocating to increase education of the public in animal welfare and best care techniques
- educate the public on handling their animals with kindness & respect and the importance of their needs
- educate the public in the differences between animal welfare and animal rights