

Animal welfare Policy in New South Wales – Post Hearing Responses

1. Transcript corrections

Transcription error – p54, Clem Harris, fourth line “this proposed defence is that there is no mental element in our proposed defence.” The use of the word defence should be “offence”.

Clarification comment – evidence from Clem Harris on p. 55 “In the draft bill at the back there is a consequential amendment to the Crimes Act, which removes the exemptions from applying to that serious cruelty offence that has that intent element. So there will be no exemptions available under the Crimes Act.” This comment related only to the removal of exemptions for serious animal cruelty under the Crimes Act at section 530 ((2)b), not 530 ((2)a).

Clarification comment – evidence from Tara Black on p. 64 – “That is the point at which the Minister met with a range of different stakeholders and formed that view of that provision, which was to change cervical AI from being a restricted act of veterinary science—which it is currently—to being a banned, prohibited act.” This is mistaken use of the term “cervical” - should be “surgical”.

2. QoNs

Question on notice	Answer
1. The Hon. EMMA HURST: We have had a lot of concerns raised in regards to why birds have been excluded from the proposed section 29, injuries to animals struck by vehicles, and there does not seem to be any rational basis for excluding specifically birds. I know that that is possibly also historical because it has been in the Act for quite some time rather than something that has been drafted in now, but noting the feedback we have had, is that something that will be considered, to include birds?	Section 29 of the Draft Animal Welfare Bill 2022 is a carryover from section 14 of the <i>Prevention of Cruelty to Animals Act 1979</i> . This provision, including the exemption for birds, has been in place since 1979. We have been unable to identify the historical reasons for this exemption. The NSW Government is committed to considering all feedback on the Draft Bill and welcomes the Committee’s views on this provision.

TARA BLACK: Yes, that is right. The provision around birds that you are talking about is a carryover from existing POCTAA requirements. That has actually been something that has been really interesting through this project: A lot of the feedback that we are getting is actually on provisions that are in existing legislation that maybe people just were not aware of. So, today I think was the first time that we have heard feedback about that specific issue. I am definitely happy to go away and have a look at that and provide some further information back to the Committee about what the historical reasons might have been and whether we believe that needs to change.

2. The Hon. MICK VEITCH: Over the last couple of days one of the issues that has been raised relates to the objects of the Act. The objects as I see it are to do with the welfare of animals and to prevent cruelty to animals. People talk about education being a critical element for better welfare outcomes for animals in New South Wales. Section 4 talks about how objects are to be achieved. For section 3 and section 4, is there a view that we should include something around education and how would you envisage that happening?

TARA BLACK: I definitely agree that education and also training are important parts of ensuring the continuous improvement in animal welfare, as well as compliance with the laws. Yes, I definitely agree that education is important. It would be unusual to prescribe anything about education in legislation. That is definitely part of DPI's role and the enforcement agencies' roles and a number of other players in the animal welfare space. It is very important and something that we will continue to do, particularly off the back of hopefully soon having new animal welfare laws. We fully intend to have a community education and awareness

Jurisdiction	Relevant objects
ACT	Nil - objects do not include education
Northern Territory	"to promote community awareness about responsibilities and legal obligations associated with the care and protection of animals" (section 3(c))
Queensland	Nil - objects do not include education
South Australia	N/A – Act does not include objects
Tasmania	N/A – Act does not include objects
Victoria	"to improve the level of community awareness about the prevention of cruelty to animals" (section 1(c))
Western Australia	Nil - objects do not include education

<p>campaign to make sure that people understand what the requirements are and why and how they can comply with those requirements. It is certainly important, but I am not sure that we would support having that prescribed. I am not sure what that would look like if it was inserted in the bill.</p> <p>The Hon. MICK VEITCH: Ms Black, do you know of any other jurisdiction that would have education and training in the objects?</p> <p>TARA BLACK: Not that I am aware of.</p> <p>CLEM HARRIS: You are testing my memory. I will have to take that on notice.</p>	
<p>3. The CHAIR: One more on that. The University of Western Sydney specifically raised the issue that they did not want to have any gap if there was a change in Act. Do you have thoughts about that?</p> <p>SUZANNE ROBINSON: Unless there is room for improvement we do not think there will be a gap. Also, as Tara mentioned earlier, the intent is that we will be initiating the Act when the regulations are in place as well, so the whole legislative framework in terms of the Act and the regulation will come on at once. We are also looking at carrying over the existing mandatory standards that sit within the three different pieces of legislation as an interim measure, to carry those over so they will remain mandatory standards as they are now, and then we will be reviewing that standards framework. The phase three after the regulations is to look at that framework and what other standards may need to be considered to be mandatory and reviewing those existing standards as well.</p>	<p>We consulted the community on a proposal to consolidate the three existing animal welfare related Acts into a single piece of legislation, and 66% of public feedback was supportive of the idea.</p> <p>We note stakeholder concerns raised through the Inquiry process. We are currently considering options for the most appropriate structure for the regulatory framework and welcome the Committee's views on this.</p>

TARA BLACK: If I could just add, I think this is one that we will need to take away and have another look at and then perhaps provide some further information to the Committee on—just to check and reflect on the feedback that we have heard this morning. Obviously, as we have said, our intention here is to streamline and modernise things. If it is going to have the opposite effect and it is going to cause confusion or unintended consequences, then that is not what we are aiming to do. But I just would like the opportunity to take that away and reflect on that little bit and perhaps provide some further information back.

The CHAIR: Yes, that is fine.

The Hon. MICK VEITCH: I am not wedded to this. This is just something that has come through my own mind. The researchers this morning seemed pretty convinced. They would just like to have that legislation very clear in the title. That is what they go to. One of the other options is you have a division of the bill just for animal research or you have a regulation just for animal research, so they still go to the animal research regulation of this particular bill. There are pros and cons of that and I know it might sound a bit messy, but that is something. If it is part of the streamlining process, maybe that is a way of doing it.

TARA BLACK: I think that is something we will take a look at and come back to you on.

4. The Hon. EMMA HURST: You can say no if you like, but is there any chance of giving us a very rough guideline for a timeline for those regulations in the next draft?

TARA BLACK: Yes, we are definitely happy to provide you with any additional information that might be helpful. We can have a go at a draft time line and, at the very least, a process.

The Hon. EMMA HURST: That would be really useful.

TARA BLACK: To a certain degree, it does depend on what the interim report says and how the Government might respond to that. But, yes, definitely happy to give you our best estimate of what the process would look like from here

Key milestones for drafting Regulations

- Committee interim report on Draft Bill due 30 May 2022
- Draft Bill finalised
- Draft Regulations drafted and tested with key stakeholder groups
- Draft Regulatory Impact Statement drafted and tested with key stakeholder groups
- Draft Regulations and Regulatory Impact Statement published and provided to the Committee for consideration
- Committee considers Draft Regulations
- Committee tables final report
- Draft Regulation finalised

3. Supplementary questions

Supplementary questions	Answer
<p>1. A number of stakeholders raised questions and concerns about the entry powers in section 66 (non-residential premises) and section 67 (residential premises) of the Bill, particularly in relation to dog and cat breeders.</p> <p>Can you please clarify:</p> <p>a. What is meant by “premises, or a part of premises, used for residential purposes”?</p> <p>b. Does it include the backyard of a residential home, including a backyard where dogs are being bred for sale or routinely kept for breeding?</p> <p>c. Does it include kennels in the backyard of a residential home, where dogs are being bred for sale or routinely kept for breeding?</p> <p>d. Does it include a garage or shed on the same property as a residential home, where dogs are being bred for sale or routinely kept for breeding?</p> <p>e. Would it make a difference if the garage or shed was attached to a residential home, versus an entirely separate structure?</p> <p>f. If a commercial operation was occurring entirely inside a residential premises (e.g. someone breeding and selling dogs</p>	<p>The Draft Bill aims to make the current powers of entry easier to understand and does not substantively change the effect of the existing laws. The provisions aim to balance an individual’s right to privacy and the need to provide authorised officers with the powers required to undertake effective compliance and enforcement action.</p> <p>a) The Draft Bill uses the term “premises, or part of premises, used for residential purposes”. These terms are not defined, so will take their ordinary meaning.</p> <p>This approach is common in NSW law - for example, the Environmental Planning and Assessment Act 1979, Protection of the Environment Operations Act 1997, Biosecurity Act 2015 and Biodiversity Conservation Act 2016 all make reference to premises used for residential purposes in provisions establishing powers of entry.</p> <p>In situations where premises or parts of premises are used for both residential and commercial purposes, the intent of the provision is that the residential protections apply.</p> <p>b) As above, the powers of entry included in the Draft Bill are based on those set out in other contemporary NSW legislation.</p> <p>There are an infinite number of property types and scenarios that might arise in an authorised officer’s day-to-day execution of their functions. Ultimately, a determination of</p>

<p>in their home), would inspectors be entitled to enter the residential premises at any time to enforce compliance with the Act or regulations pursuant to section 66(1)(f) without a warrant?</p> <p>i. If the answer is no, does this mean that proactive, routine inspections of commercial animal businesses occurring in residential premises will not be allowed to occur, and authorised officers will only be allowed to enter these residential premises in the circumstances set out in section 67?</p>	<p>which parts of land are used for residential purposes will be considered on a case-by-case basis.</p> <p>c) As above.</p> <p>d) As above.</p> <p>e) As above.</p> <p>f) No.</p> <p>a. Yes, section 67 would apply.</p>
<p>2. In relation to the changes to the Government Information (Public Access) Regulation 2018 proposed in the Animal Welfare Bill 2022, why are the RSPCA and AWL not deemed agencies for the purposes of enforcing Part 3 of the Bill in relation to Minimum Care Standards? Why has Part 3 been excluded?</p>	<p>This was a drafting error – Part 3 will not be excluded in the final Bill.</p>