ANIMAL WELFARE

ANIMAL WELFARE DISCUSSION PAPER: IMPROVING THE CURRENT LEGISLATION – PENALTIES AND CRITICAL SITUATIONS
Summary

Protecting the welfare of animals now and into the future is a priority of the NSW Government. In May 2018, the Department of Primary Industries (NSW DPI) released the NSW Animal Welfare Action Plan (the Action Plan), which outlines a range of policy and legislative activities to be undertaken over the next three years aimed at ensuring NSW has a robust animal welfare framework and the capacity and capability to effectively administer it.

Animal welfare is currently regulated in NSW under four different Acts:

- the *Prevention of Cruelty to Animals Act 1979* (the POCTA Act)
- the *Exhibited Animals Protection Act 1986*
- the *Animal Research Act 1985*
- the *Crimes Act 1900* (the Crimes Act).

Following on from the public release of the Action Plan and the introduction of the *Companion Animals and Other Legislation Amendment Bill 2018*, this discussion paper is the next step towards improving the current animal welfare policy and legislative framework in NSW.

The NSW Government is seeking community and stakeholder feedback to this discussion paper to guide improvements to existing animal welfare legislation and as a foundation for further animal welfare policy reform. Comments received on issues outside of the scope of this discussion paper, such as game hunting or live exports will not be considered in the review.

In this discussion paper we are seeking your feedback on:

1. Whether current penalties for offences in the POCTA Act are appropriate
2. Proposed amendments to the POCTA Act that aim to protect animal welfare during critical and emerging incidents.

You can provide your comments online by completing our survey at: www.dpi.nsw.gov.au/improving-animal-welfare

We will continue to consult with you as the new policy and legislative changes outlined in the Action Plan take shape over the coming months and years.

Background

The NSW Animal Welfare Action Plan outlines the Government’s commitment to safeguard animal welfare and provide the strongest possible regulatory framework to promote responsible animal ownership and care in NSW. The key objective of the Action Plan is that people responsible for animals provide for their welfare in line with the best available science and community expectations. The Action Plan has six goals:

1. Modernise the policy and legislative framework;
2. Implement companion animal breeding practices reforms;
3. Improve the effectiveness of compliance and enforcement efforts;
4. Ensure sound research and scientific practices are used to develop policy and legislation;
5. Engage with key stakeholders and ensure all views are respected and considered in developing policy and legislation; and
6. Invest in our systems and processes.
Community and stakeholder feedback will be used to inform implementation of all of the goals of the Action Plan. This discussion paper relates to goals 3 and 6.

To learn more about the Action Plan, visit www.dpi.nsw.gov.au/improving-animal-welfare

1. Animal welfare penalties

Penalties play an important role in the enforcement of and compliance with animal welfare legislation in NSW. They should influence the behaviour of individuals and the community to improve animal welfare and deter potential offenders. It is vital that penalties remain effective and proportionate to the crime. Penalties should only be increased where there is clear evidence of a need for an increase, or in response to persistent public or judicial concern. Change may also be warranted if the deterrent effect of penalties is insufficient to prevent cruelty to animals.

The POCTA Act outlines maximum penalties for the majority of animal cruelty offences in NSW, including:

- Failing to provide proper and sufficient food to an animal
- Committing an act of aggravated cruelty upon an animal
- Being in charge of an animal and failing to provide veterinary treatment
- Being in charge of an animal and failing to exercise care
- Committing an act of cruelty upon an animal

Enforcement of the POCTA Act is undertaken by the NSW Police Force, the Royal Society for the Prevention of Cruelty to Animals NSW (RSPCA NSW) and Animal Welfare League NSW (AWL NSW). Two additional offences for serious and reckless animal cruelty are provided under section 530 of the Crimes Act 1900. Enforcement of the Crimes Act 1900 is undertaken by NSW Police.

The POCTA Act enforcement agencies have asked the Government to review penalties for animal cruelty offences because they believe they are out of step with community expectations, and should be increased. The POCTA Act enforcement agencies have also asked the Government to consider providing additional powers to Courts to improve the effectiveness of compliance and enforcement efforts. This discussion paper considers these issues.

As outlined in the Action Plan, the NSW Government will be considering further opportunities to improve animal welfare legislation over the coming months and years. We will continue to consult with the community as these changes take shape.

Statutory Maximum Penalties

A statutory maximum penalty is the maximum penalty that may be imposed for a statutory violation (deliberately or recklessly breaking a law) and can result in a fine, term of imprisonment or both.

Figure 1 below shows data obtained from the NSW Bureau of Crime Statistics and Research (BOCSAR) on finalised charges under the POCTA Act over the last five years.

There has been no significant change in the number of charges over the last five years, with the most recent years’ data being in line with the average per year over the preceding four years.

As a result of the way court matters are administered, the BOCSAR data may not include all charges laid and prosecuted by RSPCA NSW and AWL NSW. The NSW Government is working with RSPCA NSW and AWL NSW to resolve this issue.
Figure 1 – Finalised charges under the POCTA Act from 2013 to 2018

Table 1 below shows that NSW has lower penalties for similar offences in comparison to other states and jurisdictions. However in NSW and other states, there are additional penalties for serious and reckless animal cruelty in the Crimes Act. Maximum penalties for these offences are five years’ and three years’ imprisonment respectively.

Table 1 – Comparable statutory penalties for animal cruelty offences across Australian jurisdictions

<table>
<thead>
<tr>
<th>State or territory</th>
<th>Cruelty to animals offence</th>
<th>Aggravated cruelty to animals offence</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>Individual maximum penalty - $5,500 and/or six months’ imprisonment</td>
<td>Individual maximum penalty - $22,000 and/or two years imprisonment</td>
</tr>
<tr>
<td></td>
<td>Corporation maximum penalty - $27,500</td>
<td>Corporation maximum penalty - $110,000</td>
</tr>
<tr>
<td>QLD</td>
<td>Maximum penalty for individual and corporation- $252,300 or three years imprisonment</td>
<td>Offences for aggravated animal cruelty are prosecuted under the Criminal Code Act 1899</td>
</tr>
<tr>
<td>VIC</td>
<td>Individual maximum penalty - $39,642.50 or 12 months’ imprisonment</td>
<td>Individual maximum penalty - $79,285 or two years imprisonment</td>
</tr>
<tr>
<td></td>
<td>Corporation maximum penalty - $95,142</td>
<td>Corporation maximum penalty - $190,284</td>
</tr>
<tr>
<td>ACT</td>
<td>Individual maximum penalty - $15,000 and/or one year imprisonment</td>
<td>Individual maximum penalty $30,000 and/or imprisonment for two years</td>
</tr>
<tr>
<td></td>
<td>Corporation maximum penalty - $75,000</td>
<td>Corporation maximum penalty $150,000</td>
</tr>
<tr>
<td>TAS</td>
<td>Individual maximum penalty – $15,900 and/or 12 months’ imprisonment</td>
<td>Individual maximum penalty - $31,800 and/or imprisonment for five years</td>
</tr>
<tr>
<td></td>
<td>Corporation maximum penalty - $79,500</td>
<td>Corporation maximum penalty - $159,000</td>
</tr>
<tr>
<td>WA</td>
<td>Individual mandatory minimum penalty - $2,000</td>
<td>In WA aggravated animal cruelty is not listed as a separate offence</td>
</tr>
<tr>
<td>State or territory</td>
<td>Cruelty to animals offence</td>
<td>Aggravated cruelty to animals offence</td>
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<tr>
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</tr>
<tr>
<td></td>
<td>Individual maximum penalty – $50,000 and five years’ imprisonment</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Corporation mandatory minimum penalty $10,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Corporation maximum penalty $250,000</td>
<td></td>
</tr>
<tr>
<td>NT</td>
<td>Maximum penalty – $23,100 or 18 months’ imprisonment</td>
<td>Maximum penalty $30,800 or imprisonment for two years</td>
</tr>
<tr>
<td>SA</td>
<td>Maximum penalty – $20,000 or imprisonment for two years</td>
<td>Maximum penalty: $50,000 or imprisonment for four years</td>
</tr>
</tbody>
</table>

This table has been prepared from a desktop analysis of legislation. It is intended to be of a general nature only and does not constitute legal advice.

Table 2 below shows NSW animal cruelty penalties compared to a selection of other offences in NSW legislation. The table is not intended to suggest that animal cruelty is comparable to any of these offences. Rather, it seeks to show how these penalties compare across a spectrum of other offences.

**Table 2 - Comparison with offences in other NSW legislation**

<table>
<thead>
<tr>
<th>NSW legislation</th>
<th>Offence</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prevention of Cruelty To Animals Act 1979</td>
<td>Cruelty to animals</td>
<td>Individual maximum penalty - $5,500 and/or six months imprisonment</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Corporation maximum penalty - $27,500</td>
</tr>
<tr>
<td>Protection of the Environment Operations Act 1997</td>
<td>False or misleading information about waste</td>
<td>Individual maximum penalty - $240,000 and/or imprisonment for 18 months</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Corporation maximum penalty - $500,000</td>
</tr>
<tr>
<td>Road Transport Act 2013</td>
<td>Driving or making licence application while disqualified</td>
<td>Individual maximum penalty - $3,300 and/or imprisonment for six months (in the case of a first offence)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Corporation maximum penalty - maximum charged for an individual</td>
</tr>
<tr>
<td>Greyhound Racing Act 2017</td>
<td>Keep any animal that is reasonably capable of being used as a lure in connection with the trialling, training or racing of greyhounds at a place</td>
<td>Individual maximum penalty: $22,000 and/or imprisonment for 2 years</td>
</tr>
</tbody>
</table>
The three POCTA Act enforcement agencies believe that current penalties are insufficient and out of step with community expectations. Increasing the maximum terms of imprisonment and fines in the POCTA Act could better represent the seriousness of these offences and may act as a more effective deterrent.

If statutory maximum penalties are increased, it is not guaranteed that higher penalties would actually be imposed by the Courts. When determining a sentence, the judge or magistrate must take into account a number of factors, including:

- the facts of the offence
- the maximum penalty (and, if in the Local Court, the jurisdictional maximum)
- the objective seriousness of the offence
- the conduct of the offender that gave rise to the offence
- the circumstances of the offence
- aggravating and mitigating factors
- subjective factors about the offender
- relevant sentencing legislation and case law.

### Penalty Infringement Notices

Penalty Infringement Notices (PINs) are fixed financial penalties for an offence prescribed by legislation. Schedule 2 of the Prevention of Cruelty to Animals Regulation 2012 outlines those POCTA Act offences that may be dealt with by way of a PIN.

Currently the penalty notice amounts are either $200 or $500 for individuals, and $1,000 or $1,500 for corporations. PINs have not increased since they were introduced in 2005 (but new PIN offences have been added).

Between 1 July 2012 and 12 December 2017, the three enforcement agencies issued 855 PINs for a range of offences. These PINs had a combined value of $327,700 (average $383).²

A comparison of PIN amounts for animal cruelty offences in NSW compared other Australian jurisdictions is presented in Table 3. The table shows that NSW PIN amounts are similar to those in other States.

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² State Debt Recovery Office - ART-3279 PINs issued under the Cruelty to Animals Act 2012/17
Table 3 – Comparable Penalty Infringement Notice amounts for animal cruelty offences across Australian jurisdictions

<table>
<thead>
<tr>
<th>State/Territory</th>
<th>Mandate</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>Prevention of Cruelty to Animals Regulation 2012</td>
<td>Individual - $200 or $500</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Corporations - $1,000 or $1,500</td>
</tr>
<tr>
<td>VIC</td>
<td>Prevention of Cruelty to Animals Regulations 2008</td>
<td>Individual - $158.57 to $475.71</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Corporations – N/A</td>
</tr>
<tr>
<td>TAS</td>
<td>Animal Welfare (General) Regulations 2013</td>
<td>Individual - $318</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Corporation – N/A</td>
</tr>
<tr>
<td>NT</td>
<td>Animal Welfare Regulations</td>
<td>Individual – $154 or $308</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Corporation – N/A</td>
</tr>
<tr>
<td>WA</td>
<td>Animal Welfare Act 2002</td>
<td>Note: WA is in the process of setting the values of PINs under the Act.</td>
</tr>
<tr>
<td>SA</td>
<td>Animal Welfare Act 1985</td>
<td>Individual - $210 for an animal welfare notice</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Corporation – N/A</td>
</tr>
<tr>
<td>QLD</td>
<td>Animal Care and Protection Act 2001</td>
<td>Only court imposed penalties apply to offences under the Act.</td>
</tr>
</tbody>
</table>

By way of comparison to offences in other NSW legislation, animal cruelty PIN amounts in NSW are similar to the littering offences under the Protection of the Environment Operations Act 1997 (between $250 and $500) and failing to pay the fishing fee under the Fisheries Management Act 1994 ($200).

The enforcement agencies support increasing PIN amounts as they believe that they are out of step with community expectations.

**Disqualification Orders and Penalties for Non-Compliance**

Disqualification orders allow a Court to make orders in relation to a person convicted for animal cruelty offences, including that the person is not to purchase or acquire, or take possession or custody, of any animal within such a period as specified in the order.

Disqualification orders are provided for in the POCTA Act. The NSW Government has recently introduced legislation that allows Courts to disqualify persons from not only owning or possessing animals, but also being involved in their care in any way. This will help prevent these animals from being subjected to future acts of cruelty.

However, disqualification orders are not applicable to more serious and reckless animal cruelty charges brought under the Crimes Act. This means that the Courts cannot disqualify persons from keeping...
animals if they have been convicted of these more serious offences. It is proposed to close this loophole by allowing the Courts to impose disqualification orders for serious animal cruelty offences under the Crimes Act.

The POCTA Act enforcement agencies have also asked the NSW Government to consider an ‘interim disqualification’ order which may further assist in protecting animal welfare. Such an order would prohibit a person charged with an offence from acquiring more animals until the finalisation of any animal cruelty matters in Court. Interim orders are tools used by the Courts under other legislation. For example, an interim Apprehended Violence Order (AVO) can be made by a Court if it is agreed that someone needs immediate protection until a decision is made on a final AVO. The individual is required to comply with the interim order until their case is heard.

The enforcement agencies have also requested the NSW Government consider the adequacy of penalties for non-compliance with Court orders under the POCTA Act. Court orders can include disqualification orders and orders to produce an animal to the Court. Penalties for non-compliance are currently set at $2,750. The enforcement agencies believe that this fine is an insufficient deterrent to non-compliance.

In setting penalties for non-compliance with a Court order, it is important to consider the impact on the victim and the broader community. Other NSW legislation provides for both monetary penalties and imprisonment for breaches of Court orders. For example:

- Contempt of a District or Local Court can attract a fine ($2,200) or imprisonment for 28 days.
- A breach of an Apprehended Domestic Violence Order (ADVO) attracts imprisonment for two years and/or a fine of $5,500.
- If a Court disqualifies someone from having a dangerous dog following conviction for a dangerous dog offence, and they breach this order, the fine is $11,000.

2. Protecting animal welfare in critical and emerging situations

It is critically important that the NSW Government has the capacity and resources to take effective and timely action to safeguard the welfare of animals during critical and emerging situations. These situations could include emergencies\(^3\), natural disasters, transport accidents or business failure. A number of amendments are proposed to the POCTA Act to improve animal welfare in critical and emerging situations:

- **Powers to humanely destroy livestock in critical and emerging situations**

  During emergency situations such as floods or fire, or critical incidents like stock transport accidents, Local Land Services (LLS) and local council rangers may be called upon to humanely destroy livestock when it is considered cruel to keep them alive.

  The POCTA Act currently allows inspectors, veterinary practitioners and saleyard or abattoir managers to humanely destroy an animal. However, it is unclear whether LLS is authorised to do this under the *Local Land Services Act 2013*.

  It is proposed to amend the POCTA Act to provide LLS and local council rangers with the power to humanely destroy livestock in emergency situations when, in their opinion:

\(^3\) Refer Section 4 of the *State Emergency and Rescue Management Act 1989*
• the animal is so severely injured, diseased or in such a physical condition that it is considered cruel for those animals to be kept alive, and

• the animal is not about to be destroyed, or it is about to be destroyed in a manner that will inflict unnecessary pain on the animal.

It is also proposed to provide LLS and local council rangers with protection from personal liability where they exercised the proposed destruction powers in good faith and for the purposes of executing functions under the POCTA Act.

Individual local councils and LLS will determine if their staff should be authorised to exercise these powers based on the needs in their region, and to ensure that adequate training is provided and licences obtained in accordance with the relevant provisions of the Firearms Act 1996.

**Broadening provisions for the seizure and disposal of livestock**

While farmers take the utmost care to look after their livestock, sometimes situations like drought, company financial difficulties, or personal difficulties can have harmful impacts on the welfare of livestock. In these situations, seizure and disposal (including by way of sale) provisions in the POCTA Act provide a practical and cost-effective early intervention mechanism for the NSW Government, to prevent unnecessary welfare issues for distressed stock.

The POCTA Act currently provides for the seizure and disposal of stock animals depastured on rateable land. The seizure and disposal provisions can only be executed by the Government if it reasonably suspects that the animal is in distress or likely to become distressed due to lack of proper and sufficient food, drink, shelter or veterinary treatment.

Before stock can be seized or disposed of, the Government must:

• Constitute a Stock Welfare Panel to assess and report on the state of and appropriate care of the animal and any other matter concerning its welfare

• Issue an official warning (a written notice) of the intention to authorise a seizure and disposal.

If the action is not taken and the animal remains in distress or likely to become distressed, the Government may issue an order to seize and dispose of the animal. This process ensures that proper due diligence is undertaken before seizure and disposal provisions are enacted.

However, the NSW Government is restricted in its ability to protect livestock welfare during these situations because:
- intensive livestock are not considered ‘depastured’ as they are predominantly fed prepared stock food and do not depend on grazing pasture for their nutritional needs
- the definitions of rateable land in the Local Land Services Act 2013 are limited by land size and stock units

It is proposed to broaden the application of seizure and disposal provisions to include intensively produced livestock (not only depastured), and to include smaller parcels of land (not covered as

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4 Refer Part 2B of the Prevention of Cruelty to Animals Act 1979
5 Refer Clause 3(1) of the Local Land Services Regulation 2014 for definition of ‘intensive livestock production’
6 Refer Section 56 of the Local Land Services Act 2013 for definition of ‘rateable land’
7 Refer Clause 3(2) of the Local Land Services Regulation 2014 for definition of ‘stock units’
rateable). This would mean seizure and disposal provisions would apply to poultry facilities, piggeries, feedlots and dairies.

Another limitation of the current seizure and disposal provisions is that it is unclear if an inspector has the power to enter premises and vehicles, including farm paddocks and intensive livestock production facilities, to carry out their functions. This means an inspector could be hindered in their functions if, for example, on arrival at a farm to seize animals, the stock owner or manager has loaded the animals on a truck.

It is therefore proposed to amend the POCTA Act to clarify that the definition of land for the purpose of seizure and disposal provisions is the same as the definition of land for other powers in the POCTA Act. That is, it includes premises or a vehicle, vessel or aircraft.

- **Serving notices**

Legislation often includes provisions for notices or other documents to be served on a person and how this should occur. However, this is not the case in the POCTA Act. This can be a major obstacle for inspectors exercising functions under the POCTA Act and preventing cruelty to animals. For example, the Secretary must issue an official warning and/or a written order to the owner or person in charge of distressed stock, prior to exercising seizure and disposal powers. It can be difficult to serve an official warning notice or an order to the stock owner or person in charge (particularly if they do not live on the property in question or are intentionally evading service), and there are currently no provisions in the POCTA Act for how this should occur.

The NSW Government proposes to amend the POCTA Act to provide for the service of notices by traditional methods (such as by mail or hand delivery), electronic transmission, or by affixing it to some conspicuous part of the land (including premises on the land) where the stock are kept.

- **Clarification of advisory functions under the POCTA Act**

LLS plays an important role in advising stock holders about the appropriate care of their animals.

This function was transferred from NSW DPI (referred to as the ‘Department’ in the POCTA Act) to LLS in 2013; but the POCTA Act was not updated to reflect this change.

The NSW government proposes to amend the POCTA Act to clarify that advice should be sought from LLS, and not from the NSW DPI. This change is supported by RSPCA NSW.

**What do you think?**

We value your comments on how we can improve our animal welfare framework and look forward to receiving your input into this important process.
