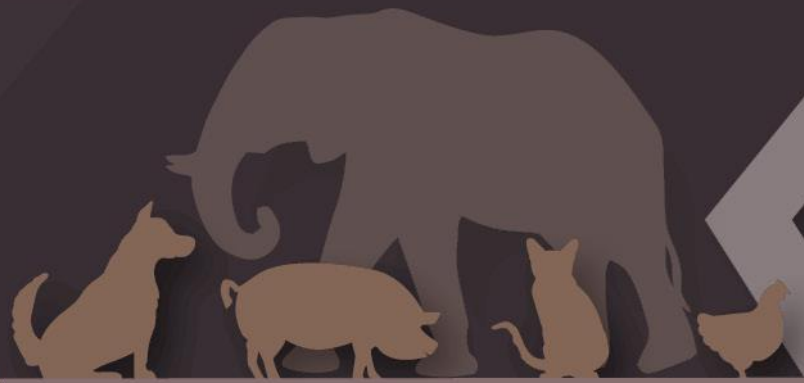


# NSW ANIMAL **WELFARE** REFORM CONSULTATION OUTCOMES



**Published by the NSW Department of Primary Industries**

NSW Animal Welfare Reform – Consultation Outcomes

First published December 2021

**More information**

DPI Strategy & Policy

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RDOC21/98151

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# Introduction

## Consultation overview

The *NSW Animal Welfare Reform – Discussion Paper* (Discussion Paper) sought public feedback on key proposals for new animal welfare laws in NSW, consistent with the NSW Government's commitment to streamline and modernise NSW's animal welfare legislative framework under the NSW Animal Welfare Action Plan.

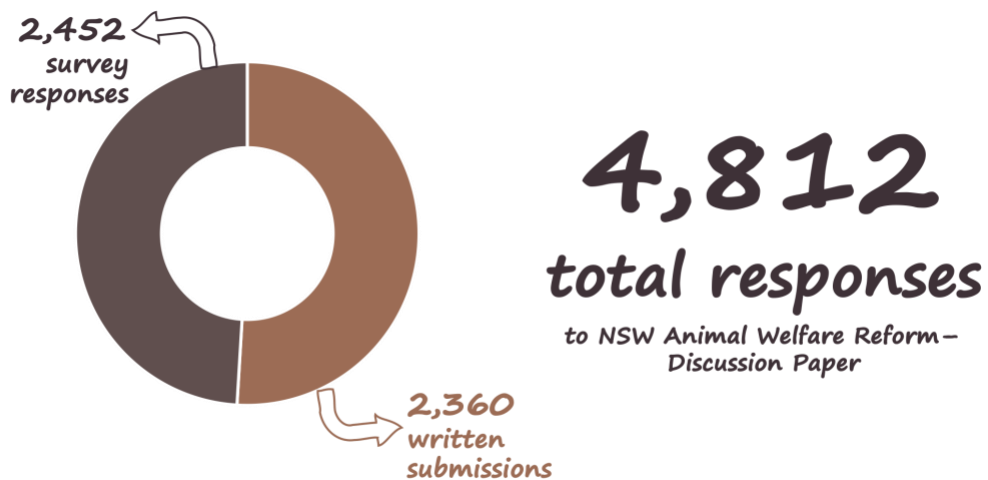
The Discussion Paper was released for consultation on 3 August 2021 and submissions closed on 17 September 2021.

The Discussion Paper was published on the NSW Department of Primary Industries (NSW DPI) website on a dedicated webpage, which also included details on how to provide feedback. The Discussion Paper was also advertised on the NSW Government Have Your Say website, communicated to stakeholders via the Chief Animal Welfare Officer's newsletter in August and September 2021, and advertised through NSW DPI's social media channels.

Stakeholders and the community could provide feedback by providing a written submission to a dedicated email address or by post, or by responding to an online survey.

## Response statistics

The NSW Government received 4,812 total responses to the Discussion Paper, consisting of 2,452 survey responses and 2,360 written submissions.



The written submissions were received from 2,196 unique respondents, and included:

- 938 pro-forma submissions (copies of identical 'form' submissions)
  - approximately 40 per cent of all written submissions
- 912 campaign-style submissions (submissions bearing strong similarities in style that indicated they were based on a common source)
  - approximately 39 per cent of all written submissions
- 71 submissions made on behalf of organisations
  - approximately 3 per cent of all written submissions
- 439 individual submissions (submissions that were neither pro-forma nor campaign submissions, and were not made on behalf of an organisation)
  - approximately 19 per cent of all written submissions.

## About this Report

The feedback received from stakeholders in response to the Discussion Paper has been used to inform the development of the draft Animal Welfare Bill 2022 (draft Bill). This Consultation Outcomes report provides an insight into the feedback received in an aggregated format. The report highlights a range of key issues raised during consultation feedback and provides an overview of the NSW Government's response to these questions, issues or concerns. It also includes quantitative data collected as part of the online survey.

The report also highlights key sections of the draft Bill related to each proposal. The draft Bill is available on the [NSW DPI website](#).

# Proposal 1: Replace the existing laws with a single, modern Act

## Proposal summary

This proposal is to repeal the *Prevention of Cruelty to Animals Act 1979*, *Exhibited Animals Act 1986* and *Animal Research Act 1985* and replace them with a single, modern animal welfare law that covers all three current laws.

## Draft Bill – key locations

- N/A

## What we asked

- Do you support Proposal 1: Repeal the existing laws and replace them with a single, modern Act?
- Do you have any comments on the proposal to repeal the existing laws and to replace them with a single, modern animal care and protection law?

## Survey responses



**66% positive**

| Response       | Number | Percentage |
|----------------|--------|------------|
| Support        | 1466   | 61%        |
| Partly Support | 118    | 5%         |
| Neutral        | 57     | 2%         |
| Partly Oppose  | 44     | 2%         |
| Oppose         | 723    | 30%        |
| N/A            | 3      | <1%        |

## Key issues raised (submissions and survey responses)

| Issue or theme raised   | Our response   |
|---|--|
| <b>Concerns that the proposed approach places too much detail into the Regulations instead of the Act</b> | <p>The draft Bill focuses on setting out high-level principles, expectations and offences. This forms a single point of reference for people to understand what is expected of them.</p> <p>The Regulation includes further detail for specific situations, including operational provisions. It includes details where an increased level of flexibility is required to ensure responsiveness to emerging issues or changing evidence. Including this type of material in Regulation is standard practice.</p> <p>In terms of licensing, the policy intent of the licensing scheme – who needs a licence, what the licence allows, what the penalties are for breaches – will be included in the Act. However operational details, like meeting procedures and administrative processes, are proposed for inclusion in the Regulation. This model is based on the approach taken in the <i>Food Act 2003</i>.</p> |

| Issue or theme raised   | Our response   |
|---|--|
| <p><b>Feedback that combining three Acts into one will result in unintended consequences like overly-generalised legislation or a loss of protections</b></p> <hr/> <p><b>Comments raising issues that combining three Acts into one will cause greater confusion than retaining three separate pieces of legislation</b></p> | <p>The draft bill carries across existing protections from the three Acts into a single framework and addresses issues identified through consultation.</p> <p>The draft Bill does not reduce existing protections. The draft bill is designed to make the laws easier to understand, by clearly communicating the basic expectations to all people interacting with animals in one place. It is also set up to enable further detail for specific situations to be provided in the Regulation and Standards.</p>  |
| <p><b>Suggestions that animal research should remain subject to separate legislation, given the co-regulatory approach and role of Animal Care and Ethics Committees</b></p>  | <p>The approach of using a single Act to manage animal welfare both generally and in the context of animal research has been widely adopted in other jurisdictions in Australia. Currently, NSW is the only state or territory with standalone animal research legislation.</p> <p>The draft Bill includes dedicated provisions outlining what activities require an animal research licence and provides the powers for the Regulation to establish the details of the animal research licensing scheme in a way that gives effect to the important role of animal ethics committees and is consistent with the Australian code for the care and use of animals for scientific purposes.</p>  |
| <p><b>Questions regarding why other animal-related legislation hasn't been included in the scope of reform (e.g. <i>Companion Animals Act 1998</i>, <i>Greyhound Racing Act 2017</i> or <i>Biodiversity Conservation Act 2016</i>)</b></p>  | <p>These other laws – and other similar laws – are about animals but are not specifically or primarily related to their welfare. For example, the <i>Companion Animals Act 1998</i> focuses on the management of companion animals by local councils, and the focus of the <i>Biodiversity Conservation Act 2016</i> is to protect NSW's biodiversity.</p> <p>Even when animals are also regulated under these Acts, animal welfare laws continue to apply. An animal does not lose protections under animal welfare laws because these laws also apply. For example, even where the <i>Greyhound Racing Act 2017</i> includes provisions specifically about the welfare of greyhounds, these are consistent with, and additional to, the requirements of animal welfare laws.</p> |
| <p><b>Comments seeking assurance that there will be no delays between repealing the old legislation and introducing new legislation</b></p>   | <p>The repeal of the current legislation will occur when the new legislative framework takes effect. This ensures there is no risk of a 'gap' between the old laws ceasing to apply and the new laws coming into force.</p> <p>The draft Bill also includes a set of transitional arrangements that allow the smooth functioning of the new laws from day one – for example:</p> <ul style="list-style-type: none"> <li>recognising existing licences issued under the new laws until they are next due for renewal</li> </ul>   |

**Issue or theme raised**

**Our response**

- ensuring that inspectors that have been appointed under the current laws do not have to be specifically re-appointed under the new laws
-



# Proposal 2: Update the objects of the Act

## Proposal summary

The proposed objects outline the intent of the new laws. For example, the new laws intend to provide for the care and protection of animals, and to protect animals from cruelty.

## Draft Bill – key locations

- Section 3 – Objects of Act
- Section 4 – How objects are to be achieved

## What we asked

- Do you support Proposal 2: Update the objects of the new laws?
- Do the proposed objects clearly and effectively explain the purpose of the new laws?
- Do you have any comments on the proposal to update the objects of the new laws?

## Survey responses



**65% positive**

| Response              | Number | Percentage |
|-----------------------|--------|------------|
| <b>Support</b>        | 1388   | 58%        |
| <b>Partly Support</b> | 165    | 7%         |
| <b>Neutral</b>        | 55     | 2%         |
| <b>Partly Oppose</b>  | 68     | 3%         |
| <b>Oppose</b>         | 693    | 29%        |
| <b>N/A</b>            | 8      | <1%        |

## Key issues raised (submissions and survey responses)

| Issue or theme raised  | Our response   |
|--|--|
| <b>Comments that the objects of the new laws should make specific reference to sentience and/or the intrinsic value of animals</b> | <p>Objects are used to describe the purpose of legislation and tie to specific provisions within the legislation.</p> <p>The draft Bill acknowledges the concept of animal sentience through reference to protecting animals from harm, which is defined as including distress, pain, and physical and psychological suffering.</p>  |
| <b>Concerns that the objects provide less clarity than the existing objects and lose important considerations</b>                  | <p>The objects of the draft Bill have now been revised to address the feedback received on the Discussion Paper.</p> <p>The revised objects now communicate that the primary purpose of the legislation is to promote the welfare of animals and prevent cruelty to animals. The objects then outline how this is achieved – by establishing requirements for people to provide for the care and protection of animals, prohibiting and restricting activities to protect animals from cruelty and harm, and providing a framework</p> |
| <b>Feedback indicating that using the terms ‘unreasonable’ and ‘unnecessary’ are inappropriate in objects</b>                      |  |

| Issue or theme raised  | Our response  |
|--|---|
| <b>Responses seeking more detail in the objects</b>  | <p>to regulate and oversee the conduct of certain activities involving animals (including animal research and exhibiting animals).</p> <p>The reference to 'unreasonable and unnecessary harm' has been removed from the objects – reflecting that these qualifiers only apply in certain situations.</p>   |
| <b>Comments that objects should be more aspirational – communicating best practice rather than a minimum standard</b>        | <p>Most people treat their animals in a way that is far above the baseline requirements set by law. The role of legislation is to set an enforceable minimum standard which articulates the minimum expectations that must be met to avoid committing an offence. This ensures that anyone who does the wrong thing can be held to account.</p> <p>The NSW Government supports and encourages treatment of animals that exceeds the legislated minimum. Beyond legislation, there is an important role for non-regulatory initiatives (both by the NSW Government and across the community) to promote a higher standard of welfare.</p>  |
| <b>Suggestions to include additional objects such as education</b>   | <p>Education programs are an important non-regulatory tool to promote positive animal welfare. As education programs are a non-regulatory tool, they are not recognised in the objects of the draft Bill.</p>   |
| <b>Concerns that the focus on risk-based licensing will weaken oversight of licensed activities</b>                          | <p>The proposed approach seeks to use risk-based principles to tailor administrative requirements and better direct administrative and compliance resources, where it is appropriate to do so. This is not intended to weaken oversight of licenced activities and will enable a greater level of oversight on activities that pose a higher risk to animal welfare.</p> <p>The reference to risk-based licensing has now been removed from the objects - a risk-based licensing scheme is a way of achieving the broader object of regulating certain activities involving animals (like animal research and animal exhibition).</p> <p>There will be further consultation on licensing as part of the development of the regulations.</p> |
| <b>Comments concerned that the objects imply that exhibiting animals would fall within the definition of animal research</b> | <p>There was some confusion from the Discussion Paper that exhibited animals could fall within the definition of animal research. This is not the case.</p> <p>The draft Bill makes it clear that exhibiting an animal does not constitute animal research. The intention of the new laws is to maintain the existing arrangements where animal research and animal exhibition are licensed separately.</p>   |

# Proposal 3: Update the definition of animal

## Proposal summary

The proposed definition of animal includes members of vertebrate species (such as amphibians, birds, fish, mammals (other than humans) and reptiles), as well as decapod crustaceans (e.g. crabs, lobsters) and cephalopods (e.g. octopuses, squids).

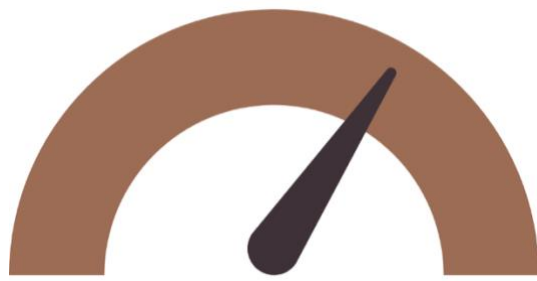
## Draft Bill – key locations

- Schedule 3 – Dictionary

## What we asked

- Do you support Proposal 3: Update the definition of animal?
- Do you have any comments on the proposal to update the definition of animal?

## Survey responses



**67% positive**

| Response              | Number | Percentage |
|-----------------------|--------|------------|
| <b>Support</b>        | 1449   | 60%        |
| <b>Partly Support</b> | 153    | 6%         |
| <b>Neutral</b>        | 62     | 3%         |
| <b>Partly Oppose</b>  | 57     | 2%         |
| <b>Oppose</b>         | 669    | 28%        |
| <b>N/A</b>            | 6      | <1%        |

## Key issues raised (submissions and survey responses)

| Issue or theme raised   | Our response   |
|---|--|
| <b>Suggestions that the definition of animal should be based on sentience, rather than a taxonomic list, to future-proof the new laws by allowing the definition of animal to keep up with advances in scientific understanding</b> | Defining animal by means of a taxonomic list provides a high level of certainty and allows for efficient enforcement. As science develops, the definition of animal can be updated by making amendments to the laws. This ensures that there is appropriate parliamentary oversight of changes that significantly affect the scope of the laws.  |
| <b>Feedback that the definition of animal should be broadened, for example, to include bees and/or other insects</b>  | The NSW Government acknowledges the importance of bees to the ecosystem, and has endorsed the Australian Honey Bee Industry Biosecurity Code of Practice, which outlines standards designed to protect NSW bee populations from pests and diseases – and includes elements regarding the appropriate protection of bees. Insects are not generally protected by animal welfare laws and the evidence around their ability to experience pain is not well understood. |

| Issue or theme raised  | Our response  |
|--|---|
| <b>Comments seeking greater consistency with other states and territories</b>  | <p>The proposed changes to the definition of animal will improve consistency with other jurisdictions. For example, cephalopods are included in the definition of animal in the Australian Capital Territory, Queensland, Northern Territory and Tasmania - and are also included in the scope of the Australian code for the care and use of animals for scientific purposes (which sets a consistent national approach to regulating animal research).</p>  |
| <b>Questions around whether changes to the definition of animal would impact fishing</b>                                 | <p>The changes to the definition of animal will not have any adverse impacts for recreational or commercial fishing.</p> <p>The NSW Government recognises the value of the recreational and commercial fishing industries. Fishing is a legitimate recreational activity and will continue to be allowed under the new laws.</p> <p>The draft Bill contains exemptions for fishing, including using live fish, cephalopods and decapod crustaceans as bait, which ensure that the expanded definition of animal does not impact on fishing in NSW.</p> <p>Including cephalopods and decapod crustaceans in the scope of animal welfare laws ensures that those who do the wrong thing and mistreat animals can be held to account for doing so.</p> |
| <b>Questions on whether the proposed definition of animal applies to bivalve molluscs like pipis, mussels or oysters</b> | <p>The definition of animal is being broadened to include decapod crustaceans and cephalopods. This definition does not include bivalves like pipis, mussels or oysters.</p> <p>The inclusion of decapod crustaceans and cephalopods improves alignment with animal welfare laws in other states and the Australian code for the care and use of animals for scientific purposes (which forms the basis of a nationally consistent approach to animal research). It is also reflective of contemporary animal welfare science, which indicates that both cephalopods and decapod crustaceans can experience pain.</p>   |

# Proposal 4: Introduce a minimum care requirement

## Proposal summary

The minimum care requirements explain the basic obligations of people looking after animals. For example, this includes providing appropriate food, drink and shelter; and providing timely veterinary treatment.

## Draft Bill – key locations

- Part 3 – Requirements for care of animals

## What we asked

- Do you support Proposal 4: Introduce a minimum care requirement?
- Does the proposed minimum care requirement make it easier to understand a person's obligations when caring for animals?
- Do you have any comments on the proposal to introduce a minimum care requirement?

## Survey responses



**75% positive**

| Response       | Number | Percentage |
|----------------|--------|------------|
| Support        | 1566   | 66%        |
| Partly Support | 221    | 9%         |
| Neutral        | 47     | 2%         |
| Partly Oppose  | 76     | 3%         |
| Oppose         | 476    | 20%        |
| N/A            | 4      | <1%        |

## Key issues raised (submissions and survey responses)

| Issue or theme raised  | Our response  |
|--|---|
| <b>Feedback that the minimum care requirements do not provide sufficient protection – and that it should aim for a higher standard of care</b> | <p>The role of legislation is to set minimum acceptable standards which are enforceable and ensure that people who do the wrong thing can be held to account.</p> <p>Non-regulatory tools, such as government, industry-led and third-party programs play an important role in driving better animal welfare outcomes above the baseline, like education programs and extension services.</p> |
| <b>Comments that additional detail is needed to understand how the minimum care requirements apply on a species-by-species basis</b>           | <p>The minimum care requirement has been designed to provide a clear explanation of the outcomes expected for animals in a person's care.</p> <p><b>(Note: response continued on next page)</b></p>   |

| Issue or theme raised   | Our response  |
|---|---|
| <b>Recommendations that the minimum care requirements should be more prescriptive, particularly in terms of shelter</b>   | <p>The minimum care requirements have been designed to be flexible, recognising that the basic needs of animals vary between species and not every potential situation can be detailed in legislation.</p> <p>Additionally, mandatory Standards help to establish more detailed welfare requirements that may explain how the minimum care requirements apply in different situations. Non-legislated educational and guidance material is also a useful resource to support people in meeting the minimum care requirements.</p>   |
| <b>Concerns that the minimum care requirements including the term ‘appropriate’ and having flexibility to consider species and circumstances will undermine its effectiveness</b>                   | <p>The draft Bill includes specific guidance for the courts around what should be taken into account when considering what was ‘appropriate’ given the species and the circumstances. This supports clear and consistent enforcement, in a way that is sensitive to the facts of individual cases.</p>  |
| <b>Feedback emphasising the need to ensure that people aren’t criminalised for failing to meet the minimum care requirements in situations beyond their control (e.g. during natural disasters)</b> | <p>The draft Bill also provides for consideration of the specific circumstances – including where a person took all the steps a reasonable person would take, or was prevented from doing so by unforeseen circumstances, e.g. in a bushfire.</p>   |
| <b>Suggestions that the minimum care requirements should be broadened to include more elements – including enrichment, freedom to express natural behaviours and/or socialisation</b>               | <p>The minimum care requirements in the draft Bill have been amended in response to consultation feedback. The revised provision requires a responsible person for an animal to provide the animal with:</p> <ul style="list-style-type: none"> <li>• appropriate access to food and drink</li> <li>• appropriate access to shelter</li> <li>• an appropriate environment</li> <li>• appropriate treatment for injury, illness or disease, including preventative treatment and timely veterinary treatment when necessary</li> <li>• appropriate opportunities to exercise</li> <li>• appropriate opportunities to display normal behaviours</li> </ul> <p>It also requires a responsible person to ensure that the animal is handled and transported in an appropriate way.</p> |
| <b>Questions about when a person is considered to have an obligation to meet the minimum care requirements in respect of an animal</b>  | <p>The draft Bill outlines that a person is required to meet the minimum care requirements if they are a ‘responsible person’. This means that a person is obligated to meet the minimum care requirements where they have an established relationship with the animal and they are expected to care for the animal – for example, this would include people like the owner of a dog, a farmer in charge of livestock, an exhibited animals licence holder, or an employee of a pet grooming business with an animal in their care.</p>   |
| <b>Comments that the Five Freedoms are an inappropriate basis for the minimum care requirements, as animals are not provided with the Five Freedoms in their natural environments</b>               | <p>Where a person does not have this kind of relationship with the animal (e.g. a person coming across an animal while bushwalking, or a recreational fisher undertaking catch-and-release fishing),</p>  |

| Issue or theme raised  | Our response  |
|--|---|
|  | <p>they are not required to meet the minimum care requirements in respect of that animal.</p> <p>In situations where a person is not required to meet the minimum care requirements in respect of an animal, they may still choose to do so (e.g. taking an injured native bird to a vet, providing a stray dog with water). These acts would not make the person a responsible person and create an ongoing obligation to meet the minimum care requirements.</p> <p>This is different to an act of cruelty – a person who is cruel to an animal is committing an offence whether or not they are responsible for the animal.</p>  |
| <p><b>Feedback that education is important as a main driver of behavioural change</b></p> <hr/> <p><b>Suggestions to develop mandatory training or licensing requirements to ensure pet owners are capable of caring for their animals</b></p> | <p>The minimum care requirements are designed to clearly explain the minimum expectations placed on people who care for animals in NSW. By framing these requirements as positive actions that a person must take – instead of negative actions of what a person must not fail to do, the minimum care requirement better educates people responsible for animals about what they must do to care for their animals.</p> <p>Mandatory Standards provide more detail on the requirements to care for certain species of animals or animals in certain situations or activities, and non-legislated guidance material also assists people responsible for animals to meet and exceed the minimum care requirements.</p> <p>The approved charitable organisations that enforce animal welfare laws in NSW – RSPCA NSW and Animal Welfare League NSW – have a strong focus on education, as do other organisations focused on animals. Industry bodies also play a role in educating people about best practice animal care – including through quality assurance schemes.</p> <p>This provides a strong basis for educating the community about their animal welfare obligations and ensures that people responsible for animals can care for their animals above and beyond the minimum expectations.</p> |
| <p><b>Responses seeking further detail about the interaction between the minimum care requirements and mandatory Standards</b></p>   | <p>The draft Bill includes a mechanism to adopt mandatory Standards which must be followed by people caring for certain animals and/or in certain situations. Mandatory Standards outline detailed requirements to provide for the welfare of animals.</p> <p>The draft Bill specifies that a person is not committing an offence for doing something when they are acting in accordance with a mandatory Standard. This ensures that a person who is doing the right thing by complying with a mandatory Standard is not considered to be breaking another part of the animal welfare laws for doing so.</p>   |
| <p><b>Requests for more detail on what is meant by 'in some</b></p>  | <p>In the draft Bill, failure to meet the minimum care requirements and committing an act of animal cruelty are separate offences.</p>  |

| Issue or theme raised   | Our response   |
|---|--|
| <p><b>circumstances, a failure to meet the minimum care requirements may be considered cruelty'</b></p>   | <p>Failure to meet the minimum care requirements is a Category 3 offence (maximum penalty of \$16,500 and/or six months imprisonment), while committing an act of cruelty is a more severe Category 2 offence (with a maximum penalty of \$44,000 and/or 12 months imprisonment).</p> <p>In some circumstances, failure to meet the minimum care requirements may result in also meeting the definition of cruelty – for example where the failure to meet the minimum care requirements results in unreasonable or unnecessary harm to the animal.</p> <p>For these serious breaches of the minimum care requirements – e.g. cases of serious neglect – enforcement agencies will be able to escalate to a more serious cruelty charge. This decision will be based on the impact to the animal's welfare.</p> <p>In the most extreme of circumstances – where neglect leads to the death of the animal, or it being cruel to keep the animal alive, enforcement agencies will be able to escalate to an aggravated cruelty charge (punishable by a maximum fine of \$110,000 or up to 2 years imprisonment).</p> |
| <p><b>Comments opposing the inclusion of defences or exemptions, as these undermine the desired effect of the minimum care requirements</b></p> | <p><b>Please see Proposal 8 – Provide certainty for lawful activities on page 27</b></p>   |



# Proposal 5: Update the definition of cruelty

## Proposal summary

This proposal clarifies that the current definition of cruelty includes psychological suffering. It also consolidates a list of activities that are offences under the existing laws and makes other drafting changes.

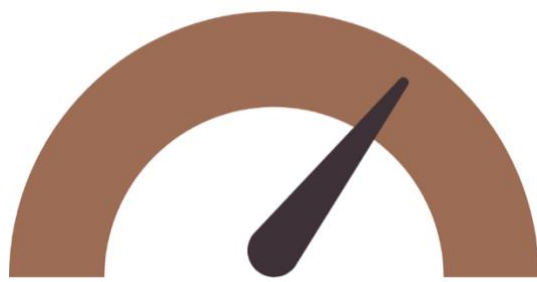
## Draft Bill – key locations

- Section 7 – Meaning of “cruelty”
- Section 8 – Meaning of “aggravated cruelty”
- Section 25 – Cruelty to animals
- Section 26 – Aggravated cruelty to animals

## What we asked

- Do you support Proposal 5: Update the definition of cruelty?
- Does the proposed definition of cruelty clearly communicate what constitutes unacceptable conduct?
- Do you have any comments on the proposal to update the definition of cruelty?

## Survey responses



**69% positive**

| Response              | Number | Percentage |
|-----------------------|--------|------------|
| <b>Support</b>        | 1451   | 61%        |
| <b>Partly Support</b> | 179    | 8%         |
| <b>Neutral</b>        | 43     | 2%         |
| <b>Partly Oppose</b>  | 80     | 3%         |
| <b>Oppose</b>         | 610    | 26%        |
| <b>N/A</b>            | 2      | <1%        |

## Key issues raised (submissions and survey responses)

| Issue or theme raised  | Our response   |
|--|--|
| <b>Concerns that the terms ‘unreasonable’ and ‘unnecessary’ are too subjective</b>                                     | The terms ‘unreasonable’ and ‘unnecessary’ exist in the definition of cruelty under current animal welfare laws and play an important role in ensuring the circumstances of individual cases can be appropriately considered by judges.  |
| <b>Comments suggesting that the terms ‘unreasonable’ and ‘unnecessary’ should be removed</b>                           | We acknowledge that many stakeholders have some concerns around the use of these terms – some raising that cruelty is never reasonable or necessary, others raising that it reduces certainty and risks appropriate and lawful activities being considered cruel.                    |
| <b>Questions around what happens in situations where some harm may be inflicted to prevent a worse welfare outcome</b> | To address these concerns, we have amended the definition of cruelty to remove the terms ‘unreasonable’ and ‘unnecessary’ from certain elements of the offence - reflecting that it would never be considered reasonable or necessary to ‘abuse’, ‘mutilate’ or ‘torture’ an animal. |

| Issue or theme raised   | Our response   |
|---|--|
|   | <p>However the terms 'unreasonable' and 'unnecessary' have been retained for other elements of the offence – reflecting, for example, that it may be reasonable to cause harm to an animal in some situations (e.g. where it prevents a worse welfare outcome, or where the harm is minimised in conducting an appropriate activity).</p>  |
| <p><b>Feedback expressing concerns about the use of the term 'harm'</b></p>   | <p>The draft Bill uses the term 'harm' instead of the term 'pain' but does not substantively change what is captured.</p>  |
| <p><b>Comments questioning the implications of clarifying that psychological suffering is considered cruelty - and how it can be measured or legally proven</b></p> | <p>The current laws define 'pain' as including suffering and distress – which would not normally be considered 'pain' in its ordinary meaning. The draft Bill uses the term 'harm' as an alternative, which better reflects that cruelty can entail pain, suffering and distress.</p> <p>This is the same approach that has been taken in South Australia and Western Australia – both use the term 'harm' in their animal welfare laws.</p> <p>The draft Bill specifically recognises psychological suffering within the definition of harm. This improves clarity around current provisions that already imply that psychological suffering can be included – for example, use of the terms 'suffering', 'distress', 'terrified', 'infuriated' and 'tortured' heavily imply that psychological harm can already be considered during cruelty cases.</p> <p>Specifically including psychological suffering means that the new laws will be clear about the NSW Government's expectations regarding the treatment of animals, reducing any current ambiguity.</p> <p>Other jurisdictions specifically recognise mental components of pain and suffering. For example, Queensland's definition of pain under the <i>Animal Care and Protection Act 2001</i> includes distress and mental or physical suffering and has been in place for 20 years. Similarly, Western Australia's definition of harm under the <i>Animal Welfare Act 2003</i> includes injury, pain and distress evidenced by severe, abnormal physiological or behavioural reactions.</p> <p>As with all charges, if an enforcement agency seeks to prosecute a person for cruelty based on unreasonable or unnecessary psychological suffering, they need to prove this to a criminal standard of beyond reasonable doubt. This means that a prosecutor would first need to prove that a person's act or omission caused psychological suffering to the animal, and then prove that the psychological suffering caused was unreasonable or unnecessary.</p> |
| <p><b>Concerns that the proposed definition of cruelty will have unintended</b></p>   | <p>The proposed definition of cruelty will have no adverse impacts on lawful activities like fishing, hunting or agriculture.</p>  |

| Issue or theme raised   | Our response  |
|---|---|
| <p><b>consequences for lawful activities like fishing, hunting or agriculture</b></p>                                   | <p>Normal fishing, hunting and agricultural activities would not meet the definition of cruelty where they are performed appropriately in a way that causes no unnecessary harm to the animal.</p> <p>Additionally, the draft Bill includes:</p> <ul style="list-style-type: none"> <li>• specific exemptions that clarify hunting and fishing activities do not constitute an offence where they cause no unnecessary harm</li> <li>• specific exemptions that clarify prescribed routine animal husbandry practices do not constitute an offence where they cause no unnecessary harm</li> <li>• provisions making it clear that conduct undertaken in compliance with a mandatory Standard does not constitute an offence</li> </ul> <p>Taken together, this means that the new laws have strong protections in place for fishers, hunters and farmers who are doing the right thing by conducting those activities appropriately – without compromising the ability for enforcement agencies to take action against people who are being cruel while undertaking these activities.</p>  |
| <p><b>Comments calling for specific activities or procedures should be banned</b></p>                                   | <p>The list of activities included in the definition of cruelty is not an exhaustive list – where activities or actions meet the outcomes described as cruelty (e.g. unreasonable or unnecessary harm), action can still be taken even though a particular activity is not specifically listed.</p> <p>The draft Bill also provides mechanisms to prohibit and restrict certain activities, items and procedures based on their welfare impacts, or where they are only justified in some situations.</p>   |
| <p><b>Feedback suggesting that cruelty offences should consider the intent of the person committing the offence</b></p> | <p>The offences in the draft Bill are strict liability offences, which means that the offence does not consider the alleged offender’s state of mind. This ensures that enforcement agencies are able to take action based on the impact on the animal, without having to prove a person’s intent. It also allows for the use of Penalty Infringement Notices, which cannot be applied to offences involving recklessness or intent (as this cannot be readily assessed by an authorised officer on the ground).</p> <p>Because strict liability offences do not include a consideration of the offender’s state of mind, there are limits to how high penalties for these offences can be.</p> <p>The more serious animal cruelty offences that currently exist in the <i>Crimes Act 1900</i> do consider an offender’s state of mind when committing the offence. This allows the offences to have significantly higher maximum penalties than the offences contained in the draft Bill, and also ensures that there is an escalation pathway for more serious offending – such as where a person is reckless as to inflicting severe pain to an animal or intentionally inflicts severe pain to an animal.</p> |

# Proposal 6: Introduce new offences and enhance existing offences

## Proposal summary

This proposal includes enhancing existing offences relating to tethering, animal fighting and greyhound live baiting, as well as introducing new offences relating to animals in hot vehicles and the production, distribution or possession of animal cruelty material.

## Draft Bill – key locations

- Part 4 Division 2 – Animal fighting and live baiting
- Part 4 Division 3 – Tethering
- Part 4 Division 4 – Transport of dogs
- Part 4 Division 5 – Animal cruelty material
- Part 4 Division 6 – Prohibited items

## What we asked

- Do you support Proposal 6: Introduce new offences and enhance existing offences?
- Do you have any comments on the proposed new and enhanced offences?
- Do you have any comments on appropriate exemptions that should apply to the proposed new offence of production or distribution of animal cruelty material?

## Survey responses



**75% positive**

| Response              | Number | Percentage |
|-----------------------|--------|------------|
| <b>Support</b>        | 1605   | 67%        |
| <b>Partly Support</b> | 190    | 8%         |
| <b>Neutral</b>        | 43     | 2%         |
| <b>Partly Oppose</b>  | 75     | 3%         |
| <b>Oppose</b>         | 462    | 19%        |
| <b>N/A</b>            | 6      | <1%        |

## Key issues raised (submissions and survey responses)

| Issue or theme raised   | Our response  |
|---|---|
| <p><b>Comments seeking further detail on tethering provisions</b></p> <p><b>Feedback that tethering should be completely prohibited</b></p> | <p>The draft Bill outlines in further detail that a person must not tether an animal unless:</p> <ul style="list-style-type: none"> <li>• the animal is appropriately protected from harm while it is tethered</li> <li>• the form, length, method and weight of the tether is not unreasonable</li> <li>• the animal is not tethered for an unreasonable period of time.</li> </ul> <p>Additionally, further guidance is provided around what unreasonable tethering looks like, to ensure that animals aren't tethered in ways that compromise their welfare.</p> |

| Issue or theme raised   | Our response  |
|---|---|
|   | <p>This approach recognises that there are genuine reasons where tethering an animal might be an appropriate thing to do. It provides specific guidance around how this must occur to ensure it does not adversely affect the animal's welfare.</p>   |
| <p><b>Feedback requesting more information on the dogs in hot cars offences</b></p> <p><b>Suggestions to broaden the 'dogs in hot cars offence' to all animals, also consider cold weather etc.</b></p> | <p>The dedicated offence of leaving a dog in a hot vehicle provides a clear signal about the danger of this practice. It also provides a clear and unambiguous point at which enforcement officers can intervene.</p> <p>The draft Bill details that it is an offence to leave a dog unattended in a car for longer than 5 minutes when the temperature is above 28 degrees, unless the vehicle is adequately ventilated and shaded or the car's cooling system is being used such that the dog is not affected by the hot weather.</p> <p>The dogs in hot vehicles offence responds to concerns that this is a particularly common and dangerous practice. The offence makes it clear when it is unacceptable to leave a dog in a vehicle and provides a clear point for enforcement officers to intervene. Limiting this offence to dogs means it can include specific provisions that are tailored to dogs.</p> <p>Other animals may also be subjected to dangerous levels of heat stress when left unattended in vehicles or to cold stress during transport. This would be addressed in the new laws through the cruelty offence (which includes unreasonably or unnecessarily exposed to excessive heat or excessive cold) and through the minimum care requirement (which establishes that a person in charge of an animal must ensure it is appropriately transported). Additionally, the Australian Land Transport of Livestock Standards and Guidelines will be mandatory Standards under the new laws – setting out mandatory requirements for the transport of livestock.</p> |
| <p><b>Calls for the livestock working dog exemption to be removed from the unrestrained dogs on the back of a ute offence</b></p>   | <p>The offence of transporting an unrestrained dog on the back of an open-backed moving vehicle on a public road currently includes a limited exemption when a dog is being used to work livestock.</p> <p>This exemption reflects that while working livestock, vehicles may occasionally cross or use public roads – for example, while moving stock between paddocks or parts of a property. In these specific situations, requiring a working dog to be restrained while on the back of the vehicle would prevent the dog from working livestock.</p> <p>When a working dog is not working livestock – for example, if the dog is on the back of the vehicle being driven into town, or for longer trips between properties at high speed – the exemption does not apply, and the dog must be appropriately restrained.</p>   |
| <p><b>Recommendations that the distribution of cruelty material offence be</b></p>  | <p>This gap has been addressed in the draft Bill - possession of animal cruelty material is now included in the offence.</p> <p>Including possession of animal cruelty material in this offence requires that an additional defence is added for situations where</p>   |

| Issue or theme raised  | Our response  |
|--|---|
| <p><b>broadened to also include possession of such material</b></p>  | <p>the material came into a person’s possession unsolicited and, as soon as they became aware of its nature, took reasonable steps to get rid of it (e.g. deleting a spam email containing such material).</p>  |
| <p><b>Concerns that the distribution of cruelty material defence may have unintended consequences - for example, preventing a person from reporting cruelty or making it illegal to share videos taken while fishing</b></p> | <p>The proposed offence for producing, disseminating or possessing animal cruelty material does not apply in the following situations:</p> <ul style="list-style-type: none"> <li>• assisting in the enforcement or administration of laws, monitoring compliance or investigating contravention of laws, or administration of justice (e.g. reporting an offence to an enforcement agency, possession as evidence)</li> <li>• where the material has been classified under the Commonwealth’s classification scheme</li> <li>• distribution for research purposes or for use in training authorised officers</li> <li>• reporting on alleged animal cruelty (e.g. journalism, whistleblowing)</li> <li>• unsolicited possession, where the person took reasonable steps to get rid of the material</li> <li>• where distribution is in the public interest</li> <li>• innocent possession, where the person did not know or could not reasonably be expected to have known that the material was unlawful.</li> </ul> <p>Note that nothing in this offence impacts on the functioning of the <i>Surveillance Devices Act 2007</i> (which regulates the use of optical surveillance devices) or the <i>Inclosed Lands Protection Act 1901</i> (which establishes that trespassing on private land is an offence).</p> <p>The offence applies only to the distribution of material that constitutes an offence under the new laws – meaning it will not prevent, for example, publishing YouTube videos showing normal agricultural, hunting or fishing practices (as these already are, and will continue to be, legal activities).</p> |
| <p><b>Comments requesting further detail on the prohibited items offence</b></p>   | <p>The prohibited and restricted items offence has two elements. First, it combines the current provisions under the <i>Prevention of Cruelty to Animals Act 1979</i> (POCTAA) that prohibit or restrict the use of certain electrical devices and traps. Second, it provides a mechanism to prohibit or restrict other items that pose an unacceptable risk to animal welfare.</p> <p>Including the list of prohibited and restricted items in the Regulation ensures that the list can be updated more readily, should new items become known or developed that pose an unacceptable welfare risk.</p> <p>Specific details of what items are included as prohibited or restricted (and how they are restricted) will be subject to consultation when the draft Regulations are developed and published.</p>   |

| Issue or theme raised   | Our response   |
|---|--|
| <p><b>Concerns that broadening animal fighting offences – particularly relating to animal fighting implements – may unintentionally prohibit things that have legitimate uses</b></p> | <p>In developing offences relating to the possession or use of animal fighting implements, we have considered that items with legitimate uses should not be outright banned just because they have been co-opted for use in animal fighting. For example, treadmills have been used to condition fighting dogs but are also used in homes and gyms for human fitness purposes.</p> <p>As such the draft Bill specifically defines animal fighting implements as including spurs, or other implements used for the purpose of training or causing animals to fight or for the purpose of increasing the ability to inflict damage in a fight.</p>   |
| <p><b>Suggestion to include specific prohibitions on training dogs to be dangerous</b></p>  | <p>Following stakeholder feedback received on both the Issues Paper and the Discussion Paper, the draft Bill specifically outlines that the animal fighting offence also applies to situations where animals are trained for an animal fight, and situations where preparations are being made for an animal fight.</p> <p>By animal fight, we mean any activity where an animal is caused, encouraged or incited to fight another animal or a human.</p> <p>The <i>Companion Animals Act 1998</i> sets out provisions relating to the management of dangerous or potentially dangerous dogs – for example requiring restricted, dangerous and menacing dogs to be muzzled and securely leashed, holding the owner or person responsible for a dog accountable should the dog attack another person or animal (other than vermin), and setting out a suite of requirements to manage or control dogs that are declared as dangerous, menacing or restricted.</p> |
| <p><b>Feedback recommending bans on certain practices and items</b></p>   | <p>The list of activities included in the definition of cruelty is not an exhaustive list – where activities or actions meet the outcomes described as cruelty (e.g. unnecessary harm), action can still be taken even though a particular activity is not specifically listed.</p> <p>The new laws also provide mechanisms to prohibit and restrict certain activities, items and procedures based on their welfare impacts, or where they are only justified in some situations.</p>   |

# Proposal 7: Clarify prohibited and restricted procedures

## Proposal summary

The proposed approach to prohibited and restricted procedures involves retaining the current structure of some procedures being outright prohibited, and others being permissible only in narrowly specified circumstances.

## Draft Bill – key locations

- Part 3 Division 3 – Prohibited and restricted procedures
- Schedule 1 – Restricted procedures

## What we asked

- Do you have any comments on Proposal 7: Clarify prohibited and restricted procedures?

## Key issues raised (submissions and survey responses)

| Issue or theme raised  | Our response  |
|--|---|
| <p><b>Comments calling for the new laws to ban or phase out certain procedures</b></p>       | <p>The draft Bill does not include an exhaustive list of all possible procedures and the circumstances in which they are permissible - it includes a select list of prohibited and restricted procedures to provide certainty around these practices and clearly articulate the circumstances in which they are allowed.</p> <p>Specific restrictions on particular procedures are also outlined in mandatory Standards documents. These include more detailed provisions establishing how these procedures are to occur and are generally tailored to particular species or production systems. This reflects that these procedures are performed to mitigate worse welfare outcomes, and that there are often no viable alternatives to these procedures.</p> |
| <p><b>Suggestions that pain relief should be mandatory when performing procedures</b></p>    | <p>The issue was also examined in Portfolio Committee No. 4's final report on the provisions of the Prevention of Cruelty to Animals Amendment (Restrictions on Stock Animal Procedures) Bill 2019. The report highlighted that there is high industry uptake of voluntary use of pain relief, and that mandating pain relief may create issues regarding withholding periods – particularly in export markets.</p>   |
| <p><b>Suggestions that requirements around certain procedures should be strengthened</b></p> | <p>The prescribed circumstances in which restricted procedures may occur are being reviewed as part of the development of the Regulation. This includes seeking advice from the independent Animal Welfare Advisory Council.</p> <p>Stakeholders will have the opportunity to provide feedback on the circumstances in which these procedures may be permitted to be performed during future consultation on the draft Regulation when it is developed and published.</p>   |



| Issue or theme raised   | Our response  |
|---|---|
| <p><b>Concerns that excessive restrictions or prohibitions may cause negative welfare outcomes by preventing genuine veterinary treatment</b></p> | <p>The draft Bill makes some changes to how procedures are prohibited or restricted to ensure that there are no unintended consequences. Consultation respondents and independent experts have raised that some procedures that are prohibited in all situations under the current animal welfare laws may, in narrow circumstances, need to be performed by a veterinary practitioner to treat injury or disease. For example, under the current laws, if a horse had suffered a severe injury to its tail that required amputation, a veterinary practitioner may be prevented from doing this because it is an offence to remove part of the tail of a horse.</p> <p>These types of situations are addressed in the draft legislation by establishing that these procedures may only be performed by veterinary practitioner for the purpose of treating a genuine injury or disease. These procedures are not permitted to be performed in any other situation (e.g. for cosmetic reasons).</p> <p>Where the NSW Government has received advice that a currently prohibited procedure would never be necessary to treat a genuine injury or disease, the absolute prohibition has been retained. For example, this includes discredited or historical veterinary practices such as firing or thermocautery.</p> |
| <p><b>Comments seeking further clarity on interactions between the new laws and the <i>Veterinary Practice Act 2003</i></b></p>                   | <p>The <i>Veterinary Practice Act 2003</i> (VPA) regulates veterinary practitioners in NSW, setting out restricted acts of veterinary science (which may only be performed by veterinary practitioners or certain other people) and establishing standards of professional conduct.</p> <p>Authorised officers under animal welfare laws have the power to respond to breaches relating to unauthorised people performing restricted acts of veterinary science.</p> <p>There is a relationship between the animal welfare laws and the VPA – the defences currently available under POCTAA for certain husbandry practices correspond to the restricted acts of veterinary science. This means that there is a defence to prosecution under animal welfare laws when the procedure is performed under a certain age threshold (as long as doing so causes no unnecessary pain) but performing the same procedure above that age threshold is a restricted act of veterinary science. This relationship provides certainty around how, when and by whom certain procedures can be performed.</p>  |
| <p><b>Comments suggesting that restrictions should be placed on how certain forms of veterinary treatment are performed</b></p>                   | <p>Where the draft Bill limits the performance of certain procedures to registered veterinary practitioners only, it outlines the circumstances when the veterinary practitioner may perform the procedure. It does not outline how veterinary practitioners must perform the procedure.</p> <p>The way in which veterinary practitioners undertake their practice is strongly regulated under the <i>Veterinary Practice Act 2003</i>. The</p>   |

**Issue or theme raised****Our response**

VPA allows for the Veterinary Practitioners Board to oversee the conduct of veterinary practitioners and includes a mandatory code of professional conduct that requires veterinary practitioners to have a primary concern for the welfare of animals and maintain professional standards in line with the expectations of other veterinary practitioners and the public.

If a veterinary practitioner acts inappropriately when performing a procedure that they are permitted to perform under the new laws, the Veterinary Practitioners Board is able to investigate and sanction the veterinary practitioner. The veterinary practitioner may also be liable to be charged under animal welfare laws if their actions in respect of the animal meet the definition of cruelty (e.g. if they perform the procedure in a way that causes unreasonable or unnecessary harm).

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# Proposal 8: Provide certainty for lawful activities

## Proposal summary

The current laws include provisions that function as 'defences' to provide certainty for lawful activities. This is intended to clearly communicate the circumstances in which those activities are permissible – avoiding confusion. We propose retaining these provisions in the new laws, with some amendments to improve understanding of how they are intended to apply.

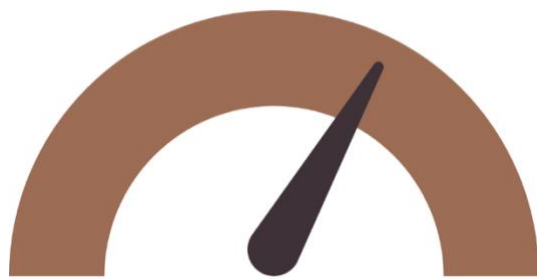
## Draft Bill – key locations

- Part 8 Division 2 – Exemptions and related matters
- Schedule 4.7 – Consequential amendment of other legislation (*Crimes Act 1900*)

## What we asked

- Do you support Proposal 8: Provide certainty for lawful activities?
- Do you have any comments on the proposal to clarify how defences are intended to apply to give certainty to lawful activities?
- Do you have any comments on applying these proposed defences to the serious animal cruelty offences under the *Crimes Act 1900*?

## Survey responses (submissions and survey responses)



**65% positive**

| Response              | Number | Percentage |
|-----------------------|--------|------------|
| <b>Support</b>        | 1228   | 54%        |
| <b>Partly Support</b> | 251    | 11%        |
| <b>Neutral</b>        | 129    | 6%         |
| <b>Partly Oppose</b>  | 90     | 4%         |
| <b>Oppose</b>         | 567    | 25%        |
| <b>N/A</b>            | 28     | 1%         |

## Key issues raised

| Issue or theme raised  | Our response  |
|--|---|
| <b>Comments opposing the inclusion of certain exemptions</b> | <p>The inclusion of exemptions in the new laws provides certainty to the community that lawful activities do not constitute an animal welfare offence, as long as they are done appropriately (i.e. in a way that causes no unnecessary harm).</p> <p>Exemptions provide the certainty that certain activities, for example fishing, hunting, or killing animals for the purpose of producing food, are not cruel when they are done appropriately. This means that a fisher will not be committing an offence if they are fishing in a normal way.</p> |

| Issue or theme raised  | Our response   |
|--|--|
| <b>Questions around how ‘unnecessary harm’ is interpreted when applying the exemptions</b>   | The use of the term ‘unnecessary harm’ in the exemptions ensures that the facts of particular cases can be considered by judges when presented with evidence as to whether the exemption applies.  |
| <b>Concerned that the change from ‘pain’ to ‘harm’ will affect the functioning of the exemptions</b>   | <p>As mentioned in response to similar comments on <b>Proposal 5 – Definition of cruelty</b>, the draft Bill uses the term ‘harm’ instead of the term ‘pain’ but does not substantively change what is captured by the use of these words.</p> <p>The current laws define ‘pain’ as including suffering and distress – which would not normally be considered ‘pain’ in its ordinary meaning. The draft Bill uses the term ‘harm’, which better reflects that cruelty can entail pain, suffering and distress.</p> <p>Additionally, the draft Bill specifically recognises psychological suffering within the definition of harm. This improves clarity around current provisions that already imply that psychological suffering can be included – for example, use of the terms ‘suffering’, ‘distress’, ‘terrified’, ‘infuriated’ and ‘tortured’ heavily imply that psychological harm can already be considered during cruelty cases. Specifically including psychological suffering means that the new laws will be clear about the NSW Government’s expectations regarding the treatment of animals, reducing any current ambiguity.</p> |
| <b>Comments expressing concern that people acting lawfully will have to defend charges, even though a defence applies</b>  | The draft Bill includes a set of exemptions that provide certainty to people undertaking lawful activities that those activities are not considered cruel where they are being done appropriately (i.e. in a way that causes no unnecessary harm). These are currently framed as defences under POCTAA.  |
| <b>Suggestions that the certain defences for lawful activities should instead be framed as exemptions</b>  | The draft Bill has retained the intent of the existing defence provisions and has reframed them as exemptions. This responds to some concerns about how defences are used in practice, without materially impacting the effect of these provisions.  |
| <b>Comments advocating that defences should not apply to the Crimes Act, given the severity of offences</b>  | The draft Bill proposes changes to the exemptions available for the serious animal cruelty offences under section 530 of the <i>Crimes Act 1900</i> , in recognition that the current exemptions are inconsistent with an offence of conduct done “with the intention of inflicting severe pain”.  |
| <b>Comments suggesting that fishing and hunting defences should be linked to compliance with the <i>Fisheries Management Act 1994 (FMA)</i> and <i>Game and Feral Animal Control Act 2003 (GFAC Act)</i>, respectively</b> | <p>The draft Bill does not propose linking fishing and hunting exemptions to their respective management Acts, as this may risk causing unintended consequences.</p> <p>Animal welfare enforcement agencies are not authorised under the FMA or GFAC Act, and therefore are not well-placed to assess whether a person is complying with those Acts and therefore whether an exemption would apply. A person’s non-compliance with the FMA or GFAC Act does not change the impact on the animal – for example, a normal fishing practice has the same</p>  |

| Issue or theme raised   | Our response  |
|---|---|
|   | <p>impact on the fish whether or not the fisher is licensed (and therefore may be in breach of the FMA). It would be inappropriate for the fisher to lose the benefit of the exemption in such a situation.</p> <p>The purpose of these exemptions is to ensure that people who are undertaking lawful activities of fishing and hunting are protected from prosecution when they conduct these activities in appropriate ways - i.e. where they cause no unnecessary harm – without compromising the ability of enforcement agencies to take action against those who do the wrong thing and mistreat animals.</p> |
| <p><b>Comments supporting the inclusion of additional defences</b></p>  | <p>The draft Bill seeks to clarify how existing protections for lawful activities apply, to ensure that people undertaking those lawful activities are not considered to be committing an offence for doing so. This includes clarifying the scope of existing protections for fishing and pest management.</p>   |
| <p><b>Concerns about the impact of changes on lawful activities like hunting, fishing, pest management, and agriculture</b></p> | <p>The draft Bill does not prevent people from carrying out lawful activities like hunting, fishing, pest management and agriculture. These are legitimate activities which are currently allowed and will continue to be allowed under the new animal welfare laws.</p> <p>The current laws include defences to provide certainty that people carrying out lawful activities are not committing an offence. While also ensuring that people who do the wrong thing and commit acts of cruelty while undertaking those activities can be held to account. This intent is being retained in the new laws.</p>        |

# Proposal 9: Introduce a modern penalties framework with increased penalties

## Proposal summary

The proposed penalties framework is based on the higher penalties recently introduced by the *Prevention of Cruelty to Animals Amendment Act 2021* and ensures that penalties for offences are aligned and applied in consistent ways, with clear escalation pathways for more serious offences.

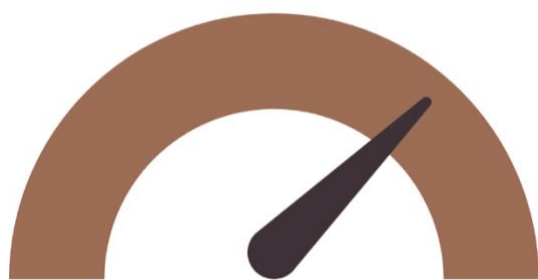
## Draft Bill – key locations

- Part 8 Division 1 – Criminal proceedings generally

## What we asked

- Do you support Proposal 9: Introduce a modern penalties framework with increased penalties?
- Do you have any comments on the proposal to establish a consistent penalties framework?
- Do you have any comments on the detailed breakdown of offences included at Appendix A?

## Survey responses



**73% positive**

| Response              | Number | Percentage |
|-----------------------|--------|------------|
| <b>Support</b>        | 1548   | 67%        |
| <b>Partly Support</b> | 158    | 7%         |
| <b>Neutral</b>        | 87     | 4%         |
| <b>Partly Oppose</b>  | 47     | 2%         |
| <b>Oppose</b>         | 477    | 21%        |
| <b>N/A</b>            | 7      | <1%        |

## Key issues raised (submissions and survey responses)

| Issue or theme raised   | Our response  |
|---|---|
| <b>Calls for higher penalties than those proposed in the Discussion Paper</b> | <p>The proposed changes are based on the increased penalty amounts established by the <i>Prevention of Cruelty to Animals Amendment Act 2021</i>, which passed in June 2021. Basing new penalties on those already passed creates a consistent penalties framework, where maximum penalties increase based on the severity of the offence.</p> <p>The penalty amounts put forward were carefully designed to be comparable to other jurisdictions, proportionate to other penalties under other NSW laws, and to ensure that offences could continue to be prosecuted in the Local Court.</p> |

| Issue or theme raised   | Our response   |
|---|--|
| <p><b>Calls for mandatory minimum penalties</b></p> <hr/> <p><b>Questions about how the new laws will ensure increased maximum penalties lead to stronger sentencing decisions</b></p>  | <p>Mandatory minimum penalties limit the ability of judges to consider the particular facts and circumstances of a case when making sentencing decisions. This judicial discretion is a key component of the justice system and the rule of law.</p> <p>As such, mandatory minimum sentencing is not frequently used in NSW – only applying in cases of exceptionally serious offences, such as committing murder of police officers.</p> <p>While increases to maximum penalties do not guarantee higher penalties being imposed at the point of sentencing, they do provide a clear signal of the severity of an offence.</p>  |
| <p><b>Concerns that the proposed penalties are too high</b></p> <hr/> <p><b>Suggestion that penalties should be scaled based on the severity of offending</b></p> <hr/> <p><b>Calls for additional aggravating factors to escalate to more serious offences</b></p> <hr/> <p><b>Responses calling for higher penalties for repeat offenders</b></p> | <p>The penalties outlined in the Draft Bill are statutory maximum penalties, meaning that they represent the highest penalty that is permitted to be imposed for an offence.</p> <p>These penalties have been established to create an escalating tiered model, with higher maximum penalties available depending on the severity of the offence.</p> <p>Judges can impose a penalty, up to the statutory maximum, depending on the facts of the case – for example, imposing lower penalties for comparatively less serious offences and higher penalties for comparatively more serious offences.</p> <p>The <i>Crimes (Sentencing Procedure) Act 1999</i> outlines a range of factors that judges consider when making sentencing decisions – including aggravating and mitigating factors.</p> <p>For example, aggravating factors that must be considered when determining a sentence include whether the offence involved the use of a weapon, whether the offender has previous convictions, and whether the offence was committed in the home of the victim or any other person.</p> <p>This means that judges can impose higher sentences when these aggravating factors apply.</p> |
| <p><b>Feedback that stronger penalties are unlikely to act as a deterrent or encourage rehabilitation</b></p> <hr/> <p><b>Comments supportive of alternative sentencing approaches, for example, court-ordered counselling</b></p>  | <p>Enforcement agencies and courts both have a range of possible compliance and enforcement options available to act as a deterrent to offending or to encourage rehabilitation.</p> <p>The draft Bill outlines a range of potential compliance tools to support better animal welfare outcomes – ranging from informal mechanisms like providing educational material or verbal warnings, compliance mechanisms like issuing written directions, or stronger mechanisms like issuing Penalty Infringement Notices or commencing court proceedings.</p> <p>The ability of judges to take these factors into account and apply the best combination of approaches in a given situation is a critical element of the NSW justice system.</p>   |

| Issue or theme raised  | Our response   |
|--|--|
| <p><b>Feedback that the poisons offence should apply to all animals, not just domestic animals</b></p> | <p>The purpose of the offence is to specifically capture poisons offences relating to domestic animals – e.g. cases where people have attempted to poison domestic dogs with contaminated food or glass.</p>   |
| <p><b>Concerns that the poisons offence impacts on pest management</b></p>                             | <p>Lethal baiting is often one of the most effective methods of pest animal control. Before being used in NSW, lethal baits need to be approved by the Australian Pesticides and Veterinary Medicine Authority.</p> <p>Where a person lays or administers a poison for the purposes of pest management, they are protected by an exemption as long as the method of killing the pest animal is reasonable and usual for the species and causes no unnecessary harm. If pest animal management occurs in a way that does not minimise harm, the exemption does not apply.</p>   |
| <p><b>Suggestions that public register of animal cruelty offenders should be established</b></p>       | <p>A public register would not be appropriate. Public registers are different to the recording of convictions in law enforcement systems – which does occur and enables law enforcement agencies to share relevant information to inform investigations. A public register is also distinct from police criminal history checks – which captures charges, convictions and findings of guilt for offences.</p> <p>In NSW, the <i>Child Protection (Working with Children) Act 2021</i> ensures that a person’s history of animal welfare offending can be considered when a person applies to work with children. Under the Act, bestiality and serious animal cruelty offences are disqualifying offences, while cruelty and aggravated cruelty offences trigger a requirement to conduct a risk assessment.</p> |



# Proposal 10: Provide authorised officers with new powers to administer sedatives and/or pain relief to animals

## Proposal summary

This proposal is intended to provide authorised officers with the option to administer sedatives and/or pain relief to an animal for the purpose of minimising suffering until the animal can receive appropriate veterinary treatment.

## Draft Bill – key locations

- Section 72 – Powers of authorised officers in relation to care of animals
- Schedule 4.20 – Consequential amendment of other legislation (Poisons and Therapeutic Goods Regulation 2008)

## What we asked

- Do you support Proposal 10: Provide authorised officers with new powers to administer sedatives and/or pain relief?
- Do you have any comments on the proposal to allow authorised officers to administer sedatives and/or pain relief to animals?

## Survey responses



**78% positive**

| Response       | Number | Percentage |
|----------------|--------|------------|
| Support        | 1679   | 71%        |
| Partly Support | 159    | 7%         |
| Neutral        | 78     | 3%         |
| Partly Oppose  | 26     | 1%         |
| Oppose         | 413    | 17%        |
| N/A            | 7      | <1%        |

## Key issues raised (submissions and survey responses)

| Issue or theme raised   | Our response   |
|---|--|
| <b>Responses seeking assurance that there is appropriate veterinary oversight when this power is used</b> | The specialised skills and expertise of veterinary practitioners means that they are best placed to administer sedatives and pain relief to animals. This is recognised through the administration of anaesthetic agents being considered a restricted act of veterinary science under the <i>Veterinary Practice Act 2003</i> . |
| <b>Comments emphasising the need for appropriate training</b>   | Allowing authorised officers to administer sedatives or pain relief in situations where a veterinary practitioner is not available will enable those officers to take timely action to address immediate welfare issues.   |

| Issue or theme raised  | Our response  |
|--|---|
|  | <p><b>Training and accreditation</b></p> <p>Under the Poisons and Therapeutic Goods Regulation 2008, a person must be authorised to supply (administer) restricted substances and is required to appropriately handle and store the substances, and to keep records about its use. The authorisation process involves assessment by a veterinary practitioner against a range of competencies – including behavioural assessment of animals, determination of appropriate dosages, and ability to identify and manage potential problems and consequences.</p> <p>In addition, the authorised officer must also be separately accredited by the Veterinary Practitioners Board - which allows the authorised officer to administer an anaesthetic agent in accordance with the <i>Veterinary Practice Act 2003</i>.</p> <p><b>Limitations on use</b></p> <p>To ensure these powers are used appropriately, the new laws establish guardrails for authorised officers exercising this power. The power may only be used if the authorised officer:</p> <ul style="list-style-type: none"> <li>• has been appropriately trained and accredited as outlined above</li> <li>• has first examined the animal and identified that it needs urgent veterinary treatment, and the administration of a sedative or pain relief will enable it to receive that veterinary treatment</li> <li>• has sought specific veterinary advice before administering the sedative or pain relief (e.g. by phone) - where it is reasonably practicable to do so (recognising that there may be situations where this is not practicable, such as if there is no phone reception)</li> <li>• as soon as practicable seeks subsequent veterinary treatment for the animal following the administration of the sedative or pain relief.</li> </ul> |
| <p><b>Feedback expressing concerns that there is a risk of accidental misuse, and seeking more detail on how liability will work</b></p>       | <p>Authorised officers exercising this power will not be held liable provided they were acting in good faith.</p>   |
| <p><b>Questions seeking more information on the circumstances in which these powers can be exercised</b></p>                                   | <p>The situations in which an authorised officer may administer sedatives and pain relief are quite narrow – it is only permitted in situations where authorised officers have examined an animal and identified that it requires urgent veterinary treatment, and the administration of a sedative or pain relief is necessary to enable the animal to receive that treatment. For example, to provide a sedative to an injured and distressed animal in order to safely rescue it from the situation and transport it to get veterinary treatment.</p>  |
| <p><b>Feedback that records be provided if pain relief is administered, to ensure there are no unintended consequences for food safety</b></p> |   |

| Issue or theme raised  | Our response   |
|--|--|
|  | <p>The draft Bill outlines that an authorised officer must provide a record or notice of having provided pain relief or sedatives to the animal where it is reasonably practicable to do so, when exercising the power in relation to a stock animal. This ensures that people responsible for animals are aware that pain relief or a sedative has been provided and can ensure they meet any relevant withholding periods.</p> |
| <p><b>Suggestions that a broader set of officials should be allowed to exercise these powers (e.g. National Parks and Wildlife Service staff, Local Land Services staff, Council officers)</b></p> | <p>The primary role of authorised officers is focused on animal welfare, compared to other officers for whom this may only be part of their role.</p> <p>Authorised officers have specialist animal care expertise, are appropriately trained to exercise this power, and can rely on their respective organisational veterinary resources and advice.</p>   |
| <p><b>Concerns around potential implications for officer safety when exercising the power</b></p>  | <p>The ability of an authorised officer to behaviourally assess animals (e.g. for fear or aggression) and understand work health and safety implications will be included as an element of training that is required to possess and administer sedatives and pain relief.</p>  |
| <p><b>Responses that there needs to be more detail about the cost to the enforcement agencies of exercising this power</b></p>   | <p>The funding and resourcing arrangements for enforcement agencies will be considered once the new laws are established. RSPCA NSW are supportive of the proposal and have not raised concerns around additional costs that may be associated with exercising this power.</p>   |

# Proposal 11: Enhance authorised officer powers of entry

## Proposal summary

Authorised officers use their powers to enter premises to carry out investigations and compliance functions, including responding to critical welfare issues. The new laws propose to align and clarify the powers available under the three current laws to ensure they are fit for purpose and appropriately balance privacy concerns.

## Draft Bill – key locations

- Part 7 Division 3 – Powers to enter premises

## What we asked

- Do you support Proposal 11: Enhance authorised officer powers of entry?
- Do you have any comments on the proposal to amend powers of entry?

## Survey responses



**73% positive**

| Response              | Number | Percentage |
|-----------------------|--------|------------|
| <b>Support</b>        | 1552   | 66%        |
| <b>Partly Support</b> | 178    | 8%         |
| <b>Neutral</b>        | 59     | 3%         |
| <b>Partly Oppose</b>  | 48     | 2%         |
| <b>Oppose</b>         | 513    | 22%        |
| <b>N/A</b>            | 6      | <1%        |

## Key issues raised (submissions and survey responses)

| Issue or theme raised  | Our response  |
|--|---|
| <p><b>Comments advocating for warrantless entry to a residence on reasonable suspicion of an offence</b></p> | <p>Under NSW law, the power to enter a residence is usually contingent on receiving a search warrant to do so. This provides appropriate oversight by the judicial system, reflecting that entry by Police officers or other authorised officers is a significant imposition on a person's privacy. Exceptions to this approach are typically narrow – mainly limited to emergencies.</p>   |
| <p><b>Questions seeking to understand how the proposed powers compare to powers of police officers</b></p>   | <p>Under the existing animal welfare laws, there is currently a narrow circumstance that allows for warrantless entry to a residence by authorised officers (including NSW Police) – it can only occur in situations where an animal has suffered (or is at imminent risk of suffering) significant physical injury or has a life-threatening condition requiring immediate veterinary treatment. The draft Bill retains this provision and specifies that entry for this purpose does not permit an authorised officer to exercise other investigative powers – it is purely to provide urgently-needed care to an animal.</p> |

| Issue or theme raised   | Our response  |
|---|---|
|   | <p>This approach to powers of entry to residential premises is broadly consistent with the powers available to NSW Police officers under the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (LEPRA). For example, section 9 of LEPRA sets out limited powers for police officers to enter premises without a warrant – including where it is necessary to end or prevent a breach of the peace, or where it is necessary to prevent significant physical injury to a person.</p>   |
| <p><b>Responses seeking more detail on how the proposed powers of entry are different from current arrangements</b></p> | <p>Feedback received throughout the Reform project has indicated that the current powers of entry provisions are complex and confusing.</p> <p>There is also a need to combine the powers of entry available under the three existing animal welfare Acts – which are broadly consistent with each other but are framed in different ways.</p> <p>The draft Bill provides powers of entry which are consistent with the current arrangements under POCTAA and which are drafted in a way that makes it clearer how they apply. The proposed provisions neither weaken the current provisions, nor make significant changes to how the existing arrangements work in practice.</p> <p>The drafting of these powers has been based on other contemporary NSW legislation.</p> |
| <p><b>Questions around how the term ‘commercial’ will be defined or interpreted</b></p>                                 | <p>The term ‘commercial’ is not specifically defined in the draft Bill – it will take its normal meaning.</p> <p>Notably, the power to enter commercial premises does not override protections regarding entry to residential premises (where entry can only be affected with consent or a search warrant – or to provide urgently-needed care in an emergency, noting entry in these circumstances cannot be used for investigative purposes).</p>   |
| <p><b>Comments seeking further clarity on what constitutes a ‘dwelling’ or ‘residence’</b></p>                          | <p>The new laws use the term “premises, or part of premises, used for residential purposes”. “Residential purposes” is not defined, so will take its normal meaning.</p> <p>The new laws provide strong protections around entry to premises used for residential purposes. An authorised officer can only enter premises used for residential purposes if they obtain consent or a search warrant or are entering under narrow emergency powers that exclusively relate to providing urgently needed care to animals (and cannot be used for investigative purposes).</p>  |
| <p><b>Responses requesting more detail on what constitutes ‘reasonable suspicion’ or ‘a reasonable time’</b></p>        | <p>To exercise a power available on ‘reasonable suspicion of an offence’ will depend on the particular circumstances and the information available to the officer. There needs to be some basis for suspecting that an offence has occurred - for example a report to an enforcement agency. In terms of exercising a power at a</p>  |

| Issue or theme raised  | Our response  |
|--|---|
|  | <p>'reasonable time', an authorised officer will take into account the relevant circumstances which will vary depending on the nature of the premises being inspected.</p>  |
| <p><b>Suggestions that the available powers of entry should scale based on the severity of the suspected offence</b></p> | <p>When exercising a power of entry in relation to a suspected offence, an authorised officer may not be certain as to the severity of the situation or suspected offence that they are investigating.</p> <p>It is important to note that if an authorised officer no longer reasonably suspects an offence – for example if they exercise a power of entry in relation to a suspected offence and find there are no animal welfare issues or concerns – they no longer have the power to remain on the property.</p>  |
| <p><b>Comments calling for enforcement agencies to undertake more proactive audits</b></p>                               | <p>Under the existing animal welfare laws, enforcement agencies are able to undertake proactive audits of saleyards, on land used for the purpose of an animal trade (i.e. where mandatory Standards apply), or on land where animals are used or kept for use in connection with a trade, business or profession.</p> <p>The draft Bill provides enforcement agencies with powers to undertake proactive audits of certain commercial establishments and in relation to licenced activities.</p> <p><b>For more information in relation to funding for enforcement agencies, see Proposal 13 on p42.</b></p> |
| <p><b>Feedback that there needs to be safeguards in place to ensure powers are used appropriately</b></p>                | <p>The draft Bill contains provisions that improve oversight of enforcement agencies – including establishing an independent complaints-handling mechanism through the NSW Ombudsman, ensuring that enforcement activities conducted by the approved charitable organisations are subject to the <i>Government Information (Public Access) Act 2009</i>, and requiring annual reports provided by the approved charitable organisations to be tabled in Parliament.</p>   |

# Proposal 12: Provide Local Land Services and council officers with powers in critical situations

## Proposal summary

The proposed powers would enable certain Local Land Services and council officers - when appropriately trained - to become authorised under the new laws - to alleviate suffering in critical situations. This will allow them to assist other enforcement agencies during critical situations.

## Draft Bill – key locations

- Part 7 Division 9 – Local authorities – critical situations

## What we asked

- Do you support Proposal 12: Provide Local Land Services and council officers with powers in critical situations?
- Do you have any comments on the proposal to allow certain government officials to exercise a limited set of powers to care for animals in critical situations?

## Survey responses



**75% positive**

| Response              | Number | Percentage |
|-----------------------|--------|------------|
| <b>Support</b>        | 1540   | 66%        |
| <b>Partly Support</b> | 214    | 9%         |
| <b>Neutral</b>        | 83     | 4%         |
| <b>Partly Oppose</b>  | 45     | 2%         |
| <b>Oppose</b>         | 447    | 19%        |
| <b>N/A</b>            | 11     | <1%        |

## Key issues raised (submissions and survey responses)

| Issue or theme raised   | Our response  |
|---|---|
| <p><b>Comments seeking further detail on when these powers can be exercised</b></p> <p><b>Responses emphasising that the power to euthanase should only be permitted as a last resort (i.e. if an animal is suffering and no other treatment options are available)</b></p> | <p>The draft Bill provides a definition of critical situation that establishes when the power to humanely euthanase animals can be exercised. This includes:</p> <ul style="list-style-type: none"> <li>• an emergency within the meaning of the <i>State Emergency and Rescue Management Act 1989</i> <ul style="list-style-type: none"> <li>○ e.g. an actual or imminent occurrence (such as fire, flood, storm, earthquake, explosion, terrorist act, accident, epidemic or warlike action) which endangers, or threatens to endanger, the safety or health of persons or animals in the State and requires a significant and co-ordinated response</li> </ul> </li> <li>• a situation requiring the mass euthanasia of animals</li> </ul> |

| Issue or theme raised   | Our response   |
|---|--|
|   | <ul style="list-style-type: none"> <li>○ e.g. a serious road accident involving livestock transport vehicles</li> <li>• a situation where immediate euthanasia is required on the basis the animal is so sick or injured that it is cruel to keep it alive and an authorised officer or veterinary practitioner is not available.</li> </ul> <p>The policy intent for this provision is to address those rare situations where the remoteness of a critical animal welfare situation makes it difficult for an authorised officer or veterinary practitioner to attend the scene in a timely manner, and as a result, animal suffering is prolonged. The powers can only be used in a narrow set of circumstances and council and Local Land Services officers will not take the place of the authorised officer as primary responders to animal welfare incidents. Rather, the provision of powers to these additional groups is intended to supplement the existing response capacity in particularly severe or remote situations.</p> |
| <p><b>Responses wanting further information whether this permits the use of restricted drugs for euthanasia, noting that there are tight restrictions on possession and use of drugs for this purpose</b></p> | <p>This power does not enable Local Land Services officers who are not veterinary practitioners or council officers to euthanase animals by the administration of restricted substances.</p>   |
| <p><b>Feedback highlighting that there needs to be appropriate training and oversight</b></p>   | <p>The power to humanely euthanase an animal in critical situations will not be immediately or automatically conferred on Local Land Services and council staff. The relevant authority will authorise staff for this purpose. Part of this process will involve ensuring that the individual officer has undergone appropriate training. The NSW Government is currently developing procedures and training material to ensure that these powers are exercised appropriately.</p>   |
| <p><b>Concerns that these powers may be misused</b></p>   | <p>The purpose of this power is to enable Local Land Services and council officers to supplement the existing response capacity in critical situations. This provision is constrained to a limited set of circumstances to ensure that the amount of time an animal is suffering is minimal. In these situations, delaying euthanasia to require it be performed by an authorised officer or veterinary practitioner may not be in the best interests of the animal's welfare.</p>   |
| <p><b>Feedback recommending that the proposed powers should only be exercised by veterinarians</b></p>  | <p>Local Land Services and council authorised officers will need to be appropriately trained before exercising these powers.</p>   |
| <p><b>Comments that this power should only be exercised with the consent of the</b></p>   | <p>It is always preferable to work with landholders or the person responsible for animals in a critical situation and to seek their consent when responding to animal welfare issues. However, it may not always be possible to seek consent to humanely</p>   |



| Issue or theme raised   | Our response  |
|---|---|
| <b>responsible person for the animal</b>  | euthanase an animal, for example, in situations where the landowner has had to evacuate as a result of a flood and animals are in serious distress or risk of harm on the property.                                       |
| <b>Concerned about the scope of Local Land Services powers including native animals</b> | There may be situations where this power needs to be exercised in relation to native animals – for example, to assist staff from the National Parks and Wildlife Service if native animals are injured during a bushfire. |

# Proposal 13: Consider enforcement arrangements

## Proposal summary

The *Prevention of Cruelty to Animals Act 1979* is currently enforced by the NSW Police Force, RSPCA NSW and Animal Welfare League NSW. *The Animal Research Act 1985* and *Exhibited Animals Protection Act 1986* are both enforced by the NSW Department of Primary Industries.

## Draft Bill – key locations

- Part 7 Division 7 – Authorised officers
- Part 7 Division 8 – Approved charitable organisations

## What we asked

- Do you have any comments on enforcement arrangements for the new laws (Proposal 13)?

## Key issues raised (submissions and survey responses)

| Issue or theme raised   | Our response   |
|---|--|
| <b>Responses supporting the establishment of an Independent Office of Animal Welfare or Independent Office of Animal Protection</b>                                       | The administration and enforcement of animal welfare laws is provided through a robust framework that includes the NSW Police Force, RSPCA NSW, the Animal Welfare League NSW and NSW Department of Primary Industries (NSW DPI). Inspectors from the Greyhound Welfare Integrity Commission also have POCTAA enforcement powers and will continue to do so in relation to animals held in connection with greyhound racing.   |
| <b>Suggestions that other agencies – such as Local Land Services, local councils, or National Parks and Wildlife Service – should be included as enforcement agencies</b> | This framework provides an appropriate combination of enforcement expertise and animal care knowledge and infrastructure.  |
| <b>Concerns that the funding provided to the approved charitable organisations (RSPCA NSW and Animal Welfare League NSW) is insufficient</b>                              | <p>The funding arrangements for animal welfare enforcement agencies will be reviewed once the new animal welfare laws have been finalised.</p> <p>While the approved charitable organisations (ACOs) operate primarily under funding from charitable donations, the NSW Government also provides significant support. The Government provides annual funding of \$424,000 to RSPCA NSW and \$75,000 to Animal Welfare League NSW to support their respective enforcement functions.</p> <p>The NSW Government has also provided additional funding to the enforcement agencies to address particular enforcement-related issues. For example, in 2019-20, an additional \$620,000 was made available to the enforcement agencies to support additional inspectors, following an uplift of drought-related animal welfare cases. In October 2020, an additional \$400,000 was provided to</p> |

| Issue or theme raised  | Our response  |
|--|---|
|  | <p>RSPCA NSW to support the formation of dedicated Puppy Factory Taskforce.</p> <p>Additionally, the NSW Government has regularly provided additional, one-off funding to RSPCA NSW and Animal Welfare League NSW to support their community education programs and animal shelter capacity – which both support their effective enforcement role. This has included:</p> <ul style="list-style-type: none"> <li>• \$10.5 million to RSPCA NSW in 2021 to upgrade facilities across the state</li> <li>• \$12 million to RSPCA NSW in 2019 to renew and expand adoption facilities.</li> <li>• \$200,000 between RSPCA NSW and Animal Welfare League NSW in 2016 to develop a puppy factory awareness campaign</li> <li>• \$2 million to RSPCA NSW in 2015 to support an education centre and education program</li> <li>• \$7.5 million to RSPCA NSW in 2011 to support a rebuild of their Yagoona shelter.</li> </ul>                     |
| <p><b>Feedback expressing the view that animal welfare laws being administered by NSW DPI reflects a conflict of interest</b></p>  | <p>NSW DPI has significant expertise in animal welfare and in animal use industries, which combine to support effective administration of animal welfare laws. This approach is consistent with that taken in other jurisdictions across Australia.</p> <p>NSW DPI's roles in administering animal welfare legislation and supporting stronger primary industries are complementary. Improving animal welfare is a key component of developing stronger primary industries in NSW.</p>  |
| <p><b>Comments suggesting that it is inappropriate for charitable organisations like RSPCA NSW and Animal Welfare League NSW to have powers of authorised officers, or that the approved charitable organisations are not appropriately equipped to deal with some animal welfare situations</b></p> | <p>Enforcement of animal welfare laws by approved charitable organisations that are independent from government is not unique to NSW and occurs in other jurisdictions in Australia.</p> <p>The approved charitable organisations are able to leverage a unique combination of expertise and infrastructure for dealing with animal welfare matters, which benefits the enforcement of animal welfare laws in NSW.</p> <p>The NSW Police Force and the approved charitable organisations work together. For example, in some cases the NSW Police Force provide support to approved charitable organisations officers undertaking inspections. There is also a strong relationship between the RSPCA NSW and the NSW Police Force's Rural Crime Prevention Team, who are able to involve RSPCA NSW and other government agencies (for example, Local Land Services) to draw on their animal welfare and livestock management expertise.</p> |
| <p><b>Comments that the non-inspectorate activities of the approved charitable organisations are in conflict</b></p>   | <p>The inspectorate activities of the approved charitable organisations are conducted separately from non-inspectorate activities.</p>  |

| Issue or theme raised   | Our response  |
|---|---|
| <p><b>with their inspectorate function</b></p>  | <p><b>Concerns about decision-making of enforcement officers, including decisions to prosecute</b></p> <p>Enforcement agencies have a range of compliance and enforcement tools available to respond to instances of non-compliance with animal welfare laws. These range from informal warnings and binding written directions through to issuing Penalty Infringement Notices or commencing prosecutions.</p> <p>Authorised officers and enforcement agencies are able to choose from this wide range of tools based on which action will achieve the best welfare outcomes for the animals and have the greatest impact on deterring further offending or reducing recidivism.</p> |
| <p><b>Comments seeking improved clarity around how the different enforcement agencies work together</b></p> | <p>The draft Bill includes provisions that support greater information sharing between the enforcement agencies and NSW's Government agencies to improve the efficiency of animal welfare enforcement while meeting privacy requirements.</p> <p>The approved charitable organisations have strong relationships with the NSW Government, including through Memoranda of Understanding (MOUs) with NSW DPI that sets out roles and responsibilities, and expectations around governance, operating procedures and training.</p> <p>The existing MOUs will be reviewed as part of the reform process to ensure they reflect the new legislative framework and are fit for purpose.</p> |

# Proposal 14: Improve oversight of animal welfare enforcement activities

## Proposal summary

Proposals related to improving the oversight of the RSPCA NSW and Animal Welfare League NSW compliance activities include providing for the NSW Ombudsman to investigate complaints about enforcement, clarifying that the enforcement agencies are subject to the *Government Information (Public Access) Act 2009*, and requiring annual reports to be tabled in Parliament.

## Draft Bill – key locations

- Part 7 Division 8 – Approved charitable organisations
- Schedule 4.19 – Consequential amendment of other legislation (*Ombudsman Act 1974*)
- Schedule 4.14– Consequential amendment of other legislation (*Government Information (Public Access) Act 2009*)

## What we asked

- Do you support Proposal 14: Improve oversight of animal welfare enforcement activities
- Do you have any comments on the proposal to improve oversight of the enforcement activities of the approved charitable organisations (RSPCA NSW and Animal Welfare League NSW)?

## Survey responses



**73% positive**

| Response              | Number | Percentage |
|-----------------------|--------|------------|
| <b>Support</b>        | 1550   | 66%        |
| <b>Partly Support</b> | 148    | 6%         |
| <b>Neutral</b>        | 101    | 4%         |
| <b>Partly Oppose</b>  | 58     | 3%         |
| <b>Oppose</b>         | 463    | 20%        |
| <b>N/A</b>            | 14     | <1%        |

## Key issues raised (submissions and survey responses)

| Issue or theme raised   | Our response   |
|---|--|
| <b>Concerns around the potential impact of new oversight arrangements on approved charitable organisation resources</b> | The proposed oversight arrangements in the draft Bill have been designed based on feedback from community consultation and are consistent with a recommendation of the Select Committee on Animal Cruelty Laws in New South Wales. |
| <b>Suggestions that the ACOs should be subject to greater</b>   | This change is not anticipated to have significant implications for approved charitable organisation resourcing, and the approved charitable organisations are supportive of enhanced oversight arrangements.                      |

| Issue or theme raised  | Our response   |
|--|--|
| <p><b>oversight than is proposed by the Discussion Paper</b></p>   | <p>The approved charitable organisations currently have processes in place to manage complaints and produce annual reports and have advised that they voluntarily comply with requests for information under the <i>Government Information (Public Access) Act 2009</i>. The proposed new oversight arrangements strengthen and improve the current systems and processes in place to oversee the activities of the enforcement agencies.</p> <p>These changes bring the oversight arrangements for approved charitable organisations into line with other regulatory bodies.</p>  |
| <p><b>Feedback expressing concerns around the risk of the new provisions being misused (e.g. by vexatious complainants) or as a means of delaying prosecutions</b></p> | <p>The <i>Ombudsman Act 1974</i> sets out processes for the NSW Ombudsman to deal with complaints that are vexatious or not made in good faith.</p> <p>Complaints processes under the <i>Ombudsman Act 1974</i> are separate to criminal proceedings.</p>  |
| <p><b>Responses seeking assurance that access to the oversight processes will come at no cost for applicants, and be conducted transparently</b></p>                   | <p>There is no cost associated with making a complaint to the NSW Ombudsman.</p> <p>The <i>Government Information (Public Access) Act 2009</i> (GIPA Act) includes provision allowing for the release of information in response to informal requests. Informal requests can be made free of charge. The GIPA Act also includes provisions requiring the release of information in response to formal access applications (unless there is an overriding public interest against disclosure). The GIPA Act provides that submitting a formal access request may involve payment of a \$30 fee.</p> <p>The GIPA Act establishes that there is a general public interest in favour of disclosure – this means that information should be disclosed unless there is a clear and specific reason why that disclosure would not be in the public interest. Examples of situations where there may be an overriding public interest against disclosure are outlined at section 14 of the GIPA Act.</p> |

# Proposal 15: Amend timeframes and processes related to enforcement agency rehoming of animals

## Proposal summary

The *Prevention of Cruelty to Animals Act 1979* requires longer holding periods before animals can be rehomed compared to similar provisions under the *Companion Animals Act 1998*. Aligning the requirements under the two Acts will ensure that appropriate steps are taken to reunite lost animals with their owners, while also minimising the time unowned or abandoned animals spend in shelters prior to being rehomed.

## Draft Bill – key locations

- Section 154 – Sale of certain animals by charitable organisations

## What we asked

- Do you support Proposal 15: Amend timeframes and processes related to enforcement agency rehoming of animals?
- Do you have any comments on the proposal to amend approved charitable organisation rehoming provisions to align them with the *Companion Animals Act 1998*?

## Survey responses



**74% positive**

| Response       | Number | Percentage |
|----------------|--------|------------|
| Support        | 1521   | 66%        |
| Partly Support | 194    | 8%         |
| Neutral        | 166    | 7%         |
| Partly Oppose  | 37     | 2%         |
| Oppose         | 380    | 16%        |
| N/A            | 16     | <1%        |

## Key issues raised (submissions and survey responses)

| Issue or theme raised   | Our response   |
|---|--|
| <b>Comments expressing concerns that reducing the timeframes for enforcement agency rehoming of animals will result in animals being euthanased</b> | The intention of this proposal is to enable enforcement agencies to begin the process of rehoming animals earlier, to minimise the amount of time spent in shelters. Under current arrangements, the enforcement agencies cannot start the rehoming process until they have held the animal for at least 21 days (e.g. cannot advertise, vaccinate, desex etc.) – meaning that by the time |

| Issue or theme raised  | Our response  |
|--|---|
| <p><b>Concerns that the proposed changes would reduce the chance of lost animals being reunited with owners</b></p>                    | <p>rehoming occurs, animals may have been held in the shelter for upwards of a month.</p> <p>The proposed arrangements aim to shorten this timeframe while still ensuring that there is sufficient time to reunite lost animals with their owners. The proposed arrangements will allow enforcement agencies to commence the rehoming process:</p> <ul style="list-style-type: none"> <li>• 14 days after giving notice to the owner or responsible person for the animal that the animal is in the enforcement agency's possession</li> <li>• 7 days after receiving the animal, if the best endeavours of the enforcement agency cannot identify an owner or responsible person</li> </ul> <p>These timeframes will not apply where the owner or responsible person has surrendered the animal to the enforcement agency (as there is no need to notify the owner in these situations, the rehoming process can commence immediately)</p> <p>These minimum holding periods are consistent with the <i>Companion Animals Act 1998</i>.</p> <p>The draft Bill specifically includes provisions that require enforcement agencies to consider and adopt all practicable alternatives before considering the option to euthanase the animal. This emphasises that rehoming should always be the preferred approach to dealing with surrendered animals, while also recognising that this may not be appropriate in some circumstances (e.g. the animal is surrendered in such a poor state of welfare that it is cruel to keep it alive).</p> |
| <p><b>Feedback recommending that holding periods should be retained for infant and unowned animals</b></p>                             | <p>The proposal included in the Discussion Paper suggesting that there be no minimum holding period for infant or unowned animals has been removed based on feedback received during public consultation.</p>   |
| <p><b>Comments advocating for Trap-Neuter-Release or other forms of community cat management to be included under the new laws</b></p> | <p>The NSW Government does not support Trap-Neuter-Release programs (TNR).</p> <p>The Animal Welfare Advisory Council (AWAC) considered the effectiveness of TNR programs on improving animal welfare outcomes in 2016. AWAC concluded that there are significant welfare concerns associated with TNR programs, and that they are of questionable effectiveness.</p> <p>The NSW Government is engaged in other, more effective strategies for reducing the number of cats entering the unowned cat population – including funding research and trials of integrated management strategies, community education around the importance of desexing, and requiring owners of undesexed cats to obtain an annual permit.</p>   |
| <p><b>Support for greater use of foster care networks to</b></p>   | <p>Both RSPCA NSW and Animal Welfare League NSW have foster care arrangements in place to minimise the amount of time</p>   |



| Issue or theme raised  | Our response  |
|--|---|
| <b>minimise the amount of time animals spend in shelters</b>   | animals spend in shelters. More information on these programs is available on their respective websites.  |
| <b>Feedback that there needs to be support for education to ensure successful rehoming and minimise need for rehoming in the first place</b> | <p>The NSW Government has a range of education materials and programs to support responsible pet ownership in NSW. These materials and programs help to minimise the need for rehoming, by supporting pet owners to make the right pet purchase for their circumstances and meet high standards of care for their animals. For example, the NSW Animal Welfare Code of Practice: Breeding Cats and Dogs requires that breeders provide information on the care for animals to the purchaser.</p> <p>In 2019 the NSW Government also made changes to the laws that requires anyone selling or giving away a cat or dog to use an identification number in any advertisement. This helps prospective owners to find out more information about the cat or dog that is advertised.</p> |
| <b>Responses expressing concerns around the current management approach to dangerous and menacing dogs</b>                                   | The approach to managing dangerous, restricted and menacing dogs is set out under the <i>Companion Animals Act 1998</i> . The draft Bill does not make any changes to these arrangements, as they do not fall within the scope of animal welfare laws.  |

# Proposal 16a: Standardise statutory limitation periods

## Proposal summary

Statutory limitation periods refer to the length of time in which enforcement agencies can commence a prosecution after an alleged offence was committed. This proposal will align the different approaches taken under the existing laws by allowing prosecutions to commence within three years of the date of the alleged offence, or within three years of the date on which evidence of the alleged offence first came to the attention of an authorised officer.

## Draft Bill – key locations

- Section 114 – Time limit for proceedings

## What we asked

- Do you support the proposal to align statutory limitation periods (Proposal 16)?
- Do you have any comments on the proposal to align the statutory limitation provisions?

## Survey responses



**71% positive**

| Response              | Number | Percentage |
|-----------------------|--------|------------|
| <b>Support</b>        | 1479   | 64%        |
| <b>Partly Support</b> | 152    | 7%         |
| <b>Neutral</b>        | 159    | 7%         |
| <b>Partly Oppose</b>  | 57     | 2%         |
| <b>Oppose</b>         | 435    | 19%        |
| <b>N/A</b>            | 25     | 1%         |

## Key issues raised (submissions and survey responses)

| Issue or theme raised   | Our response   |
|---|--|
| <b>Feedback that the statutory limitation period will compromise the ability to successfully prosecute offences in a timely manner</b>                          | The proposal to set a statutory limitation period of three years, that commences at the time evidence of an offence is presented to an authorised officer, is based on the approach agreed by Parliament in passing the <i>Prevention of Cruelty to Animals Amendment Act 2021</i> . |
| <b>Feedback that there should be a longer statutory limitation period, no limitation at all, or the period should vary based on the severity of the offence</b> | This means that an enforcement agency has up to three years after they become aware of an offence to initiate court proceedings.<br><br>Statutory limitation periods balance the need to provide enforcement agencies with sufficient time to undertake thorough                     |

| Issue or theme raised  | Our response  |
|--|---|
| <p><b>Concerns that a longer limitation period would heighten the risk of further offending before initial offences are prosecuted</b></p>   | <p>investigations before commencing a court case, and the desire to ensure matters are dealt with in a timely manner.</p> <p>In situations where animals have been seized, it is also beneficial to commence proceedings quickly to minimise the length of time that animals are held by enforcement agencies.</p>  |
| <p><b>Concerns that a longer statutory limitation period will affect the ability of people to defend charges</b></p>   | <p>The proposed three-year limitation period, commencing when evidence of an offence is provided to an authorised officer, acknowledges that some animal cruelty investigations may be highly complex and take time to thoroughly investigate. It also recognises that, in some situations, a person may take time to report an offence to an authorised officer (e.g. if they have fears for their safety as a result of doing so).</p>  |
| <p><b>Concerns that starting the period from the time evidence is provided to an authorised officer may have impacts on the ability to defend charges or result in slower enforcement action</b></p> | <p>The serious animal cruelty offences under the <i>Crimes Act 1900</i> have no statutory limitation period. This reflects that the offences under the <i>Crimes Act 1900</i> are so severe that there should be no limitation on when proceedings can commence.</p>  |
| <p><b>Questions regarding how the 'two-part' approach to the limitation period works</b></p>   | <p>The draft Bill includes a two-part limitation period, stating that proceedings may be commenced:</p> <ul style="list-style-type: none"> <li>• within three years of the alleged offence occurring</li> <li>• within three years of an authorised officer becoming aware of evidence of the alleged offence.</li> </ul> <p>In practice, this means that if the proceedings commenced within three years of the date of the alleged offence occurring, the prosecution does not need to provide proof to the court of when they first became aware of evidence of the alleged offence.</p> <p>This approach is consistent with other pieces of modern legislation in NSW, such as the <i>Biosecurity Act 2015</i>.</p> |

# Proposal 16b: Standardise authority to prosecute provisions

## Proposal summary

This proposal aligns the different approaches under the existing laws by specifying that certain groups, who have investigative powers and knowledge of animal welfare and judicial processes, can commence prosecutions.

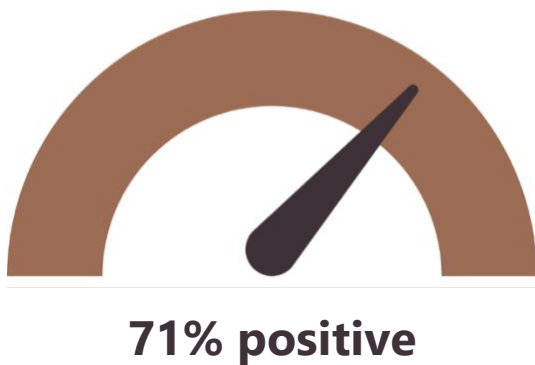
## Draft Bill – key locations

- Section 115 – Authority to prosecute

## What we asked

- Do you support the proposal to align authority to prosecute provisions (Proposal 16)?
- Do you have any comments on the proposed approach to standardise authority to prosecute provisions?

## Survey responses



| Response              | Number | Percentage |
|-----------------------|--------|------------|
| <b>Support</b>        | 1506   | 66%        |
| <b>Partly Support</b> | 128    | 6%         |
| <b>Neutral</b>        | 144    | 6%         |
| <b>Partly Oppose</b>  | 44     | 2%         |
| <b>Oppose</b>         | 455    | 20%        |
| <b>N/A</b>            | 17     | <1%        |

## Key issues raised (submissions and survey responses)

| Issue or theme raised  | Our response   |
|--|--|
| <b>Comments seeking further clarity about who will be able to initiate prosecutions under the new laws</b> | The draft Bill carries across the existing POCTAA provisions which specify who can commence prosecutions. There is no change to the provisions that have been in place since 2007.   |
| <b>Responses supportive of allowing private prosecutions</b>   | This provision specifies who may commence proceedings under the new animal welfare laws. Authorised officers – meaning authorised officers from approved charitable organisations (RSPCA NSW and Animal Welfare League NSW), authorised officers from the NSW Government (e.g. exhibited animals and animal research authorised officers), and NSW Police will be able to commence prosecutions under the new laws. These groups have powers under the new laws to investigate allegations of offences. These groups enforce animal welfare laws and conduct prosecutions on the basis that they have both specialised skills and knowledge of both animal welfare and judicial processes. |
| <b>Suggestions that prosecutions should be run only by the Director of Public Prosecutions</b>             |  |

| Issue or theme raised  | Our response  |
|--|---|
|  | <p>The draft Bill also retains provisions from the current laws that permit a person with the consent of the Minister or Secretary to commence proceedings.</p> <p>Limiting the agencies who can commence prosecutions ensures a consistent approach to prosecutions, which is the most effective and efficient approach to dealing with animal welfare cases.</p>  |
| <p><b>Concerns that the proposals may result in unfair or vexatious prosecutions</b></p> | <p>In deciding whether to prosecute, the public interest is a key consideration. Enforcement agencies take into account whether prosecution is the best approach to deal with the animal welfare issues and prevent reoffending. In making the decision to prosecute, enforcement agencies also consider the prospects of success – such as whether there is sufficient evidence to satisfy the court of guilt beyond reasonable doubt.</p> |

# Proposal 17: Broaden the application of Stock Welfare Panels and improve their functioning

## Proposal summary

The proposed improvements to Stock Welfare Panels include extending the process to apply for intensive livestock and on smaller parcels of land, and in situations where failure to appropriately care for the animal has resulted in the animal becoming distressed or likely to become distressed. Other proposed changes include preventing stock owners who have had their animals seized from immediately re-purchasing the seized stock or immediately acquiring new stock and allowing police to exclude a person from the scene of a seize and dispose operation to protect the safety of those involved.

## Draft Bill – key locations

- Part 6 – Stock welfare panels

## What we asked

- Do you support Proposal 17: Broaden the application of Stock Welfare Panels and improve their functioning?
- Do you have any comments on the proposal to broaden the application of Stock Welfare Panels and improve how they function?

## Survey responses



**72% positive**

| Response              | Number | Percentage |
|-----------------------|--------|------------|
| <b>Support</b>        | 1532   | 66%        |
| <b>Partly Support</b> | 139    | 6%         |
| <b>Neutral</b>        | 128    | 5%         |
| <b>Partly Oppose</b>  | 68     | 3%         |
| <b>Oppose</b>         | 451    | 19%        |
| <b>N/A</b>            | 19     | <1%        |

## Key issues raised (submissions and survey responses)

| Issue or theme raised  | Our response   |
|--|--|
| <b>Suggestions that the order preventing re-purchase of stock should extend beyond 30 days</b> | The purpose of the 30-day order that may be applied following a seizure is to ensure that a person who has had stock seized, cannot immediately re-purchase stock when they are sold. This responds to feedback raised that this was a loophole with current arrangements. |
| <b>Feedback calling for long-term or lifetime</b>  | The 30-day time period was chosen to reflect that it may take time for an enforcement agency to begin the process of selling the   |

| Issue or theme raised  | Our response  |
|--|---|
| <p><b>disqualifications on animal ownership following seizure</b></p>  | <p>seized stock (e.g. depending on when the next available livestock sale is to occur).</p> <p>It is important to note that this order is intentionally limited to a short period of time as a person having stock seized through a Stock Welfare Panel have not been found guilty of an offence. Longer-term disqualification orders can only be made by courts following a finding of guilt.</p> <p>The Stock Welfare Panel process is used when education and working with a farmer is the best option to deliver good welfare outcomes. The Stock Welfare Panel process does not prevent an enforcement agency from commencing a prosecution for an animal welfare offence, if it is warranted in the circumstances.</p>                |
| <p><b>Comments suggesting that the ability to acquire new stock following a Stock Welfare Panel process should be contingent on a further inspection</b></p>   | <p>The seizure of stock through a Stock Welfare Panel process does not indicate that a person has been found guilty of an offence; Stock Welfare Panels are a separate process to other enforcement activities. Applying indefinite restrictions on a person's behaviour that typically apply after conviction for an offence is not appropriate.</p>   |
| <p><b>Suggestions that follow-up checks should occur after the cessation of a Stock Welfare Panel</b></p>  | <p>If an enforcement agency has concerns about the welfare of animals on a property following a seizure operation, they may undertake follow-up inspections.</p>  |
| <p><b>Response emphasising the need for Stock Welfare Panels to include people with suitable expertise - particularly in circumstances where Local Land Services may not be best-placed to provide expert advice</b></p> | <p>The draft Bill provisions for the Stock Welfare Panels provides the flexibility to include an additional Panel member if needed (e.g. an additional member with expertise relating to the species).</p>  |
| <p><b>Concerns around the meaning of 'distress' or 'likely to become distressed' being open to interpretation</b></p>  | <p>The terms 'distressed' and 'likely to become distressed' have been carried across from the existing laws, with no change to their meaning. In the draft Bill, as in the existing laws, a stock animal is considered to be in distress if it is suffering from exposure to the elements, debility, exhaustion or significant physical injury.</p> <p>The only change related to the term 'distress' in the draft Bill is that it allows for Stock Welfare Panels to be formed if the distress has been caused by a lack of appropriate animal husbandry or other forms of care. Previously, Stock Welfare Panels were only available if the distress resulted from a failure to provide food, drink, shelter or veterinary treatment.</p> |
| <p><b>Concerns that the Stock Welfare Panel process could be misused</b></p>   | <p>The draft Bill, as under the existing laws, clearly sets out the Stock Welfare Panel process</p> <p>Stock Welfare Panels are designed to take an educational focus, with the Panel working with the producer to address animal</p>   |

| Issue or theme raised  | Our response  |
|--|---|
|  | <p>welfare issues. Seizure of animals is a last resort and can only be authorised by the Secretary of the Department, if he or she is satisfied that an official warning has not been complied with and the welfare risk remains.</p>   |
| <p><b>Suggestions that Stock Welfare Panels should be broadening to apply to other animals (i.e. outside of stock animal situations)</b></p> | <p>This option was considered through the reform process however has not been included in the draft Bill.</p> <p>The existing model for Stock Welfare Panels is based on considerations that do not apply in the companion animals context – for example, stock welfare cases often involve larger numbers of animals that are more difficult to be cared for in shelter infrastructure compared to companion animals.</p> <p>Oftentimes, the Stock Welfare Panel process is set up to work with producers to improve welfare situations that have developed as a result of changing climatic conditions – for example, where drought conditions have reduced the ability of a person to meet the welfare needs of animals.</p> |



# Proposal 18: Further improve the functioning of court orders

## Proposal summary

The proposed enhancements would allow courts to make orders preventing people from acquiring more animals in situations where alternatives to conviction (e.g. mental health treatment pathways) are used to deal with a case. Additionally, the new laws will ensure that animals can be seized where they are held in contravention of a court order or by a person who is otherwise prohibited from owning animals.

## Draft Bill – key locations

- Section 74 – Seizure of animals held in contravention of court orders or by disqualified persons
- Part 8 Division 3 – Court orders
- Section 152 – Prohibition for persons convicted of certain offences
- Section 158 – Recognition of interstate prohibition decisions

## What we asked

- Do you have any comments on the proposed enhancements to court orders (Proposal 18)?

## Key issues raised (submissions and survey responses)

| Issue or theme raised   | Our response   |
|---|--|
| <b>Feedback calling for the imposition of automatic, lifetime bans upon conviction for offences</b>                                   | The draft Bill carries across the current s31AB of POCTAA, which sets out mandatory prohibitions on owning, caring for or working with animals for people convicted of serious animal cruelty and related offences under the <i>Crimes Act 1900</i> . This reflects the seriousness of these offences.   |
| <b>Comments raising concerns that imposition of long-term disqualification orders presumes that offenders cannot be rehabilitated</b> | For other animal cruelty offences, courts can make disqualification orders that prohibit a person who has been found guilty of an offence from owning, possessing or caring for animals.<br><br>The scope of disqualification orders is flexible, in recognition that judges are best placed to consider the facts of individual cases when making sentencing decisions. Disqualification orders may apply to specific animals or all animals and their duration can vary. |
| <b>Concerns about the risk of court orders being used inappropriately, or in response to vexatious complaints</b>                     | Court orders are made by the courts, not by enforcement agencies. Judges are best placed to consider the facts of each case and decide whether a court order is appropriate.   |
| <b>Concerns that interim disqualification orders conflict with the presumption of innocence</b>                                       | The purpose of interim disqualification orders is to ensure that the risk of further offending is reduced while proceedings are before the courts.   |

| Issue or theme raised   | Our response   |
|---|--|
|   | <p>Courts may only make interim disqualification orders if they are satisfied that the person is likely to commit another animal cruelty offence if they were responsible for an animal.</p>   |
| <p><b>Responses questioning the appropriateness of using court orders in situations dealt with under mental health pathways</b></p>                             | <p>This proposal addresses an issue raised by the enforcement agencies.</p> <p>Under the existing laws, it is not possible for courts to use both mental health pathways to support a person to obtain treatment and to also apply an order to prevent them from harming animals. This results in judges having to choose between the two – either allowing prosecution to continue for the purpose of seeking the court order to prevent animal cruelty (even if mental health treatment is a more appropriate pathway for the defendant), or to direct the person through mental health pathways and forego the ability to obtain a court order to protect animal welfare.</p> <p>The proposal in the draft Bill addresses this issue and provides courts with the flexibility to sensitively deal with such cases and provide the most appropriate response to address both mental health and animal welfare considerations.</p>                        |
| <p><b>Feedback emphasising the need to ensure due process when court orders are used – including a review process</b></p>                                       | <p>The draft Bill establishes that court orders made under the new laws are considered ‘sentences’ for the purposes of the <i>Criminal Appeal Act 1912</i> and the <i>Crimes (Appeal and Review) Act 2001</i> – meaning that the defendant has the right to appeal the order being applied.</p>  |
| <p><b>Concerns that the Government seeks to weaken the effect of interim disqualification orders</b></p>  | <p>The draft Bill carries across the current interim disqualification order provisions available under POCTAA with no changes.</p>   |
| <p><b>Feedback emphasising the importance of automatic recognition of interstate orders, and expressing concern about limitations on how this may occur</b></p> | <p>As outlined in the Discussion Paper, the NSW Government has explored options to automatically recognise disqualification orders made in other jurisdictions.</p> <p>However, the draft Bill contains provisions that allow for the Secretary to recognise in writing orders made in other jurisdictions.</p> <p>This reflects the complexity of adopting orders made under different states’ legislation into NSW law. Automatically adopting these orders would not allow for consideration of important factors such as:</p> <ul style="list-style-type: none"> <li>• differences to how an order works compared to its NSW equivalent (e.g. if another jurisdiction’s order places certain restrictions on ownership rather than a complete prohibition)</li> <li>• challenges associated with different approaches to drafting (e.g. how NSW’s wording of “purchase or acquire, or take possession or custody of, an animal” compares to</li> </ul> |

**Issue or theme raised****Our response**

Victoria's wording of "owning or being in charge of an animal"),

- whether the conduct that resulted in the order in another state would have been an offence in NSW (e.g. if the order is made in relation to an offence that does not have an equivalent in NSW).

None of these factors should preclude an order from being recognised – but these circumstances need to be considered to ensure that it is appropriate for the order to be recognised.

Including a step where the Secretary recognises an order can also ensure that there is due process in place so that a person subject to such an order is aware of this fact.

# Proposal 19: Establish licensing schemes and committees in the Regulation

## Proposal summary

The current laws license animal research and exhibited animals to provide additional oversight of these activities. These activities will continue to be licensed under the new framework, with additional detail on these licensing schemes and their associated committees (the Animal Research Review Panel and Exhibited Animals Advisory Committee, respectively) to be included in the Regulation. These specific provisions will be developed in consultation with key stakeholder groups and the community.

## Draft Bill – key locations

- Section 9 – Meaning of “animal research”
- Section 10 – Meaning of “exhibiting an animal”
- Part 5 – Licensing and approvals
- Part 9 – Committees

## What we asked

- Do you have any comments on the proposed approach to licensing schemes and committees (Proposal 19)?
- Do you have any comments on the proposal to consider risk-based principles when reviewing licensing schemes?

## Key issues raised (submissions and survey responses)

| Issue or theme raised   | Our response  |
|---|---|
| <b>Feedback requesting more detail on the proposed approach to licensing under the new laws</b>                                     | The details of licensing schemes will be set out in the regulations. There will be opportunities for the community to comment on the draft regulations when these are developed.  |
| <b>Concerns with how risk levels would be determined, and the implications this would have for oversight of licensed activities</b> |   |
| <b>Comments opposing the use of animals in research and the exhibition of animals</b>   | Under the law, approval must be granted before animals can be used for research or exhibition, to provide additional oversight of activities which may pose higher risks to the welfare of animals.   |
| <b>Comments seeking bans on certain research practices</b>  | The use of animals for research is underpinned by the Australian code of practice for the care and use of animals for scientific purposes, which establishes a nationally-consistent framework for regulating animal research, that requires researchers to apply the ‘3Rs’: <ul style="list-style-type: none"> <li>• <b>replacement</b> - using methods that achieve the purpose of the research without the use of animals at all</li> <li>• <b>reduction</b> – using methods that achieve the purpose of the research while using the fewest amount of animals possible</li> </ul> |

| Issue or theme raised  | Our response  |
|--|---|
|  | <ul style="list-style-type: none"> <li>• <b>refinement</b> – using methods that alleviate or minimise pain and distress for the animals used in research.</li> </ul> <p>In addition to the requirements of the Act and regulations, anyone who exhibits animals (such as a zoo) must also comply with the requirements in NSW's exhibited animals Standards, which outline how they must care for animals to ensure their welfare.</p>  |
| <p><b>Comments seeking more detail on whether risk-based approaches would affect the ability of research establishments to discharge their responsibilities under the Code</b></p> | <p>The details of licensing schemes will be set out in the regulations and there will an opportunity for the community to comment on the draft regulations when they are developed and published.</p> <p>The proposed approach to licensing animal research under the new laws will continue to be consistent with the Australian Code of Practice for the Care and Use of Animals for Scientific Purposes (the Code) and will not affect the ability of research establishments to meet their responsibilities under the Code.</p> |
| <p><b>Comments calling for changes to the structure of animal care and ethics committees</b></p>   |   |
| <p><b>Feedback highlighting concerns that the definition of animal research may unintentionally capture animal exhibition</b></p>  | <p>The exhibition of an animal is not considered a form of animal research and will continue to be licenced separately. The draft Bill reflects this.</p>   |
| <p><b>Feedback emphasising the importance of advisory committees</b></p>   | <p>The draft Bill will retain the three existing advisory committees – the Animal Welfare Advisory Council (AWAC), the Animal Research Review Panel, and the Exhibited Animals Advisory Committee. The draft Bill outlines each committee's functions and powers. Procedural and administrative details relating to the committees will be included in the Regulations.</p>   |
| <p><b>Comments advocating for certain groups or representatives to be on advisory committees</b></p>   | <p>In 2020, AWAC was reformed as an independent scientific committee to provide technical advice to the Minister. AWAC may form Stakeholder Reference Groups to seek specialised advice on particular matters – including from industry stakeholders.</p> <p>AWAC is only one means of obtaining advice and stakeholder views – the NSW Government is committed to broad consultation on animal welfare matters and will continue to engage with all stakeholders.</p>  |

# Proposal 20: Make other minor amendments to improve understanding and retain elements of the existing legislation that are effective

## Proposal summary

Proposed minor amendments include aligning and modernising the different sets of authorised officer powers and compliance tools currently available under the different Acts, amending liability protection and updating ways in which notices can be served. Provisions proposed to be retained include the use of prescribed Standards and the concept of a person in charge (retitled to 'responsible person').

## Draft Bill – key locations

- Section 12 – Meaning of “responsible person”
- Part 3 Division 2 – Standards
- Part 7 – Enforcement and compliance
- Section 157 – Service of documents
- Section 160 – Protection from liability

## What we asked

- Do you have any comments on the minor amendments and retained provisions (Proposal 20)?

## Key issues raised (submissions and survey responses)

| Issue or theme raised   | Our response   |
|---|--|
| <b>Comments seeking more detail on the proposed minor amendments and retentions</b> | The details of minor amendments and retained provisions will be included in the supporting explanatory material released alongside the draft Bill. This will outline the policy intent of the provisions in the Bill and explain where a provision is new or where it is replacing an equivalent provision in the existing laws.   |
| <b>Comments regarding the framework and content of mandatory Standards</b>          | <p>Standards are an important element of the animal welfare legislative framework, as they provide detailed requirements to protect the welfare of specific animals or animals in specific situations.</p> <p>There are a range of mandatory Standards in the existing legislative framework, and these continue to be mandatory under the new laws. The Standards will be reviewed and updated as needed, during the Standards phase of the reform process.</p> <p>The NSW Government is continuing to engage in the process to develop nationally consistent Australian Animal Welfare Standards and will continue to consider these for implementation as they are finalised.</p> |
| <b>Feedback seeking more detail on authorised officer powers</b>                    | The draft Bill sets out a suite of powers available to authorised officers that are consistent with modern legislation and takes a proportionate approach to enable authorised officers to effectively enforce and undertake compliance activity.  |

| Issue or theme raised  | Our response   |
|--|--|
| <p><b>Comments seeking more detail on the definition of responsible person – particularly as it relates to animal research and exhibited animals licensing</b></p> | <p>The draft Bill includes a section providing clear guidance on who is considered a ‘responsible person’. This establishes that responsible person includes, depending on the facts of the situation:</p> <ul style="list-style-type: none"> <li>• the animal’s owner</li> <li>• a person with the animal in their possession or custody or under their care, control or supervision</li> <li>• if the person with the animal in their possession or in their care is required to comply with the directions of another person employed by the owner (e.g. a supervisor or manager), that person</li> <li>• where a stock animal is in a saleyard or abattoir, the saleyard or abattoir’s owner or lessee</li> <li>• where an animal is being used under a licence, the licence holder</li> </ul> <p>More than one person can be a responsible person at the same time (e.g. the situation may mean that both the owner of the animal and their employee are responsible persons).</p> <p>For example, in an animal research setting, the responsible person could include the person with ultimate responsibility (as defined in the Australian code for the care and use of animals for scientific purposes) as well as individual researchers or attendants who provide care to the animals. This is consistent with the requirements set out at section 2.5.3 of the Australian code for the care and use of animals for scientific purposes.</p> |
| <p><b>Concerns about the proposed approach to liability protections</b></p>  | <p>The approach proposed by the draft Bill is consistent with modern legislation. The protections are designed to ensure that anyone exercising a power or function under the laws (or who has been directed to act by a person exercising a power or function), and who is acting in good faith, is appropriately protected from being sued.</p>  |

## Other issues raised

### What we asked

- Do you have any other ideas or comments for the new laws that were not specifically considered in this Discussion Paper?

### Key issues raised (submissions and survey responses)

| Issue or theme raised   | Our response   |
|---|--|
| <b>Feedback advocating for stronger laws</b>  | The draft Bill has been developed based on two rounds of public consultation, on both the NSW Animal Welfare Reform: Issues Paper and NSW Animal Welfare Reform: Discussion Paper.   |
| <b>Feedback expressing the view that legislative change is unnecessary, instead advocating for improved enforcement of the current laws</b>                     | The draft Bill streamlines and modernises NSW's animal welfare laws, and addresses key issues raised with NSW's animal welfare legislative framework.  |
| <b>Feedback expressing generalised concerns that the proposals represent significant government overreach</b>   | The draft Bill represents clear, contemporary, outcomes-focused legislation that seeks to prevent cruelty to animals and promote their welfare. This includes striking an appropriate balance to ensure the new laws are enforceable while also considering impacts on individual privacy and property rights.   |
| <b>Comments emphasising the need for laws to treat animals equally, irrespective of use</b>   | <p>The definition of animal outlined in the draft Bill ensures that all animals are protected from cruelty, and that people responsible for those animals are obligated to meet minimum care requirements for those animals. This ensures that the basic needs of all animals are met – noting that different species have different basic needs.</p> <p>The exemptions included in the new laws do not function to allow cruelty to animals. They provide certainty to the community that lawful activities which involve animals, like fishing, are not considered cruelty, as long as they are performed appropriately (i.e. in a way that causes no unnecessary harm).</p> |
| <b>Comments emphasising the need for laws to reflect community expectations</b>   | The NSW Government is committed to consulting throughout the animal welfare reform project to ensure that the new laws are developed considering community expectations.   |
| <b>Feedback calling for certain practices or activities to be banned, or more heavily regulated (breeding, racing, circuses, intensive ag, 1080, kangaroos)</b> | <p>The NSW Government recognises that there are a range of views across the community in relation to particular activities.</p> <p>The draft Bill has been developed based on a range of factors and in consideration of the feedback received during consultation, to strike the right balance between those different views.</p>   |
| <b>Comments highlighting concerns with the approach</b>   | The NSW Government is committed to consultation at all stages of the project to review and reform NSW's animal welfare laws.   |



| Issue or theme raised  | Our response  |
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| <p><b>taken to stakeholder consultation</b></p>  | <p>All stakeholders and the community were able to provide feedback on the NSW Animal Welfare Reform: Issues Paper (open for consultation between February and June 2020) and on the NSW Animal Welfare Reform: Discussion Paper (open for consultation from August to September 2021). We've received close to 6,000 responses from right across the community as part of these processes.</p> <p>This broad community consultation supplemented targeted consultation with a range of key stakeholders, selected because they have a legislated role in the current animal welfare framework or in order to provide balanced stakeholder representation.</p>  |
| <p><b>Questions about why the Discussion Paper did not specifically address issues relating to companion animals breeding, and various comments about the way breeding is regulated in NSW</b></p> | <p>The Discussion Paper was focussed on the high-level legal approach to new laws and was not designed to address issues raised with specific industries or forms of animal use. This reform process establishes the high-level legal principles for new laws first, before working into industry- or species-specific issues, as part of the development of Regulations and Standards.</p> <p>In NSW, the primary document for specifically regulating companion animals breeding is the NSW Animal Welfare Code of Practice: Breeding dogs and cats.</p>  |
| <p><b>Comments calling for bans – or stronger regulation – on puppy factories and companion animals breeding</b></p>   | <p>The NSW Government has released the NSW DPI Consultation Paper: Licensing and regulation of cat and dog breeding (Breeding Consultation Paper), which seeks community feedback on specific issues relating to the regulation of companion animals breeding. This feedback will be used to inform the development of a dog breeder licensing scheme and to consider any additional required changes to companion animals breeding regulation.</p> <p>More detail on the Breeding Consultation Paper is available on the <a href="#">NSW DPI website</a>.</p>  |
| <p><b>Comments calling for greater recognition of links between animal cruelty and domestic violence (and other forms of interpersonal violence)</b></p>   | <p>The NSW Government has recently made changes to ensure that harm (or threatened harm) to animals is considered a form of intimidation, and to ensure animals are protected as a standard condition of Apprehended Domestic Violence Orders.</p> <p>Where an animal welfare offence is committed in the context of domestic or family violence, this additional seriousness is considered as an aggravating factor in the sentencing process under the <i>Crimes (Sentencing Procedure) Act 1999</i>. Judges are required to consider these aggravating factors when making sentencing decisions, meaning that offences committed in the context of domestic or other interpersonal violence are likely to attract higher penalties than in situations where these aggravating factors do not apply.</p> <p>Additionally, recent changes to the <i>Child Protection (Working with Children) Act 2012</i> ensure that a person's history of animal cruelty</p> |

| Issue or theme raised   | Our response   |
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|   | offending is appropriately considered prior to that person being able to work with children.   |
| <b>Comments calling for mandatory reporting of cruelty offences – including mandatory disclosure of footage</b>   | While we acknowledge that timely reporting of cruelty offences and disclosure of footage supports timely and efficient enforcement, the draft Bill does not include mandatory reporting requirements. Mandatory reporting obligations may result in unintended consequences that worsen animal welfare outcomes – for example, a person not taking an injured animal to a vet because they are concerned about being reported. |
| <b>Feedback calling for frequent updates and reviews of the new laws, to ensure they remain up-to-date and effective</b>  | The NSW Government is committed to ensuring that the new animal welfare laws remain up to date. The draft Bill includes a provision requiring a five-year statutory review of the new laws, to ensure that they are functioning as intended and are achieving the objects of the Act.  |
| <b>Comments highlighting the need for national solutions</b>  | The NSW Government recognises the benefits of national consistency in approaches to animal welfare matters and contributes to this through our ongoing engagement in the nationally coordinated process to develop Australian Animal Welfare Standards and Guidelines.   |
| <b>Feedback seeking integration of private sector quality assurance schemes into the new laws, to provide additional support to exceed the legislated baseline requirements</b> | The NSW Government recognises the important role played by industry in achieving animal welfare outcomes that exceed basic legislative requirements – including through quality assurance schemes. The Government may consider options that would recognise these schemes, where doing so has benefits for industry, the community and, most importantly, the welfare of animals.  |
| <b>Suggestions to include animal welfare-related factors on product labelling.</b>  | Mandatory product labelling is an issue addressed at the Commonwealth level.   |
| <b>Responses highlighting concerns around the risk of trespass by activists</b>   | Trespass is illegal under NSW law. Nothing in the new animal welfare laws allows for trespass.   |
| <b>Comments expressing concerns with matters relating to the <i>Companion Animals Act 1998</i> (e.g. dangerous dogs)</b>  | These matters are not in the scope of the review of animal welfare laws.   |
| <b>Responses raising concerns about potential impacts on animals stemming from other policy areas (e.g. development, pollution, land clearing etc.)</b>                         |  |