



THE LAW SOCIETY
OF NEW SOUTH WALES

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17 September 2021

Mr Daryl Quinlivan
NSW Agricultural Commissioner
Animal Welfare, Department of Primary Industries
Locked Bag 21
Orange NSW 2800

By email: animalwelfare.submissions@dpi.nsw.gov.au

Dear Mr Quinlivan,

NSW Animal Welfare Reform – Discussion Paper

Thank you for the opportunity to contribute to the Department of Primary Industries, NSW Animal Welfare Reform - Discussion Paper. The Law Society has prepared the following comments on relevant questions in the Discussion Paper with input from the Rural Issues Committee.

The Law Society is generally supportive of replacing the *Prevention of Cruelty to Animals Act 1979* (POCTAA), the *Animal Research Act 1985* (ARA) and the *Exhibited Animals Protection Act 1986* (EAPA) with a simplified animal care and protection act, noting that the existing Acts have been made on an ad hoc basis. We would support a new Act which has clear obligations and provides adequate penalties for non-compliance. Any such Act, in our view, must maintain a balanced approach, such as that contained in the Qld Act.¹

We look forward to the opportunity to comment on an exposure draft of the consolidated legislation, in due course.

Proposal 2 – Update the objects of the Act

3. Do you have any comments on the proposal to update the objects of the new laws?

The Law Society supports the proposals in the Discussion Paper in relation to updating the legislative objects.

Proposal 4 – Introduce minimum care requirement

5. Does the proposed minimum care requirement make it easier to understand a person's obligations when caring for animals?

¹ See *Animal Care and Protection Act 2001* (Qld) s3(b)(i).

6. Do you have any comments on the proposal to introduce a minimum care requirement?

The Law Society's is supportive of minimum care requirements, provided that the obligations on those charged with the care of animals are made very clear, and relevant offences apply in circumstances where the person intentionally or recklessly fails to meet the minimum care requirements. Our members are of the view that this is the appropriate fault element to apply for a criminal offence, and will ensure the legislation does not capture situations where the care requirements are not met due to circumstances outside the control of the relevant person, as alluded to in the Discussion Paper.

The Discussion Paper notes that bushfire and flood events are examples of such extraordinary circumstances, and we suggest that the draft Act and supporting materials make clear these and other relevant exonerating circumstances. This would benefit not only those charged with the care of animals, but also prosecuting authorities, in having clarity regarding the application of offences in the wake of natural disasters.

Proposal 5 – Update the definition of cruelty

7. Does the proposed definition of cruelty clearly communicate what constitutes unacceptable conduct?

8. Do you have any comments on the proposal to update the definition of cruelty?

It is the Law Society's view that, notwithstanding the intent of the proposed changes is to clarify the definition of cruelty, the proposed definition does not satisfactorily clarify what constitutes unacceptable conduct, and this is self-evident, in as much as the Discussion Paper notes that it is intended that it will be left to the courts to interpret 'unreasonably or unnecessarily' in individual cases. Given the costs to all parties, and the stress for the accused, involved in engaging in prosecution before the courts, it would be highly desirable to minimise situations where prosecutions proceed in circumstances where it is merely possible that the court might consider that an omission resulted in an animal being harmed unnecessarily, and hence that this constitutes an offence of committing animal cruelty.

In the view of our members, the proposed definition of cruelty is too broad, and may unintentionally capture situations that should not be considered animal cruelty, for example where livestock may be injured in yarding or transport where the injury might be said to have been caused by the unpredictability of the animal. This can unfortunately occur in situations where an animal is appropriately handled and transported under the proposed minimum care requirements. Such an injury might not be considered unreasonable, but it may be considered unnecessary.

There are other aspects of the definition that do not provide sufficient clarity, for example, what might constitute 'excessive' heat or cold, particularly in circumstances of an increasingly unpredictable climate.

Proposal 7 – Clarify prohibited and restricted procedures

11. Do you have any comments on prohibited and restricted procedures?

In our view, the appropriate place for the list of any husbandry practices continues to be in the Act and not in a Regulation. While we appreciate the desirability of ensuring that prohibited and restricted procedures keep pace with evolving science, community expectation and industry practice, where those procedures may result in the imposition of serious criminal offences, such procedures should be clearly set out in an Act subject to appropriate parliamentary scrutiny.

In any case, we look forward to further consultation on the drafting of any new Act and Regulation in this regard, so as to ensure that the legislative framework provides adequate timing for consultation around the relevant procedures.

Proposal 8 – Providing certainty for lawful activities

12. Do you have any comments on the proposal to clarify how defences are intended to apply to give certainty to lawful activities?

The Law Society acknowledges the utility of section 24 of the POCTAA, where a specific provision outlining the available defences makes it clear which animal husbandry practices for stock animals are permitted under the law.

In our view, any defence must be robust and strongly justified. To that end, we suggest that the defence of ‘undertaking certain prescribed husbandry practices, as long as doing so causes no unnecessary harm’ requires further clarification. We suggest the addition of the ‘unnecessary harm’ element in the context of psychological harm be considered in light of our comments above in relation to the fault elements of intention and recklessness.

Proposal 11 – Enhanced authorised officer powers of entry

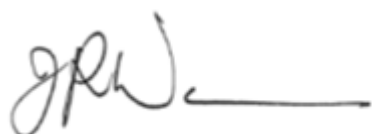
17. Do you have any comments on the proposal to amend powers of entry to better support compliance?

Our members have reported that many farms are family enterprises with residential dwellings and, on any given day, an unannounced visit may be distressing for family members, many of whom would be children.

In our view, the power to “Enter at a reasonable time for the purpose of ensuring compliance, on reasonable suspicion that any industrial, agricultural, commercial (i.e. relating to the sale or trade of animals) or licensed activity (i.e. animal research or animal exhibition) is being carried out in respect of an animal on the premises” does not provide “appropriate safeguards for individual rights and privacy”. Where land is used for agricultural activities, but includes a dwelling, it may be worth considering limiting powers of entry without a warrant to circumstances where a notice of compliance has been issued or notice has been given of an intention to enter to monitor compliance.

Should you have any questions or require further information about this submission, please contact Stephanie Lee, Policy Lawyer, on (02) 9926 0272 or email stephanie.lee@lawsociety.com.au.

Yours sincerely,



Juliana Warner
President