



# NSW Cat Fanciers Association Inc.

NSW Department of Primary Industries

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## NSW Animal Welfare Reform - Issues Paper

NSW Cat Fanciers Association (NSWCFA) is one of the largest and most active Feline Registering Bodies in the Southern Hemisphere with a professional administration office processing thousands of registrations each year. Through our Affiliated Clubs there are in excess of 20 Championship Shows for members to showcase their breed.

NSWCFA is a founding member of the Co-Ordinating Cat Council of Australia, one of the two umbrella national recommendatory bodies in Australia. NSWCFA has a stakeholder position on the Office of Local Government Responsible Pet Ownership Reference Group.

NSWCFA welcome the opportunity to provide further input into the reforms.

### ***Objects of the Act***

#### ***2. Is there anything additional to the current objects that should be included in the objects of new animal welfare laws?***

##### Prevention of Cruelty to Animals Act 1979 (POCTA).

The focus of the Objects of the Act should be proactive (improving animal welfare) rather than reactive (prevention of cruelty). Improving animal welfare and promoting responsible pet ownership through education should in theory reduce cruelty to animals. NSWCFA supports provisions within the Act to improve a person's understanding of their legal obligation and agrees that it is challenging to reflect a consistent community expectation due to the variance of the people with differing opinions.

The Objects of the Act should not confuse Animal Welfare with Animal Rights, and a clear distinction should be included. The Standards/Guidelines should be reflective of animal welfare.

Exhibited Animals Protection Act 1986 (EAPA) should have clearly defined Objects in line with the other two Acts (POCTA and Animal Research Act 1985). It is not reasonable to 'infer' the purpose of the Act and leave it to interpretation.



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### **3. Do you have any comments on the interactions between the Prevention of Cruelty to Animals Act 1979, Animal Research Act 1985, and Exhibited Animals Protection Act 1986?**

The three Acts should have a consistent approach for the animals that fall into any overlapping sections.

Parts of the Animal Research Act and Exhibited Animals Protection Act may be too complex to be included in the main body of POCTA and it may be more beneficial for these to remain as standalone due to the changing nature of legislation and different experience needed to enforce these Acts. Most animals covered under these Acts are not “pets” in the traditional definition of “a domestic or tamed animal kept for companionship or pleasure”.

Regardless of whether POCTA is the overarching legislation, animals that fall into any of the three Acts should have clearly defined Standards and Guidelines covering all aspects of their welfare.

NSWCFA supports Animal Welfare Acts being consistent nationally within Australia.

#### **Definitions**

### **5. Should other species be included in the definition of 'animal' and therefore be covered by the new animal welfare laws (e.g. cephalopods, crustaceans in all situations, other species)?**

Cephalopods – Yes/No? Yes

Crustaceans (all situations) Yes/no? Yes

Other animals (please specify)? No

### **6. Please explain your answer to the question above regarding species contained in the definition of 'animal'.**

The inclusion of all animals into POCTA would make the Standards & Guidelines too long, confusing and complicated with the result being insufficient experience and training by those keeping animals as well as those tasked with the enforcement of POCTA (or any other relevant animal welfare act).



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Broadening the definition of 'animal' would result in a higher volume of individuals being covered under this legislation which would increase the volume of education/compliance/enforcement work required as well as the need to increase government funding to implement the additional work. This would mean that more inspectors are required to enforce the legislation and training to be undertaken.

Any animal that has current protection under other legislation Acts should not lose that protection.

NSWCFA supports the inclusion of animals where their species currently exists within current definitions under the Acts

### ***7. Should a consistent definition of 'animal' be used across the Prevention of Cruelty to Animals Act 1979, Animal Research Act 1985, and Exhibited Animals Protection Act 1986?***

Yes

### ***8. Please explain your answer to the question above about using a consistent definition of 'animal'.***

The dictionary definition of an animal is "a living organism that feeds on organic matter, typically having specialized sense organs and nervous system and able to respond rapidly to stimuli". For the purposes of a definition, it is a reasonable one.

However, in order to answer this question properly, there would need to be further information provided about whether the three Acts would be combined into one, how this would be legislated, how it would work in practical terms and what category or species an "animal" would fall into. It is not responsible to respond based on a 'theory' of what would or wouldn't be included.

### ***9. Do you have any comments on how 'cruelty' is currently defined within the Prevention of Cruelty to Animals Act 1979?***

The definition of cruelty in the Act covers a wide variety of scenarios but the current definition is still ambiguous enough for it to be perceived or interpreted differently.



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The definition of cruelty should include the deprivation of any of the 5 animal welfare freedoms. These being:

- Freedom from hunger and thirst
- Freedom from discomfort
- Freedom from pain, injury and disease
- Freedom to express normal behaviours
- Freedom from fear and distress

The 'decision' as to whether animal cruelty has been committed is generally solely based on the initial judgement of an Inspector. This ends up concluding in decision made by the Inspectorate and/or a Court to deem what is reasonable, necessary or justified (which often does not reflect the same understanding of the animal's owner or community expectations).

NSWCFA appreciates the challenges associated with setting a definition of cruelty, acts of cruelty or the use of the words "reasonable" or "unreasonable". If the definition is not prescriptive enough, it leaves it open to interpretation. Adversely by making the definitions too prescriptive causes the same issues.

NSWCFA acknowledge the Inspectorate of RSPCA and AWL have limited resources on the funding provided by the Government. In some cases, resources are spent on enforcement with no or minimum penalties (if successful) and no improvement in the individual(s) education or knowledge.

NSWCFA supports education over regulation in the first instances with the outcome being improved knowledge in the community and therefore improved welfare conditions for all animals. Knowledge and education that is unique to cats could be provided by experienced cat breeders (or any animal specialty) by way of providing educational materials would strengthen and support the inspectorate in policing all animals within their remit under POCTA.

### ***10. Would you support introducing a minimum standard of care into the new animal welfare laws?***

Yes – on the provision that this minimum standard of care is incorporated into the Standards and Guidelines for each species under the three welfare acts (POCTA, Animal Research and EAPA). The Standards & Guidelines should specify the minimum standards in a clear and non-ambiguous format. These standards should be actively promoted throughout the community and should be easily accessible for people to locate. The standards and guidelines should be based on animal welfare, and not animal rights.



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**11. Do you have any comments on using existing 'fail to provide' provisions under the Prevention of Cruelty to Animals Act 1979 as a basis for a minimum standard of care?**

“Fail to provide” is a negative perception – ie: what the owner failed to do for the animal’s welfare.

NSWCFA believes that the focus of POCTA should be about education firstly and that the emphasis should be on what the owner is required to provide using positive and educational language.

The existing POCTA Standards and Guidelines format is reasonable and a move to positive language could be done at the same time as reviewing the specific species Standards and Guidelines with the stakeholders.

**12. Noting the need for scientifically based indicators, do you support psychological suffering being explicitly included in the definition of 'pain'?**

NSWCFA does not support the inclusion of psychological suffering in the definition of pain.

**13. Please explain your answer to the question above about psychological suffering.**

Identifying psychological suffering is too subjective on the interpretation at the time that it is being applied. It is not enough to view an animal’s behaviour and apply the definition of psychological pain (being associated with feelings of guilt, anguish, fear, panic, angst, loneliness and helplessness) to the environment the animal is currently in. An animal may exhibit signs of fear being in an unfamiliar environment such as with strangers in a holding facility (unfamiliar smells, other animals, loud noises etc), but this is not a clear enough indicator that the animal is experiencing psychological suffering.

Pain is specific to each individual animal or species and therefore very difficult to measure particularly within animals. Determining the cause and extent of psychological pain is extremely unclear. Scientific methods have been proven to provide inaccurate results. Therefore, determining if an offence relating to psychological pain has been committed is not currently possible.

This may be more appropriate to be included in each species Standards and Guidelines as if the minimum standards are being met, pain would be avoided in most cases other than medical reasons.



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**14. Do you have any comments on the definition of 'person in charge', particularly with regard to circumstances where multiple people may have responsibility for, or control over, an animal?**

NSWCFA agrees with the definition of 'person in charge' for the purposes of the Acts discussed in this paper.

**17. Are there any activities currently included in the definition of 'exhibit' in the Exhibited Animals Protection Act 1986 that should be excluded? If so, why?**

Schedule 1[1] of the Bill associated with this Inquiry inserts a new definition of "circus" into section 5(1) of the Act. "Circus" is defined to mean "any premises occupied by temporary or moveable structures used for the purposes of a circus, fair, fun-fair, amusement park or similar place of public entertainment." This new/expanded definition can and will encompass most animal exhibitions - both public and private. Mobile petting zoos, mobile educators, agricultural shows, local fairs, and even animal shows and expos all have the potential to be affected.

NSWCFA opposes the use of this new definition. It is critical to ensure that all hobbyist activities continue to be exempt from the EAPA. This includes complete exemptions for all competitions and displays at agricultural shows and for all events run by an association dedicated to the keeping of that type of animal. Further review and clarification on this definition is required.

**19. Are there any other terms or concepts used in the existing animal welfare legislative framework that require new or amended definitions?**

As indicated in the Introduction of this review, NSWCFA understands that all the Standards and Guidelines for species covered under POCTA are to be reviewed and we support a review of these items to bring the legislation into current times.

**20. Do you have any other feedback, ideas or suggestions you would like to provide regarding definitions of terms used within the existing animal welfare laws?**

It would be useful for key items to be written in words that are easily understood by the people held accountable for animals under this legislation as well as for those who are account to enforce it. If this is not possible, NSWCFA would suggest key items written in technical terms to be shown as an example in plain English.



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### ***Compliance & Enforcement***

***22. Do you support aligning compliance powers and enforcement tools across the Prevention of Cruelty to Animals Act 1979, Animal Research Act 1985, and Exhibited Animals Protection Act 1986?***

Yes

***23. Please explain your answer to the question above about aligning compliance powers.***

Those entities accountable for enforcing any of these Acts should have consistent work practices, terminology and methodologies. Aligning powers and tools should bring some clarity to all people involved.

NSWCFA believe that several the recommendations made by the Select Committee Inquiry into Animal Welfare Laws in NSW need to be implemented prior to the finalisation of this review, including but not limited to:

- Enforcement agencies be more transparent with their reporting
- There must be an independent mechanism for appeal against enforcement agencies
- Increased training for enforcement agencies
- Inspectors must be accredited based on training and expertise

***24. Should Penalty Infringement Notices be made available under the Animal Research Act 1985?***

Yes.

It is reasonable that Penalty Infringement Notices should be issued if the Animal Research Act 1985 is not being complied with. To continue to have disparity between how breaches of compliance are actioned only serves to have further confusion and poor animal welfare outcomes.

***25. Do you have any comments on providing authorised inspectors with powers and tools (e.g. being able to check compliance with an existing direction) to provide proactive support to help prevent adverse animal welfare outcomes?***

It is concerning if authorised inspectors do not have the powers or tools to provide proactive support or check that a person is complying with existing directions. If they are not checking that the advice, suggestions, penalty notices or court orders etc are being implemented, how can the enforcement agencies ensure the minimum standards are being followed?



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NSWCFA supports authorised inspectors being provided with powers and tools to provide proactive support. However, a review of the powers/tools needs to be completed and a set of guidelines and protocols should be established (if there is a guideline/protocol in place, it should be reviewed with stakeholder consultation). The proactive support would have to be based on being innocent until proven guilty.

***26. Should the current provisions that require inspectors under the Animal Research Act 1985 to be public servants who are also qualified veterinarians be retained, or should they be amended to allow for a more risk-based approach?***

NSWCFA do not operate in the Animal Research space, however the fact that the enforcement agency is inspecting an animal research facility means veterinary experience should be mandatory.

***27. Noting the educational focus of Stock Welfare Panels, would you support further consideration of how the Stock Welfare Panel process could be applied to support better animal welfare outcomes in non-agricultural cases?***

Yes, with stakeholders to be included in discussions of how this would be implemented.

***29. Are there any specific issues you would like to raise as we review the penalties for all offences under the Prevention of Cruelty to Animals Act 1979, Animal Research Act 1985, and Exhibited Animals Protection Act 1986?***

Members of the public need to be aware of the penalties and this is critical for education purposes.

NSWCFA supports the review of all penalties for offences including the amounts, how the value of the penalty is determined and how the penalties will influence behaviours.

### **Streamlining the Framework**

***32. Which areas within the animal welfare legislative framework could be improved to reduce unnecessary red tape or make requirements clearer?***

NSWCFA supports the obligations and requirements being clear and concise to ensure it can be correctly interpreted by anyone who must adhere to it or those tasked with enforcing it.





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### ***33. Do you have any comments on what the role of panels and committees should be in supporting the new animal welfare legislative framework?***

NSWCFA can only comment on AWAC, who have been redesigned as a scientific committee only. It is unclear what community stakeholders are involved in any panel or committee regarding any aspect of animal welfare (other than NSWCFAs recent inclusion in the Responsible Pet Ownership Reference Group). It is unclear to NSWCFA as to the role of the Reference Group with respect to these reforms.

Panels and committees need to have appropriate stakeholders included from the very beginning – those who actively care for animals under each relevant Act. Historically, panels and committees write policies based on old data or theories with no real exposure to the actual reality. Once legislation has been drafted, certain stakeholders are asked to comment with no confidence that their feedback is taken into consideration. Other stakeholders are often not included.

NSWCFA appreciates that a panel or committee cannot include everyone, but the stakeholders are the people keeping animals, not policy writers or government employees, so representatives of each area must be included.

### ***34. Do you have any other feedback, ideas or suggestions you would like to provide regarding streamlining the animal welfare legislative framework?***

Committees or sub-committees must include people who are directly impacted by the legislation, and these people are the greatest source of information as they are the ones providing care to animals every day and seeking to improve welfare standards.

Experts in these situations is not someone who is collating information or reading a report. The experts in animal care and welfare are all the people in our communities who provide the care and welfare to animals as well as promoting responsible animal ownership and educate others.

### ***35. Do you have any final comments about this reform?***

NSWCFA acknowledges that this reform is extensive and has the very real opportunity to change the landscape of animal welfare into a proactive and positive process. This is an opportunity for all areas of animal welfare to work together to improve the standards of how animals are cared for. It is important to ensure that the welfare is the key factor and to ensure the animal rights movement does not hinder those who keep animals responsibly to be able to continue to do so.