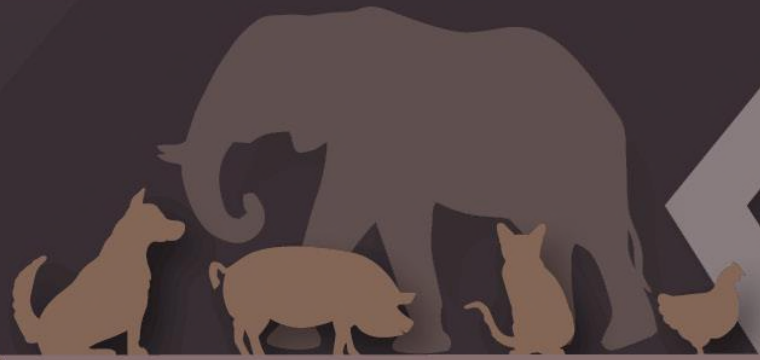




NSW ANIMAL **WELFARE** REFORM

DISCUSSION PAPER



Published by the NSW Department of Primary Industries

NSW Animal Welfare Reform - Discussion Paper

First published July 2021

ISBN: 978-1-76058-453-5

More information

Strategy and Policy,
NSW Department of Primary Industries

www.dpi.nsw.gov.au

INT21/28415

© State of New South Wales through Department of Regional NSW 2021. The information contained in this publication is based on knowledge and understanding at the time of writing (July 2021). However, because of advances in knowledge, users are reminded of the need to ensure that the information upon which they rely is up to date and to check the currency of the information with the appropriate officer of the Department of Regional NSW or the user's independent adviser.

Contents

Introduction.....	3
Consultation to date.....	5
Summary of proposals.....	7
Section 1: Scope and Definitions.....	8
Section 2: Offences and Penalties.....	11
Section 3: Authorised Officers.....	21
Section 4: Enforcement Arrangements.....	26
Section 5: Miscellaneous.....	30
Next Steps.....	37
Appendix A – Detailed proposed offences and penalties.....	38

Introduction

Background

Protecting the welfare of animals is a priority of the NSW Government.

In 2018, the NSW Government released the NSW Animal Welfare Action Plan (Action Plan). The Action Plan outlines the NSW Government's commitment to safeguarding animal welfare and providing a strong regulatory framework that promotes responsible animal ownership and care in NSW.

As part of the Action Plan, the NSW Government is modernising the policy and legislative framework for animal welfare in NSW. To achieve this, we are looking for opportunities to streamline and strengthen animal welfare laws, and for ways to make them easier to understand and follow.

The science behind animal welfare has evolved since the *Prevention of Cruelty to Animals Act 1979*, the *Animal Research Act 1985* and the *Exhibited Animals Protection Act 1986* were introduced around 40 years ago, and so have community expectations. The existing laws have been modified and added to over the years, resulting in the unnecessarily complex and prescriptive system in place today.

About this document

In February 2020, the NSW Government released the *NSW Animal Welfare Reform – Issues Paper* (Issues Paper) to seek public feedback on the key issues around NSW's current animal welfare laws. We received over 1,100 submissions and survey responses during the consultation period from a wide range of community members and stakeholders. Using this feedback, we have identified a range of opportunities to better provide for the care and protection of animals.

This *NSW Animal Welfare Reform – Discussion Paper* (Discussion Paper) has been developed based on the feedback from the community and stakeholders. The Discussion Paper provides an outline of proposed changes to the laws, explains their intended effect, seeks feedback on these proposed changes, and provides the opportunity for the community to have their say on the shape of new animal welfare laws.

This Discussion Paper outlines the key proposed changes and enhancements to the existing laws. These proposals have been developed to be consistent with the Five Freedoms and Five Domains models of animal welfare, and to reflect best practice in constructing modern legislation. Where elements of the existing laws are effective, the intent of those provisions is proposed to continue under the new laws. As a result, these provisions have not been specifically covered by this Discussion Paper.

Further opportunities for consultation

The feedback we receive on the Discussion Paper will be used to refine the proposed changes and inform the drafting of the new laws.

Reform Process



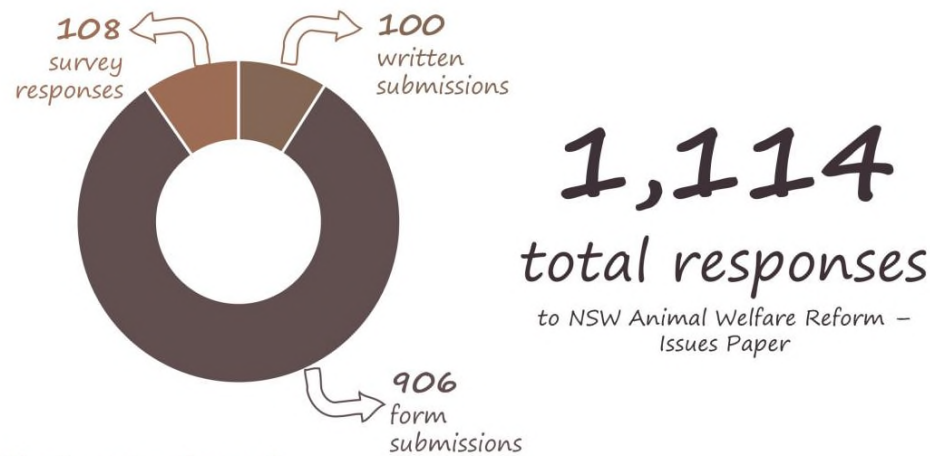
Have your say

The NSW Government is seeking public feedback on the Discussion Paper. You are welcome to comment on as many or as few of the proposals as you like. Additionally, please feel free to provide any other ideas or comments that are not specifically considered by the Discussion Paper.

To have your say, [fill out our online survey](#) or send a submission to animalwelfare.submissions@dpi.nsw.gov.au

Consultation to date

Outcomes from Issues Paper public consultation



What we've heard

	The new laws need to be clear and consistent	See All Proposals
	Objects of the new laws should better reflect the purpose of providing for the care and protection of animals	See Proposal 2
	Cephalopods and crustaceans should be included in the definition of animal	See Proposal 3
	The new laws should be consistent with the Five Freedoms and/or Five Domains models	See Proposal 4
	Psychological suffering should be specifically included as a form of cruelty	See Proposal 5
	Concerns regarding some practices or industries (e.g. some husbandry procedures)	See Proposals 5-7
	Concerns regarding the application of defences and exemptions	See Proposal 8
	Penalty amounts need to be increased to better reflect the severity of offences	See Proposal 9
	Changes are required to improve compliance, enforcement and administration	See Proposals 10-14
	Improvements need to be made around transparency and reporting	See Proposal 14

Targeted consultation

We have also worked closely with a selection of key stakeholders to test the proposals outlined in this paper. We acknowledge that there is a large and diverse range of stakeholders with an interest in animal welfare, and it has not been possible to individually consult with all stakeholder groups in developing this Discussion Paper. These stakeholders were chosen because they have a legislated role related to animal welfare or to provide balanced stakeholder representation.

Box 1 – Key stakeholders included in targeted consultation

- Animal Care Australia
- Animal Research Review Panel
- Animal Welfare League NSW
- Australian Veterinary Association
- DOGS NSW
- Exhibited Animals Advisory Committee
- Greyhound Welfare Integrity Commission
- NSW Farmers Association
- NSW Police Force
- RSPCA NSW
- Veterinary Practitioners Board of NSW

Summary of proposals

Section 1: Scope and Definitions	Proposal 1	Replace the existing laws with a single, modern Act
	Proposal 2	Update the objects of the Act
	Proposal 3	Update the definition of animal
Section 2: Offences and Penalties	Proposal 4	Introduce a minimum care requirement
	Proposal 5	Update the definition of cruelty
	Proposal 6	Introduce new offences and enhance existing offences
	Proposal 7	Clarify prohibited and restricted procedures
	Proposal 8	Provide certainty for lawful activities
	Proposal 9	Introduce a modern penalties framework with increased penalties
Section 3: Authorised Officers	Proposal 10	Provide authorised officers with new powers to administer sedatives and/or pain relief to animals
	Proposal 11	Enhance authorised officer powers of entry
	Proposal 12	Provide Local Land Services and council officers with powers in critical situations
Section 4: Enforcement Arrangements	Proposal 13	Consider enforcement arrangements
	Proposal 14	Improve oversight of animal welfare enforcement activities
	Proposal 15	Amend timeframes and processes related to enforcement agency rehoming of animals
	Proposal 16	Standardise statutory limitation periods and authority to prosecute provisions
Section 5: Miscellaneous	Proposal 17	Broaden the application of Stock Welfare Panels and improve their functioning
	Proposal 18	Further improve the functioning of court orders
	Proposal 19	Establish licensing schemes and committees in the Regulation
	Proposal 20	Make other minor amendments to improve understanding and retain elements of the existing legislation that are effective

Section 1: Scope and Definitions

Proposal 1 –

Replace the existing laws with a single, modern Act

In NSW, animal welfare is predominantly protected by the *Prevention of Cruelty to Animals Act 1979* (POCTAA). Additionally, the *Animal Research Act 1985* (ARA) and *Exhibited Animals Protection Act 1986* (EAPA) provide additional oversight of the animal research and exhibited animals industries, respectively. Finally, the *Crimes Act 1900* contains the most serious animal cruelty offences.

We propose replacing POCTAA, ARA and EAPA with a single, modern animal care and protection law. The proposals in this paper, along with retained elements of POCTAA, ARA and EAPA that are effective, would form the new Act. The *Crimes Act 1900* offences would continue to remain separate, reflecting their severity.

We have heard through consultation that the relationship between POCTAA, ARA and EAPA is confusing, so replacing them with a single Act would help to simplify the laws and reduce overlap.

There are other laws in NSW that relate to animals but are not specifically about animal welfare – such as the *Companion Animals Act 1998*, the *Biodiversity Conservation Act 2016*, and racing-related Acts. These Acts are not in the scope of this reform project; they will continue to apply separately.

It is important to note that the new laws are proposed to apply to all animals (where they meet the definition of animal – see **Proposal 3**) unless the new laws provide a specific exemption or defence. This includes situations where treatment of animals is also subject to another, separate law.

For example, a greyhound racing participant would still have to comply with the new laws, even though they also have obligations under the *Greyhound Racing Act 2017*. Similarly, people would have to treat native animals in accordance with the new laws – even if that animal is also protected by the *Biodiversity Conservation Act 2016*.

“The existence of multiple acts with differing objectives adds complexity for people working in the field of animal welfare [...] Simplifying and improving consistency in the legislation and across jurisdictions can only benefit legislative efficiency and improve the ability of those on the ground to do their jobs effectively.”

- Survey Respondent #19

Discussion Questions

1. Do you have any comments on the proposal to replace POCTAA, ARA and EAPA with a single, modern animal care and protection law?

Proposal 2 – Update the objects of the Act

Objects outline the purpose of a piece of legislation and are used by the courts and others to help understand what the laws are intended to achieve and to interpret the intended meaning of specific provisions.

The feedback we received on the Issues Paper indicated that the current objects of the laws are not effective in explaining the purpose of the laws, nor communicating how the laws will achieve that purpose.

The proposed objects of the new laws focus on reflecting the intent of the policy proposals included in this document – describing the intended purpose of the laws and explaining how the content of the laws will achieve this. Some examples of what the proposed approach may look like in practice are outlined below:

Potential objects

Protect animals from unreasonable or unnecessary harm by:

- establishing unacceptable welfare outcomes
- prohibiting certain actions or activities that are always cruel
- restricting when, and by whom, certain activities may be performed.

Provide for the care and protection of animals by:

- setting a minimum care requirement that establishes a baseline of acceptable conduct for the treatment of animals .

Establish a framework for risk-based licensing of:

- scientific or educational use of animals (consistent with the principles of replacement, reduction and refinement)¹
- use of animals for exhibition (particularly animals with complex care requirements).

Discussion Questions

2. Do the proposed objects clearly and effectively explain the purpose of the new laws?
3. Do you have any comments on the proposal to update the objects of the new laws?

¹ The principles of replacing animals with other methods of research, reducing the number of animals used in research, and refinement of techniques used to minimise adverse impacts on animals are known as the '3Rs'. These are internationally accepted as providing a framework for decision-making in the use of animals for research and teaching. The 3Rs underpin the *Australian code for the care and use of animals for scientific purposes*.

Proposal 3 – Update the definition of animal

The definition of animal is critical in establishing exactly which species are intended to be protected by the provisions of the new laws.

The current definition of animal includes all vertebrate species (other than humans), and also includes crustaceans – but only when at a place where food is prepared or offered for consumption, such as a restaurant.

As part of the new laws, we propose to extend this definition, broadening the kinds of animals that are protected by law. This proposed definition will:

- continue to include members of vertebrate species, such as:
 - amphibians
 - birds
 - fish
 - mammals (other than humans)
 - reptiles
- include decapod crustaceans (e.g. crabs, lobsters) at all times
- include cephalopods (e.g. octopuses, squids).

“There is considerable scientific evidence that cephalopods have the physiological capacity to experience pain. While the situation with crustaceans is possibly more open to scientific debate, our understanding of consciousness and pain perception is rapidly evolving and this should be taken into account when framing new animal welfare legislation.”

- Survey Respondent #37

The proposed changes improve alignment with the *Australian code for the care and use of animals for scientific purposes*, as well as other jurisdictions in Australia and overseas. Consultation on the definition of animal showed overwhelming support for change, with over 85 per cent of people who responded to the survey question supporting the inclusion of cephalopods and crustaceans.

To ensure that the lawful activity of fishing is not unintentionally affected by this change, we will also introduce a provision that clarifies that using a live fish, cephalopod or decapod crustacean as bait is not an offence (see **Proposal 8**).

Discussion Questions

4. Do you have any comments on the proposal to update the definition of animal?

Section 2: Offences and Penalties

Proposal 4 – Introduce a minimum care requirement

We propose introducing a minimum care requirement that will take some existing parts of POCTAA relating to the failure to provide food, drink, shelter, and veterinary treatment, and reframe them as positive obligations. This will explain, as clearly as possible, the animal care and protection outcomes that a person must achieve when looking after an animal. This approach is consistent with contemporary animal welfare science, including the Five Freedoms.

Under the proposed approach, a person would be committing an offence if they fail to take reasonable steps to meet the minimum care requirement. This means that people would not be committing an offence if they have taken the steps a reasonable person would have been expected to take to meet the minimum care requirement but were unable to meet those requirements because of circumstances beyond their control (for example, during a bushfire or flood).

The proposed minimum care requirement includes obligations to:

- provide appropriate and adequate food and drink
- provide appropriate and adequate shelter
- provide for the treatment of disease or injury (including timely provision of veterinary treatment where needed)
- provide for appropriate or necessary confinement, and appropriate exercise that considers behavioural needs
- appropriately handle and transport animals.

These obligations would be designed in a way that is flexible regarding the needs of different species of animals and considers the appropriate context around the level of human intervention required to meet those needs.

Where a failure to meet the minimum care requirement is particularly severe (for example, cases of neglect), the enforcement agencies will be able to bring stronger charges like cruelty, aggravated cruelty, or serious cruelty as the situation requires. This provides a clear escalation of offences to respond appropriately based on the severity of the situation.

Feedback on the Issues Paper showed support for this idea – nearly 90 per cent of people who responded to our survey question about the minimum care requirement were supportive of such a concept being introduced. Other jurisdictions in Australia (e.g. Queensland) and other countries have established similar provisions in their laws.

Discussion Questions

5. Does the proposed minimum care requirement make it easier to understand a person's obligations when caring for animals?
6. Do you have any comments on the proposal to introduce a minimum care requirement?

Proposal 5 – Update the definition of cruelty

It is currently an offence under POCTAA to commit an act of cruelty, and this will remain the case under the new laws. However, we propose clarifying the definition of cruelty. We propose that cruelty should clearly explain unacceptable actions and outcomes when interacting with animals. When this approach to cruelty is included alongside the minimum care requirement outlined above, it forms the basis of a robust, outcomes-focused framework that escalates in severity to provide for the care and protection of animals.

Most of the updates we are proposing to the definition of cruelty are about improving clarity and understanding, rather than being major policy changes. This reflects the feedback we received on the Issues Paper, where most responses indicated that the current definition was working well – typically only proposing minor amendments.

“The current definition [of cruelty] touches on psychological suffering but doesn’t make it clear enough to effectively enforce.”

- Respondent #54

The current definition is not clear on whether psychological suffering can be considered cruelty, though it makes some reference to it by using the terms ‘tormenting’, ‘terrifying’ and ‘infuriating’ an animal. We propose that the new laws will specifically acknowledge psychological suffering in the definition of cruelty, in addition to the current provisions around pain and physical suffering. This would make sure that the new laws are as clear as possible in explaining expectations around the treatment of animals.

Related to this, the definition of cruelty will be updated to refer to ‘harm’ instead of ‘pain’ to be consistent with the language used in other legislation, like the *Biodiversity Conservation Act 2016*.

This leads to a proposed definition of cruelty of:

Any act or omission resulting in an animal being unreasonably or unnecessarily:

- harmed (which includes being inflicted with pain, caused distress, or caused physical or psychological suffering)
- beaten, kicked, killed, drowned, wounded, pinioned, mutilated, maimed, abused, tormented, tortured, terrified or infuriated
- over-loaded, over-worked, over-driven, over-ridden or over-used
- exposed to excessive heat or excessive cold.

The proposed definition of cruelty retains the current qualifiers ‘unnecessarily’ and ‘unreasonably’ to ensure there is sufficient flexibility in the new laws to allow courts to appropriately consider the facts of individual cases – particularly in scenarios not explicitly described in legislation. We propose removing the qualifier ‘unjustifiably’, following public feedback that any act or omission could be interpreted as ‘justified’ if a person provides a reason, irrespective of whether that reason is appropriate.

The new laws will outline a handful of narrow defences to ensure that activities that are intended to remain lawful are not unintentionally considered to constitute cruelty to an animal (for more information on these, see **Proposal 8**).

As mentioned in **Proposal 4** above, the impact of neglect on an animal is proposed to fall into the definition of cruelty. Where a failure to take reasonable steps to meet the minimum care requirement has resulted in harm to the animal – such as in cases of neglect – this could satisfy the definition of cruelty and be escalated to a cruelty charge.

Existing POCTAA offences that prohibit certain actions or activities are proposed to be retained either as part of the revised cruelty offence (e.g. current prohibitions on game parks) or as a standalone offence where a higher penalty is appropriate (e.g. administering poisons, live baiting and animal fighting).

The laws propose retaining the existing approach to aggravated cruelty as currently outlined in POCTAA, where higher maximum penalties are available in cases where an act of cruelty results in the death, deformity, permanent disablement or permanent injury of an animal, or results in circumstances where it is cruel to keep the animal alive. The two most serious animal cruelty offences – reckless serious animal cruelty and intentional serious animal cruelty – are proposed to be retained in the *Crimes Act 1900*.

A more detailed description of the offence structure is included at **Appendix A**.

Discussion Questions

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?

Proposal 6 –

Introduce new offences and enhance existing offences

The feedback we received through public consultation and from stakeholders identified some gaps in the current laws and gaps in existing offences.

Enhanced offence – animal fighting and greyhound live baiting

The existing offences around animal fighting implements, animal fighting, bull-fighting and greyhound live baiting (sections 17, 18, 18A and 21 of POCTAA) are proposed to be consolidated into a single animal fighting and greyhound live baiting offence to streamline the current laws. The penalty for this consolidated offence will increase to be aligned to aggravated cruelty to reflect the severity of these offences.

This consolidated offence proposes carrying across the provisions of the current offences and broadening them to address gaps related to animal fighting that were raised during consultation on the Issues Paper. In addition to the current scope of the existing offences, the consolidated offence would also prohibit:

- the keeping or selling of animals for the purpose of fighting or training for fighting
- the use, possession, manufacture or transport of implements intended for use in animal fighting or in training an animal for fighting
- being present at a place where preparations are being made for animal fighting.

Enhanced offence – tethering

Feedback from enforcement agencies and the community is that the current tethering offence is not functioning as intended and requires changes. We propose including further specific guidance on tethering, which is missing from the current laws. For example, in assessing whether a tethering offence has been committed, consideration will be given to whether the animal can access appropriate food, water and shelter; whether the animal is appropriately protected from harm; the method, form or length of the tether being used to tether the animal; the period of time for which the animal is tethered.

New offence – dogs in vehicles

We also propose that the new laws will introduce specific guidance on the transport of dogs in vehicles in certain situations. This would mean that a person must not leave a dog unattended in a hot vehicle or transport a dog on the tray of an open-backed vehicle in hot weather unless some form of insulating material is available to provide protection from the hot metal surface of the tray.

This new offence would also carry across the current provisions at section 7(2A) of POCTAA relating to the transport of unrestrained dogs in open-backed vehicles on public roads which includes an exemption for transporting dogs being used to work livestock.

Consideration will be given to the ambient temperature and length of time in assessing whether an offence has been committed.

New offence – production or distribution of animal cruelty material

We propose to introduce a new offence for producing or disseminating animal cruelty material. This is intended to include things like a person selling videos of dog fighting, distributing animal crush videos, or creating and sharing a video of them swallowing live

goldfish on social media. This will complement other offences that currently criminalise the sharing of indecent material and prohibit the cruel activities depicted within the material.

The NSW Government is working to ensure that this new offence does not have any unintended consequences – for example, so it does not capture things like recording animal welfare issues or sharing such recordings for the purpose of reporting a suspected offence. This may need to be achieved by including specific exemptions within the offence. The penalty for this offence is proposed to be aligned to cruelty to reflect the severity of the offence – noting that charges can also be laid for the offences depicted within the material.

New offence – prohibited and restricted items

We propose introducing a new provision that would prohibit a person from possessing and/or using certain items on animals that result in poor welfare outcomes or restrict the use of certain items to a limited set of circumstances.

The specific items would be prescribed in Regulation and is proposed to include updated versions of existing POCTAA provisions that prohibit or restrict the use of electrical devices and certain traps.

This new provision would allow the NSW Government to prohibit the use of certain items if new products that cause harm to animals come onto the market or if new scientific evidence of the impacts on animals of existing items comes to light.

The community will have the opportunity to provide feedback on this section of the new animal welfare framework as part of consultation on the Regulation.

Discussion Questions

9. Do you have any comments on the proposed new and enhanced offences?
10. Do you have any comments on appropriate exemptions that should apply to the proposed new offence of production or distribution of animal cruelty material?

Proposal 7 – Clarify prohibited and restricted procedures

POCTAA currently includes offences related to undertaking certain prohibited procedures on animals, and places restrictions on the circumstances in which some other procedures may be performed. We propose to retain this approach in the new laws but to bring together the existing provisions into one location to make them easier to understand.

The current set of procedures and their existing categorisation are outlined below. The specifics of prohibited and restricted procedures, including the category and the circumstances in which they may be performed, are subject to further review and consultation, and we will seek advice from the independent Animal Welfare Advisory Council.

Prohibited Procedures (never permitted)	Restricted Procedures (permitted only in prescribed circumstances)
<ul style="list-style-type: none"> • Docking the tail of a horse, bull, ox, bullock or steer • Cropping the ears of a dog • Pin-firing an animal • Tail nicking a horse • Grinding, trimming or clipping the teeth of sheep (currently 'restricted', but no associated prescribed circumstances) • Performing a clitoridectomy on a greyhound (currently 'restricted', but no associated prescribed circumstances) • Firing or hot iron branding the face of an animal (currently 'restricted', but no associated prescribed circumstances) 	<ul style="list-style-type: none"> • Docking the tail of a cow, heifer, or female calf (in prescribed circumstances) • Debarking a dog (in prescribed circumstances) • Declawing a cat (in prescribed circumstances) • Docking the tail of a dog (in prescribed circumstances) • Pinioning a bird's wings (in prescribed circumstances)

Depending on the specific procedure, the prescribed circumstances may outline that the procedure may only be undertaken by certain people (e.g. veterinary practitioners), if it is in the interests of the animal's welfare (e.g. to treat injury or disease), or if there is no alternative to the procedure (e.g. the animal would otherwise have to be euthanased). Some of the current 'restricted' procedures do not have any prescribed circumstances in which they are permitted, meaning they are effectively prohibited.

Restricted procedures currently come with a requirement to keep records related to those procedures being performed. We propose retaining this requirement.

These procedures are not intended as an exhaustive list. Performing other, unlisted procedures on animals may still constitute an offence if they cause unnecessary or unreasonable harm to an animal (that is, if performing the procedure results in an outcome that is considered cruelty – see **Proposal 5**).

In addition, certain procedures are considered 'normal husbandry procedures' and are permitted under section 24(1)(a) of POCTAA, as long as the person performing the procedure causes no unnecessary pain to the animal (e.g. ear tagging). The inclusion of normal

husbandry procedures in the animal welfare framework provides certainty to the community that it is not an offence to undertake normal animal husbandry activities in a way that causes no unnecessary pain to animals. The list of procedures will be reviewed to ensure it continues to reflect normal animal husbandry practices. Scientific advice will be also sought from the independent Animal Welfare Advisory Council.

Further consultation

The prescribed circumstances for restricted procedures and the husbandry practices are proposed to be included in the Regulation, which will allow the new laws to keep pace with evolving science, community expectation and industry practices. The community will have the opportunity to provide feedback on this section of the new animal welfare framework as part of consultation on the Regulation.

Discussion Questions

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

Proposal 8 – Providing certainty for lawful activities

POCTAA includes 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 minor amendments to improve understanding of how they are intended to apply.

During consultation some stakeholders registered their concerns with these defences – raising issues that defences provide broad-ranging exemptions that allow people to mistreat animals.

The proposed defences apply only in very narrow situations, and most include qualifiers that mean the defence does not apply if a person causes unnecessary harm to the animal.

The defences proposed under the new laws include:

- anything done for the purpose of hunting, shooting, snaring, trapping, catching or capturing an animal, as long as doing so causes no unnecessary harm²
- otherwise destroying an animal for the purpose of producing food, as long as doing so causes no unnecessary harm
- destroying an animal or preparing an animal for destruction in accordance with a duty or power established by another law, as long as doing so causes no unnecessary harm (e.g. destroying a pest animal in accordance with a standard operating procedure, in compliance with the general biosecurity duty under the *Biosecurity Act 2015*)
- destroying or preparing an animal for destruction in accordance with the Jewish (or another prescribed) religion
- feeding a predatory animal with live prey, where the live prey is of a species normally included in the predator’s diet and it is necessary for the predatory animal’s survival (e.g. where the animal will not eat pre-killed meat)
- undertaking animal research activities in accordance with the conditions of an animal research licence or project approval (see **Proposal 19**)
- undertaking certain prescribed husbandry practices, as long as doing so causes no unnecessary harm (see **Proposal 7**)
- using a live fish, decapod crustacean or cephalopod as bait or as a lure to take, or attempt to take, fish.

To minimise the risk of inconsistency arising, these defences could also apply to the serious animal cruelty offences under the *Crimes Act 1900*.

Discussion Questions

12. Do you have any comments on the proposal to clarify how defences are intended to apply to give certainty to lawful activities?
13. Do you have any comments on applying these proposed defences to the serious animal cruelty offences under the *Crimes Act 1900*?

² Note: This defence would not apply in situations where a provision exists to prohibit certain forms of hunting, shooting, snaring, trapping, catching or capturing an animal (for example, the current prohibitions on game parks at s19A of POCTAA, and the use of certain types of traps at s23 of POCTAA).

Proposal 9 –

Introduce a modern penalties framework with increased penalties

In June 2021, the NSW Government passed legislation to increase penalties for key animal welfare offences under POCTAA. This new legislation marked an interim step ahead of the broader review of animal welfare offences and penalties occurring through this reform project.

Feedback from public consultation has shown that current penalties are out of step with community expectations, and that there is clear support to increase penalties under the new laws.

Penalty amounts for all offences across the new laws have been reviewed in line with a set of principles. These principles are that penalties must be:

- a sufficient deterrent to a person committing the offence
- proportionate to the severity of the offence
- in line with community expectations
- comparable to other jurisdictions.

In the new laws, we propose structuring offences within an escalating category model to ensure that penalties for offences are applied across the new laws in a consistent way and similar offences are aligned, and that increasingly severe offences can attract increasingly severe penalties (see the table below). This approach to structuring offences is similar to other modern legislation, including the *Biosecurity Act 2015*.

The proposed penalty amounts are based on the amounts established by the *Prevention of Cruelty to Animals Amendment Act 2021*.

Category	Example (not exhaustive)	Maximum Penalty – Individual	Maximum Penalty – Corporation
Crimes Act	Intentional serious animal cruelty	5 years imprisonment	N/A
	Reckless serious animal cruelty	3 years imprisonment	N/A
Category 1	Aggravated cruelty	\$110,000 and/or 2 years imprisonment	\$550,000
Category 2	Cruelty	\$44,000 and/or 1 year imprisonment	\$220,000
Category 3	Minimum care requirement	\$16,500 and/or 6 months imprisonment	\$82,500
Category 4	Fail to comply with written notice	\$5,500	\$27,500
Category 5	Fail to provide name and address	\$2,750	\$13,750

Aside from the more serious offences under the *Crimes Act 1900*, all offences will remain summary offences, typically heard in the Local Court. Maximum penalties for summary offences in NSW generally do not exceed two years imprisonment. The more serious animal cruelty offences under the *Crimes Act 1900* are indictable offences, meaning higher maximum penalties can be applied.³

A complete list of offences is included at **Appendix A**.

Discussion Questions

14. Do you have any comments on the proposal to establish a consistent penalties framework?
15. Do you have any comments on the detailed breakdown of offences included at Appendix A?

³ Summary offences are usually heard by a Magistrate in the Local Court (usually allowing for proceedings to be completed more quickly), whereas trials for indictable offences often involve a judge and jury. Offences under the new animal care and protection laws will be summary offences, while the serious animal cruelty offences under the *Crimes Act 1900* may be dealt with either way (depending on the severity of the case and the preference of the prosecutor).

Section 3: Authorised Officers

Proposal 10 –

Provide authorised officers with new powers to administer sedatives and/or pain relief to animals

The powers currently available under POCTAA provide that inspectors may only relieve an animal's immediate suffering by euthanasing the animal or by organising for it to be provided with veterinary treatment. In situations where veterinary treatment is not immediately available, inspectors do not have the power to administer sedatives or pain relief to minimise the animal's immediate suffering until the animal can receive appropriate veterinary treatment.

This may result in suboptimal animal welfare outcomes if inspectors are unable to administer sedatives or pain relief that would enable an animal to be subsequently treated, and instead must euthanase the animal.

For example, under current laws, if an animal was injured in a remote location where a veterinary practitioner is not immediately available, inspectors would be unable to treat the animal with sedatives or pain relief and instead may be forced to euthanase it.

The new laws propose to close this gap by allowing for trained authorised officers to administer sedatives or pain relief, where doing so will subsequently allow the animal to be treated by a veterinary practitioner. Before using this power, individual authorised officers will need to be appropriately trained and be approved by the Ministry of Health, as the Ministry of Health regulate access to controlled substances under the *Poisons and Therapeutic Goods Act 1966*. This is not intended as a substitute for seeking appropriate veterinary treatment.

Discussion Questions

16. Do you have any comments on the proposal to allow authorised officers to administer sedatives or pain relief?

Proposal 11 – Enhance authorised officer powers of entry

Explaining current entry powers

Under the current three Acts, inspectors have significantly different powers of entry to premises. In the new laws, we propose to align these powers to ensure they are consistent for all authorised officers appointed under the new framework, while still providing appropriate safeguards for individual rights and privacy.

Currently, inspectors under POCTAA may enter any land – other than dwellings – for the purpose of exercising their functions if they suspect, on reasonable grounds, that an offence has been committed, is being committed or is about to be committed. Inspectors may only enter dwellings with the permission of the occupier, in accordance with a search warrant, or for the express purpose of providing urgently required care to an animal.

Where the land is used for certain commercial purposes (such as saleyards) or for the purpose of conducting an animal trade, slightly different powers of entry currently apply. In these circumstances, POCTAA inspectors may enter land – other than dwellings – to ensure that the provisions of the Act or regulations or prescribed Standards are being complied with. This does not require the need for reasonable suspicion of an offence.

The EPA currently allows inspectors to enter licensed animal display establishments or any other place – other than dwellings – if the inspector suspects, on reasonable grounds, that a provision of the Act or the regulations has been or is being contravened. An inspector may only enter a dwelling either with permission of the occupier or under a search warrant.

The ARA currently allows inspectors to proactively enter the designated land of an accredited research establishment or the designated land in relation to an animal research authority or animal supplier's licence. However, a search warrant is required to enter any part of that land that is used for residential purposes.

Proposed enhancements to entry powers

The concept of an animal trade, mentioned above, has caused concern and confusion with some stakeholders. Under the new laws, we propose to enable compliance, where appropriate, through other, less complex means that are not linked to the concept of an animal trade.

Providing powers of entry that allow for earlier intervention can empower authorised officers to provide advice and direction with the aim of preventing poor animal welfare situations from arising or worsening. Entry powers also enable authorised officers to conduct licensing audits, follow up after issuing a Direction Notice, check that a court order is being complied with, or ensure a disqualified person is complying with the terms of their disqualification. This enables a more effective approach to protecting the welfare of animals.

Naturally, these powers must be limited such that they can only be used appropriately and must be balanced against their imposition on a person's privacy and property rights.

“Not all non-compliance comes from a deliberate act of cruelty but may arise from ignorance, in which case education and support are valuable (and possibly more effective than a simple fine or prosecution). The capacity to follow up on a directive is vital”

- Respondent #89.

The proposed model of entry powers has been based on existing NSW legislation⁴, and is outlined in the table below:

Type of Land	Power	Rationale
Dwelling / residence	Enter with a warrant or the consent of the occupier.	<p>Entry to a dwelling or residence is the most significant imposition on a person's privacy, and therefore requires either consent or the level of scrutiny provided by a warrant.</p> <p>This is a standard approach across NSW legislation.</p>
Premises (other than a dwelling)	<p>Enter with a warrant or the consent of the occupier</p> <p>OR</p> <p>Enter at any time on reasonable suspicion of an offence</p> <p>OR</p> <p>Enter at any reasonable time to check compliance with a Direction Notice, court order, or disqualification</p> <p>OR</p> <p>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.</p>	<p>Entry to premises other than a dwelling has a lower imposition on privacy than entry to a dwelling.</p> <p>Enabling entry where an offence is suspected or a Direction Notice or court order has been applied strikes a balance between empowering authorised officers to exercise their functions and meeting reasonable expectations of privacy.</p> <p>Entry to premises where there is a reasonable suspicion that an industrial, agricultural, commercial or activity licenced under the new laws is being carried out in respect of an animal, for the purpose of checking compliance, has the lowest level of imposition on privacy.</p> <p>Many premises within this category are ordinarily open to the public (e.g. pet shops, zoos), or are otherwise regulated (e.g. abattoirs).</p> <p>Reasonable suspicion of commerciality could be based on factors like the size or complexity of facilities, evidence of animals being sold or transported from the premises, or other relevant considerations.</p>

⁴ Namely the *Protection of the Environment Operations Act 1997* and the *Environmental Planning and Assessment Act 1979*

Note: Powers currently available under POCTAA that allow entry to premises (including a dwelling) for the purpose of providing urgently required care to an animal are proposed to be retained, in addition to the powers outlined above. This power of entry cannot be used for investigative or evidence-gathering purposes – it exists exclusively to enable authorised officers to provide care to animals where it is urgently required.

Discussion Questions

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

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

We propose making changes to powers to address animal welfare issues in critical situations. These are powers that would only be available in certain critical situations and only used to alleviate suffering (i.e. they are not investigative or evidence-gathering powers).

Currently, inspectors under POCTAA have powers to address animal welfare issues arising from critical situations, such as bushfires and animal transport truck accidents. It is important to take effective and timely action to safeguard the welfare of animals in these situations.

During critical situations, certain appropriately trained Local Land Services (LLS) and council officers may be called upon to assist authorised officers or other agencies with responsibility for animals – particularly in rural or regional areas where they may be able to respond more quickly than enforcement agency authorised officers. The new laws propose providing specific powers to LLS officers and certain council officers to relieve pressure on other agencies (e.g. the enforcement agencies or the National Parks and Wildlife Service), with the aim of improving welfare outcomes.

We propose that the new laws:

- enable certain appropriately trained LLS officers to humanely euthanase livestock and native animals in critical situations where it would be cruel to keep the animal alive, and to enter private land (other than a dwelling) to do so
- enable certain appropriately trained council officers to humanely euthanase livestock in critical situations where it would be cruel to keep them alive.

To ensure that appropriate safeguards are put in place regarding how these powers are utilised, LLS and council officers will need to undergo relevant training before being able to exercise these powers.

Discussion Questions

18. Do you have any comments on the proposal to allow certain appropriately trained LLS or council officers to exercise a limited set of powers to care for animals in critical situations?

Section 4: Enforcement Arrangements

Proposal 13 – Consider enforcement arrangements

The current animal welfare laws in NSW have a range of associated enforcement arrangements. For example, POCTAA is currently administered by the NSW Department of Primary Industries (NSW DPI) but enforced by the NSW Police Force and two approved charitable organisations – RSPCA NSW and Animal Welfare League NSW (AWL NSW). Greyhound Welfare Integrity Commission (GWIC) inspectors also have enforcement powers under POCTAA. In contrast, the ARA and EAPA are both administered and enforced by NSW DPI.

This current approach reflects the different needs of each law – POCTAA has a broader scope and greater investigative requirements than the ARA and EAPA, which are predominantly licensing schemes. Under the proposed new, single piece of legislation, authorised officers will require different skills and expertise depending on the part of the new laws they are responsible for enforcing.

RSPCA NSW and AWL NSW have extensive animal care expertise and access to animal care infrastructure, in addition to the law enforcement expertise as approved charitable organisations under POCTAA. This leaves them uniquely placed to respond to animal cruelty issues, as they can both investigate offences and provide a high standard of care to animals they seize as a result of mistreatment. This is neatly complemented by NSW Police Force's law enforcement expertise and resources and has provided a robust enforcement framework for animal welfare laws in NSW.

Given the robust arrangements already in place, the NSW Government did not support the Select Committee into Animal Cruelty Laws in NSW recommendation to establish an independent office of animal protection.

Discussion Questions

19. Do you have any comments on enforcement arrangements for the new laws?

Proposal 14 – Improve oversight of animal welfare enforcement activities

Currently, POCTAA is enforced by the approved charitable organisations (RSPCA NSW and AWL NSW) and the NSW Police Force. The GWIC inspectors also have powers under POCTAA. EAPA and ARA are enforced by NSW DPI.

A theme identified in consultation was the need to enhance oversight and transparency of compliance activities undertaken by the approved charitable organisations. We propose to achieve this under the new laws by:

- establishing an external complaints mechanism related to the inspectorate function of the approved charitable organisations
- clarifying that the approved charitable organisations are subject to the requirements of the *Government Information (Public Access) Act 2009* (GIPA)
- requiring annual reports from the approved charitable organisations to be provided to the Minister, for tabling in Parliament.

We propose to establish an external complaints mechanism to provide oversight of approved charitable organisations' enforcement activity in the new laws, by allowing the NSW Ombudsman to investigate complaints. This reflects similar processes that are already in place for the NSW Police Force and NSW DPI enforcement activities.

We also propose that the new laws will clarify that the approved charitable organisations are subject to GIPA with respect to their statutory enforcement activities. While RSPCA NSW already responds to and complies with GIPA requests related to their inspectorate functions, some stakeholders have indicated that the laws are currently ambiguous on this point.

Under the current laws, the approved charitable organisations are required to provide annual reports on their enforcement activities to the Minister. These reports must contain certain information as prescribed in Regulation. We propose retaining this requirement, with a new requirement that the reports are to be tabled in Parliament by the Minister.

In addition, a range of stakeholders raised that enforcement agencies and relevant NSW Government agencies need to be better equipped to share information related to investigations and administration. We propose that the new laws include provisions that will enable this collaboration.

We also propose that administrative decisions made in relation to the animal research and exhibited animals licensing schemes will continue to be subject to review by the NSW Civil and Administrative Tribunal under the new laws.

Discussion Questions

20. Do you have any comments on the proposal to improve oversight of the enforcement activities of the approved charitable organisations?

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

Currently, section 31A of POCTAA requires that approved charitable organisations that possess animals (e.g. if an animal is a stray or seized) must hold the animal for a minimum of 21 days and make reasonable inquiries to find the owner or person responsible for the animal prior to selling, rehoming, or euthanasing the animal.

These provisions ensure that the approved charitable organisations must attempt to reunite lost animals with their owners prior to selling, rehoming or euthanasing the animal. However, where animals are presented with no reason to believe that they are owned (e.g. feral cats, animals lacking microchips or other identification), the requirement for a 21-day holding period acts as a significant handbrake on the rehoming process. Additionally, excessive time spent in a shelter rather than a home increases the risk of compromised animal welfare outcomes and increases biosecurity risks.

We propose that the new laws amend the rehoming provisions currently outlined at section 31A of POCTAA to align with the holding periods established by the *Companion Animals Act 1998* (CAA). This provision would also be extended to apply to all enforcement agencies (i.e. also providing GWIC with the power to rehome animals in accordance with these requirements, not just the approved charitable organisations). This would require the enforcement agency to hold the animal for:

- at least 14 days after notifying the owner or responsible person that the animal is being held
- at least 7 days after the approved charitable organisation has taken reasonable steps to establish the owner or responsible person but has failed to identify them.

No minimum holding period is proposed to be applied in situations where the animal is a feral animal or infant companion animal, or if an owner or responsible person surrenders their animal to the enforcement agency.

We propose retaining the current limitations on this power that mean that enforcement agencies cannot sell, rehome or euthanase animals using this power if they are subject to active court proceedings (unless provided for in a court order).

In addition, enforcement agencies are also not permitted to sell or rehome restricted dogs (in the meaning of s55 of the CAA). We propose to extend this to also apply to dogs that have been declared as dangerous or menacing under s64 of the CAA.

Discussion Questions

21. Do you have any comments on the proposal to amend approved charitable organisation rehoming provisions to align them with the *Companion Animals Act 1998*?

Proposal 16 – Standardise statutory limitation periods and authority to prosecute provisions

Statutory limitation period

Statutory limitation periods restrict the length of time in which an enforcement agency may bring forward a prosecution after an alleged offence was committed. The current limitation period varies across POCTAA, ARA and EAPA – ranging between six months and two years. The *Prevention of Cruelty to Animals Amendment Act 2021* extended the limitation period to three years and establish that it commences from the time at which an inspector became aware of the alleged offence – not the date it was alleged to have been committed.

Under the new laws, we propose that the approach to the limitation period be standardised to ensure there are no unintended consequences. This will establish that proceedings can be commenced:

- within three years of the date on which evidence of the alleged offence first came to the attention of an authorised officer (the POCTAA provision), or
- within three years of the date of the alleged offence (new, based on current EAPA / ARA)

This ensures that enforcement agencies have sufficient time to carry out complex investigations, or to appropriately investigate in situations where the alleged offence is not immediately reported. This proposed approach is consistent with other modern legislation, like the *Biosecurity Act 2015*.

There is currently no statutory limitation period for the more serious (indictable) offences under the *Crimes Act 1900*. We do not propose to change this, meaning that more serious charges can still be brought forward under the *Crimes Act 1900* even if more than three years has elapsed from the date of the alleged offence.

Authority to prosecute provisions

The current animal welfare laws take different approaches to authority to prosecute provisions. The EAPA does not have specific authority to prosecute provisions, whereas the ARA and POCTAA provide that prosecutions may only be instituted by specified persons.

The proposed approach under the new laws is to specify who can bring forward prosecutions for animal welfare offences, based on the current approach under POCTAA. Prosecutions will be able to be brought by certain groups who have specialised skills and knowledge of both animal welfare and judicial processes, and who also have investigative powers. This will ensure a uniform approach to prosecutions, which is the most effective and efficient approach to dealing with animal welfare cases.

Discussion Questions

22. Do you have any comments on the proposal to standardise the statutory limitation period?
23. Do you have any comments on the proposed approach to standardise authority to prosecute provisions?

Section 5: Miscellaneous

Proposal 17 –

Broaden the application of Stock Welfare Panels and improve their functioning

Stock Welfare Panels are a structured process that seek to improve outcomes in situations where stock animals are in distress or are likely to become distressed because they have not been provided proper and sufficient food, drink, or shelter, or necessary veterinary treatment. The Stock Welfare Panel process provides stock owners with advice and directions (in the form of an official warning) at multiple points to prevent the situation from worsening. The last resort of the Stock Welfare Process is to seize and dispose of the affected stock if a stock owner has not complied with an official warning and their stock remain in distress or likely to become distressed.

Currently, Stock Welfare Panels may only be used to address situations involving stock animals that are depastured on rateable land. This means the Stock Welfare Panel process cannot be used to assist livestock in intensive production systems, as they are not considered 'depastured'. Likewise, the process cannot be

used on smaller landholdings, as the property may not meet the definition of 'rateable land' in the *Local Land Services Act 2013*. Under the new laws, we propose expanding the scope of the Stock Welfare Panel process to include all stock animals regardless of the size of the landholding or form of production. This would extend the benefits of the process to poultry facilities, piggeries, feedlots and intensive dairies.

Similarly, we also propose allowing Stock Welfare Panels to also be used in situations where an animal is in distress or at risk of becoming distressed because of a failure to appropriately care for an animal. For example, there may be situations where animals become distressed if they are injured because of a lack of fencing, or where a failure to undertake normal husbandry practices puts an animal at risk of becoming distressed.

We are also proposing some minor adjustments to the definition of 'stock animal' to improve internal consistency and alignment with the *Local Land Services Act 2013*. This will result in camels, alpacas and llamas being added to the existing definition.⁵

A loophole has also been identified where stock owners who have had their animals seized are able to re-purchase the seized stock or acquire new stock – immediately after being found to be unable to adequately care for their stock animals. To address this issue, we propose providing the Secretary the authority to issue an order that temporarily prohibits a stock owner from purchasing (or being responsible for) any additional stock for up to 30 days following stock being seized from them through a Stock Welfare Panel process. Failure to

"There is currently a lack of an effective mechanism in POCTAA to prevent a person from re-purchasing the animals that have been seized and sold by enforcement agencies."

- Submission #46

⁵ Currently stock animal means an animal which belongs to the class of animals comprising cattle, horses (including a stallion, gelding, mare, colt, filly, foal, pony, mule, donkey, ass and jenny), sheep, goats, deer, pigs, poultry and any other species of animal prescribed for the purposes of this definition.

comply with the order would be an offence, and authorised officers would have the power to seize stock held in contravention of the order.

In addition, we propose that the new laws make it clear that seizure notices can extend to stock animals that have been born or otherwise acquired after an official warning has been given. For example, this would ensure that in situations where a ewe is in distress and is seized, any unweaned lambs born after the notice of seizure was served do not get 'left behind' or become distressed.

In response to concerns regarding risks to safety of authorised officers or other people involved in seizure operations, we propose allowing NSW Police Force officers to direct a person (e.g. a stock owner or employee) to leave the scene of a seizure and disposal operation while it is underway.

Other minor changes are also proposed to improve the functioning of the process – for example, allowing for official warning notices to require stock owners to keep records of treatment or feed purchase, ensuring that the definition of land is consistent and includes vehicles, vessels and aircraft for the purpose of carrying out a seizure.

Discussion Questions

24. Do you have any comments on the proposal to broaden the application of Stock Welfare Panels and improve how they function?

Proposal 18 – Further improve the functioning of court orders

Allowing for court orders when alternative pathways to prosecution are used

Courts can make orders in relation to a person convicted of an animal cruelty offence or during animal welfare proceedings, including that a person is not to purchase or acquire, or take possession or custody of any animal within such a period specified in the order.

Enforcement agencies have raised that court orders cannot be used when a person charged with an offence is suffering from mental illness or cognitive impairment and is dealt with using the provisions of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* – even if this approach would result in the best outcomes for animals.

As such, we propose to enable courts to apply court orders that are currently only available upon conviction in situations where a case has been dealt with using the provisions of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*. This will provide courts with the flexibility to sensitively deal with such cases – meaning they do not have to choose between using mental health treatment provisions, or continuing criminal prosecution in order to be able to issue a court order. These changes would also apply to the serious animal cruelty offences under the *Crimes Act 1900*.

Clarifying that animals can be seized if held in contravention of a court order

We also propose to make it clear under the new laws that authorised officers have the power to seize animals where they are held in contravention of a court order or are held by a disqualified person (i.e. where they are automatically prohibited as a consequence of having been convicted of an animal cruelty offence under the *Crimes Act 1900*).

Considering options to enhance recognition of interstate prohibition orders

POCTAA currently allows for prohibition orders made interstate to have effect in NSW when the Minister recognises them in writing. As we develop the draft Bill, we propose to explore options that would allow for prohibition orders made interstate to apply in NSW without the need for Ministerial recognition but only insofar as the order could have been made in NSW. This would address any inconsistencies arising from differences between state laws. We will work closely with the enforcement agencies to identify the best means of achieving this, and to ensure that this does not result in unintended consequences.

Carrying across the newly introduced interim disqualification orders

The *Prevention of Cruelty to Animals Amendment Act 2021* introduced a new interim disqualification order under POCTAA. The interim disqualification order empowers courts to prevent a person from exercising care and control over animals during the course of court proceedings. Interim disqualification orders may only be made where the court is satisfied that it is likely the person would otherwise commit a further animal cruelty offence and are designed to protect animals from the risk of further harm.

The making of interim disqualification orders is not automatic – it is at the court's discretion as to whether an interim disqualification order is appropriate in the circumstances. In choosing whether to apply an interim disqualification order, courts will consider a range of factors – including the likelihood of further harm occurring and the practicability of

complying with the order, and whether alternative compliance and enforcement tools would be better suited to addressing the risk of a further offence occurring.

Discussion Questions

25. Do you have any comments on the proposed enhancements to court orders?

Proposal 19 – Establish licensing schemes and committees in the Regulation

Improve existing licensing schemes to consider risk-based principles

The ARA and EPA establish licensing schemes for the animal research and exhibited animals industries, respectively. These licensing schemes provide additional oversight to ensure certain criteria are met before approval is given to undertake these activities and ensure animals involved in research and exhibition are appropriately cared for and protected.

The current licensing schemes are complex, difficult to understand, and are not risk-based. This leads to excessive regulatory burden, where it is unclear how certain requirements contribute to the care and protection of animals. There are significant opportunities to simplify these schemes without compromising the level of oversight or welfare outcomes.

“We support a risk-based approach in relevant situations. For example, this approach can avoid unnecessary administrative burden in situations where the risk or impact of non-compliance is low, and free up resources to focus on managing higher-risk situations.”

- Submission #50

We propose that the new laws allow the current licensing schemes to be reformed in a way that considers the principles of risk-based licensing where appropriate. This would allow for more effective targeting of administrative requirements and compliance resources to achieve better outcomes for animals, without reducing oversight of these activities.

When we consulted on risk-based licensing, about 70 per cent of people who responded to the question indicated their support for this being considered – but many comments raised concerns with how risk levels would be determined or whether this would reduce oversight.

The detail of the licensing schemes will be included in the Regulation. Further consultation on the proposed approach to licensing will occur as the Regulation is developed.

Re-establish advisory committees to provide oversight and expert advice

The Animal Welfare Advisory Council (AWAC), Animal Research Review Panel (ARRP) and the Exhibited Animals Advisory Committee (EAAC) are advisory committees established in the current framework. Under the new laws, we propose developing a streamlined approach to ensure independent expert advice is available to the NSW Government without creating unnecessary administrative burden and complexity.

Under the proposed approach, AWAC would be established as a statutory committee with the role of providing scientific advice to the Minister on animal welfare-related matters. AWAC was recently re-appointed following a restructure of membership and functions. The new laws would also provide that the Minister may establish other bodies in the Regulation to advise on animal welfare issues – facilitating the continuing role of ARRP and EAAC.

Discussion Questions

26. Do you have any comments on the proposed approach to licensing schemes and committees?
27. Do you have any comments on the proposal to consider risk-based principles when reviewing licensing schemes?

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

Minor amendments

The proposals above outline the more significant changes being proposed for inclusion in the new animal welfare laws. There are also a range of less substantive amendments being proposed that do not constitute major changes in policy, but streamline or otherwise improve the operation of NSW's animal welfare laws. Some of these are outlined below.

This is not intended as an exhaustive list. Other minor amendments may be identified during the reform project and consequential amendments may be required to give effect to the proposals.

Streamlined authorised officer powers and compliance tools

Inspectors and authorised officers under POCTAA, ARA and EAPA currently have a range of powers and tools available to them to undertake their compliance and enforcement roles. Under the current framework, these are often inconsistent and confusing.

We propose developing a streamlined and consistent set of powers that are easier to understand. When we asked about this in the Issues Paper survey, around 90 per cent of people who responded were supportive of a consistent, aligned set of authorised officer powers. The streamlined set of powers would be modelled on the *Biosecurity Act 2015*.

Protections from liability

The current laws provide statutory protections from liability for people acting in good faith when exercising their roles on a Stock Welfare Panel. We propose to expand this to provide protection for any person or body acting in good faith while exercising a function under the new law. This includes authorised officers, LLS and local council authorised officers when exercising their limited powers in critical situations (see **Proposal 12**), and people who have been requested to provide assistance to an authorised officer. This provision would also extend to the Crown.

Service of notices

We propose updating provisions related to the service of notices, as the current provisions are outdated and may not allow the service of notices by electronic means. The proposed changes would enable notices to be served by electronic means or by affixing the notice to a conspicuous part of the land, in addition to the existing methods of mail or hand delivery.

This is a modern approach consistent with the *Biosecurity Act 2015* and would provide authorised officers with methods to serve notices in situations where people attempt to avoid being served.

Retained provisions

Additionally, there are parts of the current laws that work well and are proposed to be retained or updated to make only minor drafting-related changes that improve understanding. A few examples are included below. This is also not intended as an exhaustive list – other existing provisions not mentioned in this paper may also be retained.

Prescribed Standards

POCTAA, EAPA and ARA all contain scope for Standards to be prescribed (in the ARA's case, in the form of a research Code of Practice). Standards documents provide a greater level of detail than can be included within an Act.

Under the current laws, Standards can be prescribed with different levels of enforceability and are given effect in different ways between (and sometimes within) Acts. As POCTAA, ARA and EAPA will be brought together into one new law, we propose streamlining this approach to more clearly establish who must comply with Standards documents. The Australian Animal Welfare Standards and Guidelines, which are continually developed through a national process and reflect the best available science, will continue to be implemented throughout the reform project.

Responsible person

Feedback received on the current definition of 'person in charge' indicated that the concept was sound, but that the way it is currently drafted is confusing. We propose making only minor amendments – changing the term to 'responsible person' and redrafting the language for clarity. For example, this would make it clear that more than one person (or corporation) may be considered a responsible person at the same time, or with respect to the same offence depending on the circumstances.

Discussion Questions

28. Do you have any comments on these minor amendments and retained provisions?

Next Steps

The NSW Government will use your comments and feedback on this Discussion Paper to refine the proposals and inform the drafting of the new animal welfare legislation.

Discussion Questions

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

Appendix A – Detailed proposed offences and penalties

Crimes Act offences

Animal cruelty offences under the *Crimes Act 1900* are indictable offences, with maximum terms of imprisonment of three years in the case of reckless serious animal cruelty, and five years in the case of intentional serious animal cruelty.

Offence	Description	Current Offences
Intentional serious animal cruelty	<p>This offence is proposed to capture the most serious animal cruelty offences, where a person commits a serious act of cruelty on an animal with the intention of inflicting severe harm.</p> <p>This offence retains the provisions at section 530(1) of the <i>Crimes Act 1900</i>.</p>	<i>Crimes Act 1900</i> , section 530(1)
Reckless serious animal cruelty	<p>This offence is proposed to capture serious animal cruelty offences, where a person commits a serious act of cruelty on an animal while being reckless as to whether severe harm is inflicted.</p> <p>This offence retains the provisions at section 530(1A) of the <i>Crimes Act 1900</i>.</p>	<i>Crimes Act 1900</i> , section 530(1A)

Category 1 offences

Category 1 offences are the most serious summary offences under the proposed new laws and will attract a maximum penalty of 1,000 penalty units (\$110,000) and/or two years imprisonment for an individual, or 5,000 penalty units (\$550,000) for a corporation.

Offence	Description	Current Act Offences
Aggravated cruelty	<p>This offence is proposed to capture cruelty offences (see below) where the act of cruelty has:</p> <ul style="list-style-type: none"> led to the death, deformity or serious disablement of the animal resulted in a situation where the animal is so injured or diseased that it is cruel to keep it alive 	POCTAA, section 6
Administering poisons	<p>The poisons offence is proposed to capture circumstances in which a person:</p> <ul style="list-style-type: none"> administers a poison or other harmful substance (e.g. glass) to a domestic animal lays a poison or other harmful substance (e.g. glass) with the intention of killing or harming a domestic animal possesses a poison or other harmful substance (e.g. glass) with the intention of killing or harming a domestic animal <p>This offence is not intended to capture destroying pest animals in accordance with the general biosecurity duty outlined in the <i>Biosecurity Act 2015</i>, where the method of poisoning the animal causes no unnecessary harm (e.g. using appropriate means of baiting to manage pest animals).</p> <p>Note: This offence relates to domestic animals only, however the act of poisoning animals not captured by this offence may still constitute a cruelty or aggravated cruelty offence under POCTAA, or an offence under other legislation (e.g. harming wildlife under the <i>Biodiversity Conservation Act 2016</i>).</p>	POCTAA, section 15
Animal fighting and greyhound live baiting	<p>The animal fighting and greyhound live baiting offence is proposed to capture:</p> <ul style="list-style-type: none"> greyhound live baiting situations where the actions of a person causes, encourages, or incites animals to fight one another for entertainment (e.g. dog fighting), or where a person trains an animal for such a fight 	<p>POCTAA, section 17</p> <p>POCTAA, section 18</p> <p>POCTAA, section 18A</p>

Offence	Description	Current Act Offences
	<ul style="list-style-type: none"> • situations where a person fights an animal (e.g. bull-fighting), or where a person trains an animal for such a fight • possession of animals (or any part of an animal, including carcasses, skins or reproductive material) for the purpose of live baiting or fighting (including training for fighting) • possession of animal fighting implements (e.g. spurs) for the purpose of causing animals to fight or training animals to fight (note: this will include a clarification that it does not constitute an offence if the implement is held as part of a genuine collection – for example in a museum) • making preparations for an animal fight • organising, advertising, or admitting persons to an animal fight • attending an animal fight (or preparations for an animal fight) <p>The intent of existing clarifications contained at s21(3) and s21(4) of POCTAA is proposed to be retained to ensure the new offence does not result in unintended consequences for lawful activities like mustering stock, sheep dog trials, or lawful forms of hunting (where it causes no unnecessary harm).</p> <p>This offence is also not intended to apply to rodeos (see current cl 36 of POCTA Regulation)</p> <p>The intent of current evidentiary provisions outlined at s18(3), s21(2), s21(2A), s21(2B), s21(2C) of POCTAA and cl 28 of the Prevention of Cruelty to Animals Regulation 2012 is proposed to be retained.</p>	POCTAA, section 21

Category 2 offences

Category 2 offences will attract a maximum penalty of 400 penalty units (\$44,000) and/or 12 months imprisonment for an individual, or 2,000 penalty units (\$220,000) for a corporation.

Offence	Description	Current Act Offences
Cruelty	<p>The purpose of this offence is to establish that certain activities and certain outcomes resulting from actions or omissions are unacceptable in providing for the care and protection of animals.</p> <p>The following outcomes are deemed to constitute cruelty:</p> <ul style="list-style-type: none"> unreasonably or unnecessarily causing harm to an animal (including causing pain, distress, or physical or psychological harm) unreasonably or unnecessarily exposing an animal to excessive heat or excessive cold unreasonably or unnecessarily overloading or overworking an animal unreasonably or unnecessarily causing an animal to be beaten, kicked, killed, drowned, wounded, pinioned⁶ (unless in a way prescribed in the Regulations), mutilated, maimed, abused, tormented, tortured, terrified or infuriated <p>The following activities are deemed to be always cruel, irrespective of their outcome:</p> <ul style="list-style-type: none"> riding, driving, using, carrying or conveying an animal that is unfit for that purpose advertising, promoting, or taking part in an activity in which an animal is released from confinement for the purposes of people chasing it, catching it, confining it or shooting at it using, managing or controlling premises, authorising the use of premises, or receiving payment for admission to premises used for purposes of a game park advertising, promoting, or taking part in an activity in which an animal participates in a steeplechase or hurdle race 	<p>POCTAA, section 5</p> <p>POCTAA, section 13</p> <p>POCTAA, section 16</p> <p>POCTAA, section 19</p> <p>POCTAA, section 19A</p> <p>POCTAA, section 20</p> <p>POCTAA, section 21C</p>

⁶ Note: for the purposes of the new laws, pinioning means to cut off the pinion of a wing of a bird or otherwise disable the wing or wings of a bird

Offence	Description	Current Act Offences
	<p>This offence includes authorising the commission of an act of cruelty upon an animal, or failing to exercise reasonable care, control or supervision to prevent the commission of an act of cruelty upon an animal.</p> <p>The provisions regarding animal catching activities are not intended to apply to rodeos (see cl 36 Prevention of Cruelty to Animals Regulation 2012), or in other situations where it would result in unintended consequences (e.g. fish restocking for anglers, marked fish for fishing competitions). The provisions regarding steeplechasing and hurdle racing are not intended to capture races that are organised such that no horse can approach a particular jump or obstacle at the same time as any other horse in the race (e.g. timed show jumping events; see cl 37 Prevention of Cruelty to Animals Regulation 2012).</p> <p>Note: see Proposal 8 for whole-of-Act defences</p>	
Abandonment	<p>The purpose of this offence is to establish that a responsible person must not deliberately abandon an animal. The intent of this offence is to cover situations where:</p> <ul style="list-style-type: none"> an animal is abandoned as a result of an action by an individual (e.g. 'dumped', inappropriately released into the wild, or intentionally allowed to escape). This is not intended to extend to situations where people surrender animals to shelters, or where a rehabilitated native animal is re-released into the wild⁷. an animal is abandoned as a result of inaction by an individual (e.g. failing to provide care for a dog while away from home for an extended period). 	POCTAA, section 11
Prohibited and Restricted Procedures	<p>The purpose of this offence is to provide greater clarity regarding the circumstances in which certain procedures may be performed on animals. It brings together a range of different provisions managed in different ways across the current laws and establishes two types of procedures – prohibited procedures and restricted procedures.</p>	POCTAA, section 12 POCTAA, section 24

⁷ Note: This is not intended to result in trap, neuter, release programs becoming a permitted activity

Offence	Description	Current Act Offences
	<p>Prohibited procedures may not be performed in any circumstances. Restricted procedures may only be performed by veterinary practitioners in specific circumstances prescribed in the Regulations.</p> <p>The specifics of restricted procedures, including the circumstances in which they may be performed, are subject to further review and will be included in the Regulation.</p>	
Prohibited and restricted items	<p>The purpose of this offence is to prohibit the use of certain items that cause unreasonable or unnecessary harm to animals, and only permit the use of some items in certain circumstances.</p> <p>For example, this offence will prohibit the use of:</p> <ul style="list-style-type: none"> • electrical devices (other than certain devices used in ways prescribed in the Regulation) • certain traps (including steel-jawed traps) • other items as prescribed in the Regulation 	<p>POCTAA, section 16</p> <p>POCTAA, section 23</p>
Production or dissemination of animal cruelty material	<p>This offence is proposed to capture situations where a person produces or disseminates material that depicts an act or omission that would constitute an animal cruelty offence under this Act.</p> <p>For example, this would include producing or sharing videos of dog fighting activities, animal crush videos or images of other forms of cruelty.</p> <p>Appropriate protections will be put in place to ensure this does not have unintended consequences – for example, making sure that appropriate exemptions enable public interest reporting and effective enforcement and administration of the laws.</p> <p>Note: this does not affect the functioning of the <i>Surveillance Devices Act 2007</i>.</p>	NEW
Fail to comply with prohibition for persons convicted of certain offences	<p>This offence, proposed by the <i>Prevention of Cruelty to Animals Amendment Act 2021</i>, establishes that a person convicted of an offence against sections 79, 80, 530 or 531 of the <i>Crimes Act 1900</i> is disqualified from purchasing, owning or working with animals.</p>	POCTAA, section 31AB

Category 3 offences

Category 3 offences will attract a maximum penalty of 160 penalty units (\$16,500) and/or six months imprisonment for an individual, or 750 penalty units (\$82,500) for a corporation.

Offence	Description	Current Act Offences
<p>Fail to take reasonable steps to meet minimum care requirement</p>	<p>This offence captures situations in which a person fails to take reasonable steps to meet the minimum care requirement. The proposed minimum care requirement includes:</p> <ul style="list-style-type: none"> • providing appropriate and adequate food and drink • providing appropriate and adequate shelter • providing for the treatment of disease or injury (including timely provision of veterinary treatment where needed) • providing for appropriate or necessary confinement, and appropriate exercise that considers behavioural needs • appropriately handling and transporting animals <p>Factors determining what is appropriate and what constitutes taking reasonable steps include:</p> <ul style="list-style-type: none"> • the species, environment and circumstances of the animal • what steps a 'reasonable person' would have been expected to have taken in that situation <p>For the avoidance of doubt, a person has not failed to take reasonable steps to meet the minimum care requirement if they have been prevented from taking those steps by factors beyond their control (e.g. a sudden-onset natural disaster, like a bushfire or flood, that they could not plan for).</p> <p>Additionally, the existing POCTAA provisions that provide additional guidance around the confinement or transport of certain animals are proposed to be retained. This would not limit the application of the general requirement to appropriately confine, handle and transport animals (outlined above) but would provide additional detail to support people responsible for animals in those situations.</p>	<p>POCTAA, section 5</p> <p>POCTAA, section 7</p> <p>POCTAA, section 8</p> <p>POCTAA, section 9</p> <p>POCTAA, section 10</p>

Offence	Description	Current Act Offences
Fail to comply with prescribed Standard	<p>Under this provision, prescribed Standards documents will apply in certain situations or to certain people. Compliance with a prescribed Standard would be mandatory.</p> <p>An action done in compliance with prescribed Standards cannot constitute an animal welfare offence under another part of the new laws (e.g. where a person is bound to comply with the Land Transport Standards and is complying with the requirements contained in those Standards, they cannot be found to have failed to take reasonable steps to meet the minimum care requirement).</p>	Enhanced – based on Prevention of Cruelty to Animals Regulation 2012
Fail to alleviate harm or report injury	<p>Under this provision, a driver of a vehicle who strikes and injures an animal must take reasonable steps to alleviate harm caused to the animal as a result of its injury.</p> <p>If the animal is a domestic animal, the driver must also contact a responsible person for the animal (e.g. the owner) or an authorised officer as soon as is practical to inform them of the injury.</p>	POCTAA, section 14
Fail to keep records of restricted procedures	<p>A veterinary practitioner who performs a restricted procedure (per the Prohibited and Restricted Procedures offence above) must record the prescribed particulars of the procedure into a register within seven days of performing the procedure, keep those records for at least two years, and produce them for inspection at the request of an authorised officer.</p> <p>The specific details that must be recorded will be prescribed in Regulation.</p>	POCTAA, section 12A
Selling severely injured animals	<p>A person must not purchase, acquire, keep or sell – or offer for sale – an animal that is so severely injured or diseased that it is cruel to keep it alive.</p> <p>This is not intended to prevent an animal shelter or rehoming organisation from taking possession of animals in circumstances where animals are surrendered.</p> <p>This is not intended to include circumstances where the animal is sold/purchased for the purpose of causing it to be promptly euthanased. A person who purchases animals in these circumstances</p>	POCTAA, section 22

Offence	Description	Current Act Offences
	must then cause it to be promptly euthanased in a manner that causes it to die quickly and with no unnecessary pain (failure to do so would constitute an offence).	
Undertake licensed activity without a licence	<p>This offence captures circumstances in which an individual or corporation undertakes an activity or carries on a business that requires a licence, without having acquired the relevant licence.</p> <p>Activities or businesses requiring licences – namely animal research and animal exhibition – will be outlined in the Regulation.</p> <p>Note: Details of licensing schemes will be developed as part of the Regulation.</p>	<p>ARA, section 46</p> <p>ARA, section 47(1)</p> <p>ARA, section 47A</p> <p>ARA, section 48</p> <p>EAPA, section 12</p> <p>EAPA, section 22</p> <p>EAPA, section 24</p>
Breach condition of a licence	<p>This offence captures circumstances in which an individual or corporation fails to comply with the conditions set out in a licence.</p> <p>Note: Details of licensing schemes will be developed as part of the Regulation.</p>	<p>ARA, section 25C</p> <p>ARA, section 47(2)</p> <p>ARA, section 56A</p> <p>EAPA, section 19</p> <p>EAPA, section 31</p>
Falsify or fraudulently obtain a licence	<p>This offence captures circumstances in which an individual or corporation falsifies a licence, falsely claims to hold a licence or impersonates a person who holds a licence or obtains a licence as a result of fraudulent behaviour.</p> <p>Note: Details of licensing schemes will be developed as part of the Regulation.</p>	EAPA, section 31

Offence	Description	Current Act Offences
Impersonate an authorised officer	This offence captures circumstances in which an individual impersonates an authorised officer.	POCTAA, section 28A ARA, section 54 EAPA, section 43
Tethering	Under this provision an animal must not be tethered unless certain requirements are met. For example, in assessing whether a tethering offence has been committed, consideration will be given to whether the animal can access appropriate food, water and shelter; whether the animal is appropriately protected from harm; the method, form or length of the tether being used to tether the animal; the period of time for which the animal is tethered.	POCTAA, section 10
Transport of dogs	<p>Under this provision, a person must not leave a dog unattended in a hot vehicle, or transport a dog on the tray of an open backed vehicle in hot weather unless some form of insulating material is available to provide protection from the hot metal surface of the tray.</p> <p>This new offence will also carry across the current provisions at section 7(2A) of POCTAA relating to the transport of unrestrained dogs in open-backed vehicles on public roads, which includes an exemption for dogs working livestock.</p>	NEW

Category 4 offences

Category 4 offences will attract a maximum penalty of 50 penalty units (\$5,500) for an individual, or 250 penalty units (\$27,500) for a corporation.

Offence	Description	Current Act Offences
Fail to comply with advertising identification requirements	<p>This offence captures circumstances in which an individual or corporation fails to meet requirements regarding the display of identification information when advertising a regulated dog or cat as being for sale, to be given away, or otherwise transferred. It also captures circumstances where a person knows (or reasonably ought to have known) that the identification number they have provided is false.</p> <p>Such an advertisement must include at least one of the following:</p> <ul style="list-style-type: none"> • microchip identification number • breeder identification number • rehoming organisation number 	POCTAA, section 23A
Fail to comply with court order	<p>This offence captures circumstances in which a person fails to comply with a court order issued under the new laws.</p> <p>Note: this offence also carries a maximum term of imprisonment of six months.</p>	POCTAA, section 29 POCTAA, section 29C POCTAA, section 30 POCTAA, section 30A POCTAA, section 31
Fail to comply with Direction Notice	<p>This offence captures circumstances in which a person fails to comply with a Direction Notice issued by an authorised officer under the new laws.</p> <p>Note: A person cannot be found guilty of both this offence and of another offence regarding the same action or omission.</p>	POCTAA, section 24N ARA, section 50 EAPA, section 43

Offence	Description	Current Act Offences
Obstruction of authorised officer exercising powers	This offence captures circumstances in which a person obstructs authorised officers (or other persons with functions conferred upon them by the new laws) from lawfully exercising their powers or undertaking their function.	POCTAA, section 28 ARA, section 53 EAPA, section 43
Provide false or misleading information	<p>This offence captures circumstances in which a person provides an authorised officer with information they know to be false or misleading (including documents and registers) when the authorised officer is lawfully exercising their powers.</p> <p>The authorised officer must have identified themselves as an authorised officer to the person and warned the person about the requirement to provide information that is not false or misleading.</p> <p>This offence also includes making false or misleading entries in registers (or authorising such false or misleading entries) or providing false or misleading information while applying for a licence.</p>	POCTAA, section 24NA POCTAA, section 29A POCTAA, section 29B ARA, section 55 EAPA, section 44
Unlawful disclosure of information	<p>This offence captures circumstances in which a person discloses information obtained in connection with the administration or execution of the Act, unless that disclosure is made:</p> <ul style="list-style-type: none"> • in accordance with the information sharing provisions outlined in the Act • with the consent of the person from whom the information was obtained • in connection with the administration or execution of the Act • for the purpose of legal proceedings arising from the Act (or of any report of such proceedings) • in accordance with the requirements of the <i>Ombudsman Act 1974</i>, or • with another lawful excuse. 	ARA, section 56 EAPA, section 45
Fail to comply with Stock Welfare Panel order	This offence captures circumstances in which a person acquires stock animals in contravention of an order applied following the seizure and disposal of stock animals through a Stock Welfare Panel process.	NEW

Offence	Description	Current Act Offences
<p>Fail to surrender a suspended, cancelled, or expired licence</p>	<p>This offence captures situations where a person’s licence has been suspended or cancelled or otherwise no longer has effect, and the holder fails to surrender the licence when requested to do so by an authorised officer.</p>	<p>EAPA, section 31</p>

Category 5 offences

Category 5 offences will attract a maximum penalty of 25 penalty units (\$2,750) for an individual, or 125 penalty units (\$13,750) for a corporation.

Offence	Description	Current Act Offences
Fail to provide name and address	<p>This offence captures circumstances in which a person fails to provide their name and address to an authorised officer when the authorised officer is lawfully exercising their power to demand a person's name and address.</p> <p>The authorised officer must have identified themselves as an authorised officer to the person and have warned the person about the requirement to provide their name and address.</p>	<p>POCTAA, section 24A ARA, section 52</p>
Fail to answer questions, follow directions, or produce documents	<p>This offence captures circumstances in which a person fails to answer questions, produce documents (including registers) or follow directions of an authorised officer when the authorised officer is lawfully exercising their powers.</p> <p>The authorised officer must have identified themselves as an authorised officer to the person and have warned the person about the requirement to answer questions, provide documents, or follow directions.</p>	<p>POCTAA, section 24B POCTAA, section 24G POCTAA, section 24H POCTAA, section 24NA EAPA, section 43</p>