

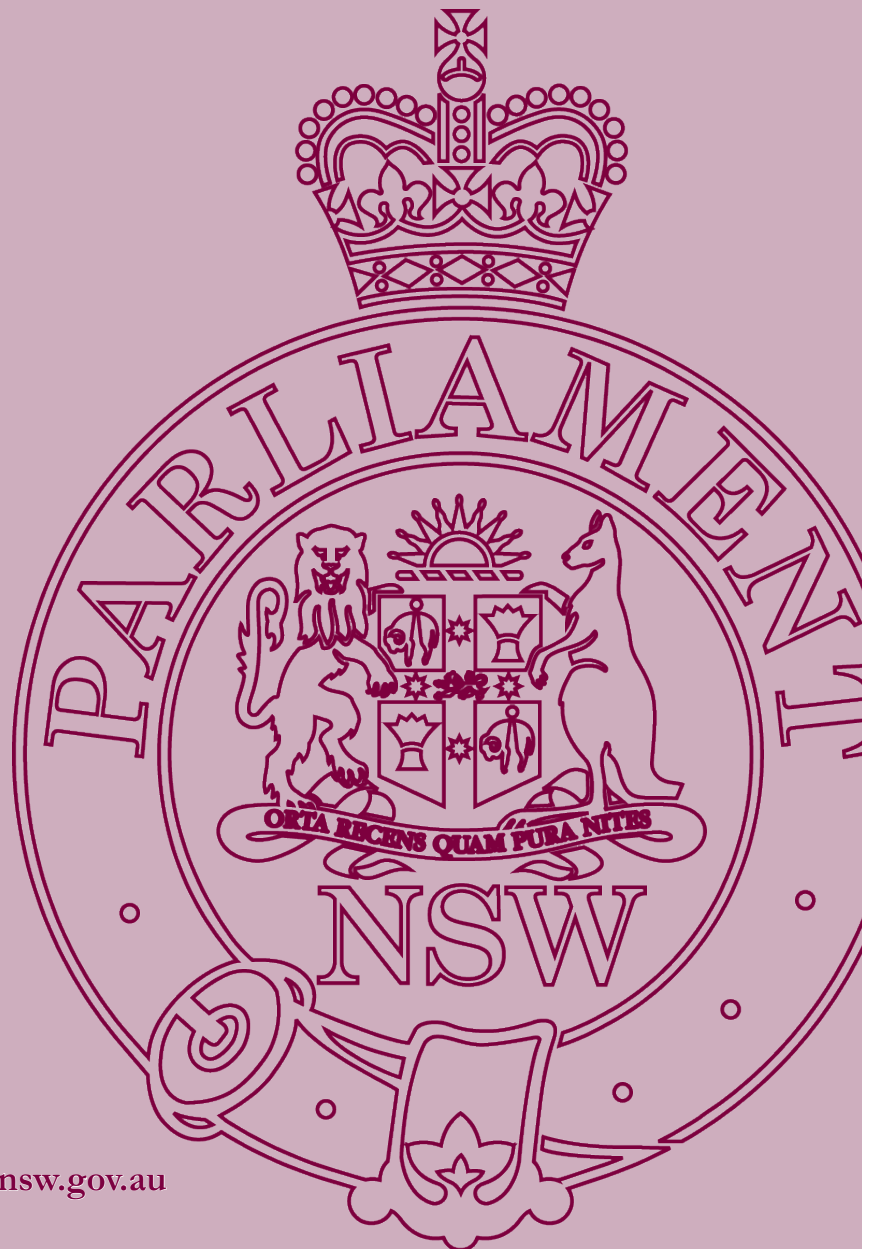


LEGISLATIVE COUNCIL

SELECT COMMITTEE ON ANIMAL CRUELTY LAWS IN NEW SOUTH WALES

# Animal cruelty laws in New South Wales

June 2020



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Select Committee on Animal Cruelty Laws in New South  
Wales

# **Animal cruelty laws in New South Wales**

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## Terms of reference

1. That a select committee be established to inquire into and report on the effectiveness of arrangements for the administration and enforcement of the laws of New South Wales for the protection of animals from cruelty, and in particular:
  - (a) the effectiveness of the charitable organisations currently approved under section 34B of the Prevention of Cruelty to Animals Act 1979 (“the Act”) in achieving the objects of the Act, namely:
    - (i) to prevent cruelty to animals,
    - (ii) to promote the welfare of animals by requiring a person in charge of an animal:
      - (a) to provide care for the animal,
      - (b) to treat the animal in a humane manner,
      - (c) to ensure the welfare of the animal,
  - (b) the ability of the charitable organisations currently approved under section 34B of the Act (“the approved charitable organisations”) to achieve the objects of the Act, including:
    - (i) the level of funding provided by government,
    - (ii) perpetrator and community education about ensuring animal welfare,
    - (iii) any conflicts of interest or potential conflicts of interest between the investigation and enforcement of the Act, and one or more of the following:
      - (a) commercial activities of the approved charitable organisations including corporate sponsorship,
      - (b) industrial proxy membership payments or donations,
      - (c) private interests of board members, consultants, and senior staff,
  - (c) the adequacy of the standard of care and kill rates for stray, surrendered or seized animals under the control or supervision of the approved charitable organisations,
  - (d) whether it is effective and appropriate for non-government charitable organisations to be granted investigative and enforcement powers for criminal prosecutions under the Act, with regard to their:
    - (i) capacity to exercise those investigative and enforcement powers,
    - (ii) ability to exercise those investigative and enforcement powers in relation to commercial premises and intensive farm operations involving high numbers of animals,
    - (iii) ability to conduct cases to test the application of legislative provisions in the Act,
    - (iv) accountability to government and the community,
    - (v) exemption from the provisions of the Government Information (Public Access) Act 2009,
    - (vi) exemption from administrative review under the Administrative Decisions Review Act 1997,

- (e) whether any limitations and deficiencies of the administration and enforcement of the Prevention of Cruelty to Animals Act 1979 are common to other national or international jurisdictions which use similar models,
  - (f) whether the Government should establish a specialist unit to investigate animal cruelty complaints and enforce animal protection laws, either as part of the NSW Police Force or as a separate statutory enforcement agency, and
  - (g) any other related matter.
2. That the committee begin its inquiry in the third week of October 2019 and report by 24 September 2020.<sup>1</sup>

The terms of reference were referred to the committee by the Legislative Council on 8 August 2019.<sup>2</sup>

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<sup>1</sup> The original reporting date was 2 April 2020 (*Minutes*, Legislative Council, 8 August 2019, pp 338-340). On 26 February 2020, the Legislative Council resolved to extend the reporting date to 4 June 2020 (*Minutes*, Legislative Council, 26 February 2020, p 802). On 24 March 2020, the Legislative Council resolved to extend the reporting date to 24 September 2020 (*Minutes*, Legislative Council, 24 March 2020, p 878).

<sup>2</sup> *Minutes*, NSW Legislative Council, 8 August 2019, pp 338-340.

## Committee details

### Committee members

<b>The Hon Mark Pearson MLC</b>	Animal Justice Party	<i>Chair</i>
<b>The Hon Mick Veitch MLC</b>	Australian Labor Party	<i>Deputy Chair</i>
<b>The Hon Lou Amato MLC</b>	Liberal Party	
<b>The Hon Mark Banasiak MLC</b>	Shooters, Fishers and Farmers Party	
<b>Ms Abigail Boyd MLC</b>	The Greens	
<b>The Hon Sam Farraway MLC</b>	The Nationals	
<b>The Hon Matthew Mason-Cox MLC</b>	Liberal Party	
<b>The Hon Walt Secord MLC</b>	Australian Labor Party	
<b>The Hon Emma Hurst MLC*</b>	Animal Justice Party	

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\*The Hon Emma Hurst MLC was a participating member for the duration of the inquiry.



## Chair's foreword

This inquiry was established to examine the efficacy of the administration of the *Prevention of Cruelty to Animals Act 1979* and whether it is appropriate for the Government to authorise charitable organisations to investigate and prosecute acts of animal cruelty.

During this inquiry, it became clear that members of the community hold divergent views about the administration of the Act and the role of the two approved charitable organisations – RSPCA NSW and Animal Welfare League NSW (AWL NSW) – in being responsible for the compliance and enforcement of the Act. A number of participants supported the status quo whereby the two approved charities, are tasked to investigate and prosecute animal cruelty offences. However, significant evidence supported the establishment of an independent body to oversee animal welfare across the state and remove any conflicts of interest, perceived or otherwise. Given this, the committee has recommended that an independent statutory body, the Independent Office of Animal Protection, be established to oversight the animal welfare framework. The committee also recommended that a fully funded specialist unit within the Police Force be established to investigate and prosecute animal cruelty offences.

Similarly, members of the community questioned the appropriateness of the current funding model of the two approved charitable organisations whereby the RSPCA NSW and AWL NSW heavily rely on donations and only receive limited annual government grants for the operation of their core functions. Based on the evidence, the committee has recommended that the government significantly increase funding to more adequately resource and staff the RSPCA NSW and AWL NSW inspectorates to enable them to effectively perform their compliance and enforcement role and conduct regular inspections without reliance on charitable donations commencing immediately.

Concerns about the current penalties for animal cruelty offences not appropriately or adequately corresponding with breaches of the Act were shared with the committee. Noting that the government has identified this as an area for review, we recommended that as part of the government's review of the Act, it increase penalties for animal cruelty offences.

In terms of animal welfare legislative framework in this state, there is an urgent need to overhaul the 41-year-old Act and supporting animal welfare framework in order to ensure that it better meets growing community understanding of animal sentience and expectations about animal welfare. Based on the evidence, the committee has made several recommendations for the review of particular aspects of the Act, in addition to the Act as a whole. We support an approach whereby the government consolidates and streamlines various pieces of related legislation to create a simpler legislative framework.

Issues of transparency and accountability regarding RSPCA NSW and AWL NSW were raised, in particular, that there is inadequate scrutiny of the approved charitable organisations in terms of how they fulfil their compliance and enforcement roles. In response, the committee has recommended that the Department of Primary Industries make the annual reports of RSPCA NSW and AWL NSW publically available, and that the two approved charitable organisations be required to attend a public hearing each year with the relevant Portfolio Committee to answer questions about the their compliance and enforcement responsibilities under the *Prevention of Cruelty to Animals Act 1979*, as public accountability and scrutiny measure.

It is hoped that this report, with its findings and recommendations will inform the government in terms of the steps forward in reforming animal welfare legislation and support framework, and will be included in the government's considerations as part of its Animal Welfare Action Plan.

I would like to thank all participants for their contribution to this inquiry. I also extend my thanks to my fellow committee members for their participation and the committee secretariat in providing support to the committee.

A handwritten signature in black ink, appearing to read 'Mark Pearson', with a long horizontal line extending to the right.

Hon Mark Pearson MLC  
**Committee Chair**

## Findings

### Finding 1

29

The RSPCA NSW's policy of not investigating Approved Farming Scheme producers, coupled with the evidence from the NSW Police Force that they do not have expertise in relation to animal welfare as it relates to animals in primary production, potentially compromises the ability of RSPCA NSW to investigate potential animal welfare breaches.

### Finding 2

45

The reliance of approved charitable organisations on donations for the majority of their total funding has the potential to compromise their independence and/or lead to actual or perceived conflicts of interest.

### Finding 3

59

The committee finds that there is no reason why the Department of Primary Industries should not make public the annual reports of RSPCA NSW and AWL NSW upon receipt.

## Recommendations

- Recommendation 1** **29**  
 That the NSW Government consider a review of the current arrangements for body worn devices for the purposes of investigations into animal cruelty offences with a view to permitting such devices to be worn by officers of approved charitable organisations.
- Recommendation 2** **29**  
 That the NSW Government, as part of its review of the *Prevention of Cruelty to Animals Act 1979*, increase penalties for animal cruelty offences.
- Recommendation 3** **30**  
 That the NSW Government move responsibility for animal welfare matters out of the Department of Primary Industries.
- Recommendation 4** **31**  
 That the NSW Government investigate data collection and sharing between the AWL NSW, RSPCA NSW, and the NSW Police Force in order to inform evidence based decisions about funding and education needs for the sector, and to assist in the comprehensive enforcement of laws on animal cruelty to protect animals from harm and improve their welfare, subject to information privacy principles.
- Recommendation 5** **46**  
 That the NSW Government significantly increase funding to more adequately resource and staff the RSPCA NSW and AWL NSW inspectorates to enable them to effectively perform their compliance and enforcement role and conduct regular inspections without reliance on charitable donations commencing with the 2021/2022 financial year.
- Recommendation 6** **46**  
 That the NSW Government develop a quantitative funding model that is indexed in line with CPI commencing with the 2021/2022 financial year.
- Recommendation 7** **46**  
 That the NSW Government investigate and provide funding for the establishment and delivery of an education program on the most effective methods of improving animal welfare outcomes.
- Recommendation 8** **58**  
 That the NSW Government ensure that the *Prevention of Cruelty to Animals Act 1979* and the animal welfare framework that supports it are overhauled to better meet growing community understanding of animal sentience and expectations about animal welfare, and to reflect modern knowledge and practices regarding the treatment of animals.
- Recommendation 9** **58**  
 That the NSW Government, as part of its review of the *Prevention of Cruelty to Animals Act 1979*, conduct extensive public consultation to ascertain community views about the new framework and ensure that the new legislation addresses modern community expectations about animal welfare.

- Recommendation 10** **59**  
That the NSW Government, as part of the review of the *Prevention of Cruelty to Animals Act 1979*, consider statutory time limits for the prosecution of animal cruelty related crimes.
- Recommendation 11** **59**  
That the NSW Government amend the *Prevention of Cruelty to Animals Act 1979* to require the approved charitable organisations to:
- table their annual reports in both Houses of the NSW Parliament
  - comply with requests under the *Government Information (Public Access) Act 2009*.
- Recommendation 12** **60**  
That the Legislative Council Portfolio Committee responsible for Primary Industries (or other Portfolio Committee that has primary responsibility for animal welfare) be required to conduct a one day public hearing each year involving the approved charitable organisations, with the hearing to be conducted after the lodgement of the approved charitable organisations' annual reports in NSW Parliament. One of the core requirements of the hearing will be to examine the approved charitable organisations' compliance and enforcement responsibilities under the *Prevention of Cruelty to Animals Act 1979*. Further, that approved charitable organisations be invited to attend the relevant Portfolio Committee in conjunction with representatives from the Department of Primary Industries.
- Recommendation 13** **60**  
That the NSW Government establish and fully fund a specialist unit within the NSW Police Force to investigate and prosecute animal cruelty offences.
- Recommendation 14** **60**  
That the NSW Government establish an independent statutory body, the Independent Office of Animal Protection, to oversight the animal welfare framework. Further, that the NSW Government consult stakeholders on the appropriate functions of the new body.

## Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 8 August 2019.

The committee received 142 submissions and two supplementary submissions. An online questionnaire was also conducted which received 3,757 responses.

The committee held two public hearings at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents, answers to questions on notice, and a summary report on the online questionnaire.



## Chapter 1 Legislative and enforcement framework

This chapter summarises the principal animal welfare legislation in New South Wales and responsibility for its administration and enforcement, and also discusses the legal status of animals.

### Animal welfare legislation in New South Wales

1.1 In New South Wales, animal welfare is regulated under four main Acts:

- the *Prevention of Cruelty to Animals Act 1979*
- the *Exhibited Animals Protection Act 1986*
- the *Animal Research Act 1985*
- the *Crimes Act 1900*.<sup>3</sup>

1.2 As the NSW Government explained, '[t]hese Acts govern the way animals have their welfare promoted and are protected from cruelty and set the administrative and enforcement arrangements in NSW'.<sup>4</sup>

#### Prevention of Cruelty to Animals Act 1979

1.3 Of the four Acts, the *Prevention of Cruelty to Animals Act 1979* is the principal Act that provides for animal welfare. It is administered by the Minister for Agriculture and Western New South Wales, jointly with the Minister for Local Government.<sup>5</sup> The objectives of the Act are:

- (a) to prevent cruelty to animals, and
- (b) to promote the welfare of animals by requiring a person in charge of an animal:
  - (i) to provide care for the animal, and
  - (ii) to treat the animal in a humane manner, and
  - (iii) to ensure the welfare of the animal, and
- (c) to promote the welfare of dogs and cats by requiring information about them to be provided when they are advertised for sale.<sup>6</sup>

1.4 Under the Act, animals are defined as a member of a vertebrate species (other than a human being) or a crustacean that is used for consumption.<sup>7</sup> An act of cruelty refers to an act or

<sup>3</sup> Submission 74, NSW Government, p 3.

<sup>4</sup> Submission 74, NSW Government, p 3.

<sup>5</sup> Submission 74, NSW Government, p 3.

<sup>6</sup> *Prevention of Cruelty to Animals Act 1979*, Pt I, s 3.

<sup>7</sup> *Prevention of Cruelty to Animals Act 1979*, Pt I, ss 4(1)(a) and 4(1)(b).



omission 'unreasonably, unnecessarily or unjustifiably' leads to suffering or pain to an animal or animals.<sup>8</sup> The offences include, but are not limited to:

- an intentional or unintentional act that leads to an animal being inadequately fed or sheltered, wounded, abused, terrified, infuriated, over-used or exposed to extreme climates,<sup>9</sup>
- leaving a dog unstrained on the open back of a moving vehicle resulting in the animal falling off from the vehicle,<sup>10</sup>
- not providing animals with adequate exercise,<sup>11</sup>
- abandonment,<sup>12</sup>
- not reporting an injured animal after the driver of a vehicle strikes an animal,<sup>13</sup>
- animal baiting or fighting,<sup>14</sup> and
- trap-shooting.<sup>15</sup>

**1.5** In relation to farm animals, Section 34A of the Act refers to the capacity for regulations to exempt certain practices with respect to farm animals from the cruelty provisions of the Act.<sup>16</sup> These exemptions are outlined in guidelines and/or codes of practice either prescribed or adopted by the regulations which are reviewed by 'the Animal Welfare Advisory Council, and representatives of any relevant livestock industry'.<sup>17</sup>

**1.6** When an act of cruelty is so severe that it results in the death, deformity or serious disability of the animal or the animal being in a such physical condition that it is cruel to keep it alive, the act of cruelty is considered to have amounted to an act of aggravated cruelty.<sup>18</sup>

**1.7** An offence in violation of the Act is punishable under the Act or the *Crimes Act 1900*.<sup>19</sup> Under the *Prevention of Cruelty to Animals Act 1979*, offenders can face up to six months imprisonment and/or a \$5,500 fine if found guilty of committing an act of animal cruelty, or up to two years imprisonment and/or a \$22,000 fine for an act of aggregated cruelty.<sup>20</sup> Whereas, under Section

<sup>8</sup> *Prevention of Cruelty to Animals Act 1979*, Pt I, s 4(2).

<sup>9</sup> *Prevention of Cruelty to Animals Act 1979*, Pt I, s 4(2).

<sup>10</sup> *Prevention of Cruelty to Animals Act 1979*, Pt II, s 7(2A).

<sup>11</sup> *Prevention of Cruelty to Animals Act 1979*, Pt II, s 9(1).

<sup>12</sup> *Prevention of Cruelty to Animals Act 1979*, Pt II, s 11.

<sup>13</sup> *Prevention of Cruelty to Animals Act 1979*, Pt II, s 14(b).

<sup>14</sup> *Prevention of Cruelty to Animals Act 1979*, Pt II, s 18(1).

<sup>15</sup> *Prevention of Cruelty to Animals Act 1979*, Pt II, s 19.

<sup>16</sup> *Prevention of Cruelty to Animals Act 1979*, Pt III, s 34A.

<sup>17</sup> *Prevention of Cruelty to Animals Act 1979*, Pt III, s 34A(2). See also Prevention of Cruelty to Animals Regulation 2012, Pt V, cl 33 for guidelines relating to the welfare of farm or companion animals.

<sup>18</sup> *Prevention of Cruelty to Animals Act 1979*, Pt I, s 4(3).

<sup>19</sup> RSPCA Australia, *What are the penalties for animal cruelty offences?* (2 May 2019), Animal Welfare Legislation, <https://kb.rspca.org.au/knowledge-base/what-are-the-penalties-for-animal-cruelty-offences/>.

<sup>20</sup> *Prevention of Cruelty to Animals Act 1979*, Pt II, ss 5 and 6; RSPCA Australia, *What are the penalties for animal cruelty offences?* (2 May 2019), Animal Welfare Legislation, <https://kb.rspca.org.au/knowledge->

530 of the *Crimes Act 1900*, persons found guilty of serious animal cruelty offences, that is 'a person with the intention of inflicting severe pain – (a) tortures, beats or commits any other serious act of cruelty on an animal, and (b) kills or seriously injures or causes prolonged suffering to the animal, can face up to 5 years imprisonment, or 'A person who, being reckless as to whether severe pain is inflicted — (a) tortures, beats or commits any other serious act of cruelty on an animal, and (b) kills or seriously injures or causes prolonged suffering to the animal' can face up to 3 years imprisonment.<sup>21</sup>

- 1.8 The *Prevention of Cruelty to Animals Act 1979* provides that certain acts of cruelty will not constitute an offence if they were carried out for the purposes of preparing the animals for human consumption, recognised religious practices, animal research, or certain recreational activities such as hunting, shooting or trapping animals,<sup>22</sup> and other cases prescribed by the regulations.<sup>23</sup>

### Administration and enforcement of the *Prevention of Cruelty to Animals Act 1979*

- 1.9 The NSW Department of Primary Industries administers the *Prevention of Cruelty to Animals Act 1979* and is 'responsible for ensuring the policy and legislative frameworks in the state support good animal welfare outcomes'.<sup>24</sup>
- 1.10 However, the Department of Primary Industries is not an enforcement agency of the Act and officers of the Department do not have powers of enforcement.<sup>25</sup>
- 1.11 Section 34B(1) of the Act specifies that 'The Minister may, by order published in the Gazette, approve of a charitable organisation for the purposes of the exercise by its officers of law enforcement powers under this Act'.<sup>26</sup> At present, there are two approved charitable organisations (ACO): the Royal Society for the Prevention of Cruelty to Animals New South Wales (RSPCA NSW) and the Animal Welfare League NSW (AWL NSW).<sup>27</sup>
- 1.12 RSPCA NSW has been 'committed to the prevention of cruelty to animals for the last 145 years' and has performed a statutory role in enforcing the state's animal cruelty legislation since 1928.<sup>28</sup> RSPCA NSW operates via the activities of an Inspectorate (officers who hold prescribed

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base/what-are-the-penalties-for-animal-cruelty-offences/; Department of Primary Industries, *Animal Welfare Discussion Paper: Improving the current legislation-penalties and critical situations* (12 December 2019), [https://www.dpi.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0003/820173/discussion-paper-improving-the-current-legislation-penalties-and-critical-situations.pdf](https://www.dpi.nsw.gov.au/__data/assets/pdf_file/0003/820173/discussion-paper-improving-the-current-legislation-penalties-and-critical-situations.pdf).

<sup>21</sup> *Crimes Act 1900*, Pt 14A, Div 2, s 530.

<sup>22</sup> *Prevention of Cruelty to Animals Act 1979*, Pt IIB, s 24.

<sup>23</sup> *Prevention of Cruelty to Animals Act 1979*, Pt III, ss 35 and 35A(2)(b).

<sup>24</sup> The Department of Primary Industries also administers the *Exhibited Animals Protection Act 1986* and the *Animal Research Act 1985*. NSW Department of Primary Industries, *Animal Welfare*, <https://www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare>.

<sup>25</sup> Department of Primary Industries, *Complaints regarding cruelty to animals*, <https://www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/complaints/cruelty>.

<sup>26</sup> *Prevention of Cruelty to Animals Act 1979*, Pt III, s 34B(1).

<sup>27</sup> Submission 74, NSW Government, p 3.

<sup>28</sup> Submission 136, RSPCA NSW, p 1.

authority and powers to enforce the Act), a network of nine shelters, one care centre and four veterinary hospitals, 532 staff, 26 volunteer branches and thousands of volunteers.<sup>29</sup>

- 1.13** AWL NSW has been in operation for over 61 years, providing 'expert care to surrendered, neglected, injured and abandoned animals across New South Wales'. AWL NSW consists of an Inspectorate, veterinary services shelters, an administration unit and a branch network.<sup>30</sup>
- 1.14** In addition to the two approved charitable organisations, the NSW Police Force and the Greyhound Welfare and Integrity Commission are also responsible for oversight and compliance functions of the Act.<sup>31</sup>
- 1.15** In its submission to the inquiry, the government outlined that RSPCA NSW and AWL NSW 'have legislated Ministerial reporting requirements that ensure oversight of their regulatory activities'. For example,
- [u]nder section 34B(3) ... an approved charitable organisation must, within three months after 30 June in each year, provide the Minister with a report addressing the exercise of its functions under ... [the Act and the Regulation].
  - ...[section] 34B(4) requires that the approved charitable organisations provide the Minister with a report on any matter specified by the Minister that relates to the enforcement of the Act by the organisation'.<sup>32</sup>

## NSW Animal Welfare Action Plan

- 1.16** In May 2018, the NSW Government released the Animal Welfare Action Plan, with the aim of modernising the animal welfare legislative framework by ensuring that people responsible for animals provide for their welfare, and that animal protections in the state are in line with the best available science and meet community expectations.<sup>33</sup>
- 1.17** Under this Action Plan, the government will look to reform the following Acts: *Prevention of Cruelty to Animals Act*, *Exhibited Animals Protection Act*, and *Animal Research Act*. The government noted that 'consultation will be a key element of this process and ... will ensure that all members of industry, animal welfare groups and the community can have their say throughout the reform process'.<sup>34</sup>

## Legal status of animals

- 1.18** In Australia, the legal status of animals is as 'property', meaning they are capable of being owned by humans, and subject to acquisition, transfer and theft, which gives rise to various rights and liabilities.<sup>35</sup>

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<sup>29</sup> Submission 136, RSPCA NSW, p 1.

<sup>30</sup> Submission 56, Animal Welfare League NSW, p 1.

<sup>31</sup> Evidence, Mr Scott Hansen, Director General, NSW Department of Primary Industries, 12 February 2020, p 2.

<sup>32</sup> Submission 74, NSW Government, p 7.

<sup>33</sup> Submission 74, NSW Government, p 3.

<sup>34</sup> Submission 74, NSW Government, p 3.

<sup>35</sup> Deborah Cao (ed), *Animal law in Australia* (Thomson Reuters, 2015), p 71.

- 1.19** In recent years, legislative changes in Australia and around the world have reflected a shift in perception from thinking of animals as property to individual sentient entities that deserve to be treated with compassion and have a quality of life.<sup>36</sup>
- 1.20** For example, in 2019, the Australian Capital Territory passed the *Animal Welfare Legislation Amendment Bill 2019* to explicitly recognise that 'animals are sentient beings that are able to subjectively feel and perceive the world around them'.<sup>37</sup> Prior to that, the European Union recognised animal sentience in 2008, French National Assembly in 2014, New Zealand and Quebec in 2015 and Colombia in 2016.<sup>38</sup>

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<sup>36</sup> *Animal Welfare Act 1992 (ACT)*, Pt I, s 4A(1)(b); See Submission 10, Mr Lawrence Murphy, p 1; Submission 91, Susie Header, pp 5 and 8; Submission 130, Name suppressed, p 2; Evidence, Ms Glenys Oogies, Chief Executive Director, Animals Australia, 12 February 2020, p 29.

<sup>37</sup> *Animal Welfare Act 1992 (ACT)*, Pt I, s 4A(1)(a).

<sup>38</sup> The Law Society of New South Wales Young Lawyers, Consultation on the exposure draft of the *Animal Welfare Legislation Amendment Bill 2019*, 7 February 2019, p 4.



## Chapter 2 Compliance and enforcement

This chapter examines the powers of RSPCA NSW and AWL NSW, and how effectively they exercise them, in their role as enforcers of the *Prevention of Cruelty to Animals Act 1979*. Another key issue is the various roles played by the approved charitable organisations and the Department of Primary Industries as animal welfare and industry advocates and enforcement organisations, and any potential conflicts of interest. The chapter concludes with a study of how the relationship between the approved charitable organisations, NSW Police and the Department of Primary Industries may impact the effectiveness of compliance and enforcement.

### Extent and exercise of compliance and enforcement powers

2.1 During this inquiry, the powers of the approved charitable organisations to enforce the Act were examined, including whether they should share similar powers with the NSW Police Force with respect to body-worn cameras. Similarly, the performance of the approved charitable organisations in enforcing the law was assessed, particularly in terms of prosecution rates and the number of test cases.

#### Powers of approved charitable organisations

2.2 As mentioned in chapter one, under the *Prevention of Cruelty to Animals Act 1979* (POCTA) officers of an approved charitable organisation, as specified by the Minister, have law enforcement powers.<sup>39</sup>

2.3 These powers are set out in Part 2A, Division 2 of the Act and specify the powers of inspectors relating to entering land, search warrants, land used for certain commercial purposes, general examination of animals, care of animals, seizure of evidence of offences, provision of written notices and questioning of persons and production of documents.<sup>40</sup>

2.4 The two approved charitable organisations are also authorised to bring forward prosecutions under the Act.<sup>41</sup>

2.5 The NSW Government outlined how the ACOs 'play a key role in enforcing POCTA. They offer specialised expertise and facilities to allow for effective enforcement operations and the protection of animals and their welfare in NSW'.<sup>42</sup>

2.6 At the hearing, Ms Suzanne Robinson, Director, Animal Welfare, NSW Department of Primary Industries, explained the powers available to all inspectors under the Act:

All of the inspectors under the Act have the powers that the Act provides them with. They have powers of entry onto properties if they suspect on reasonable grounds that there is a breach of the Act potentially occurring. They can enter houses only in very specific situations, if there is a really urgent issue. Otherwise, like everyone else, they

<sup>39</sup> *Prevention of Cruelty to Animals Act 1979*, Pt III s 34B(1).

<sup>40</sup> *Prevention of Cruelty to Animals Act 1979*, Pt IIA, Div 2, ss 24D to 24 NA.

<sup>41</sup> Submission 74, NSW Government, p 7.

<sup>42</sup> Submission 74, NSW Government, p 2.

need to get a warrant to enter houses. So they have the powers of entry to examine animals and can then also look at providing care to certain animals, which does include seizing animals.<sup>43</sup>

**2.7** RSPCA NSW outlined that its inspectors, consistent with their counterparts in other Australian jurisdictions, have the power to:

enter land (other than dwellings), apply for search warrants, examine animals suspected of being neglected, ill-treated or requiring veterinary treatment, seize animals and other evidence, and serve notices on responsible persons to rectify the neglect of animals in their care.<sup>44</sup>

**2.8** However, AWL NSW expressed doubt about the powers available to the ACOs, questioning whether the AWL is empowered to enter a property based on a suspicion of animal cruelty. Mr Mark Slater, Chief Executive Officer, Animal Welfare League claimed that the organisation did not have the 'ability to be able to enter a property on suspicion. We have to have either direct line of sight of an animal suffering or be able to build a portfolio to take to a magistrate to then give us entry or, essentially, a search warrant. We are hampered by that'.<sup>45</sup>

**2.9** Mr Slater argued that if AWL NSW had the 'ability to respectfully enter a property on a reasonable doubt of an animal being in suffering or not being looked after properly, there would be lower rates of animal welfare issues'.<sup>46</sup>

**2.10** Another issue raised in relation to the exercise of enforcement powers was the safety of inspectors. RSPCA NSW indicated there were often referrals of animal cruelty complaints to the NSW Police Force where safety of an inspector 'dictates the presence of a police officer ....'<sup>47</sup>

**2.11** Meanwhile, Mr Slater gave evidence that potential violence against officers was a cause for concern stating that '...our inspectors ... are told that no welfare issue is worth your bodily, physical and mental wellbeing and they are to walk away'.<sup>48</sup>

### **Powers to use body worn cameras**

**2.12** Inquiry participants discussed the issue of whether ACO inspectors should be given the same powers as police officers to wear body-worn devices when gathering evidence. The responses of participants demonstrated a lack of clarity on the issue, particularly in respect of the present use of body worn devices by the RSPCA, with some suggesting the footage was being used to press charges of animal cruelty.<sup>49</sup>

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<sup>43</sup> Evidence, Ms Suzanne Robinson, Director, Animal Welfare, NSW Department of Primary Industries, 12 February 2020, p 12.

<sup>44</sup> Submission 136, RSPCA NSW, p 4.

<sup>45</sup> Evidence, Mr Mark Slater, Chief Executive Officer, Animal Welfare League, 12 February 2020, p 31.

<sup>46</sup> Evidence, Mr Slater, 12 February 2020, pp 31- 32.

<sup>47</sup> Submission 136, RSPCA NSW, p 11.

<sup>48</sup> Evidence, Mr Slater, 12 February 2020, p 33.

<sup>49</sup> See Submission 67, Name suppressed; Submission 79, NSW Hen Rescue, Submission 82, Animal Justice Party.

- 2.13** According to Detective Inspector Cameron Whiteside, State Crime Rural Coordinator, NSW Police Force, there is a critical difference in legislation regarding body-worn devices. He stated that under the *Surveillance Devices Act 2007*, only police officers had the power to use 'body-worn video capability', while inspectors of the RSPCA NSW and AWL NSW did not.<sup>50</sup>
- 2.14** Yet, Detective Inspector Whiteside contended that consideration should be given to allow RSPCA NSW and AWL NSW inspectors to be covered by legislation for the use of body-worn devices. This was a result of the police 'rely[ing] heavily on joint investigations ... [with] the evidence you get from a photo or a video ... [being] much better than someone's recollection of what has taken place'.<sup>51</sup>
- 2.15** Similarly, the Animal Defenders Office argued that RSPCA NSW and AWL NSW should have the same powers as the police if they were to be fully able to enforce the law. It argued that without surveillance powers the charitable organisations were 'unable to gather the kind of evidence that can be critical to prove contraventions of animal protection laws, which usually occur deep inside private premises and away from public view'.<sup>52</sup>
- 2.16** The RSPCA NSW advised that it was already using body-worn cameras in one facet of its work, namely in the context of management techniques to review and assess the work of its inspectors. The RSPCA NSW advised that in this context, its Inspectorate 'routinely utilises body-worn cameras ... which also allows the Deputy Chief Inspector to review the footage of any engagement with the subject of an investigation as appropriate'.<sup>53</sup>
- 2.17** In his evidence, Mr Scott Hansen, Director General, Department of Primary Industries, indicated that it was unnecessary for the ACO inspectors to have the power to use body-worn devices. He advised that for those investigations that required covert operation, 'all of our agencies tend to fall back and rely on the advice, the training, the expertise and the powers from New South Wales police ... therefore bypassing the requirement of other individual agencies to be able to obtain ... [such approvals]'.<sup>54</sup>

### **Performance in enforcing the Act**

- 2.18** The ACOs explained the approach of their inspectors to ensure compliance and enforcement under the Act, and the compliance activity undertaken in previous years.
- 2.19** RSPCA NSW provided the following diagram to illustrate the graduated approach of inspectors when responding to complaints and alleged offences of animal cruelty.

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<sup>50</sup> Evidence, Detective Inspector Mr Cameron Whiteside, State Crime Rural Coordinator, NSW Police Force, 12 February 2020, pp 12-13.

<sup>51</sup> Evidence, Detective Inspector Whiteside, 12 February 2020, p 12.

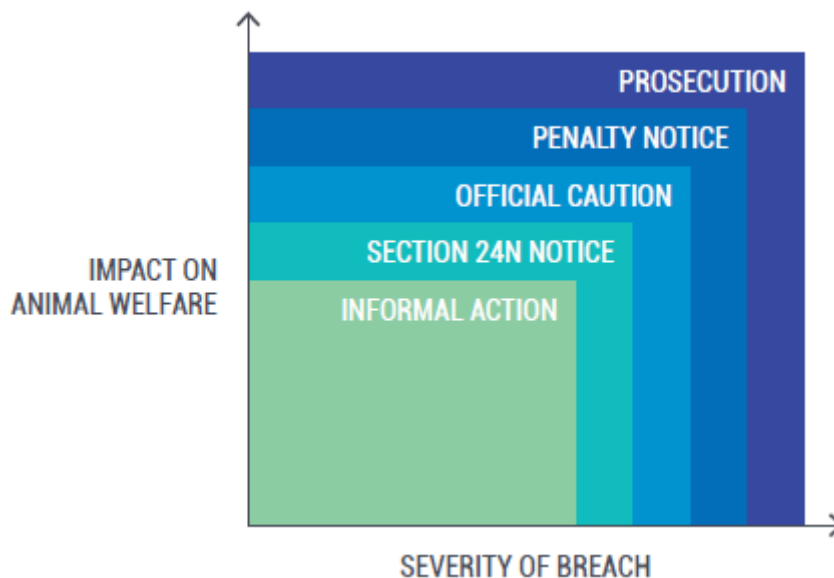
<sup>52</sup> Submission 135, Animal Defenders Office, p 6.

<sup>53</sup> Submission 136, RSPCA NSW, p 16.

<sup>54</sup> Evidence, Mr Scott Hansen, Director General, NSW Department of Primary Industries, 12 February 2020, p 12.



**Figure 1 RSPCA NSW graduated approach in responding to complaints and alleged offences of animal cruelty<sup>55</sup>**



**2.20** RSPCA NSW noted that 'in any given case, an Inspector may take one or more of the following steps short of recommending prosecution of an offence':

- Informal action - An Inspector records relevant information, offers advice and makes requests regarding the treatment of the animals in question and follows up to monitor progress.
- Section 24N notice - If a person is contravening a provision of the Act they are given a written direction pursuant to section 24N of the Act requiring that they take specified actions regarding animal care.
- Official caution - Issued where a minor breach of the legislation has occurred, but where the animal welfare outcomes were not so egregious as to require more serious action to be taken.
- Penalty notice – For prescribed offences under the Act, dependent on the circumstances of the commission of the offence and the outcome to the animal and discretionary factors this may be preferred than commencing proceedings.<sup>56</sup>

**2.21** During the 2017-2018 financial year, AWL NSW reported the following numbers relating to its role as an enforcer of the Act:

- 1,292 complaints were received by the Inspectorate
- 1,944 attendances by an Inspector were conducted to investigate these complaints
- 59 notices of direction were issued under 24N of POCTA
- 29 penalty notices were issued to offenders.<sup>57</sup>

<sup>55</sup> Submission 136, RSPCA NSW, p 12.

<sup>56</sup> Submission 136, RSPCA NSW, pp 12-13.

<sup>57</sup> Submission 56, Animal Welfare League NSW, p 2.

**2.22** During the previous financial years of 2017-2018 and 2018-2019, RSPCA NSW reported the following numbers regarding its investigations.

**Table 1 Outcomes of RSPCA NSW investigations<sup>58</sup>**

	<b>FY 2017/18</b>	<b>FY 2018/19</b>
Complaints	15,451	16,696
Investigations	14,190	15,673
Written directions issued (24N)	223	248
Official cautions issued	2	7
Penalty Infringement notices	36	37
Prosecutions Commenced	91	77
Prosecutions finalised	50	75

### **Prosecution rates**

**2.23** Inquiry participants raised concerns about the ACOs' exercise of their enforcement powers, as demonstrated by the low prosecution rates for animal cruelty offences. Several submission authors observed that the number of prosecutions for animal cruelty by the two approved charitable organisations was low<sup>59</sup> and suggested that this may possibly be due to budgetary constraints<sup>60</sup> or concerns about whether a case was winnable.<sup>61</sup>

**2.24** Due to the concerns about low prosecution rates, some submission authors called for the powers of prosecution to be handed to the police or the Director of Public Prosecutions so as to separate advocacy from enforcement as well as to ensure prosecutions were being pursued in a fair and just manner.<sup>62</sup>

**2.25** Mr Michael Donnelly, President, Animal Care Australia Inc contended that the Director of Public Prosecutions should be the entity that decides whether a case proceeds to court rather

<sup>58</sup> Submission 136, RSPCA NSW, p 34.

<sup>59</sup> See Submission 32, Mr Karl Augustine, p 1; Submission 50, Mr Ashley Chan, p 2; Submission 51, Miss Bao Nguyen, p 1; Submission 57, Ms Amy Johnson, p 1; Submission 72, Australian Equine Unification Scheme, pp 1 and 4.

<sup>60</sup> See Submission 15, PETA Australia, p 5; Submission 40, Name suppressed, p 1; Submission 78, Animal Care Australia Inc, p 1; Submission 52, Ms Celina Lui, p 3; Submission 58, Ms Maria Soria, p 1; Submission 92, Name suppressed, p 6; Submission 129, Name suppressed, p 2.

<sup>61</sup> Evidence, Ms Justine Curatolo, President, Heritage Brumby Advocates Australia, 13 February 2020, p 38; Submission 15, PETA Australia, p 5; Submission 40, Name suppressed, p 1.

<sup>62</sup> See Submission 91, Ms Susie Hearder, p 2; Submission 126, Name suppressed, p 2; Submission 82, Animal Justice Party, p 2; Submission 137, Name suppressed, p 2.

than the current system whereby an RSPCA employed solicitor makes the decision.<sup>63</sup> Mr Donnelly reasoned that by involving the Director of Public Prosecutions in the process it would establish a 'level of reasonable doubt put across that case first' and, in turn, a determination as to whether there was actual sufficient evidence for a prosecution to be carried forward.<sup>64</sup>

**2.26** By contrast, Detective Inspector Whiteside, advised that the police work very closely with RSPCA NSW and AWL NSW to ensure 'animal cruelty cases are thoroughly investigated and prosecuted' as well as 'work[ing] closely with the NSW Department of Primary Industries to better ensure penalties for animal cruelty reflect community expectations'.<sup>65</sup>

**2.27** When questioned as to whether RSPCA NSW possessed the necessary resources, training, and ability to prosecute cases rather than through the Director of Public Prosecutions, Mr Scott Meyers, NSW Chief Inspector, RSPCA NSW replied yes, outlining the process to the committee:

... once a brief is completed by an inspector who is responsible for doing the investigation, conducting the record of interviews, compiling the brief in its entirety, they will then send that off to an external brief checker we have, who is an extremely experienced, retired prosecutor. He will then assess that and make a formal recommendation based on that through to me. I will then either approve the prosecution and from there it will go through to our legal counsel. We will also rely on police prosecutors to hear a mention if we do not have a legal counsel available. And depending on where it goes from there, if it goes to a hearing we have our own legal counsel that will conduct that hearing.<sup>66</sup>

**2.28** Mr Steve Coleman, Chief Executive Officer, RSPCA NSW also refuted suggestions that budgetary constraints played a role in determining whether to proceed with prosecutions, confirming it was not a relevant consideration when deciding whether or not to proceed. Mr Coleman advised that '[a]t any given time our organisation would be owed somewhere between \$1.5 million and \$2.5 million worth of outstanding fines. Do we think about that? No we do not!'.<sup>67</sup>

**2.29** RSPCA NSW explained that when determining whether a matter be prosecuted the following three questions were asked:

1. Is there is admissible evidence capable of proving the elements of the charge before the Court?
2. Can it be said that there is no reasonable prospect of conviction by a Court properly instructed as to the law?
3. Is there any other proper reason not to proceed to charging?

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<sup>63</sup> Evidence, Mr Michael Donnelly, President, Animal Care Australia Inc, 13 February 2020, p 26.

<sup>64</sup> Evidence, Mr Donnelly, 13 February 2020, p 26.

<sup>65</sup> Evidence, Detective Inspector Whiteside, 12 February 2020, p 2.

<sup>66</sup> Evidence, Mr Scott Meyers, NSW Chief Inspector, RSPCA NSW, 13 February 2020, p 68.

<sup>67</sup> Evidence, Mr Steve Coleman, Chief Executive Officer, RSPCA NSW, 13 February 2020, p 68.

Where the answers to these questions dictate, RSPCA NSW prosecutes.<sup>68</sup>

**2.30** RSPCA NSW advised that in the last two years, no accused person has been acquitted and no conviction in proceedings undertaken by RSPCA NSW has been overturned in the District Court on appeal.<sup>69</sup>

**2.31** However, RSPCA NSW did note that there were other considerations at play when pursuing prosecution:

prosecution of an individual for an offence under the Act (whether successful or unsuccessful) can ... have serious consequences for that person and, in the context of a decision about whether to embark on such a prosecution, whether the matter could be characterised as a “test case” would not be an appropriate consideration for either the law enforcement officer investigating, or the prosecutor prosecuting, the offence.<sup>70</sup>

**2.32** During the inquiry, several participants referred to the 2014 case of Wally's Piggery as an example of unacceptably low prosecution rates of animal cruelty offences and, in particular, how the inadmissibility of video footage influenced the outcome of the case. It was noted by other participants that rules of evidence also had to apply to cases involving animals.

#### **Case study: Wally's Piggery, 2014<sup>71</sup>**

In 2014, illegally obtained footage was released of the distressing and cruel treatment of pigs at Wally's Piggery.

Subsequently, the RSPCA attended the property and a large-scale investigation ensued. The RSPCA laid 53 charges against the owner, including 12 counts of alleged aggravated animal cruelty, 12 charges of failing to provide veterinary treatment to pigs and piglets and 29 counts of failing to comply with the animal welfare regulations. Prosecution proceedings commenced.

However, on the morning of the first day of trial the RSPCA dropped all 53 charges, thus terminating the prosecution proceedings. It was reported in the media that the charges had to be withdrawn due to the inadmissibility of the illegally captured video footage evidence.

RSPCA NSW has since clarified that:

in order for the video evidence to be admissible in a criminal prosecution, it would have been necessary to prove, by admissible evidence, when, where and by whom it was taken and that it had not been edited or interfered with in any way. Without such proof, the evidence would not have been admissible ... [instead] ... the evidence [was that] of the observations of RSPCA NSW's Inspectors and those of other agencies and an expert, when they attended the piggery in early August 2012.'

<sup>68</sup> Submission 136, RSPCA NSW, p 39.

<sup>69</sup> Submission 136, RSPCA NSW, p 41.

<sup>70</sup> Submission 136, RSPCA NSW, p 39.

<sup>71</sup> Submission 79, NSW Hen Rescue, p 10; Submission 82, Animal Justice Party, p 9; Answers to questions on notice, RSPCA NSW, 12 March 2020, p 23; Henry Belot, 'Animal cruelty charges dropped against now defunct Wally's Piggery', *Sydney Morning Herald*, 21 November 2014, <https://www.smh.com.au/environment/conservation/animal-cruelty-charges-dropped-against-now-defunct-wallys-piggery-20141121-11r8c9.html>. This case study is based on the contents of these submissions.

### Test cases and private prosecutions

- 2.33** In the context of the low number of prosecutions, some inquiry participants expressed particular concern about the number of test cases undertaken by the ACOs, and suggested that this may in part be due to legislative changes that prevented individuals from instigating private prosecutions for animal cruelty offences.
- 2.34** In regards to the ability of the two approved charitable organisations to conduct cases to test the application of legislative provisions in the Act, PETA Australia claimed that RSPCA NSW's decisions regarding whether to proceed to prosecution is often informed by:
- an inability to conduct test cases but also by a reluctance on the part of RSPCA NSW to test untried or unsettled aspects of the law, both as regards provisions of the Act and provisions of legislation regarding admissibility of evidence in cruelty prosecutions brought under the Act.<sup>72</sup>
- 2.35** RSPCA NSW objected to this claim, and argued that it did not 'avoid testing the limits of the Act'. It stated that some cases had not made it past the hearing stage and indicated that '[i]f the situation arose and RSPCA NSW considered it an issue that required judicial consideration, the fact that it might require considerable or expensive litigation (in the Supreme Court, for example) would not be a barrier to taking that course'.<sup>73</sup>
- 2.36** According to AWL NSW, it 'test[ed] the application of the legislative provisions of the Act ... every single time one of our Inspectors attends a property, issues a written direction (24N), charges a person with an act of cruelty and consequently takes the matter to court'.<sup>74</sup>
- 2.37** Further, it was suggested that the decline in prosecutions may be a result of the 2007 ban on private prosecutions, and in turn the limited number of test cases brought forward. In its submission to the inquiry, the Animal Defenders Office referred to other 'jurisdictions in Australia, [where] any person can start a private prosecution for a breach of animal welfare laws'. It advised that until 2007 in New South Wales, private prosecutions for animal cruelty offences were possible under the Act.<sup>75</sup>
- 2.38** However, the Animal Defenders Office claimed that with the introduction of Section 34AA which 'provides that proceedings for offences under POCTA legislation may only be instituted by ... approved charitable organisations, the police, and the relevant Minister', there have been few prosecutions.<sup>76</sup>
- 2.39** The Animal Defenders Office claimed that, '[o]f the relatively few prosecutions ... that have been brought since section 34AA was introduced, few, if any, have tested, and therefore developed, the law, or tested its application to different categories or species of animals or different uses of animals'.<sup>77</sup>

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<sup>72</sup> Submission 15, PETA Australia, p 5.

<sup>73</sup> Submission 136, RSPCA NSW, pp 39-40.

<sup>74</sup> Submission 56, Animal Welfare League NSW, p 6.

<sup>75</sup> Submission 135, Animal Defenders Office, p 11.

<sup>76</sup> Submission 135, Animal Defenders Office, pp 11-12.

<sup>77</sup> Submission 135, Animal Defenders Office, pp 11-12.

- 2.40** Further, the Animal Defenders Office claimed that the current process for authorising private prosecutions in New South Wales, whereby the relevant Minister – the Minister for Agriculture – must 'consent for "any other person to institute proceedings" risks politicising the process of initiating prosecutions, and undermining the perception of prosecutorial independence'. It argued that this 'also limits the prospects of prosecutions being initiated against agricultural industries which it is the primary function of the Minister ... to protect'.<sup>78</sup>
- 2.41** Finally, the Animal Defenders Office recommended that the 'restrictions on who can institute proceedings for offences against POCTA legislation be removed'.<sup>79</sup> It argued that such an arrangement would 'allow other interested parties to bring proceedings given that private charities are inevitably under-resourced and that the police have other priorities. It would also allow anti-cruelty laws to develop in line with contemporary community expectations and values'.<sup>80</sup>

### **Calls for increased penalties for offences**

- 2.42** In addition to concerns about prosecution rates, some inquiry participants argued that the current penalties for animal cruelty offences were inadequate and inappropriate, with calls for the government to increase penalties.
- 2.43** A number of inquiry participants supported higher/increased penalties for breaches of the Act, stating current penalties did not align with the severity of the offence nor match the community's understanding and expectations of animal welfare.<sup>81</sup>
- 2.44** For example, some inquiry participants observed that current penalties were not adequate or appropriate in relation to the severity of breaches of the Act:
- 'I believe animal cruelty legislation needs tougher penalties. Animal abuse should be perceived as a criminal offence, with serious consequences for the perpetrators'.<sup>82</sup>
  - '[there needs to be] [m]uch stronger penalties for people not adhering to legislation and lifetime bans on owning/working with animals if people have been convicted of animal cruelty'.<sup>83</sup>

<sup>78</sup> Submission 135, Animal Defenders Office, p 12.

<sup>79</sup> Submission 135, Animal Defenders Office, p 12.

<sup>80</sup> Submission 135, Animal Defenders Office, p 12.

<sup>81</sup> See Evidence, Mr Donnelly, 13 February 2020, p 33; Evidence, Mr Barry Codling, President, Pet Industry Association of Australia, 13 February 2020, p 33; Evidence, Ms Kristina Vesk, Chief Executive Officer, Cat Protection Society of NSW, 13 February 2020, p 33; Evidence, Mr Dennis Anderson, National President, Coalition for the Protection of Greyhounds, 13 February 2020, p 37; Submission 18, Name suppressed, p 1; Submission 54, Ms Catherine Blasonato, p 1; Submission 65, Myriam Hribar and Simone Lieschke, p 5; Submission 77, Australian Brumby Alliance Inc, p 3; Submission 88, Pet Industry Association of Australia, p 1; Submission 91, Susie Header, p 2; Submission 107, Mrs Rose Ferguson, p 1; Submission 111, Ms Pamela Fioretti, p 1; Submission 120, Ms Kathryn Woolfe, pp 1 and 3; Submission 130, Name suppressed, p 1.

<sup>82</sup> Submission 120, Ms Kathryn Woolfe, pp 1 and 3.

<sup>83</sup> Submission 65, Myriam Hribar and Simone Lieschke, p 5.

- 'More severe and appropriate punishment and penalties should be allocated ... in order to have guilty parties punished and deterred from repeat offences...'<sup>84</sup>

- 2.45** The Australian Brumby Alliance Inc argued that the government was responsible for ensuring '... that the penalties match today's understanding of animal welfare norms',<sup>85</sup> with similar sentiments shared by others who claimed 'the negligible penalties given are totally out of touch with community expectations and do nothing to discourage further similar crimes'.<sup>86</sup>
- 2.46** In his evidence to the committee, Detective Inspector Cameron Whiteside, State Rural Crime Coordinator, NSW Police Force, stated that the Police Force 'has been supportive of changes to increase penalties and create new offences to be able to combat these abhorrent crimes'.<sup>87</sup> In turn, the NSW Police Force had been working closely with the Department of Primary Industries 'to better ensure penalties for animal cruelty reflect community expectations'.<sup>88</sup>
- 2.47** During the inquiry, reference was made to a discussion paper released by the Department of Primary Industries in June 2018 looking at ways to improve the current legislation in terms of penalties and critical situations.<sup>89</sup> The RSPCA NSW noted that this also coincided with the release of two online surveys 'regarding public sentiment in respect of animal cruelty sentencing and planning for critical and emerging situations (including measures for relieving stock in distressed circumstances)'.<sup>90</sup>
- 2.48** Mr Mark Slater, Chief Executive Officer, AWL NSW, gave evidence that the organisation had contributed to the Department's review of penalties by asking for 'much heavier mandatory sentences'<sup>91</sup> while RSPCA NSW advised that it had contributed to 'drafts of the discussion paper ... the surveys and participated at all stages of government consideration'.<sup>92</sup>
- 2.49** RSPCA NSW noted that '[n]o substantive legislative amendments have yet been made to the maximum penalties for offences of animal cruelty since 1997' and that it supported 'action by Parliament in that regard as a matter of priority'.<sup>93</sup>

## Various roles of enforcement bodies

- 2.50** Throughout the inquiry, the appropriateness of approved charitable organisations performing a compliance and enforcement role with respect to the *Prevention of Cruelty to Animals Act* was examined by participants. Furthermore, the appropriateness of the approved charitable

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<sup>84</sup> Submission 18, Name suppressed, p 1.

<sup>85</sup> Submission 77, Australian Brumby Alliance Inc, p 3.

<sup>86</sup> Submission 91, Susie Hearder, p 2.

<sup>87</sup> Evidence, Detective Inspector Whiteside, 12 February 2020, p 2.

<sup>88</sup> Evidence, Detective Inspector Whiteside, 12 February 2020, p 2.

<sup>89</sup> Evidence, Ms Annabel Johnson, Head, Strategy and Advocacy, NSW Farmers' Association, 13 February 2020, p 20; Evidence, Mr Slater, 12 February 2020, p 42; Submission 136, RSPCA NSW, p 47.

<sup>90</sup> Submission 136, RSPCA NSW, p 47.

<sup>91</sup> Evidence, Mr Slater, 12 February 2020, p 42.

<sup>92</sup> Submission 136, RSCPA NSW, p 47.

<sup>93</sup> Submission 136, RSCPA NSW, p 48.

organisations as enforcement bodies and the Department of Primary Industries as the administrator of the Act was questioned given the potential conflicts of interest due to a range of issues including approved farming schemes, sponsorship and advocating for the agricultural industry.

### **Delegation of enforcement powers to charitable organisations**

- 2.51** The appropriateness of delegating of enforcement powers to charitable organisations was a key issue raised during the inquiry.
- 2.52** In particular, some inquiry participants highlighted how unusual it was to have charities rely on fundraising to enforce the law. Animals Australia stated it was '...greatly concerned that currently the enforcement obligations of the government have been out-sourced and is (largely) reliant upon charitable funding; significant changes must be made to this model'.<sup>94</sup>
- 2.53** Likewise, the Animal Defenders Office remarked it was 'unaware of any other criminal laws that are enforced primarily by private charities. As a general principle it is inappropriate in 21st-century Australia to allow criminal laws to be enforced by private charities'.<sup>95</sup>
- 2.54** While some inquiry participants were satisfied by the current system with approved charitable organisations performing a compliance and enforcement role,<sup>96</sup> others were of the view that it was inappropriate for charities to do so.<sup>97</sup>
- 2.55** For example, in support of the current system inquiry participants expressed the following views:
- 'RSPCA has more capacity to investigate and prosecute animal cruelty matters than any other organisation, government or otherwise'.<sup>98</sup>
  - 'RSPCA provides an effective service to uphold animal cruelty legislation through their inspections. They are independent in their assessments and understand that animals used for production can be raised humanely'.<sup>99</sup>
  - 'These welfare charities ... have been doing a very good job for a very long time. They understand the many and varied contributing factors that make up both good and bad welfare situations. Equally they have the ability to properly house and care for seized animals that may require fairly long periods of care while cases are prosecuted'.<sup>100</sup>

<sup>94</sup> Submission 84, Animals Australia, p 4.

<sup>95</sup> Submission 135, Animal Defenders Office, p 3.

<sup>96</sup> Submission 3, Ms Louise Webb, p 1, Submission 12, Mr Stephen Bradshaw, pp 1-2; Submission 45, Australian Pork Limited, p 1; Submission 74, NSW Government, p 6; Submission 75, Dogs NSW, p 5; Submission 78, Animal Care Australia Inc, p 4; Submission 88, Pet Industry Association of Australia, p 2; Submission 90, Ms Beverly Wood, p 1.

<sup>97</sup> Submission 82, Animal Justice Party, p 2; Submission 92, Name suppressed, p 1; Submission 126, Name suppressed, p 2; Submission 128, Name suppressed, p 1.

<sup>98</sup> Submission 12, Mr Stephen Bradshaw, p 2.

<sup>99</sup> Submission 45, Australian Pork Limited, p 1.

<sup>100</sup> Submission 75, Dogs NSW, p 5.



- 'Any move to diminish or limit the current animal cruelty investigative powers of the RSPCA would be a retrograde step in terms of overall provision of services to animals in need in the state of New South Wales'.<sup>101</sup>

**2.56** On the other hand, those who viewed the current system as inappropriate put forward the following observations:

- '...the RSPCA works to reform the very laws and regulations which they are tasked with enforcing. While they might have valuable contributions to make to law reform, it becomes a conflict of interest when they play a major role in both reform and enforcement. In addition, it is inappropriate for private charitable fundraising and bequests to serve as the dominant source of funds for the enforcement of public law'.<sup>102</sup>
- 'RSPCA and AWL as charitable organisations ... that have carriage over the enforcement of these laws sends a strong message to the community and in particular to potential offenders ... that the laws are not taken seriously and that breaching them is unlikely to result in negative consequences. We do not sub-contract out the enforcement and prosecution of other branches of the law. Animal cruelty laws should not be treated differently'.<sup>103</sup>
- 'No other crimes are policed by charities ie the Salvation Army doesn't investigate and enforce our child abuse laws. It is an old model from the 19th century that has never been modernised ... Charities don't have the same powers as police regarding entry and warrants. Charities can't rely on the same level of expertise for investigations and enforcement as the police'.<sup>104</sup>
- '...it is inappropriate that any agencies that politically advocate or participate in activism or public campaigns have a role in enforcement of animal welfare'.<sup>105</sup>

**2.57** Another critic of the current system, Ms Tara Ward, Executive Director and volunteer lawyer, Animal Defenders Office stated that the current system poses a 'fundamental problem for the administration of justice' given that :

... the enforcement agencies rely on private donations ... that could affect, consciously or otherwise, their prosecution policy. For example, they would not investigate enterprises associated with donors or they would investigate the fluffy cases with a lot of public appeal and not the ones against, say, animals who do not have that public appeal, for example, because it is less likely to result in donations.<sup>106</sup>

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<sup>101</sup> Submission 90, Ms Beverly Wood, p 1.

<sup>102</sup> Submission 92, Name suppressed, p 1.

<sup>103</sup> Submission 126, Name suppressed, p 2.

<sup>104</sup> Submission 58, Maria Soria, p 1.

<sup>105</sup> Submission 86, Woolproducers Australia, p 3.

<sup>106</sup> Evidence, Ms Tara Ward, Executive Director and volunteer lawyer, Animal Defenders Office, 13 February 2020, p 50.

### Potential conflicts of interest

- 2.58** A number of inquiry participants voiced concerns about potential conflicts of interest for the two approved charitable organisations and the Department of Primary Industries in relation to their roles in administering the law and promoting animal welfare.<sup>107</sup>

### *Perceptions of RSPCA NSW*

- 2.59** Ms Selma Burek-Celejewska, former employee of RSPCA NSW, gave evidence that there was a perception of bias displayed by RSPCA NSW as a result of the national RSPCA Approved Farming Scheme which endorses certain brands of animal products and farms. She proposed that the perceived bias rested in the knowledge that the RSPCA was also the law enforcement entity for animal cruelty complaints for the very type of places it was endorsing.<sup>108</sup>
- 2.60** This position was echoed by Ms Patricia Fernandez, Organiser, Australasian Meat Industry Employees Union, who agreed that the business arrangement of the RSPCA endorsing particular producers compromised their function as an inspectorate body.<sup>109</sup>
- 2.61** Ms Ward noted that '[s]peaking hypothetically, an agency that has such schemes may well be reluctant to investigate any allegation of cruelty in those enterprises that participate in those schemes because it would reflect badly on the scheme. You can understand that would at least be a perception'.<sup>110</sup>
- 2.62** By contrast, Australian Pork Limited was of the view that there was no conflict of interest between the RSPCA and industry bodies, rather there was 'a confluence of interest in that both organisations wish to see an improvement of animal welfare outcomes'.<sup>111</sup>
- 2.63** In its submission to the inquiry, RSPCA NSW explained that the Approved Farming Scheme<sup>112</sup> (AFS) was a not-for-profit initiative operated by RSPCA Australia:

Companies that choose to participate in the AFS must meet RSPCA Australia's detailed animal welfare standards and complete a rigorous assessment process. The compliance costs associated with the Scheme, including the ongoing assessments of participating

<sup>107</sup> See Submission 15, PETA Australia, p 3; Submission 42, Name suppressed, p 1; Submission 46, Mr Grant Holman, p 3; Submission 77, Australian Brumby Alliance Inc., p 2; Submission 79, NSW Hen Rescue, p 9; Submission 82, Animal Justice Party, pp 11-13; Submission 84, Animals Australia, p 5; Submission 91, Susie Hearder, p 2; Submission 93, Lisa J Ryan, p 4; Submission 117, Ms Elizabeth Ellis, p 3.

<sup>108</sup> Evidence, Ms Selma Burek-Celejewska, Private Citizen, 13 February 2020, p 4.

<sup>109</sup> Evidence, Ms Patricia Fernandez, Organiser, Australasian Meat Industry Employees Union, 12 February 2020, p 55.

<sup>110</sup> Evidence, Ms Ward, 13 February 2020, p 54.

<sup>111</sup> Submission 45, Australian Pork Limited, p 2.

<sup>112</sup> The RSPCA Australia Approved Farming Scheme allows layer hen, pig, meat chicken, turkey, salmon and dairy veal producers whose farms meet the RSPCA's standards can apply to join the Approved Farming Scheme. Once the farm has been approved, the RSPCA logo may be used on the packaging of product from that farm. Consumers are then able to choose to buy these products, knowing that the animals have been kept according to the RSPCA's high welfare standards. See RSPCA Australia, *What is the RSPCA Approved Farming Scheme?*, 8 August 2019, <https://kb.rspca.org.au/knowledge-base/what-is-the-rspca-approved-farming-scheme/>.

farms, is covered by a licensing fee. This fee is paid by brands that use the “RSPCA Approved” logo in the marketing of RSPCA Approved products. The fee is quarantined and used only within the AFS to improve the lives of these farmed animals. No fees from the AFS are distributed to state or territory Member Societies, nor to any other part of RSPCA Australia’s operations.<sup>113</sup>

- 2.64** Mr Steve Coleman, Chief Executive Officer, RSPCA NSW, explained that if a New South Wales Approved Farming Scheme producer was suspected of misconduct or non-compliance with the Act, then RSPCA NSW would not investigate it, instead referring matters to either the police or the Animal Welfare League.<sup>114</sup>
- 2.65** In addition, RSPCA NSW stated that its role in preventing animal cruelty was not 'compromised by any conflict of interest between this statutory role and its other functions, sponsors, donors or staff'.<sup>115</sup> RSPCA NSW advised that the organisation's Approved Farming Scheme was an RSPCA Australia initiative which the state branch had no involvement with.<sup>116</sup>
- 2.66** However, both AWL NSW and the NSW Police Force indicated to the committee that they may not be equipped to deal with referrals to investigate RSPCA facilities. Mr Mark Slater, Chief Executive Officer, AWL NSW stated that AWL focused on companion animal issues within 'peri-urban situations' rather than rural settings with very large stock issues due to the smaller number of inspectors the organisation had in comparison to RSPCA NSW.<sup>117</sup> Detective Inspector Cameron Whiteside, State Crime Rural Coordinator, NSW Police Force, gave evidence that 'police do not have the expertise in either animal welfare matters nor the use of animals in primary production ... as police we rely on the expertise of other authorised enforcement agencies under the Prevention of Cruelty to Animals Act 1979 [POCTAA]'.<sup>118</sup>

### *Perceptions of AWL NSW*

- 2.67** Some inquiry participants referred to the donations program AWL NSW has with Kellyville Pets.<sup>119</sup> Both the Animal Justice Party and Animal Care Australia Inc claimed that the owner of the pet store had development approval for a large commercial dog breeding facility. Both organisations argued that this was a potential conflict of interest given that AWL NSW 'is responsible for routine inspections of pet shops and breeding facilities ... under POCTAA'<sup>120</sup> and therefore 'could not complete an unbiased inspection of this facility'.<sup>121</sup> The inquiry was unable to test this assertion.

<sup>113</sup> Submission 136, RSPCA NSW, p 24.

<sup>114</sup> Evidence, Mr Coleman, 13 February 2020, p 58.

<sup>115</sup> Submission 136, RSPCA NSW, p 2.

<sup>116</sup> Submission 136, RSPCA NSW, p 23.

<sup>117</sup> Evidence, Mr Slater, 12 February 2020, p 39.

<sup>118</sup> Evidence, Detective Inspector Whiteside, 12 February 2020, p 2.

<sup>119</sup> Submission 82, Animal Justice Party, p 13, Submission 91, Susie Header, p 2; Submission 92, Name suppressed, p 4.

<sup>120</sup> Submission 82, Animal Justice Party, p 13.

<sup>121</sup> Submission 78, Animal Care Australia Inc, p 2.

- 2.68** In order to remove any perceived conflicts of interest, Animal Care Australia Inc recommended that the approved charitable organisations 'must declare donations provided by political parties, animal welfare organisations, animal rights organisations and commercial animal businesses'.<sup>122</sup>
- 2.69** In response, AWL NSW gave evidence that its 'commercial or for profit activities are restricted to rehoming animals, accepting the surrender of animals and providing veterinary services. These three services are provided without bias to or from the AWL NSW inspectorate'.<sup>123</sup>

### *Perceptions of board interests*

- 2.70** Some inquiry participants questioned the private interests of board members and the enforcement and compliance activities of the ACOs. For example, Mrs Catherine Smith, Founder and Chief Executive Officer, NSW Hen Rescue, referred to RSPCA NSW having a difference in attitude towards certain types of animals, particularly between companion animals and farm animals. She claimed this was a result of board members having 'animal farming interests and/or backgrounds' and thereby generating a culture of '[these] are the animals that we exploit and these are the animals that we care for'.<sup>124</sup>
- 2.71** Likewise, PETA Australia argued that by allowing the RSPCA NSW board and senior staff to include 'individuals with a longstanding and vested interest in protecting the status quo across all farmed animal industries ensures there is no organisational will to drive reforms or improvements to welfare standards'.<sup>125</sup>
- 2.72** Similar sentiments were shared by Animal Liberation ACT who contended that the membership of the RSPCA NSW board, which included primary producers and veterinarians, created 'barriers to defining cruelty and welfare'. This was reasoned on the grounds that many practices of primary producers, such as tail removal, were not viewed as cruel but rather as the norm.<sup>126</sup>
- 2.73** In addition, Animal Liberation ACT considered that primary producers, veterinarians and those in the legal profession viewed animals, particularly stock animals, as objects and/or property for 'sale and consumption, rather than sentient and thus capable of different "feelings" and "perceptions"'.<sup>127</sup>
- 2.74** In relation to questions about potential conflicts of interest between the investigation and enforcement of the Act, and private interests of board members, both RSPCA NSW and AWL NSW stated such claims were untrue.
- 2.75** Dr Peter Wright, President, RSPCA NSW Board of Directors, confirmed that the board was 'completely arm's-length from the inspectorate. We have no control or sway over who is

<sup>122</sup> Submission 78, Animal Care Australia Inc, p 2.

<sup>123</sup> Submission 56, Animal Welfare League, p 5.

<sup>124</sup> Evidence, Mrs Catherine Smith, Founder and Chief Executive Officer, NSW Hen Rescue, 12 February 2020, p 46.

<sup>125</sup> Submission 15, PETA Australia, p 4.

<sup>126</sup> Submission 80, Animal Liberation ACT, p 3.

<sup>127</sup> Submission 80, Animal Liberation ACT, p 3.

prosecuted, who is not prosecuted, who gets inspected or investigated. As a board, no, we do not have any influence at all in that regard'.<sup>128</sup>

- 2.76** Also on this point, AWL NSW advised that it's 'Board members are all members of the organisation and duly elected by the members of the organisation on rotation at Annual General Meetings. Prior to becoming members, applicants are screened, and background checks are undertaken before approval'.<sup>129</sup>

### *Perceptions of the Department of Primary Industries*

- 2.77** In its submission to the inquiry, the Animal Justice Party claimed the Department of Primary Industries in 'serv[ing] the interests of the agricultural sector' was at odds with its other role of being responsible for animal protection via the administration of the Act, resulting in both a perceived and actual conflict of interest.<sup>130</sup>
- 2.78** The Animal Justice Party argued that industry bodies and the Department were more focused on 'maximising profits' from commercial animal production than animal welfare, as demonstrated by the standards and guidelines for commercial production and industry management practices that allow 'lawful but painful practices as mulesing and castration without anaesthesia and/or pain relief'.<sup>131</sup>
- 2.79** Ms Glenys Oogjes, Chief Executive Officer, Animals Australia raised concerns about the current system in place whereby the Minister for Agriculture 'sign[s] off on codes and standards and guidelines' that favour the practices of the farming industry, rather than take into account the welfare of farm animals.<sup>132</sup> She argued there was a 'real reluctance on the part of, sometimes, the department ... but certainly the Ministers, to give way to change. They may then get ... backlash from those others that they try to represent in farming and other industries related to farming industries'.<sup>133</sup>
- 2.80** As Ms Shatha Hamade, Legal Counsel, Animals Australia explained '... much of these regulations or codes have not moved much in many, many decades because of the inherent conflict of interest of those charged with administrating them and developing them'.<sup>134</sup>
- 2.81** On the other hand, Ms Annabel Johnson, Head of Strategy and Advocacy, NSW Farmers' Association opposed these claims, stating that the Association did not 'see DPI's role in welfare and increasing the productivity of agricultural industries as a conflict of interest. We see it as them having a vested interest in making sure that industries are improving welfare'.<sup>135</sup>
- 2.82** Mr Scott Hansen, Director General, Department of Primary Industries addressed the concern that there was a conflict of interest within the Department, observing that

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<sup>128</sup> Evidence, Dr Peter Wright, President, RSPCA NSW Board of Directors, 13 February 2020, p 59.

<sup>129</sup> Submission 56, Animal Welfare League NSW, p 5.

<sup>130</sup> Submission 82, Animal Justice Party, p 11.

<sup>131</sup> Submission 82, Animal Justice Party, p 12.

<sup>132</sup> Evidence, Ms Glenys Oogjes, Chief Executive Officer, Animals Australia, 12 February 2020, p 26.

<sup>133</sup> Evidence, Ms Oogjes, 12 February 2020, p 26.

<sup>134</sup> Evidence, Ms Shatha Hamade, Legal Counsel, Animals Australia, 12 February 2020, p 28.

<sup>135</sup> Evidence, Ms Johnson, 13 February 2020, p 17.

...there will be those who see this as a conflict. But I think there is also a large body of evidence that says that this is actually complementary. You cannot actually help progress agricultural industries without helping progress animal welfare outcomes. They need to go hand-in-hand. They cannot be separated.<sup>136</sup>

## Relationship between ACOs, NSW Police and DPI

**2.83** During the inquiry, the relationships between the approved charitable organisations, the Department of Primary Industries and the NSW Police were examined in terms of how they impact on the effectiveness of compliance and enforcement. These relationships are set out in memoranda of understanding between all parties. Particular issues raised include the initiative of Stock Welfare Panels, the training of inspectors and police officers in responding to animal cruelty complaints and offences, and the link between animal cruelty and social violence as observed via the information sharing between inspectors of the ACOs and police officers.

### Memoranda of Understanding (MOU)

**2.84** The NSW Government advised that both approved charitable organisations have signed Memoranda of Understanding developed by the Department of Primary Industries which provide:

... a joint understanding of governance expectations, including expected behaviours of employees, risk management and audit system, and policies that define how these charitable organisations will separate their advocacy and enforcement roles.<sup>137</sup>

**2.85** The Memoranda of Understanding also set out the functions and responsibilities of each ACO and reporting requirements. The NSW Government stated it was 'satisfied that the ACOs have fulfilled their obligations under the MOUs'.<sup>138</sup>

**2.86** As Mr Scott Hansen, Director General, Department of Primary Industries explained, the Act 'places obligations on ... [the two charities] in terms of what they do, [and] how they go about doing it. The MOUs give effect to how they need to be working in concert with each other and with us in delivering against their obligations under the Act'.<sup>139</sup>

**2.87** The two approved charitable organisations also have Memoranda of Understanding with the NSW Police Force, which outline the NSW Police Force's role 'in respect to assessing ... threats' to inspectors when attending cases.<sup>140</sup>

**2.88** RSPCA NSW indicated that the Memoranda of Understanding 'ensure the effective and timely exchange of information, and to meet operational requirements across the State in relation to the enforcement of the Act'.<sup>141</sup>

<sup>136</sup> Evidence, Mr Hansen, 12 February 2020, p 16.

<sup>137</sup> Submission 74, NSW Government, p 4.

<sup>138</sup> Submission 74, NSW Government, p 4.

<sup>139</sup> Evidence, Mr Hansen, 12 February 2020, p 7.

<sup>140</sup> Evidence, Detective Inspector Whiteside, 12 February 2020, p 10.

<sup>141</sup> Submission 136, RSPCA NSW, p 11.

**Stock welfare panels**

- 2.89** The improved welfare outcomes said to be achieved as a result of the relationship between the two approved charitable organisations and the Department of Primary Industries was illustrated by the apparent success of the Stock Welfare Panels.
- 2.90** Stock Welfare Panels are established under Section 24T of the Act 'to redress instances of poor animal welfare relating to stock animals'. These panels are convened by the Department of Primary Industries and consist of:
- a representative from both the Department of Primary Industries and Local Land Services, an inspector from a POCTA enforcement agency, and sometimes may include a member of the NSW Farmers' Association, and a veterinary practitioner where no other member is a veterinary practitioner.<sup>142</sup>
- 2.91** The NSW Government advised that '[s]ince being established in 2012, the Stock Welfare Panel process has been successful in facilitating better animal welfare outcomes for more than 15,000 animals'. It also highlighted that the Stock Welfare Panel process 'provides ... an opportunity to educate the person in charge of stock animals and assist them in implementing measures to restore the health of the stock without the need for direct prosecution action'.<sup>143</sup>
- 2.92** Mr James McDonald, Chair, Animal Welfare Committee, NSW Farmers' Association supported the use of Stock Welfare Panels in 'serious animal welfare situations' explaining to the committee that '[c]ommunication and collaboration between farmers, government agencies and welfare organisations lead to better outcomes'.<sup>144</sup> He informed that 'over the last two years it has been most successful. The panels have achieved positive animal welfare outcomes because the primary objective was to make sure the animals were looked after'.<sup>145</sup>
- 2.93** Mr McDonald further highlighted the importance of Stock Welfare Panels through their ability to 'work out a plan that is best for the livestock rather than it being focused on a court action'.<sup>146</sup>
- 2.94** Ms Annabel Johnson, Head, Strategy and Advocacy, NSW Farmers' Association argued it was 'important to recognise that before a Stock Welfare Panel is formed, generally the RSPCA and an LLS [Local Land Services] person have been out on that property working with the farmer. It only gets escalated to a panel when there has been a decline or they have not been able to make progress and it is decided that they need to try a different tactic'.<sup>147</sup> She described the Stock Welfare Panels as 'very effective in being able to provide that circuit-breaker, generally because the two-person approach is not working'.<sup>148</sup>
- 2.95** Mr Steve Coleman, Chief Executive Officer, RSPCA NSW echoed this position and stated that '[w]e cannot speak highly enough of the new measures to trigger livestock welfare panels. These

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<sup>142</sup> Submission 74, NSW Government, 4.

<sup>143</sup> Submission 74, NSW Government, 4.

<sup>144</sup> Evidence, Mr James McDonald, Chair, Animal Welfare Committee, NSW Farmers' Association, 13 February 2020, p 12.

<sup>145</sup> Evidence, Mr McDonald, 13 February 2020, p 12.

<sup>146</sup> Evidence, Mr McDonald, 13 February 2020, p 14.

<sup>147</sup> Evidence, Ms Johnson, 13 February 2020, p 19.

<sup>148</sup> Evidence, Ms Johnson, 13 February 2020, p 19.

panels and the work that they do with our involvement have addressed and improved the conditions of many thousands of animals in drought'.<sup>149</sup>

- 2.96** RSPCA NSW advised that 'as at November 2019, 24 stock welfare panels have been commenced, with RSPCA NSW Inspectors involved in eight active panels. These panels have so far assessed nearly 4,000 sheep, over 3,700 cattle, 200 calves and 188 horses'.<sup>150</sup>

### **Training for police officers and inspectors**

- 2.97** Some inquiry participants discussed the extent of training provided to the police in how to respond to animal cruelty complaints and offences, as well as concerns about the adequacy of training provided to inspectors of the RSPCA NSW and AWL NSW.
- 2.98** Commenting on the training provided to police officers, Detective Inspector Cameron Whiteside, State Crime Rural Coordinator, NSW Police Force, spoke of how the RSPCA and 'other external agencies come to our rural crime workshops where they give a detailed overview of their role ... to enhance the capability of those first responders'.<sup>151</sup> The workshops also discussed the 'technicalities, the evidence and the information in respect of investigating animal cruelty matters'.<sup>152</sup>
- 2.99** As a result of these workshops, of which around 20 have been conducted in the last two years, Detective Inspector Whiteside said that 'approximately 400 first responding police [have been trained], whether that be the local uniform officer in a one-man station in remote New South Wales, through to detectives and prosecutors to help us in that process'.<sup>153</sup>
- 2.100** Aside from the adequacy of training provided to police offers, some concerns were also raised that the inspectors of the two approved charitable organisations were not appropriately trained to carry out their role as enforcers of the Act.
- 2.101** For example, Mr Michael Donnelly, President, Animal Care Australia Inc, claimed the inspectorates of both the RSPCA NSW and AWL NSW were 'not sufficiently trained in all of the species to have that understanding' of what was required in each situation.<sup>154</sup>
- 2.102** The NSW Farmers' Association supported the view that inspectors needed 'the necessary expertise and skills to be able to implement the animal welfare legislative framework' for all animals. For example, the Association highlighted that inspectors needed 'a clear understanding of livestock production ... [and] have the skills and expertise in evidence gathering required to conduct a successful enforcement action'.<sup>155</sup>
- 2.103** In order to improve this, Animal Care Australia Inc recommended that the future employment of approved charitable organisation inspectorates must include:

<sup>149</sup> Evidence, Mr Coleman, 13 February 2020, p 57.

<sup>150</sup> Submission 136, RSPCA NSW, p 5.

<sup>151</sup> Evidence, Detective Inspector Whiteside, 12 February 2020, p 16.

<sup>152</sup> Evidence, Detective Inspector Whiteside, 12 February 2020, p 9.

<sup>153</sup> Evidence, Detective Inspector Whiteside, 12 February, p 16.

<sup>154</sup> Evidence, Mr Donnelly, 13 February 2020, p 31.

<sup>155</sup> Submission 66, NSW Farmers' Association, p 10.



- Training needs analysis within CO's for each role to determine what additional training is required for existing staff and any training deficiencies be rectified within a specified period of time.
- A skills based training program should be reviewed at specified intervals to ensure the content remains current and appropriate for the changing needs in these roles.
- If a skills based training program does not exist, one should be implemented within the next 12 months.
- Training should contain a mixture of theory and practical assignments, and should include external courses as well as internal. It should include items such as the current POCTA standards, general animal care and animal husbandry for the species' falling within the Inspectorate remit and animal behaviour.
- Successful completion of an approved training program must be a mandatory requirement prior to accreditation being given to an individual to be elevated to an Inspector role.
- Accreditation should be subject to ongoing training and renewals within specified timeframes ...<sup>156</sup>

**2.104** On the other hand, the Cat Protection Society of NSW Inc commented that 'inspectors in both AWL and RSPCA have a great deal of expertise and experience in assessing animal welfare'.<sup>157</sup>

**2.105** In response to these concerns, Animal Welfare League NSW advised that in order to become an inspector an individual had to possess 'good animal handling knowledge and experience ... law enforcement or legal background and/or ... [be required] to obtain a Certificate IV in Government Investigations at minimum'. Inspectors also undertook ongoing training in relation to their role.<sup>158</sup>

**2.106** When asked about this issue at the hearing, Mr Scott Meyers, NSW Chief Inspector, RSPCA NSW, advised that in the 'past 12 to 18 months, we have rewritten our whole training program around inspectors and onboarding inspectors'. He explained the recruitment and training process for inspectors:

... we recruit for certain skill sets and experience with our inspectors. From there on, we do a lot of in-house training around legislation, around notebook requirements—all of those day-to-day things we require them to be across. The training program pretty much runs now for around three months before an inspector is actually out on the road investigating complaints themselves.<sup>159</sup>

**2.107** Mr Meyers indicated that if a complaint was received, '...in a particular area and it is, say, about cattle and the inspector who is in that area does not have as much experience as somebody else, we will bring somebody else in to assist them on that job ...'<sup>160</sup>

**2.108** Further, Mr Meyers described other training conducted annually for inspectors, including 'batons and handcuffs training, which is an accreditation ... verbal tactics, which is giving our

<sup>156</sup> Submission 78, Animal Care Australia Inc, pp 3-4.

<sup>157</sup> Submission 81, The Cat Protection Society of NSW Inc, p 2.

<sup>158</sup> Submission 56, Animal Welfare League NSW, p 5; Evidence, Mr Slater, 12 February 2020, p 36.

<sup>159</sup> Evidence, Mr Meyers, 13 February 2020, p 61.

<sup>160</sup> Evidence, Mr Meyers, 13 February 2020, p 61.

inspectors skills to be able to identify issues and de-escalate situations, ... [in relation to] officer safety training ...<sup>161</sup>

- 2.109** In its submission, the NSW Government acknowledged the importance of inspectors from RSPCA NSW and AWL NSW being sufficiently trained given the enforcement powers they possess under the Act. The government noted that the 'training requirements for inspectors is addressed by the [memorandums of understanding] ... held between the ACOs and the NSW Government'.<sup>162</sup>

### **Animal cruelty and violence to humans**

- 2.110** An emerging issue raised during the inquiry was the link between animal cruelty and violence to humans.<sup>163</sup> This goes to the relationship and information sharing between inspectors of the ACOs, who investigate animal cruelty, and police officers who are responsible for addressing social violence.

- 2.111** The NSW Young Lawyers Animal Law Committee remarked that there were 'consistent links being drawn between [animal cruelty] ... offences and the eventual commitment of violent crimes against humans'. For example, it referred to a recent Australian study which 'clearly established the link between animal abuse and domestic violence in rural, regional and suburban communities'.<sup>164</sup>

- 2.112** Likewise, the Cat Protection Society of NSW Inc considered the 'evidence demonstrating links between violence to animals and violence to people ... [to be] compelling, and suggests a need for more comprehensive and holistic policing'. This was grounded in the findings of the Humane Society of the United States studies which found:

... of those arrested for animal crimes, 65% had been arrested for battery against another person; of 36 convicted multiple murders questioned in one study, 46% admitted to committing animal torture as teenagers. Seven school shootings in the US between 1997 and 2001 all involved boys who had previously committed animal cruelty.<sup>165</sup>

- 2.113** At the hearing, Ms Kristina Vesk, Chief Executive Officer, Cat Protection Society of NSW Inc suggested there is inadequate data collection and information sharing on how violence against animals could be predictive of violence against humans, and further, that police officers lack training on the link between crimes against humans and crimes against animals:

... in terms of ... a statistical analysis of what is going on in Australia in relation to crime against animals and crime against people and those links, there has been work, but because the data collection is not great and often does not happen, and then you

<sup>161</sup> Evidence, Mr Meyer, 13 February 2020, p 61.

<sup>162</sup> Submission 74, NSW Government, p 7.

<sup>163</sup> See Submission 58, Ms Maria Soria, p 1; Submission 81, The Cat Protection Society of NSW Inc, p 2; Submission 91, Susie Hearder, p 1; Submission 102, Name suppressed, p 1; Submission 120, Ms Kathryn Woolfe, pp 1-2;

<sup>164</sup> Submission 141, NSW Young Lawyers Animal Law Committee pp 10- 11 citing Dimond, Juliet, 'Act now on animal cruelty' (May 2015) *Police Monthly*, pp 8-10.

<sup>165</sup> Submission 81, The Cat Protection Society of NSW Inc, p 2.

get all the underreporting, the issues that I am talking about where people are trying to leave a situation and it is not being reported, the police do not necessarily take it seriously – and I am not blaming them; I think there is an education gap, there is a communication gap. It needs to be the case that these situations are flagged; they are predictive.<sup>166</sup>

**2.114** In addition, Ms Vesk argued that it was not 'adequate to depend on animal welfare inspectors ...[in relation to] the abuse of animals in the context of domestic and interpersonal violence'. She referred to a further study conducted by the United States Department of Justice, entitled *Animal Cruelty as a Gateway Crime*, which noted:

- Animal abuse and cruelty are serious and often precursors to other crimes such as assault, domestic violence and homicide.
- Animal abuse is often a window into the home and awareness of animal abuse may prevent other crimes ...<sup>167</sup>

**2.115** When questioned about the issue, Detective Inspector Cameron Whiteside, State Crime Rural Coordinator, NSW Police Force, stated 'Complaints of animal cruelty are not just confined to the rural industries ... it is quite significant on companion animals whether that be domestic violence or other matters'.<sup>168</sup> He added that 'the assessment of a threat or issues of violence ... crosses a number of crime categories and is quite indicative of a lot [of] research in terms of animals being abused linked to other crimes'.<sup>169</sup>

**2.116** In February 2020, it was reported that the NSW Attorney-General, the Honourable Mark Speakman MP, had ordered a review of the 'connection between animal abuse and domestic violence'.<sup>170</sup>

## Committee comment

**2.117** The committee understands that the approved charitable organisations have compliance and enforcement powers under the *Prevention of Cruelty to Animals Act 1979* which places them in a distinct position to control and monitor animal cruelty offences.

**2.118** However, the committee notes the lack of clarity provided by key witnesses at the committee's hearings as to the powers of the approved charitable organisations to use body worn devices when conducting investigations into animal cruelty offences. Given the lack of clarity by witnesses, the committee suggests the government clarifies powers of inspectors and encourages promotion through the approved charitable organisations.

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<sup>166</sup> Evidence, Ms Vesk, 13 February 2020, p 30.

<sup>167</sup> Evidence, Ms Vesk, 13 February 2020, p 23.

<sup>168</sup> Evidence, Detective Inspector Whiteside, 12 February 2020, p 16.

<sup>169</sup> Evidence, Detective Inspector Whiteside, 12 February 2020, p 10.

<sup>170</sup> Caitlin Fitzsimmons, 'A sickening form of coercion!': Push to help the animal victims of domestic violence', *Sydney Morning Herald*, 17 February 2020, <https://www.smh.com.au/lifestyle/life-and-relationships/a-sickening-form-of-coercion-push-to-help-the-animal-victims-of-domestic-violence-20200207-p53yp0.html>.

**Recommendation 1**

That the NSW Government consider a review of the current arrangements for body worn devices for the purposes of investigations into animal cruelty offences with a view to permitting such devices to be worn by officers of approved charitable organisations.

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- 2.119** We also recognise the concerns of the public in relation to the current penalties for offences under the Act, and agree that improvements are required in this area.
- 2.120** The committee is pleased that the government has identified this as an area for review and recommends that as part of its review of the Act, the government increase penalties for animal cruelty crimes in order to meet modern community expectations for animal well-being and protection.
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**Recommendation 2**

That the NSW Government, as part of its review of the *Prevention of Cruelty to Animals Act 1979*, increase penalties for animal cruelty offences.

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- 2.121** The committee notes the evidence of some inquiry participants who questioned the desirability of delegating enforcement powers to charitable organisations, as well as highlighting the potential for conflicts of interest in relation to their and the Department of Primary Industries roles in administering the law and promoting animal welfare. In particular, the committee recognises potential conflicts of interest with respect to the private interests of board members of RSPCA NSW and AWL NSW, and the Department of Primary Industries' role as advocate for animal enterprises and guardian of animal welfare.
- 2.122** We also note the views shared about the RSPCA's Approved Farming Scheme and find that this endorsement and promotion of particular producers may undermine their role as an inspectorate body for animal welfare breaches.
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**Finding 1**

The RSPCA NSW's policy of not investigating Approved Farming Scheme producers, coupled with the evidence from the NSW Police Force that they do not have expertise in relation to animal welfare as it relates to animals in primary production, potentially compromises the ability of RSPCA NSW to investigate potential animal welfare breaches.

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- 2.123** The committee questions the impartiality and independence of the two approved charitable organisations and the Department of Primary Industries to carry out these various roles. The committee considers it to be unrealistic and inappropriate for these bodies, particularly RSPCA NSW and AWL NSW to be both the enforcer and promoter of animal welfare. We are also uncertain if the approved charitable organisations are the most appropriate bodies to be legally responsible for the prevention of cruelty to animals. Recommendations to this effect can be found in chapter four.
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- 2.124** In addition, we are of the view that the Department of Primary Industries views the concept of 'animal welfare' within the context of agricultural industries as being synonymous with 'quality of stock'. The community, however, increasingly views animals as sentient beings, regardless of their use to humans. Given the Department of Primary Industries' role in supporting agricultural industries, the committee is concerned that the Department of Primary Industries risks maintaining a narrow and outdated view of animal welfare matters which is out of step with the broader community.
- 2.125** Given our concerns, we therefore recommend that the NSW Government move responsibility for animal welfare matters out of the Department of Primary Industries to avoid any potential conflicts of interest in relation to animal welfare.
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### **Recommendation 3**

That the NSW Government move responsibility for animal welfare matters out of the Department of Primary Industries.

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- 2.126** On the benefits of strong relationships between all parties, the committee considers the stock welfare panels to be an encouraging example of the collaboration and cooperation between the various parties in a difficult and challenging time, demonstrating what constructive relationships can achieve in terms of positive animal welfare outcomes.
- 2.127** In terms of the training and skills of RSPCA NSW and AWL NSW inspectors, the committee recognises that inspectors may not always hold the necessary knowledge for all animal species they come into contact with during investigations of alleged animal cruelty offences. We note that with more funding and resources the organisations could further enhance their training regimes.
- 2.128** From the evidence received, we are encouraged by the training workshops conducted by RSPCA NSW with the NSW Police Force about how to respond to complaints of animal cruelty and offences.
- 2.129** The committee notes the studies raised by inquiry participants linking animal abuse with violence to humans, particularly domestic violence. The committee is encouraged by the NSW Attorney-General's announcement that a review of the legislation around the connection between animal abuse and domestic violence is being conducted.
- 2.130** Regardless, the committee recognises the need for more training on the likely link between animal abuse and violence to humans, particularly domestic violence for both the NSW Police Force and the two approved charitable organisations. This would be helpful in terms of responding to animal cruelty complaints, and assessing risks to inspectors and involved individuals. In addition, information sharing between the approved charitable organisations and the police is both beneficial and pertinent, given the likely link between the animal cruelty offences and those individuals who may become violent to other humans. Therefore, the committee recommends that the NSW Government institute greater information sharing links between the approved charitable organisations and the police. The committee notes evidence by some inquiry participants on risks to inspectors in dealing with aggressive behaviour during the completion of their investigations. We noted evidence from NSW Police Force that they
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assist in providing advice to the approved charitable organisations on dealing with this issue. The committee encourages this to continue to occur.

- 2.131** So as to institute greater information sharing links between the approved charitable organisations and the NSW Police Force, the committee calls on the government to investigate data collection and sharing between the three bodies, in order to inform evidence based decisions about funding and education needs for the sector, and to assist in the comprehensive enforcement of laws on animal cruelty to protect animals from harm and improve their welfare, subject to information privacy principles.

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**Recommendation 4**

That the NSW Government investigate data collection and sharing between the AWL NSW, RSPCA NSW, and the NSW Police Force in order to inform evidence based decisions about funding and education needs for the sector, and to assist in the comprehensive enforcement of laws on animal cruelty to protect animals from harm and improve their welfare, subject to information privacy principles.

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## Chapter 3 Funding and resources

This chapter discusses the current funding and resources of the two approved charitable organisations, RSPCA NSW and AWL NSW. It then examines a key question raised by inquiry participants: whether funding and resources are adequate to enable these organisations to fulfil their roles and responsibilities, particularly for compliance and enforcement. The chapter concludes by considering calls for greater government funding to RSPCA NSW and AWL NSW.

### Current status of funding and resources

- 3.1** Historically, both RSPCA NSW and AWL NSW have relied on charitable donations to support and fund their work in preventing cruelty to animals and the promotion of animal welfare.<sup>171</sup> As discussed in chapter 2, a number of witnesses raised the fact that it is highly unusual for the Government to rely on a private charity to fundraise and enforce criminal law (see from paragraph 2.52).
- 3.2** These charitable donations are supplemented by annual funding provided by the NSW Government to RSPCA NSW and AWL NSW for their inspectorial and enforcement functions, with additional one-off funding also provided at times for specific projects.<sup>172</sup> RSPCA NSW receives \$424,000 annually while AWL NSW receives \$75,000 annually from the NSW Government.<sup>173</sup>
- 3.3** Mr Scott Hansen, Director General, NSW Department of Primary Industries, explained that the annual funding provided to the two organisations was grant funding that had been static for some years, with no particular formula as to how the initial amount was calculated.<sup>174</sup> Mr Hansen did confirm that the grants were not tied to key performance indicators such as a specific number of inspectors, inspections or compliance activities.<sup>175</sup>
- 3.4** RSPCA NSW and AWL NSW shared similar sentiments regarding the arbitrary amount of the government grants. Mr Mark Slater, Chief Executive Officer, Animal Welfare League commented, '[n]o-one is actually quite sure on the maths or how they came up with ... [the funding formula]'.<sup>176</sup> While Mr Steve Coleman, Chief Executive Officer, RSPCA NSW said he did '...not know, in all honesty, what \$424,000 is supposed to represent'.<sup>177</sup>
- 3.5** The committee heard that the RSPCA's NSW Branch receives significantly less funding than other comparative jurisdictions. Mr Coleman stressed that RSPCA NSW has the 'biggest

<sup>171</sup> Submission 56, Animal Welfare League NSW, p 1; Submission 136, RSPCA NSW, p 3; Submission 74, NSW Government, p 8.

<sup>172</sup> Submission 74, NSW Government, p 1; Evidence, Mr Mark Slater, Chief Executive Officer, Animal Welfare League, 12 February 2020, p 42; Evidence, Mr Steve Coleman, Chief Executive Officer, RSPCA NSW, 13 February 2020, p 63.

<sup>173</sup> Submission 74, NSW Government, p 8.

<sup>174</sup> Evidence, Mr Scott Hansen, Director General, NSW Department of Primary Industries, 12 February 2020, p 6.

<sup>175</sup> Evidence, Mr Hansen, 12 February 2020, p 6.

<sup>176</sup> Evidence, Mr Slater, 12 February 2020, p 35.

<sup>177</sup> Evidence, Mr Coleman, 13 February 2020, p 64.



enforcement team across the RSPCA federation and yet we are the least funded from a recurrent funding spectrum'.<sup>178</sup> The below table depicts comparative funding of RSPCA inspectorates across the country.

**Table 2 Comparative funding of RSPCA inspectorates across Australia<sup>179</sup>**

State/Territory	Number of inspectors	Annual Inspectorate cost	Government contribution
ACT	3	\$281,000	\$224,000
NSW	33	\$6,800,000	\$424,000
QLD	19	\$3,800,000	\$500,000
SA	8	\$2,720,000	\$1,100,000
TAS	5	\$586,000	\$550,000
VIC	27	\$5,500,000	\$1,000,000
WA	11	\$2,750,000	\$500,000

- 3.6** The RSPCA NSW inspectorate consists of a Chief Inspector, Deputy Chief Inspector, four Team Leaders, 32 permanent full-time inspectors and five temporary Inspectors.<sup>180</sup> RSPCA NSW stated that the total Inspectorate cost in 2018/2019 was \$6,233,041.41.<sup>181</sup>
- 3.7** In its submission, RSCPA NSW stated that the five temporary Inspector roles were the result of an additional \$500,000 made available via the Department of Primary Industries from the NSW Drought Fund in August 2019, to 'assist with a large number of Stock Welfare Panels and investigations related to the current drought'.<sup>182</sup> However, this funding is only available until 30 June 2020.<sup>183</sup>
- 3.8** In contrast to RSPCA NSW, the AWL NSW has a total of six inspectors. The Department of Primary Industries advised that it had also provided \$120,000 in additional funding for one further inspector role for AWL NSW, until 30 June 2020, to reflect the increased workload during the drought.<sup>184</sup>

<sup>178</sup> Evidence, Mr Coleman, 13 February 2020, p 63.

<sup>179</sup> Submission 136, RSPCA NSW, Annexure P.

<sup>180</sup> Submission 136, RSPCA NSW, p 9.

<sup>181</sup> Submission 136, RSPCA NSW, pp 18-19.

<sup>182</sup> Submission 136, RSPCA NSW, p 9.

<sup>183</sup> Submission 136, RSPCA NSW, p 9.

<sup>184</sup> Answers to questions on notice and supplementary questions, NSW Department of Primary Industries, 12 March 2020, p 2.

- 3.9** In terms of the recurrent government grant of \$75,000, Mr Mark Slater, Chief Executive Officer, Animal Welfare League NSW commented that it covered about 80 per cent of the running costs of only one inspector.<sup>185</sup>

### **Adequacy of funding and resources**

- 3.10** A central issue raised during this inquiry was whether the funding and resources currently available to RSPCA NSW and AWL NSW are adequate to fulfil their compliance and enforcement responsibilities, provide community education and deliver adequate standard of care and kill rates for stray, surrendered or seized animals.

#### **Resources and staffing for compliance and enforcement**

- 3.11** Inquiry participants expressed strong concerns that RSPCA NSW and AWL NSW were both under-resourced and under-staffed to adequately perform their roles as compliance and enforcement bodies.<sup>186</sup> Reflective of community views put forward to this committee was Lisa J Ryan's submission in which she commented there was 'recognition that the authorised agencies are not adequately funded and resourced to prosecute and deliver and meet community expectations to achieve the object of the Act'.<sup>187</sup>
- 3.12** This was mainly considered to be a result of insufficient government funding, a reliance on donations and having a limited number of inspectors to oversee animal welfare and prevention of animal cruelty across the state.<sup>188</sup> For example, Ms Elizabeth Ellis, Honorary Senior Fellow, School of Law, University of Wollongong commented that insufficient government funding 'inevitably' led to 'inadequate enforcement ... This problem is exacerbated when reforms are introduced without the deployment of matching resources'.<sup>189</sup> Consequently, several inquiry participants advocated for RSPCA NSW and AWL NSW to be appropriately resourced to enforce the law on animal cruelty.<sup>190</sup>
- 3.13** Ms Glenys Oogjes, Chief Executive Officer, Animals Australia stated there was a 'clear need for additional resources to enable adequate monitoring and enforcement of the existing animal welfare laws and regulations'.<sup>191</sup>
- 3.14** The Animal Defenders Office argued that the current framework of two approved charitable organisations being delegated 'investigation and enforcement functions ... with extremely

<sup>185</sup> Evidence, Mr Slater, 12 February 2020, p 36.

<sup>186</sup> See Evidence, Ms Selma Burek-Celejewska, Private Citizen, 13 February 2020, p 2; Submission 15, PETA Australia, p 5; Submission 52, Ms Celina Lui, p 1; Submission 93, Lisa J Ryan, p 3; Submission 51, Miss Bao Nguyen, p 1; Submission 92, Name suppressed, pp 1-2.

<sup>187</sup> Submission 93, Lisa J Ryan, p 3.

<sup>188</sup> See Submission 39, Coalition for the Protection of Greyhounds, p 14; Submission 15, PETA Australia, p 2; Submission 82, Animal Justice Party, p 2; Submission 91, Susie Hearder, p 2; Submission 117, Ms Elizabeth Ellis, p 4.

<sup>189</sup> Submission 117, Ms Elizabeth Ellis, p 4.

<sup>190</sup> Submission 12, Mr Stephen Bradshaw, p 2; Submission 3, Ms Louise Webb, p 4; Submission 66, NSW Farmers' Association, p 4;

<sup>191</sup> Evidence, Ms Glenys Oogjes, Chief Executive Officer, Animals Australia, 12 February 2020, p 24.

limited funding and resources' would result in them 'never be[ing] able to detect, prevent and deter cruelty to animals, and especially to farm animals, at a level that is acceptable by today's community standards'.<sup>192</sup>

- 3.15** When questioned as to whether the RSPCA was adequately resourced, Mr Steve Coleman, Chief Executive Officer, RSPCA NSW, replied that he was 'compelled to say that we are under-resourced. It would be both naive and illogical for any organisation to say that they are satisfactorily resourced'.<sup>193</sup>
- 3.16** In terms of routine inspections, Mr Coleman explained that 'First and foremost it is not a case that we do not do random or unannounced inspections. They do occur. Do they occur enough in the eyes of the community? We would agree it does not'. He added that 'more enforcement officers would obviously equate to more opportunities ... to proactively enforce the Act'.<sup>194</sup>
- 3.17** RSPCA NSW also advised that 'the realities of a large case load and current court commitments means that routine inspections may have to be delayed if an urgent complaint is received and there is a risk of imminent suffering or death to an animal'.<sup>195</sup>
- 3.18** Further, RSPCA NSW noted that as a result of the prevailing drought conditions, Inspectors had been occupied with 'checking and re-checking thousands of properties thus reducing the capacity of those same Inspectors to undertake routine inspections'.<sup>196</sup>
- 3.19** In 2018/19, RSPCA NSW advised that they conducted 94 routine inspections on animal trades as outlined in the following table.
- 3.20** In its submission to the inquiry, RSPCA NSW noted that '[g]iven the necessary resources ... [RSPCA NSW] would support an increase in routine animal trade inspections, as well as joint inspections carried out with other regulators with whom it maintains a very good working relationship'.<sup>197</sup>

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<sup>192</sup> Submission 135, Animal Defenders Office, pp 15-16.

<sup>193</sup> Evidence, Mr Coleman, 13 February 2020, p 58.

<sup>194</sup> Evidence, Mr Coleman, 13 February 2020, p 59.

<sup>195</sup> Submission 136, RSPCA NSW, p 36.

<sup>196</sup> Submission 136, RSPCA NSW, p 36.

<sup>197</sup> Submission 136, RSPCA NSW, p 38.

**Table 3 RSPCA NSW inspections conducted on animal trades 2018/19**

Inspections conducted on animal trades 2018/19		
Animal trade	Routine inspections conducted 2018/2019	Cruelty complaints
Agricultural show	1 show (10 attendances)	
Boarding kennels	8	303
Breeding kennels	20	
Dairy farm	2	
Horse trader	3	
Pet shop/Market	19	156
Poultry farm	1	7
Riding school	3	11
Rodeo	1	2
Sale yard	36	12
<b>Total</b>	<b>94</b>	

- 3.21** However, some inquiry participants argued there was a lack of routine inspections, particularly of farming facilities where considerable numbers of animals were confined and there was a significant potential for animal cruelty to occur out of the public's view. For example, Ms Annabel Johnson, Head, Strategy and Advocacy, NSW Farmers' Association, gave evidence that while routine inspections were specified in the Act, they were not occurring, and stated this was 'a question for the enforcement agencies as to why they are not occurring, whether it is a resourcing issue'.<sup>198</sup>
- 3.22** In respect of resourcing, the Animal Defenders Office claimed that RSPCA NSW 'has only 32 inspectors to police a state that is over 809,000 km<sup>2</sup> in size and containing many, many millions of animals. The number of inspectors is clearly inadequate to ensure compliance with, and to enforce, the objects of the POCTA Act'.<sup>199</sup>
- 3.23** Ms Glenys Oogjes, Chief Executive Officer, Animals Australia stated that the organisation was 'concerned that there are very many animals suffering' as a result of an inadequate inspection regime, routine or otherwise, and a lack of oversight in terms of compliance.<sup>200</sup>
- 3.24** During the inquiry, several participants referred to the 2018 case of the Lakesland hens incident as an example of RSPCA NSW not being adequately resourced to carry out its compliance role and respond to complaints in a timely and effective manner.

<sup>198</sup> Evidence, Ms Annabel Johnson, Head, Strategy and Advocacy, NSW Farmers' Association, 13 February 2020, p 20.

<sup>199</sup> Submission 135, Animal Defenders Office, p 4.

<sup>200</sup> Evidence, Ms Oogjes, 12 February 2020, p 25.

**Case study: Lakesland Hens, June 2018<sup>201</sup>**

In June 2018, a member of the public, Evelyn, found hens on a road outside a property. As Evelyn considered the hens to be at risk of being run over, she tried to round them up to a large shed up the nearest driveway. After observing further distressed hens and many chicken corpses near the shed, Evelyn called the RSPCA to report the case.

The RSPCA took note of the case and advised Evelyn to call the police who said they would be there in a few hours. Evelyn waited but neither the police or RSPCA officers attended the property that day.

After a social media post and media campaign launched by NSW Hen Rescue causing public outcry, the RSPCA finally attended the premises on several occasions. Hens were found to be underweight and diseased while others were already dead. During the investigation all surviving birds were collected and killed.

Body cam footage taken by RSPCA inspectors was admitted into evidence later in court and voice recordings revealed the inspectors' uncertainty about how to progress with the investigation.

Subsequently, the owner was convicted of multiple animal cruelty offences, fined \$6,500, placed on a 16-month community corrections order and prohibited from having any animals in his care for a period of five years.

The Lakesland hens case was the sole inspection conducted by RSPCA NSW of a poultry facility in 2018 as recorded in the above Table 2 RSPCA NSW inspections conducted on animal trades 2018/19. However, rather than a routine inspection it was a consequence of complaints from the public.<sup>202</sup>

**Delivery of community education about animal welfare**

- 3.25** There were differing views among some inquiry participants regarding the ability of RSPCA NSW and AWL NSW to deliver community education about animal welfare, given the limited funding and resources.
- 3.26** One submission author stressed how important education was in the prevention of animal cruelty and argued that the charitable organisations were hampered by limited resources to focus on this. It was suggested that 'if the RSPCA was no longer funding the inspectorate, more funds could go towards ... community education programs'.<sup>203</sup>
- 3.27** However, in commenting on the quality of community education at present, Ms Justine Curatolo, President, Heritage Brumby Advocates Australia Inc observed that there was 'already some pretty good education flyers and leaflets and stuff around'.<sup>204</sup>
- 3.28** Ms Kristina Vesk, Chief Executive Officer, The Cat Protection Society of NSW, was of the view that there also needed to be 'education of the community about what to look for and what to expect' regarding good animal welfare standards and be informed about the people and places doing this:

<sup>201</sup> Submission 79, NSW Hen Rescue, pp 2-6; Submission 82, Animal Justice Party, p 15. This case study is based on the contents of these submissions.

<sup>202</sup> Submission 135, Animal Defenders Office, p 10.

<sup>203</sup> Submission 92, Name suppressed, p 4.

<sup>204</sup> Evidence, Ms Justine Curatolo, President, Heritage Brumby Advocates Australia Inc, 13 February 2020, p 43.

For example, a PIAA accredited pet shop doing all the right things in terms of where they source their puppies that there might be selling, a consumer needs to know that when they are making a choice between that and buying a puppy online from an unknown breeder.<sup>205</sup>

- 3.29** In its submission, Animal Welfare League NSW stated that it undertook 'regular educational work to the community on the best standard of animal welfare ... [and that it was] regularly called upon by local, state and national media outlets as content matter experts'.<sup>206</sup> AWL NSW estimated the total aggregated annual expenditure on education was \$600,000.<sup>207</sup>
- 3.30** RSPCA NSW described the work of its Community (Education) Team which 'delivers community-based education and outreach programs to a wide range of community organisations ... and provides courses in schools from pre-school to tertiary level'. The Team also provides educational material to those identified by an Inspector as 'need[ing] help in better understanding how to care for an animal/animals or how to access assistance'.<sup>208</sup>
- 3.31** Other community education initiatives undertaken by RSPCA NSW include using 'various forms of traditional and social media to increase awareness of important animal welfare standards and developments' and community engagement events such as the national Million Paws Walk, which 'proactively assists owners in accessing veterinary treatment and pet health education, and increases awareness for children regarding safe animal interactions'.<sup>209</sup>
- 3.32** The Department of Primary Industries advised that additional, one-off funding had been provided to RSPCA NSW and AWL NSW to assist with community education. For example, RSPCA NSW received \$2 million for an education centre at Yagoona with payments made across four financial years, 2015 to 2019, and both charities received a share of \$200,000 for a joint education campaign on puppy factories in 2015/16.<sup>210</sup>

### **Adequacy of standard of care and kill rates**

- 3.33** Several inquiry participants expressed views that the standard of care and kill rates for stray, surrendered or seized animals under the control or supervision of the approved charitable organisations were unsatisfactory and did not meet community expectations.<sup>211</sup>
- 3.34** For example, the NSW Young Lawyers Animal Law Committee remarked that '... animal shelters do not have the capacity and/or funding to support vast numbers of surrendered and stray animals'.<sup>212</sup>

<sup>205</sup> Evidence, Ms Kristina Vesik, Chief Executive Officer, Cat Protection Society of NSW, 13 February 2020, p 33.

<sup>206</sup> Submission 56, Animal Welfare League NSW, p 4.

<sup>207</sup> Answer to question on notice, Animal Welfare League NSW, 26 March 2020, p 1.

<sup>208</sup> Submission 136, RSPCA NSW, p 21.

<sup>209</sup> Submission 136, RSPCA NSW, p 21.

<sup>210</sup> Answers to questions on notice, NSW Department of Primary Industries, 12 March 2020, p 3.

<sup>211</sup> Submission 59, Name suppressed, p 1; Submission 91, Ms Susie Hearder, p 3; Submission 92, Name suppressed, p 5; Submission 93, Lisa J Ryan, p 3; Submission 141, NSW Young Lawyers Animal Law Committee, pp 3, 8-9.

<sup>212</sup> Submission 141, NSW Young Lawyers Animal Law Committee, pp 8-9.

- 3.35** In a submission to the inquiry, a former employee of RSPCA NSW claimed that animals were regularly euthanised as a result of:
- general lack of space
  - contracting perfectly treatable diseases, such as cat flu or ringworm ...
  - lack of space in adoptions
  - requiring routine surgeries but absence of funds and room for them to recover prior to going to adoptions
  - timid animals were often deemed inappropriate for adoptions
  - FIV cats were often euthanised despite the fact that they do not require medication, can live with the disease all their lives and be virtually symptom free.<sup>213</sup>
- 3.36** Hunter Animal Watch was of the view that 'it would be beneficial to ... [have] complete transparency from all animal shelters regarding the number of animals that are euthanised each year'. Hunter Animal Watch hoped that this would demonstrate to the community that there are simply not enough homes available for those who 'believe that it is okay to let their pet breed as they can take the puppies or kittens to the local shelter and they will all find homes'.<sup>214</sup>
- 3.37** Animal Care Australia Inc insisted that a lack of education about how to care and treat animals at the point of purchase of an animal was a major contributor to excessive kill-rates.<sup>215</sup> It argued that a 'reduction of kill-rates can only be achieved through stronger education of all parties concerned'. Although, it acknowledged that not all animals can be rehomed and 'there is still a need for some animals to be euthanised ...'.<sup>216</sup>
- 3.38** In response to concerns about the standard of care and kill rates, RSPCA NSW advised that it 'makes every attempt to rehome all animals that are suitable for adoption'. This includes intensive rehabilitation programs for dogs displaying behavioural concerns 'to ensure that every animal put up for adoption is safe to be rehomed back into the community'.<sup>217</sup> To this end, foster network and specialist pet rescue groups were relied upon to 'try and give these animals ... the chance to adjust to life after their seizure or surrender to RSPCA NSW'.<sup>218</sup>
- 3.39** Further, RSPCA NSW confirmed that there was 'no time limit for the rehoming of animals in its care. Where the animal is tolerating shelter and/or foster life, RSPCA NSW will continue working towards finding that animal a home. There are examples of dogs and cats finally being adopted after more than 12 months in the shelter and at foster homes'.<sup>219</sup>
- 3.40** In 2018/19 RSPCA NSW received 29,682 stray, abandoned, surrendered or seized animals into its care. This included not only companion animals (cats and dogs), but also a wide variety of stock animals, "pocket pets" and other animals.<sup>220</sup>

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<sup>213</sup> Submission 92, Name suppressed, p 5.

<sup>214</sup> Submission 70, Hunter Animal Watch, p 2.

<sup>215</sup> Submission 78, Animal Care Australia Inc, pp 2-3.

<sup>216</sup> Submission 78, Animal Care Australia Inc, p 3.

<sup>217</sup> Submission 136, RSCPA NSW, p 28.

<sup>218</sup> Submission 136, RSPCA NSW, p 28.

<sup>219</sup> Submission 136, RSPCA NSW, p 31.

<sup>220</sup> Submission 136, RSPCA NSW, p 27.

- 3.41 Of the total animals received by RSPCA NSW during 2018/2019, 30 per cent were euthanised, 43 per cent were rehomed, nearly 13 per cent were reclaimed, 1 per cent died in care and 7.5 per cent were still in care.<sup>221</sup>
- 3.42 The following figure summarises the outcomes for animals received by RSPCA NSW in 2018/19.

**Figure 2 RSPCA NSW 2018/19 animal intake by outcome<sup>222</sup>**

### Animal intake by outcome

	Rehomed	Still in care	Strays transferred to council impound	Transferred to rescue groups or another state	Reclaimed	Died in Care	Released	Other	Euthanised	TOTAL
Cats	7,652	1,239	6	282	563	203		8	5,735	15,688
Dogs	3,805	774	275	341	3,160	43		14	1,663	10,075
Horses	101	52	0	3	0	1		0	16	173
Livestock	446	42	1	52	32	10		1	263	847
Other	1,030	141	0	55	89	41		19	1,005	2,380
Wildlife		2	0	179	0	17	13	0	308	519
<b>TOTAL</b>	<b>13,034</b>	<b>2,250</b>	<b>282</b>	<b>912</b>	<b>3,844</b>	<b>315</b>	<b>13</b>	<b>42</b>	<b>8,990</b>	<b>29,682</b>

### Canine euthanasia by reason

Behavioural	Infectious	Medical	Legal†	Organisational‡	TOTAL
1,220	36	360	40	7	1,663

### Feline euthanasia by reason

Behavioural	Infectious	Medical	Legal†	Organisational‡	TOTAL
1,083	1,459	1,108	1,126	959	5,735

† Refers to animals deemed dangerous or menacing by local council

‡ Refers to unweaned or unviable animals too young to survive without their mother

- 3.43 In its submission to the inquiry, AWL NSW advised that 'since August 2011, ... [it has] subscribed to a policy of Getting2Zero, which states that if an animal is happy and healthy, we will take as much time as is required to rehome that animal'. The charity aims to achieve zero euthanasia and 'takes very seriously our responsibility to euthanise animals that cannot be rehabilitated and rehomed due to mistreatment, severe behavioural or medical conditions'.<sup>223</sup>
- 3.44 AWL NSW added that it 'employ[s] a robust foster program that also allows for animals to be rehomed from foster inclusive of our statewide branch network. This is based on the fact that no animal will thrive in a shelter environment'.<sup>224</sup>

<sup>221</sup> Submission 136, RSPCA NSW, p 29.

<sup>222</sup> Submission 136, RSPCA NSW, p 29.

<sup>223</sup> Submission 56, Animal Welfare League NSW, p 3.

<sup>224</sup> Submission 56, Animal Welfare League NSW, p 5.



## Calls for greater government funding

**3.45** One of the most important issues considered during this inquiry was whether the approved charitable organisations should receive greater government funding for their compliance and enforcement activities, noting that at present, government funding covers only a small proportion of their inspectorate costs. This section considers stakeholder views on increased government funding, followed by the views of the ACOs themselves.

### Stakeholder views on increased government funding

**3.46** Concerns about the level of government funding provided to these charities to perform their compliance and enforcement role proved to be an issue of contention among stakeholders.

**3.47** It was argued by some that without greater government funding, the two charities could not be expected to continue to perform this role in line with the community's expectations.<sup>225</sup> For example, the following views were expressed:

- 'It is difficult to see how the approved charitable organisations can provide a proper level of protection to animals and achieve the objects of the Act, without sufficient funding'<sup>226</sup>
- '... the cost to the government would be substantially higher if these organisations did not exist to enforce these laws. Government should most certainly increase funding and ensure that these organisations are adequately funded to enforce their legal obligations'.<sup>227</sup>

**3.48** On the other hand, others argued that if the government were to provide more funding to the RSPCA NSW and AWL NSW, this would call into question the independence of these charities.<sup>228</sup> For example, Mr Michael Donnelly, President, Animal Care Australia Inc said that while his organisation supported 'the need for more sustainable funding' to the approved charitable organisations, this did not extend to being fully funded government 'as this is contradictory to the term "independent"'.<sup>229</sup>

**3.49** Meanwhile, others called for more funding for the RSPCA NSW and AWL NSW but were unclear as to the source of this additional funding.<sup>230</sup>

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<sup>225</sup> See Submission 2, Carrigan English, pp 1-2; Submission 22, Name suppressed, p 1; Submission 39, Coalition for the Protection of Greyhounds, p 14; Submission 41, Egg Farmers of Australia, p 2; Submission 52, Ms Celina Lui, p 3; Submission 56, Animal Welfare League NSW, p 2; Submission 84, Animals Australia, p 3; Submission 124, Ms Karen Davies, p 2; Submission 135, Animal Defenders Office, p 5; Submission 136, RSPCA NSW, p 20; Submission 141, NSW Young Lawyers Animal Law Committee, pp 3-4.

<sup>226</sup> Submission 52, Ms Celina Lui, p 3.

<sup>227</sup> Submission 124, Ms Karen Davis, p 2.

<sup>228</sup> Submission 78, Animal Care Australia Inc, p 2; Evidence, Mr Michael Donnelly, President, Animal Care Australia Inc, 13 February 2020, pp 24-25; Evidence, Mr Stephen Rushton, Director, RSPCA NSW Board of Directors, 13 February 2020, p 70.

<sup>229</sup> Evidence, Mr Donnelly, 13 February 2020, pp 24-25.

<sup>230</sup> Submission 66, NSW Farmers' Association, p 10; Submission 75, Dogs NSW, pp 3 and 7.

- 3.50** Animals Australia expressed the view that it was 'totally unacceptable and inadequate' for two non-government organisations to be tasked with achieving the objects of the Act, 'primarily using charitable donations to fund the work'.<sup>231</sup>
- 3.51** In turn, Animals Australia argued that the ability of the two charities to 'fund sufficient numbers of animal cruelty inspectors and the resultant necessary prosecution should not be reliant on charitable donations from the public'.<sup>232</sup> As a result, Animals Australia called on the government to 'reconsider its obligation to improve animal welfare in the state and provide significantly more funding to that end'.<sup>233</sup>
- 3.52** Likewise, the Animal Defenders Office contended it was 'in the public interest' for RSPCA NSW and AWL NSW to be 'sufficiently funded by government to conduct inspection, investigation and enforcement activities ... to the degree required to prevent cruelty to animals in NSW'.<sup>234</sup>
- 3.53** Ms Nichola Donovan, President, Lawyers for Animals claimed that '[t]he chronic underfunding of RSPCA has certainly contributed to it not being able to undertake sufficient enforcement'. As a result, Ms Donovan called for the government to fully fund the enforcement of the Act, but remained sceptical as to whether greater funding to the two charities would ensure they could appropriately enforce the law.<sup>235</sup>
- 3.54** Reflective of community expectations put forward to this committee was Carrigan English's submission in which she remarked that given the annual operating costs of RSPCA NSW to carry out the objectives of the Act, it was 'not only irresponsible but impractical to place this financial burden on an organisation that carries out over 90% of animal cruelty cases for NSW'. She argued that the 'legislation should be revised to encompass more government financial assistance to ensure effective results'.<sup>236</sup>
- 3.55** There was also some discussion by inquiry participants that public education programs about animal welfare requirements should be funded by the government, with the Coalition for the Protection of Greyhounds, Australian Equine Unification Scheme, Animal Care Australia Inc, Pet Industry Association of Australia, and the Cat Protection Society of NSW all voicing support for this proposal.<sup>237</sup>

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<sup>231</sup> Submission 84, Animals Australia, p 3.

<sup>232</sup> Submission 84, Animals Australia, p 4.

<sup>233</sup> Submission 84, Animals Australia, p 4.

<sup>234</sup> Submission 135, Animal Defenders Office, pp 5-6.

<sup>235</sup> Evidence, Ms Nichola Donovan, President, Lawyers for Animals, 12 February 2020, p 19.

<sup>236</sup> Submission 2, Carrigan English, pp 1-2.

<sup>237</sup> Evidence, Mr Dennis Anderson, National President, Coalition for the Protection of Greyhounds, 13 February 2020, p 43; Evidence, Ms Debbie Barber, Manager/Founder, Australian Equine Unification Scheme, 13 February 2020, p 43; Evidence, Mr Donnelly, 13 February 2020, p 32; Evidence, Mr Sam Davis, Vice President, Animal Care Australia Inc, 13 February 2020, p 32; Evidence, Mr Barry Codling, President, Pet Industry Association of Australia, 13 February 2020, p 33; Evidence, Ms Vesk, 13 February 2020, p 33.

### Approved charitable organisations' views on increased government funding

- 3.56** AWL NSW proposed that both charities 'should be given further appropriate funding from government to allow for more Inspectors'.<sup>238</sup> Mr Mark Slater, Chief Executive Officer, Animal Welfare League, considered the ideal level of funding from the government to AWL NSW over the next five years would be 50 per cent of inspector costs.<sup>239</sup>
- 3.57** In lieu of further government funding, Mr Slater explained that the organisation was 'rejjigging' its finances to become income generative in the next four years. This would mean it could 'negate the need ... to rely on funding from the Government as far as the Inspectorate is concerned'. He clarified that he was not saying that the organisation would not like more money but that they were able to expand on their own terms.<sup>240</sup>
- 3.58** RSPCA NSW, in its submission, claimed that 'given the existing levels of government funding and with the generous support of volunteers and donors, the objects of the Act are achieved in significant measure'.<sup>241</sup>
- 3.59** However, RSPCA NSW indicated that demands on the organisation were growing every year due to increasing community expectations regarding 'the enforcement of animal cruelty laws and the improvement of animal welfare more broadly'. As such, RSPCA NSW observed that more could be done with greater government funding, such as:
- maintain[ing] the additional five Inspectors whose positions are funded temporarily via the DPI Drought Fund ...
  - increas[ing] proactive inspections and the enforcement of large-scale, companion animal breeding operations to increase compliance, improve breeding standards and result in healthier companion animals being bred and sold in NSW, including through the eradication of poor and cruel breeding practices
  - increas[ing] proactive auditing and inspection for compliance across all s 24G animal trade establishments, including assessing compliance with DPI Standards and Guidelines in a variety of areas; and
  - enhanc[ing] the ability of RSPCA NSW Community teams to work proactively with socially disadvantaged and isolated communities to support owners before Inspectorate intervention is required and thus prevent animal cruelty before it occurs.<sup>242</sup>
- 3.60** In his evidence, Mr Steve Coleman, Chief Executive Officer, RSPCA NSW spoke of the two arguments surrounding the call for greater government funding to the organisation:
- ... given the strength of our organisation, and the support that without complacency we continue to receive from the public, one could argue that because there is such significant support there is no need to go to government for additional. That is one argument. The second is that subject to the capacity, the skill-sets and the abilities of

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<sup>238</sup> Submission 56, Animal Welfare League NSW, p 2.

<sup>239</sup> Evidence, Mr Slater, 12 February 2020, p 37.

<sup>240</sup> Evidence, Mr Slater, 12 February 2020, p 37.

<sup>241</sup> Submission 136, RSPCA NSW, p 20.

<sup>242</sup> Submission 136, RSPCA NSW, p 20.

the different RSPCAs around the country, I know that there are some that have struggled to raise the funds to do what they need to do.<sup>243</sup>

**3.61** When questioned about the RSPCA NSW's views on increased government funding, Mr Stephen Rushton, Director, RSPCA NSW Board of Directors, expressed reservations about the ongoing level of independence of the RSPCA if it were to receive greater funding from the government:

... To have us funded by government rather than by an independent model that can be scrutinised by everyone fundamentally undermines our independence. That can be the case with any independent body that you choose to establish that is funded by government ...<sup>244</sup>

## Committee comment

**3.62** The committee acknowledges that RSPCA NSW and AWL NSW rely heavily on charitable donations for the operation of their core functions – in particular, compliance and enforcement. The committee was unable to identify any other area of criminal law where enforcement relied on charitable organisations. Based on the evidence received regarding the large running costs and workloads of RSPCA NSW and AWL NSW inspectorates, the committee finds it unacceptable that the annual government grants barely cover these expenses.

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### Finding 2

The reliance of approved charitable organisations on donations for the majority of their total funding has the potential to compromise their independence and/or lead to actual or perceived conflicts of interest.

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**3.63** We note that RSPCA NSW is one of the lowest funded RSPCA groups in Australia, particularly in the context of the funding awarded to other RSPCA groups in comparable jurisdictions such as Victoria and South Australia which receive \$1 million and \$1.1 million of government funding respectively.

**3.64** In addition, the committee recognises that there has been no indexing of the government's grants to RSPCA NSW and AWL NSW for many years, implying the government has a 'set and forget' approach to the compliance and enforcement of animal cruelty legislation by the two charities.

**3.65** From the evidence received, the committee agrees that both RSPCA NSW and AWL NSW are not adequately funded or resourced to perform their various roles and responsibilities.

**3.66** The committee notes concerns of inquiry participants that kill rates of animals in the care of the approved charitable organisations may be excessive but recognise that further care and adoptions may be difficult as a result of limited funding, resources and capacity of RSPCA NSW and AWL NSW.

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<sup>243</sup> Evidence, Mr Coleman, 13 February 2020, p 64.

<sup>244</sup> Evidence, Mr Rushton, 13 February 2020, p 70.

- 3.67** The committee respects the work of RSPCA NSW and AWL NSW in trying to rehome as many animals as possible and understands this to be no small feat. We also acknowledge that AWL NSW is trying to move to a policy of zero euthanasia and are encouraged by this commitment.
- 3.68** The committee is of the view that if the government provided more funding to RSPCA NSW and AWL NSW this would enable inspectors to be proactive rather than reactive in relation to animal cruelty. We conclude that the government should significantly increase funding to more adequately resource and staff the RSPCA NSW and AWL NSW inspectorates to enable them to effectively perform this role and conduct regular inspections without reliance on charitable donations.
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**Recommendation 5**

That the NSW Government significantly increase funding to more adequately resource and staff the RSPCA NSW and AWL NSW inspectorates to enable them to effectively perform their compliance and enforcement role and conduct regular inspections without reliance on charitable donations commencing with the 2021/2022 financial year.

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- 3.69** The committee is perplexed by the evidence that no funding formula or model exists for determining the annual government grants to the two charities. Therefore, we recommend that the NSW Government develop a quantitative funding model that is indexed in line with CPI commencing with the 2021/2022 financial year.
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**Recommendation 6**

That the NSW Government develop a quantitative funding model that is indexed in line with CPI commencing with the 2021/2022 financial year.

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- 3.70** The committee notes the differing views among some inquiry participants regarding the ability of RSPCA NSW and AWL NSW to deliver community education about animal welfare, given the limited funding and resources. As a result, the committee recommends that funding for the establishment and delivery of an education program on the most effective methods of improving animal welfare outcomes be investigated and provided.
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**Recommendation 7**

That the NSW Government investigate and provide funding for the establishment and delivery of an education program on the most effective methods of improving animal welfare outcomes.

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## Chapter 4      **Need for reform and alternative models for animal welfare**

This chapter examines inquiry participants' calls to reform animal welfare laws and the attendant compliance and enforcement framework. In support of the need for reform, stakeholders argued that the *Prevention of Cruelty to Animals Act 1979* (POCTA) is outdated and there is inadequate public scrutiny of the approved charitable organisations. The chapter concludes by discussing how reform could be achieved through alternative compliance and enforcement models, in particular the formation of a specialist Police unit and an independent statutory office of animal protection.

### **Need for reform**

- 4.1**      Some inquiry participants voiced concerns about the adequacy of current animal welfare laws, indicating the legislation is outdated and does not meet modern community expectations,<sup>245</sup> and that there is insufficient accountability and transparency of the approved charitable organisations in performing their compliance and enforcement roles.<sup>246</sup>

#### **Outdated legislation**

- 4.2**      Throughout the inquiry, participants referred to the legislation as outdated and called for it to be reviewed and modernised to better meet community expectations about animal welfare and to enable the legislation to fulfil its role in a scientifically advanced society.
- 4.3**      As mentioned in chapter one, animal welfare in New South Wales is governed under four pieces of legislation and enforced by five authorised bodies.<sup>247</sup> Under the legislation, there are various regulations and codes, which can be part of either national standards and guidelines or State-based codes. There are also consultative groups, committees and bodies providing advice on specific activities within these codes and regulations.<sup>248</sup>

<sup>245</sup> See Evidence, Ms Glenys Oogjes, Chief Executive Officer, Animals Australia, 12 February 2020, p 24; Evidence, Mr Mark Slater, Chief Executive Officer, Animal Welfare League NSW, 12 February 2020, p 38; See Submission 2, Carrigan English; Submission 25, Mr Steve Amesbury; Submission 47, Name suppressed; Submission 58, Ms Maria Soria; Submission 60, Name suppressed; Submission 65, Myriam Hribar and Simone Lieschke; Submission 66, NSW Farmers' Association; Submission 76, Canary and Cage Bird Federation of Australia Inc.; Submission 82, Animal Justice Party; Submission 91, Susie Hearder, Submission 93, Lisa J Ryan; Submission 130, Name suppressed; Submission 141, NSW Young Lawyers Animal Law Committee.

<sup>246</sup> Evidence, Ms Oogjes, 12 February 2020, p 24; Submission 15, PETA Australia, Submission 46, Mr Grant Holman, Submission 51, Miss Bao Nguyen; Submission 52, Ms Celina Lui; Submission 69, Ms Coralee Blanchard; Submission 75, Dogs NSW; Submission 78, Animal Care Australia Inc; Submission 82, Animal Justice Party; Submission 92, Name suppressed; Submission 123, Name suppressed; Submission 135, Animal Defenders Office; Submission 137, Name suppressed; Submission 141, NSW Young Lawyers Animal Law Committee.

<sup>247</sup> Evidence, Mr Scott Hansen, Director General, NSW Department of Primary Industries, 12 February 2020, p 2.

<sup>248</sup> Evidence, Mr Hansen, 12 February 2020, p 11.

- 4.4** In giving evidence, Mr Michael Donnelly, President, Animal Care Australia stated that the Act was 'outdated and extremely challenging to comprehend, both for the public and for those organisations and institutions tasked with compliance'.<sup>249</sup>
- 4.5** Similar sentiments were voiced by Mr Steve Coleman, Chief Executive Officer, RSPCA NSW, who described current animal welfare laws as 'like trying to drive a 2020 model vehicle with a 1979 engine'.<sup>250</sup>
- 4.6** Animals Australia also regarded the legislation as outdated, but on the basis that the laws do not recognise the sentience of animals and treat all animals equally:
- ...the Act...does not treat all sentient animals equally before the law; i.e. entire classes of animals remain essentially unprotected from harm and cruelty...Farmed animals comprise the majority of animals in human care in NSW, and yet compliance with voluntary agricultural codes of practice provides an exemption from the cruelty provisions of the Act (Section 34A)...
- This exemption for farmed animals provides and allows for practices that fall way below expected community standards. For example, due to the 'code exemption' it is legal to keep a laying hen permanently in a battery cage for the purposes of egg production, and to clip the tail and teeth of a piglet, mules a lamb and castrate cattle and sheep without any pain relief. The same invasive (surgical) acts carried out on animals that are classified as "domestic pets" would constitute an offence under the Act.<sup>251</sup>
- 4.7** Mr Scott Hansen, Director General, NSW Department of Primary Industries, told the committee that the 40 year old Act was 'ripe to be reviewed'.<sup>252</sup> Mr Hansen elaborated:
- That Act is over 40 years old now, and there has been quite a bit of discussion amongst industry, amongst community and with our compliance agencies around what steps we would take to modernise the Act, what we would look to do to bring the Act forward to continue to better reflect both the community's expectations around animal welfare as well as reflect modern knowledge and practices and technologies.<sup>253</sup>
- 4.8** The NSW Government advised that in May 2018 it had released the 'Animal Welfare Action Plan' to modernise the animal welfare legislative framework. The aim is to ensure that people responsible for animals provide for their welfare, and that animal protections in the state are in line with the best available science and meet community expectations.<sup>254</sup>
- 4.9** Mr Hansen advised that the Department had been 'working behind the scenes to prepare and get ready for what will be a quite substantive piece of reform ... dealing with everything from the compliance arrangements all the way through to the legislative framework that underpins animal welfare'.<sup>255</sup>

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<sup>249</sup> Evidence, Mr Michael Donnelly, President, Animal Care Australia, 13 February 2020, p 24.

<sup>250</sup> Evidence, Mr Steve Coleman, Chief Executive Officer, RSPCA, 13 February 2020, p 64.

<sup>251</sup> Submission 84, Animals Australia, p 2.

<sup>252</sup> Evidence, Mr Hansen, 12 February 2020, p 3.

<sup>253</sup> Evidence, Mr Hansen, 12 February 2020, p 3.

<sup>254</sup> Submission 74, NSW Government, p 3.

<sup>255</sup> Evidence, Mr Hansen, 12 February 2020, p 3.

- 4.10** Further, Mr Hansen assured the committee that the Government was committed to introducing the new legislation in 2021 as outlined in the NSW Animal Welfare Action Plan.<sup>256</sup> However, given the impacts of recent natural disasters, Mr Hansen indicated the review of the legislation may be delayed until communities are ready to engage and provide meaningful input on animal welfare-related issues.<sup>257</sup>
- 4.11** In order to harmonise existing animal welfare legislation, the Department of Primary Industries advised that it is making the reform more 'broad-ranging, similar to the reforms that were done with the Biosecurity Act ... which looked to modernise that piece of legislation and bring together many other Acts that provided a bit of a piecemeal approach on biosecurity'.<sup>258</sup> As Mr Hansen explained:
- A key piece of this reform is how we make this a more modern piece of legislation so that it is simpler for everyone to understand what needs to be delivered, how it needs to be delivered and what the expectations of both community and the Government are, in terms of legislative framework.<sup>259</sup>
- 4.12** The need for a more holistic approach to the reform is also recognised by the agricultural sector. Ms Annabel Johnson, Head of Strategy and Advocacy, NSW Farmers Association, stated that:
- I think everyone supports a review of POCTA...[which] is a very prescriptive framework that makes it difficult to make changes. I see the reform process as quite similar to what was achieved with the new Biosecurity Act. With the development of the new Biosecurity Act, we now have a modern framework, and more of the requirements are in regulations, making it easier to change and be proactive. I think that will be one of the keys that will come out of the reform process.<sup>260</sup>
- 4.13** Some inquiry participants identified specific provisions that require updating to enable adequate detection, prosecution and deterrence of cruelty against animals. For example, Detective Inspector Mr Cameron Whiteside, State Crime Rural Coordinator, NSW Police Force, referred to Section 31 of the Act relating to further court orders of a convicted person to be excluded from possessing or owning animals. He argued that the current penalty for breaching this order, a fineable offence of \$3,000, was not a significant deterrent and proposed this should be reviewed. Detective Inspector Whiteside also believed that there should be a system allowing enforcement officers to check on those subject to orders to deter repeat offenders.<sup>261</sup>
- 4.14** Detective Inspector Whiteside also suggested provisions similar to that in the *Law Enforcement (Powers and Responsibilities) Act 2002* to exclude people from a property subject to inspection be inserted into the animal welfare legislative framework. He put to the committee that these provisions would enable enforcement officers to carry out their duties safely, preserve the crime

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<sup>256</sup> Evidence, Mr Hansen, 12 February 2020, p 4.

<sup>257</sup> Evidence, Mr Hansen, 12 February 2020, p 3.

<sup>258</sup> Evidence, Mr Hansen, 12 February 2020, p 3.

<sup>259</sup> Evidence, Mr Hansen, 12 February 2020, p 11.

<sup>260</sup> Evidence, Ms Annabel Johnson, Head of Strategy and Advocacy, NSW Farmers Association, 13 February 2020, p 15.

<sup>261</sup> Evidence, Detective Inspector Mr Cameron Whiteside, State Crime Rural Coordinator, NSW Police, 12 February 2020, pp 13 and 16.



scene, and ensure the situation did not escalate further, particularly in situations where there may be firearms present on a property.<sup>262</sup>

- 4.15** Some inquiry participants also raised statutory limitations for proceedings of an offence under the Act. At present, proceedings must commence within twelve months after the alleged offence was committed. As noted by some inquiry participants, 12 months is too short a timeframe to gather the necessary evidence.<sup>263</sup> For example, Ms Tara Ward, Executive Director and volunteer lawyer, Animal Defenders Office, told the committee that 'you would want at least three years'<sup>264</sup> for the proceedings of an animal cruelty prosecution case to be properly examined.
- 4.16** In response, RSPCA NSW indicated that 'a 12-month limitation period in respect of cruelty offences is unnecessary and undesirable'. It stressed that 'crimes against animals have to be discovered before they can be prosecuted ... [which] can occur at a considerable time after the offence has been committed'.<sup>265</sup> For that reason, RSPCA NSW recommended that:

POCTA be amended to reflect the approach taken to limitation periods in the *Protection of the Environment Act 1997* and the *Biodiversity Conservation Act 2016*... In those Acts ... provision is made for an alternative limitation period of the same fixed period (e.g. 2 years) after the date on which evidence of the alleged offence first came to the attention of an authorised officer.<sup>266</sup>

### **Accountability and transparency of ACOs**

- 4.17** Another key contention raised during the inquiry is that the approved charitable organisations are not subject to adequate public scrutiny.
- 4.18** Mr Farnham Seyedi, Volunteer Lawyer, Animal Defenders Office, indicated it was uncommon for charities to be tasked with law enforcement, and argued that there is no adequate accountability mechanism in this current arrangement:

To our knowledge the exercise of criminal law enforcement powers by private charities is unique to animal protection in New South Wales and other similar jurisdictions in Australia and overseas, the result being that these private entities exercise significant powers without mechanism for systemic accountability...there is no fundamental accountability to the community.<sup>267</sup>

- 4.19** Mr James McDonald, Chair of Animal Welfare Committee, NSW Farmers Association, told the committee that 'an enforcement agency must have a high degree of accountability and transparency in order to build and retain community trust'.<sup>268</sup>

<sup>262</sup> Evidence, Detective Inspector Whiteside, 12 February 2020, p 14.

<sup>263</sup> Evidence, Ms Myriam Hribar, private citizen, 13 February 2020, pp 8-9; Evidence, Ms Tara Ward, Executive Director and volunteer lawyer, Animal Defenders Office, 13 February 2020, p 51; Evidence, Mr Coleman, 13 February 2020, p 66.

<sup>264</sup> Evidence, Ms Ward, 13 February 2020, p 53.

<sup>265</sup> Answers to questions on notice, RSPCA NSW, 12 March 2020, pp 6 - 7.

<sup>266</sup> Answers to questions on notice, RSPCA NSW, 12 March 2020, p 7.

<sup>267</sup> Evidence, Mr Farnham Seyedi, Volunteer Lawyer, Animal Defenders Office, 13 February 2020, p 46.

<sup>268</sup> Evidence, Mr James McDonald, Chair of Animal Welfare Committee, NSW Farmers Association, 13 February 2020, p 12.

- 4.20** Mr Steve Coleman, Chief Executive Officer, RSPCA NSW, considered that his organisation fulfilled its accountability obligations by submitting an annual report to the Department of Primary Industries. Currently, these reports are not published by the Department, although Mr Coleman stated that RSPCA NSW 'would have no problems with ... [the reports] being publicly available'.<sup>269</sup>
- 4.21** Mr Coleman also affirmed RSPCA NSW's position on responding to requests under the *Government Information (Public Access) (GIPA) Act 2009*<sup>270</sup> stating that its inspectors 'hold an office for "a public purpose by or under the provisions of a legislative instrument"',<sup>271</sup> and therefore are subject to GIPA requirements. However, Mr Coleman conceded that they had not received many GIPA requests.<sup>272</sup>
- 4.22** When asked whether that was due to a lack of public awareness of the right to request information from an approved charitable organisation, Mr Stephen Rushton, Director, RSPCA NSW Board of Directors, suggested making a legislative amendment to clarify and formalise the arrangements.<sup>273</sup>
- 4.23** On the issue of whether ACOs are subject to the *Government Information (Public Access) Act 2009*, the NSW Government submission stated that approved charitable organisations are not NSW Government agencies, and therefore not subject to GIPA requirements.<sup>274</sup> In his evidence to the committee, Mr Scott Hansen, Director General, NSW Department of Primary Industries, added that the Department relies on the charities 'goodwill' in responding to the GIPA requests.<sup>275</sup>
- 4.24** Mr Hansen further commented that transparency and reporting requirements of the approved charitable organisations are 'an area open for looking at'.<sup>276</sup> Mr Hansen said:
- At the moment it [the Act] requires them [Approved Charitable Organisations] to make reports at the end of years. Is the right information being reported at the end of the financial year in terms of provision to Parliament and the tabling of reports there? Are we getting the right information? Is it coming in a timely fashion? All of that is well and truly open for consideration under the reform process.<sup>277</sup>
- 4.25** Inquiry participants also questioned why the two approved charitable organisations were exempt from administrative review under the *Administrative Decisions Review Act 1997*. For example, both Animal Care Australia and Animals Australia disagreed with the exemptions, arguing that given they are '...predominantly public-funded organisations ... [they] should be accountable and transparent to the public'<sup>278</sup> and that any inspectorate '...tasked with enforcing the Act should

<sup>269</sup> Evidence, Mr Coleman, 13 February 2020, p 63.

<sup>270</sup> Evidence, Mr Coleman, 13 February 2020, p 65.

<sup>271</sup> Submission 136, RSPCA NSW, p 43.

<sup>272</sup> Evidence, Mr Coleman, 13 February 2020, p 65.

<sup>273</sup> Evidence, Mr Stephen Rushton, Director, RSPCA NSW Board of Directors, 13 February 2020, p 65.

<sup>274</sup> Submission 74, NSW Government, p 7.

<sup>275</sup> Evidence, Mr Hansen, 12 February 2020, p 15.

<sup>276</sup> Evidence, Mr Hansen, 12 February 2020, p 15.

<sup>277</sup> Evidence, Mr Hansen, 12 February 2020, p 16.

<sup>278</sup> Submission 78, Animal Care Australia, p 4.

be subject to the *Government Information (Public Access) Act 2009* and *Administrative Decisions Review Act 1997*.<sup>279</sup>

**4.26** Similar sentiments were shared by PETA Australia who argued that given:

...the importance of the administration, evaluation, and conduct of criminal justice being carried out in a publically accessible and accountable manner ... RSPCA NSW as an entity tasked with investigation and enforcement powers should be subject to the Act to the extent appropriate in the context of law enforcement.<sup>280</sup>

**4.27** In response, RSPCA NSW claimed it is 'not "exempt" from administrative review pursuant to the *Administrative Decisions Review Act 1997* (NSW) (ADRA). Rather, the legislation that RSPCA NSW enforces is not included within the jurisdiction of the NSW Civil and Administrative Tribunal under ADRA'.<sup>281</sup>

**4.28** Mr Mark Slater, Chief Executive Officer, Animal Welfare League NSW believed that the current animal welfare arrangements are not meeting community expectations and that the enforcement agencies need to be held 'to a higher account'.<sup>282</sup> For example, he outlined the current, complaints handling process at the organisation:

...if a member of the public rings me personally and says, "I want to complain about one of your inspectors for this, this and this reason", the process is "No problems. I will take care of it", and my office as the chief executive officer will look into that, there is no further recourse for that member of the public.<sup>283</sup>

**4.29** When asked whether they would support a scrutiny process where the approved charitable organisations are required to partake in an annual parliamentary inquiry once or twice a year, Mr Slater said that Animal Welfare League NSW would 'embrace [it]',<sup>284</sup> while Mr Coleman had no objection to that process.<sup>285</sup>

**4.30** Other inquiry participants including Animal Care Australia, Pet Industry Association of Australia, Pet Industry Association of Australia, and Cat Protection Society of NSW indicated their support for parliamentary scrutiny.<sup>286</sup>

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<sup>279</sup> Submission 84, Animals Australia, p 4.

<sup>280</sup> Submission 15, PETA Australia, p 7.

<sup>281</sup> Submission 136, RSPCA NSW, p 43.

<sup>282</sup> Evidence, Mr Slater, 12 February 2020, p 38.

<sup>283</sup> Evidence, Mr Slater, 12 February 2020, p 33.

<sup>284</sup> Evidence, Mr Slater, 12 February 2020, p 38.

<sup>285</sup> Evidence, Mr Coleman, 13 February 2020, p 65.

<sup>286</sup> Evidence, Mr Donnelly, 13 February 2020, p 29; Evidence, Mr Barry Codling, President, Pet Industry Association of Australia, 13 February 2020, p 29; Mr John Parkinson, Membership Manager, Pet Industry Association of Australia, 13 February 2020, p 29; Ms Kristina Vesk, CEO, Cat Protection Society of NSW, 13 February 2020, p 29.

## Alternative models for animal welfare

- 4.31** During the inquiry, divergent views were expressed by inquiry participants regarding the way forward for animal welfare compliance and enforcement. Some supported the establishment of a specialist unit within the NSW Police Force and/or a separate statutory agency to oversee the enforcement of animal protection laws, while others supported the approved charitable organisations retaining their position.

### A specialist police unit to investigate and enforce animal protection laws

- 4.32** Some inquiry participants supported the establishment of a specialist police unit to investigate and enforce animal protection laws,<sup>287</sup> although not all could confirm if this specialist police unit should be the sole body for investigation and prosecution of animal cruelty offences or supplement the current system of enforcement.

- 4.33** Under the current arrangements, the NSW Young Lawyers Animal Law Committee saw merit in introducing a specialist police unit. They claimed that specialised police could better resolve 'systemic, industry-wide' cruelty acts against animals, protect non-police investigators from dangerous situations and legitimise the enforcement of the law:

A dedicated unit – that may develop that needed expertise by its specialisation – may prioritise urgent action addressing systemic, industry-wide acts of cruelty (such as the highly publicised poor animal welfare practices and outcomes in parts of the greyhound and horse racing industries) without competing with crimes against people.

Aside from the resourcing and capacity issues, there exists a duty to protect the welfare of investigators in potentially dangerous situations, in which the investigation of animal cruelty may require seizure of at-risk animals or entry to personal premises. In the event NSW Government introduces a dedicated office to enforce the Act, then adequate training, resourcing and oversight would need be allocated.

The Committee suggested that enforcement be provided at a level consistent with a criminal investigation and in line with police protocols, legitimising the efforts to preserve animal welfare...<sup>288</sup>

- 4.34** For Animals Australia, a specialist police unit would supplement, rather than replace, the approved charitable organisations in the investigation and prosecution of animal cruelty offences.<sup>289</sup> It observed that:

The NSW Police Force already has an enforcement role under the Act. We suggest a specialist police task force, working alongside the charitable organisations and an Independent Office for Animal Welfare (IOAW), would assist in achieving the objects of the Act.<sup>290</sup>

<sup>287</sup> See Submission 26, Name suppressed; Submission 51, Miss Bao Nguyen; Submission 84, Animals Australia; Submission 91, Susie Header; Submission 93, Lisa J Ryan.

<sup>288</sup> Submission 141, NSW Young Lawyers Animal Law Committee, p 14.

<sup>289</sup> Submission 84, Animals Australia, p 6.

<sup>290</sup> Submission 84, Animals Australia, p 6.

- 4.35** During the inquiry, the committee was told that in New York, there is a strategic partnership agreement between the New York Police Department (NYPD) and the American Society for Prevention of Cruelty to Animals (ASPCA).<sup>291</sup> Under this strategic partnership, the NYPD has a specialist police unit called the Animal Cruelty Investigation Squad (ACIS) which is the sole body who can investigate and prosecute animal cruelty crimes.<sup>292</sup> The ACIS can also seek expert advice and practical assistance from the ASPCA.<sup>293</sup> The ASPCA, on the other hand, concentrates its efforts on providing animal care, shelter and other supportive roles to NYPD.<sup>294</sup>
- 4.36** Others did not support the establishment of a specialist police unit on the basis that it would be a step backwards and shift responsibility to an agency that did not have the relevant knowledge or experience. For example:
- 'insourcing an operation which has been successfully "outsourced" for 150 years would be a retrograde step'<sup>295</sup>
  - it would 'add a third layer to an already very complex system. The Police neither want, nor have, the time, expertise or funding to cover this very large area'.<sup>296</sup>
- 4.37** Likewise, former Assistant Commissioner of Police for New South Wales, Mr Stephen Bradshaw, argued that a police specialist unit would not have specific veterinarian knowledge and experience to deal with animal cruelty related crimes and it 'would take years to provide the same level of expertise'.<sup>297</sup>
- 4.38** As for the approved charitable organisations, they conceded that it would be undesirable if their inspectorate powers were taken away from them.
- 4.39** Mr Mark Slater, Chief Executive Officer, Animal Welfare League NSW, believed that the move would reduce the League's capacity as an animal welfare organisation.<sup>298</sup> Mr Slater told the committee:

It would take away from a lot of our fundraising opportunities, it would take away from our communications processes, and then obviously give us access to veterinary science, working with the Department of Primary Industries... Veterinary services and inspector services are catalytic to what we do, essentially ... but without inspectorate or without veterinary care we cannot be a well-rounded welfare organisation.<sup>299</sup>

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<sup>291</sup> Submission 60, Name suppressed, p 3; Submission 82, Animal Justice Party, p 23; Submission 131, Ms Mary Ann Gourlay, p 2; Submission 135, Animal Defenders Office, p 15; Evidence, Ms Nichola Donovan, President, Lawyers for Animals, 12 February 2020, pp 18-19.

<sup>292</sup> Submission 51, Miss Bao Nguyen, p 2; Submission 82, Animal Justice Party, p 23.

<sup>293</sup> Submission 51, Miss Bao Nguyen, p 3; American Society for Prevention of Cruelty to Animals, NYPD Partnership: ASPCA and NYPD: Partners Against Crime, accessed 11 May 2020, available via <https://www.asPCA.org/animal-protection/nypd-partnership>

<sup>294</sup> Submission 51, Miss Bao Nguyen, p 2.

<sup>295</sup> Submission 25, Mr Steve Amesbury, p 5.

<sup>296</sup> Submission 75, Dogs NSW, p 7.

<sup>297</sup> Submission 12, Mr Stephen Bradshaw, p 2.

<sup>298</sup> Evidence, Mr Slater, 12 February 2020, p 34.

<sup>299</sup> Evidence, Mr Slater, 12 February 2020, p 34.

**4.40** Similarly, Mr Steve Coleman, Chief Executive Officer, RSPCA NSW, expressed concern about the proposal to remove the inspectorate roles from the organisation:

The RSPCA is known for its enforcement. I strongly believe that the vast support that our organisation is lucky enough to secure is through the unique opportunity to enforce the law ... enforce POCTAA and to deal with matters appropriately. I would have grave concerns for the future of RSPCA NSW in the absence of an inspectorate function.<sup>300</sup>

### **An independent statutory office of animal protection**

**4.41** A large number of submissions responded positively to the call for the establishment of an independent office to oversee animal welfare in New South Wales.<sup>301</sup> The main arguments for an independent office centred around the contention that the approved charitable organisations have limited ability to enforce the law, due to the concerns outlined in the previous chapter that they are under-resourced with potential conflicts of interests, and that there is a lack of scrutiny. Some comments from inquiry participants are summarised below.

**4.42** Coalition for the Protection of Greyhounds advocated for a fully public funded independent body responsible for all animals' welfare.<sup>302</sup> Its National President, Mr Dennis Anderson, contended that 'vastly under-resourced' charitable organisations could not achieve the objectives of animal welfare.<sup>303</sup>

**4.43** Mrs Catherine Smith, Founder and Chief Executive Officer of NSW Hen Rescue, claimed that an independent body would not have 'vested interests' as the current approved charitable organisations allegedly have as it would be held to account.<sup>304</sup>

**4.44** Animal Liberation ACT were of the view that an independent animal welfare office should be created to allow for greater and wider representation via membership arguing that '[i]f the

<sup>300</sup> Evidence, Mr Coleman, 13 February 2020, p 58.

<sup>301</sup> See Submission 32, Mr Karl Augustine, p 1; Submission 33, Ms Eliza Smith, p 1; Submission 39, Coalition for the Protection of Greyhounds, p 13; Submission 40, Name suppressed, p 1; Submission 47, Name suppressed, p 1; Submission 58, Ms Maria Soria, p 1; Submission 60, Name suppressed, pp 2-5; Submission 61, Name suppressed, p 1; Submission 63, Ms Louise Johnson, p 1; Submission 64, Mr Bryan Mcgrath, p 1; Submission 65, Myriam Hribar and Simone Lieschke, p 4; Submission 70, Hunter Animal Watch, p 1; Submission 79, NSW Hen Rescue, p 12; Submission 80, Animal Liberation ACT, p 4; Submission 82, Animal Justice Party, pp 20-22; Submission 84, Animals Australia, pp 5-6; Submission 91, Susie Hearder, p 8; Submission 92, Name suppressed, p 6; Submission 94, Name suppressed, p 4; Submission 108, Name suppressed, p 1; Submission 112, Ms Francisa Miller, p 1; Submission 118, Mr Patrick Murphy, p 1; Submission 120, Ms Kathryn Woolfe, p 4; Submission 124, Ms Karen Davies, p 3; Submission 127, Name suppressed, p 1; Submission 128, Name suppressed, p 1; Submission 129, Name suppressed, p 3; Submission 130, Name suppressed, p 2.

<sup>302</sup> Submission 39, Coalition for the Protection of Greyhounds, p 13.

<sup>303</sup> Evidence, Mr Dennis Anderson, National President, Coalition for the Protection of Greyhounds, 13 February 2020, p 37.

<sup>304</sup> Evidence, Ms Catherine Smith, Founder and Chief Executive Officer, NSW Hen Rescue, 12 February 2020, p 46.

membership is representative of all stake holders in the prevention of cruelty to animals, then all animals will be included within the protections'.<sup>305</sup>

**4.45** In addition to rendering their support for an independent office of animal welfare, a number of inquiry participants also outlined some possible roles and responsibilities for the independent body, should it be established. For example:

- develop 'a uniform set of standards and guidelines for animal welfare'<sup>306</sup>
- 'conduct research into animal sentience, make recommendations for animal protection law reform, review standards and guidelines and carry out investigation and prosecution'<sup>307</sup>
- 'investigate and enforce crimes against animals'<sup>308</sup>
- 'be responsible for the development of a uniform set of standards and guidelines for animal welfare and be empowered to investigate and prosecute breaches of standards, and to an extent, relieve ACOs from their enforcement duty'.<sup>309</sup>

**4.46** Animals Australia, saw the independent office of animal welfare as a separate statutory enforcement agency, tasked with 'monitor[ing] and investigat[ing] matters impacting on animal welfare'. The independent office would not replace the approved charitable organisations and their enforcement role but 'rather provide an expansion and greater level of enforcement, thereby strengthening the State's approach to protecting animals from cruelty'.<sup>310</sup>

**4.47** Animals Australia considered an independent office of animal protection as 'a one-stop shop ... to be able to not only improve the review of standards, but also enforce those standards'.<sup>311</sup> It envisaged that an independent office could:

- conduct inquiries and prepare reports and recommendations (in a similar manner to the 'Productivity Commission') to highlight and address current issues/deficiencies of animal protection laws and their enforcement
- provide expert advice to Government, including on international developments and social research in regard to community views
- facilitate the development and setting of enforceable animal welfare standards based on expert scientific input, practical knowledge and community expectations
- liaise with animal protection enforcement bodies and developing appropriate training, inspection, and enforcement policy support for relevant authorities' inspectorates
- collect, report and distribute animal welfare information (e.g. a annual report and a 5-yearly 'State of Animals' report to be tabled in Parliament and which require Government/Ministerial responses)

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<sup>305</sup> Submission 80, Animal Liberation ACT, p 4.

<sup>306</sup> Submission 129, Name suppressed, p 3.

<sup>307</sup> Submission 82, Animal Justice Party, p 2.

<sup>308</sup> Submission 58, Ms Maria Soria, p 1.

<sup>309</sup> Submission 129, Name suppressed, p 3.

<sup>310</sup> Submission 84, Animals Australia, pp 5-6.

<sup>311</sup> Evidence, Ms Oogjes, 12 February 2020, p 25.

- assess priorities and provide advice to funding bodies about the research needed to inform and underpin sound animal protection reform measures.<sup>312</sup>

**4.48** Those inquiry participants that supported the idea of an independent body suggested that it sit under the portfolios of either the Attorney General,<sup>313</sup> Police,<sup>314</sup> or Ombudsman's Office with the prosecutions conducted by the Director of Public Prosecutions.<sup>315</sup> There was a general consensus amongst inquiry participants that the independent body should not be related to the agriculture portfolios, such as through the Department of Primary Industries, due to their other closely related priorities and responsibilities.<sup>316</sup>

**4.49** Some inquiry participants opposed the creation of an independent body for animal welfare, with many noting it was hard to speak to the possible benefits and disadvantages of such a body given that there was little context as to its purpose and operation.<sup>317</sup> Mr Michael Donnelly, President, Animal Care Australia, did not see the necessity of an independent body and considered the proposal as a 'backward step'.<sup>318</sup> Based on his interpretation of what the proposed independent office would look like – 'a full new department set up and run to do exactly what the RSPCA and the AWL are already doing' – Mr Donnelly questioned 'why would you start that process again'.<sup>319</sup>

**4.50** NSW Farmers Association strongly opposed the establishment of an independent body, with Mr James McDonald, Chair, Animal Welfare Committee, NSW Farmers Association, stating:

We firmly believe that placing the role of administration in such a body will result in a decline in welfare outcomes. The body will not have the inherited knowledge, professional skills, capacity or relationships to successfully fulfil the vital role already ably carried out by the DPI...The New South Wales DPI has the technical knowledge of welfare with their large employment of veterinarians and also the relationships and extension skills needed to ensure positive welfare outcomes.<sup>320</sup>

**4.51** Similar sentiments were shared by Ms Margo Andrae, Chief Executive Officer, Australian Pork Limited, who opposed the proposition of an independent body but indicated support for the Department of Primary Industries to remain as the legislative oversight body due to their

<sup>312</sup> Submission 84, Animals Australia, p 5.

<sup>313</sup> Submission 84, Animals Australia, p 5; Evidence, Ms Justine Curatolo, President, Heritage Brumby Advocates Australia, 13 February 2020, p 43; Evidence, Ms Debbie Barber, Manager/Founder, Australian Equine Unification Scheme, 13 February 2020, p 36.

<sup>314</sup> Evidence, Ms Curatolo, 13 February 2020, p 44.

<sup>315</sup> Evidence, Mr Donnelly, 13 February 2020, p 24.

<sup>316</sup> Submission 82, Animal Justice Party, p 21; Submission 84, Animals Australia, p 5; Evidence, Ms Barber, 13 February 2020, p 36; Evidence, Ms Curatolo, 13 February 2020, p 35.

<sup>317</sup> Submission 41, Egg Farmers of Australia, p 2; Submission 66, NSW Farmers Association, p 13; Submission 75, Dogs NSW, p 7; Submission 78, Animal Care Australia, p 4; Submission 86, WoolProducers Australia, p 2; Submission 139, National Farmers Federation, p 2.

<sup>318</sup> Evidence, Mr Donnelly, 13 February 2020, p 24.

<sup>319</sup> Evidence, Mr Donnelly, 13 February 2020, p 27.

<sup>320</sup> Evidence, Mr McDonald, 13 February 2020, p 12.



technical skills, and the RSPCA NSW as the enforcer of the law given the community trust and the independence it had already gained.<sup>321</sup>

## Committee comment

- 4.52** There was a consensus among inquiry participants that the 41-year-old *Prevention of Cruelty to Animals Act* is outdated and in need of review. The committee supports an overhaul of the Act and the animal welfare framework that supports it to better meet growing community understanding of animal sentience and expectations about animal welfare, and to reflect modern knowledge and practices regarding the treatment of animals.
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### Recommendation 8

That the NSW Government ensure that the *Prevention of Cruelty to Animals Act 1979* and the animal welfare framework that supports it are overhauled to better meet growing community understanding of animal sentience and expectations about animal welfare, and to reflect modern knowledge and practices regarding the treatment of animals.

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- 4.53** The committee welcomes the government's review of the Act through the Animal Welfare Action Plan. We support an approach whereby the government consolidates and streamlines various pieces of related legislation to create a simpler legislative framework.
- 4.54** During the course of the inquiry, many stakeholders called for much greater levels of protection under the new Act, in line with evolving community expectations. We therefore recommend that the government, as part of its review of the Act, conduct extensive community consultation to ensure that it hears the range of voices advocating for the new framework to meet modern community expectations for animal wellbeing and protection.
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### Recommendation 9

That the NSW Government, as part of its review of the *Prevention of Cruelty to Animals Act 1979*, conduct extensive public consultation to ascertain community views about the new framework and ensure that the new legislation addresses modern community expectations about animal welfare.

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- 4.55** The committee notes the evidence regarding the need to amend particular provisions in the Act. At face value, these amendments seem sensible and we encourage the government to consider them as part of the review of the Act. The committee suggests that the government consider statutory limits as part of its review.

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<sup>321</sup> Evidence, Ms Margo Andrae, Chief Executive Officer, Australian Pork Limited, 13 February 2020, p 17.

**Recommendation 10**

That the NSW Government, as part of the review of the *Prevention of Cruelty to Animals Act 1979*, consider statutory time limits for the prosecution of animal cruelty related crimes.

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- 4.56** Turning to accountability and transparency, the committee considers there is inadequate scrutiny of the approved charitable organisations in terms of how they fulfil their compliance and enforcement roles. This is unacceptable given that they have been delegated a law enforcement role that in effect makes them the government's agents in relation to enforcing the provisions of the Act.
- 4.57** We acknowledge that RSPCA NSW and AWL NSW fulfil their obligations under the Act by submitting an annual report to the Department of Primary Industries. The RSPCA has also displayed its openness by complying with requests for information under the *Government Information (Public Access) Act*. Yet, the committee is dismayed by the lack of transparency surrounding the ACOs' performance as compliance and enforcement bodies as illustrated by their annual reports to the Department of Primary Industries not being made public. This non-disclosure does not appear to be due to reluctance on the part of the ACOs: when questioned on the issue, the RSPCA NSW did not raise any objection to their report being made public. To further scrutiny of their compliance and enforcement role, the committee recommends that the Act be amended to require the ACOs to table their annual reports in Parliament and to comply with information requests under GIPA.
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**Finding 3**

The committee finds that there is no reason why the Department of Primary Industries should not make public the annual reports of RSPCA NSW and AWL NSW upon receipt.

**Recommendation 11**

That the NSW Government amend the *Prevention of Cruelty to Animals Act 1979* to require the approved charitable organisations to:

- table their annual reports in both Houses of the NSW Parliament
  - comply with requests under the *Government Information (Public Access) Act 2009*.
- 

- 4.58** To further enhance transparency and accountability, and engender public confidence, the committee supports introducing parliamentary oversight of the ACOs as the key agencies responsible for compliance and enforcement under the Act. The committee therefore recommends that the Legislative Council Portfolio Committee responsible for Primary Industries (or other Portfolio Committee that has primary responsibility for animal welfare) be required to conduct a one day public hearing each year, after the RSPCA NSW and AWL NSW have lodged their annual reports to the Parliament. Further that, the approved charitable organisations be invited to attend budget estimates hearings of the relevant Portfolio Committee which has primary oversight of animal welfare.
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**Recommendation 12**

That the Legislative Council Portfolio Committee responsible for Primary Industries (or other Portfolio Committee that has primary responsibility for animal welfare) be required to conduct a one day public hearing each year involving the approved charitable organisations, with the hearing to be conducted after the lodgement of the approved charitable organisations' annual reports in NSW Parliament. One of the core requirements of the hearing will be to examine the approved charitable organisations' compliance and enforcement responsibilities under the *Prevention of Cruelty to Animals Act 1979*. Further, that approved charitable organisations be invited to attend the relevant Portfolio Committee in conjunction with representatives from the Department of Primary Industries.

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- 4.59** There are divergent views amongst the committee as to maintaining the approved charitable organisations or adopting a new model with a specialist unit and independent statutory body.
- 4.60** Evidence was taken that a specialist unit within police would complement work of the approved charitable organisations while equalising status and expertise of police officers, however countering evidence was also taken that this equalisation and sharing of expertise already takes place within NSW Rural Crime taskforce and the stock welfare panels.
- 4.61** A new, statutory agency – the Independent Office of Animal Welfare – to oversee the animal welfare framework, and in particular the compliance and enforcement functions of the ACOs, would go a long way to ensuring appropriate scrutiny of the ACOs and other relevant agencies. This new agency would address concerns about potential conflicts of interest within the ACOs, and indeed the Department of Primary Industries, and be a mechanism for far greater scrutiny and transparency of their operations. Noting the views put forward by stakeholders on the responsibilities of this new office, the committee recommends that further consultation take place on the functions to be performed by the Independent Office of Animal Welfare.
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**Recommendation 13**

That the NSW Government establish and fully fund a specialist unit within the NSW Police Force to investigate and prosecute animal cruelty offences.

**Recommendation 14**

That the NSW Government establish an independent statutory body, the Independent Office of Animal Protection, to oversight the animal welfare framework. Further, that the NSW Government consult stakeholders on the appropriate functions of the new body.

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## Appendix 1 Submissions

No.	Author
1	Name suppressed
2	Carrigan English
3	Ms Louise Webb
4	Ms Sarah Avery
5	Wildlife Carers Group
6	Mr Murray Sharp
7	Mrs Virginia Burns
8	Name suppressed
9	Ms Judith Essex-Clark
10	Mr Lawrence Murphy
11	Name suppressed
12	Mr Stephen Bradshaw
13	Name suppressed
14	Marissa Lalor
15	PETA Australia
16	Name suppressed
17	Ms Teresa Kiernan
18	Name suppressed
19	Name suppressed
20	Name suppressed
21	Mrs Bev Woodburn
22	Name suppressed
23	Ms Marina Grassecker
24	Mr Kevin Gibbs
25	Mr Steve Amesbury
26	Name suppressed
27	Name suppressed
28	Ms Elizabeth Gentle
29	Phillip Adams
30	Jan Kendall
31	Name suppressed

<b>No.</b>	<b>Author</b>
32	Mr Karl Augustine
33	Miss Eliza Smith
34	Ms Trish Haywood
35	Mr John Guthrie
36	Name suppressed
37	Name suppressed
38	Name suppressed
39	Coalition for the Protection of Greyhounds
40	Name suppressed
40a	Name suppressed
41	Egg Farmers of Australia
42	Name suppressed
43	Mrs Joei Fischer
44	Australian Association of Pet Dog Breeders
45	Australian Pork Limited
46	Mr Grant Holman
46a	Mr Grant Holman
47	Name suppressed
48	Mr Mick Newman
49	Name suppressed
50	Mr Ashley Chan
51	Miss Bao Nguyen
52	Ms Celina Lui
53	Mr Quentin Dresser
54	Ms Catherine Blasonato
55	Ms Sue Vetma
56	Animal Welfare League NSW
57	Ms Amy Johnson
58	Ms Maria Soria
59	Name suppressed
60	Name suppressed
61	Name suppressed
62	Name suppressed
63	Ms Louise Johnson
64	Mr Bryan Mcgrath

<b>No.</b>	<b>Author</b>
65	Myriam Hribar and Simone Lieschke
66	NSW Farmers' Association
67	Name suppressed
68	Australasian Meat Industry Employees Union NSW Branch
69	Ms Coralee Blanchard
70	Hunter Animal Watch
71	Ms Rowena Ollis
72	Australian Equine Unification Scheme
73	Heritage Brumby Advocates Australia inc.
74	NSW Government
75	Dogs NSW
76	Canary and Cage Bird Federation of Australia Inc.
77	Australian Brumby Alliance inc.
78	Animal Care Australia Inc
79	NSW Hen Rescue
80	Animal Liberation ACT
81	The Cat Protection Society of NSW Inc
82	Animal Justice Party
83	Confidential
84	Animals Australia
85	Name suppressed
86	WoolProducers Australia
87	Name suppressed
88	Pet Industry Association of Australia
89	Confidential
90	Ms Beverley Wood
91	Susie Header
92	Name suppressed
93	Lisa J Ryan
94	Name suppressed
95	Name suppressed
96	Michelle Gable
97	Sylvie MacFarland
98	Ms Kamilla Borzeta
99	Name suppressed

<b>No.</b>	<b>Author</b>
100	Mr Peter Smith
101	Sarah Pollard Williams
102	Name suppressed
103	Ms Susan Buckland
104	Name suppressed
105	Name suppressed
106	Mr Robert Zurobski
107	Mrs Rose Ferguson
108	Name suppressed
109	Name suppressed
110	Name suppressed
111	Ms Pamela Fioretti
112	Ms Francisa Miller
113	Name suppressed
114	Mr Stephen Kingdom
115	Ms Madhusmita Hazarika
116	Name suppressed
117	Ms Elizabeth Ellis
118	Mr Patrick Murphy
119	Dr Magdoline Awad
120	Ms Kathryn Woolfe
121	Name suppressed
122	Name suppressed
123	Name suppressed
124	Ms Karen Davies
125	Ms Sandra Jorgensen
126	Name suppressed
127	Name suppressed
128	Name suppressed
129	Name suppressed
130	Name suppressed
131	Ms Mary Ann Gourlay
132	Mr Peter Cormick
133	Confidential
134	Name suppressed

<b>No.</b>	<b>Author</b>
135	Animal Defenders Office
136	RSPCA NSW <i>Attachment 16</i>
137	Name suppressed - <i>Revised</i>
138	Glynne Sutcliffe Huilgol
139	National Farmers' Federation
140	Ron Woodham PSM
141	NSW Young Lawyers Animal Law Committee
142	Confidential



## Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
<b>Wednesday 12 February 2020</b> <b>Macquarie Room</b> <b>Parliament House, Sydney</b>	Mr Scott Hansen	Director General, NSW Department of Primary Industries
	Mr Bruce Christie	Deputy Director General, Biosecurity and Food Safety, NSW Department of Primary Industries
	Ms Suzanne Robinson	Director, Animal Welfare, NSW Department of Primary Industries
	Mr Peter Day	Director, Compliance & Integrity Systems, NSW Department of Primary Industries
	Mr Cameron Whiteside	Detective Inspector & State Crime Rural Coordinator, NSW Police
	Ms Nichola Donovan <i>Via Teleconference</i>	President, Lawyers for Animals
	Ms Glenys Oogjes <i>Via Teleconference</i>	Chief Executive Officer, Animals Australia
	Ms Shatha Hamade <i>Via Teleconference</i>	Legal Counsel, Animal Australia
	Mr Mark Slater	Chief Executive Officer, Animal Welfare League NSW
	Mrs Catherine Smith	Founder and Chief Executive Officer, NSW Hen Rescue
Ms Patricia Fernandez	Secretary/Treasurer, Australasian Meat Industry Employees Union	
<b>Thursday 13 February 2020</b> <b>Macquarie Room</b> <b>Parliament House, Sydney</b>	Ms Selma Burek-Celejewska	Private citizen
	Ms Myriam Hribar <i>Via Teleconference</i>	Private citizen
	Ms Simone Lieschke <i>Via Teleconference</i>	Private citizen

Date	Name	Position and Organisation
	Ms Annabel Johnson	Head of Strategy and Advocacy, NSW Farmers' Association
	Mr James McDonald	Chair, Animal Welfare Committee, NSW Farmers Association
	Ms Melinda Hashimoto	Chief Executive Officer, Egg Farmers of Australia
	Ms Margo Andrae	Chief Executive Officer, Australian Pork Limited
	Mr Michael Donnelly	President, Animal Care Australia
	Mr Sam Davis	Vice President, Animal Care Australia
	Mr Barry Codling	President, Pet Industry Association of Australia
	Mr John Parkinson	Membership Manager, Pet Industry Association of Australia
	Ms Kristina Vesk	Chief Executive Officer, Cat Protection Society of NSW
	Mr Dennis Anderson	National President, Coalition for the Protection of Greyhounds
	Ms Justine Curatolo	President, Heritage Brumby Advocates of Australia
	Ms Debbie Barber	Manager/Founder, Australian Equine Unification Scheme
	Ms Tara Ward	Executive Director and volunteer lawyer, Animal Defenders Office
	Mr Farnham Seyedi	Volunteer lawyer, Animal Defenders Office
	Mr Steve Coleman	Chief Executive Officer, RSPCA NSW
	Mr Scott Meyers	NSW Chief Inspector, RSPCA NSW
	Dr Peter Wright	President, RSPCA NSW Board of Directors
	Mr Stephen Rushton	RSPCA NSW Board of Directors

## Appendix 3 Minutes

### Minutes no. 1

Thursday 24 October 2019

Select Committee on Animal Cruelty Laws in New South Wales

McKell Room, Parliament House, 1.59 pm

#### 1. Members present

Mr Pearson, *Chair*

Mr Amato

Mr Banasiak

Ms Boyd

Mr Farraway

Ms Hurst (*from 2.01 pm participating*)

Mr Mason-Cox

Mr Secord

Mr Veitch

#### 2. Tabling of resolution establishing the committee

The Chair tabled the resolution of the House on 8 August 2019 establishing the committee, which reads as follows:

1. That a select committee be established to inquire into and report on the effectiveness of arrangements for the administration and enforcement of the laws of New South Wales for the protection of animals from cruelty, and in particular:
  - (a) the effectiveness of the charitable organisations currently approved under section 34B of the Prevention of Cruelty to Animals Act 1979 (“the Act”) in achieving the objects of the Act, namely:
    - (i) to prevent cruelty to animals,
    - (ii) to promote the welfare of animals by requiring a person in charge of an animal:
      - (a) to provide care for the animal,
      - (b) to treat the animal in a humane manner,
      - (c) to ensure the welfare of the animal,
  - (b) the ability of the charitable organisations currently approved under section 34B of the Act (“the approved charitable organisations”) to achieve the objects of the Act, including:
    - (i) the level of funding provided by government,
    - (ii) perpetrator and community education about ensuring animal welfare,
    - (iii) any conflicts of interest or potential conflicts of interest between the investigation and enforcement of the Act, and one or more of the following:
      - (a) commercial activities of the approved charitable organisations including corporate sponsorship,
      - (b) industrial proxy membership payments or donations,
      - (c) private interests of board members, consultants, and senior staff,
  - (c) the adequacy of the standard of care and kill rates for stray, surrendered or seized animals under the control or supervision of the approved charitable organisations,
  - (d) whether it is effective and appropriate for non-government charitable organisations to be granted investigative and enforcement powers for criminal prosecutions under the Act, with regard to their:
    - (i) capacity to exercise those investigative and enforcement powers,
    - (ii) ability to exercise those investigative and enforcement powers in relation to commercial premises and intensive farm operations involving high numbers of animals,

- (iii) ability to conduct cases to test the application of legislative provisions in the Act,
  - (iv) accountability to government and the community,
  - (v) exemption from the provisions of the Government Information (Public Access) Act 2009,
  - (vi) exemption from administrative review under the Administrative Decisions Review Act 1997,
- (e) whether any limitations and deficiencies of the administration and enforcement of the Prevention of Cruelty to Animals Act 1979 are common to other national or international jurisdictions which use similar models,
- (f) whether the Government should establish a specialist unit to investigate animal cruelty complaints and enforce animal protection laws, either as part of the NSW Police Force or as a separate statutory enforcement agency, and
- (g) any other related matter.
2. That the committee begin its inquiry in the third week of October 2019 and report by 2 April 2020.

### 3. Election of the Deputy Chair

The Chair called for nominations for the Deputy Chair.

Mr Secord moved: That Mr Veitch be elected Deputy Chair of the committee.

There being no further nominations, the Clerk declared Mr Veitch elected Deputy Chair.

### 4. Conduct of committee proceedings – Media

Resolved, on the motion of Mr Veitch: That unless the committee decides otherwise, the following procedures are to apply for the life of the committee:

- the committee authorise the filming, broadcasting, webcasting and still photography of its public proceedings, in accordance with the resolution of the Legislative Council of 18 October 2007
- the committee webcast its public proceedings via the Parliament's website, where technically possible
- committee members use social media and electronic devices during committee proceedings unobtrusively, to avoid distraction to other committee members and witnesses
- media statements on behalf of the committee be made only by the Chair.

### 5. Conduct of the inquiry

#### 5.1 Proposed timeline

Resolved on the motion of Mr Mason-Cox: That the committee adopt the following inquiry timeline:

- submissions closing date – 29 November 2019
- Sydney hearing – first week of December 2019
- potential regional hearing – first week of December 2019
- potential regional hearing – February 2020
- Sydney hearing – reserve date – March 2020
- report tabling – by 2 April 2020.

Resolved, on the motion of Mr Amato: That, following advice from the secretariat in the third week of November 2019 regarding submissions, members agree via email as to whether regional hearings are to be held and where, with a meeting to be called if agreement cannot be sought via email.

#### 5.2 Stakeholder list

Resolved, on the motion of Mr Veitch: That the secretariat email members the Chair's list of stakeholders to be invited to make written submissions, and that members have two days from the email being circulated to nominate additional stakeholders.

### 5.3 Advertising

The committee noted that all inquiries are advertised via Twitter, Facebook, stakeholder letters and a media release distributed to all media outlets in New South Wales.

Resolved, on the motion of Mr Veitch: That the secretariat investigate costs associated with advertising in The Land and circulate this to the committee for their information.

### 5.4 Online questionnaire

Resolved, on the motion of Mr Veitch: That the committee use an online questionnaire, and that:

- the media release announcing the establishment of the inquiry, and the committee's website, note that the committee will use an online questionnaire to capture individual views
- draft questions be circulated to the committee next week for agreement, with a meeting called if members wish to discuss in detail.

### 5.5 Participating member

Resolved, on the motion of Mr Veitch: That the Hon Emma Hurst MLC, who intends to participate for the duration of the inquiry into animal cruelty laws:

- be provided with copies of all inquiry related documents, including meeting papers, unpublished submissions and the Chair's draft report
- has site visit/regional hearing costs associated with her participation in the inquiry covered by the committee.

## 6. Adjournment

The committee adjourned at 2.22 pm, *sine die*.

Rebecca Main  
Committee Clerk

## Minutes no. 2

Wednesday 12 February 2020

Select Committee on Animal Cruelty Laws in New South Wales

Macquarie Room, Parliament House, 9.02 am

### 1. Members present

Mr Pearson, *Chair*

Mr Veitch, *Deputy Chair*

Mr Amato

Mr Banasiak

Ms Boyd

Mr Farraway

Ms Hurst (*participating*)

Mr Mason-Cox (until 2pm, re-joined at 3.44 pm)

Mr Secord

### 2. Draft minutes

Resolved, on the motion of Mr Veitch: That draft minutes no.1 be confirmed.

### 3. Correspondence

Committee noted the following items of correspondence:

#### ***Received:***

- 21 September 2019 – Email from Sherry Hawley to committee, regarding animal cruelty laws in Queensland
- 16 October 2019 – Email from Anna Sofia Canning to committee, regarding horse and dog racing
- 17 October 2019 – Email from Jordan Hunt to committee, regarding horse racing
- 25 October 2019 – Email from anonymous to committee, regarding concerns about the alleged toxic culture of the RSPCA and misconduct of management
- 9 November 2019 – Email from Mr Jan Anthonisz to committee, providing information outside the terms of reference
- 11 December 2019 – Email from Rhiannon Cunningham, Humane Society International Australia to secretariat, advising that the organisation will no longer be making a submission to the inquiry.
- 23 January 2020 – Email from Ms Paula Hough, PETA Australia, declining the invitation to appear as a witness for the inquiry into animal cruelty laws on 12 February 2020.
- 23 January 2020 – Email from Mr David Edney, NSW Young Lawyers, declining invitation to appear as a witness for the inquiry into animal cruelty laws hearing on 12 February 2020.
- 7 February 2020 – Email from Ms Nadine Collins, former RSPCA inspector, to the committee, requesting to give evidence at the inquiry regarding allegations of misconduct and corruption.

Resolved, on the motion of Mr Amato: That the committee keep the correspondence from Mr Jan Anthonisz regarding information outside the terms of reference, dated 9 November 2019, be kept confidential.

Resolved, on the motion of Mr Veitch: That the committee write to Ms Nadine Collins, inviting her to make a submission to the inquiry.

### 4. Submissions

#### **4.1 Public submissions**

The following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 2-7, 9, 10, 12, 14, 15, 17, 21, 23-25, 28-30, 32-35, 39, 41, 43-46, 46a, 48, 50-58, 63, 64-66, 68, 70-78, 80-82, 84, 86, 88, 90, 91, 93, 96-98, 100, 101, 103, 106, 107, 111, 112, 114, 115, 117-120, 124, 131, 132, 135, 136, 139-141.

#### **4.2 Partially confidential submissions**

Resolved, on the motion of Mr Secord: That the committee keep the following information confidential, as per the request of the author: names and/or identifying and sensitive information in submissions nos. 8, 11, 13, 16, 18-20, 22, 26, 27, 31, 36, 38, 40, 40a, 42, 47, 49, 59-62, 67, 85, 87, 92, 94, 95, 99, 102, 104, 105, 108-110, 113, 116, 121-123, 126-130, 134 and 137.

Resolved, on the motion of Mr Veitch: That the committee authorise the publication of submission nos. 1, 37, 69, 79 and 138 with the exception of identifying and/or sensitive information which are to remain confidential, as per the recommendation of the secretariat.

Resolved, on the motion of Mr Veitch: That the committee authorise the publication of submission no. 125.

#### **4.3 Confidential submissions**

Resolved, on the motion of Mr Veitch: That the committee keep submission nos. 83, 89 and 133 confidential, as per the request of the author.

#### **4.4 Attachments to submissions**

Resolved, on the motion of Mr Farraway: That the committee keep confidential all attachments to submissions.

#### **4.5 Pro forma**

Resolved, on the motion of Mr Mason-Cox: That a sample of Pro forma A be published on the inquiry website, including the number of responses, and that all individual pro forma response be kept confidential.

#### **5. Summary report from online questionnaire**

Resolved on the motion of Mr Banasiak: That the committee publish the summary report from the online questionnaire on the inquiry's website.

#### **6. Reporting timeline**

Resolved, on the motion of Mr Secord: That the Chair seek an extension through the House to extend the reporting date to 4 June 2020.

Resolved, on the motion of Ms Boyd: That the secretariat canvass member's availability for a report deliberative in the last week of May 2020.

#### **7. Declarations**

Mr Secord declared that he had made donations and is a current member of the Cat Protection Society of NSW.

Mr Faraway declared that he was a financial member of the NSW Farmers' Association.

#### **8. Public hearing**

Resolved, on the motion of Mr Secord: That the timing of questioning in hearings be left in the hands of the Chair.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Scott Hansen, Director General, NSW Department of Primary Industries
- Mr Bruce Christie, Deputy Director General, Biosecurity and Food Safety, NSW Department of Primary Industries
- Ms Suzanne Robinson, Director, Animal Welfare, NSW Department of Primary Industries
- Mr Peter Day, Director, Compliance & Integrity Systems, NSW Department of Primary Industries
- Mr Cameron Whiteside, Detective Inspector & State Crime Rural Coordinator, NSW Police.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined via teleconference:

- Ms Nichola Donovan, President, Lawyers for Animals.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined via teleconference:

- Ms Glenys Oogjes, Chief Executive Officer, Animals Australia
- Ms Shatha Hamade, Legal Counsel, Animal Australia.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Mark Slater, Chief Executive Officer, Animal Welfare League.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mrs Catherine Smith, Founder and Chief Executive Officer, NSW Hen Rescue.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Ms Patricia Fernandez, Secretary/Treasurer, Australasian Meat Industry Employees Union.

The public hearing concluded at 3.50 pm.

The public and media withdrew.

## 9. In camera hearing

The committee previously agreed via email to take *in camera* evidence from individual submission authors.

The committee proceeded to take *in camera* evidence.

Persons present other than the committee: Ms Rebecca Main, Ms Emma Rogerson, Ms Lauren Evans and Hansard reporters.

The following witnesses were sworn and examined:

- Witness A
- Witness B

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Witness C
- Witness D

Witness C tendered the following documents:

- Photograph of race horse being whipped
- Copy of Questions and Answers, Legislative Assembly, 2012, Question 1859 – Whipping of race horses to Mr Greg Hunt, Minister for Tourism, Major Events, Hospitality and Racing.

The evidence concluded and the witnesses withdrew.

The hearing concluded at 5.15 pm.

## 10. Tended documents

Resolved, on the motion of Mr Veitch: That:

- a) the committee accept the following documents tendered during the in camera hearing,
  - b) consideration of the publication of documents be deferred until reviewed by the secretariat:
- Photograph of race horse being whipped, tendered by Witness C
  - Copy of Questions and Answers, Legislative Assembly, 2012, Question 1859 – Whipping of race horses to Mr Greg Hunt, Minister for Tourism, Major Events, Hospitality and Racing, tendered by Witness C.

## 11. Other business

Ms Hurst declared that she was a former board member of the Animal Welfare League NSW.

## 12. Adjournment

The committee adjourned at 5.23 pm until Thursday 13 February 2020, Macquarie Room, 9.00 am (public hearing).



Emma Rogerson  
**Committee Clerk**

### **Minutes no. 3**

Thursday 13 February 2020

Select Committee on Animal Cruelty Laws in New South Wales

Macquarie Room, Parliament House, 9.02 am

#### **1. Members present**

Mr Pearson, *Chair*

Mr Veitch, *Deputy Chair*

Mr Amato

Mr Banasiak

Ms Boyd

Mr Farraway

Ms Hurst (*participating*)

Mr Mason-Cox (*left the meeting at 9.15 am, re-joined at 2.00 pm*)

Mr Secord (*until 4.24 pm*)

#### **2. In camera hearing**

The committee previously agreed via email to take *in camera* evidence from individual submission authors.

The committee proceeded to take *in camera* evidence.

Persons present other than the committee: Ms Rebecca Main, Ms Shu-Fang Wei, Ms Rhia Victorino, Ms Lauren Evans and Hansard reporters.

The following witness was sworn and examined:

- Witness E

Witness E tendered the following documents:

- Bundle of documents containing photos, media articles and court transcripts.

The evidence concluded and the witness withdrew.

#### **3. Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Ms Selma Burek-Celejewska, Private citizen.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined via teleconference:

- Ms Myriam Hribar, Private citizen
- Ms Simone Lieschke, Private citizen.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Annabel Johnson, Head of Strategy and Advocacy, NSW Farmers' Association
- Mr James McDonald, Chair of Animal Welfare Committee, NSW Farmers' Association

- Ms Melinda Hashimoto, Chief Executive Officer, Egg Farmers of Australia
- Ms Margo Andrae, Chief Executive Officer, Australian Pork Limited.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Michael Donnelly, President, Animal Care Australia
- Mr Sam Davis, Vice President, Animal Care Australia
- Mr Barry Codling, President, Pet Industry Association of Australia
- Mr John Parkinson, Membership Manager, Pet Industry Association of Australia
- Ms Kristina Vesk, Chief Executive Officer, Cat Protection Society of NSW.

Mr Donnelly tendered the following document:

- Opening statement

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Dennis Anderson, National President, Coalition for the Protection of Greyhounds
- Ms Justine Curatolo, President, Heritage Brumby Advocates of Australia
- Ms Debbie Barber, Manager/Founder, Australian Equine Unification Scheme.

Ms Debbie Barber tendered the following document:

- Animal Cruelty Report Form – horses, dated 26 August 2018

Ms Curatolo tendered the following documents:

- Opening statement
- Media releases, infosheets, and other supporting documentation concerning aerial shooting of wild horses, the cultural identify of brumbies and their role in vegetation re-generation.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Tara Ward, Executive Director and volunteer lawyer, Animal Defenders Office
- Mr Farnham Seyedi, Volunteer lawyer, Animal Defenders Office.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Steve Coleman, Chief Executive Officer, RSPCA
- Mr Scott Meyers, NSW Chief Inspector, RSPCA NSW
- Dr Peter Wright, President, RSPCA NSW Board of Directors
- Mr Stephen Rushton, RSPCA NSW Board of Directors.

Mr Coleman tendered the following document:

- Photograph of dog on short leash in backyard.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 5.08 pm.

The public and media withdrew.

**4. Tendered documents**

Resolved, on the motion of Mr Veitch: That:

- a) the committee accept the following documents tendered during the in camera hearing,
- b) consideration of the publication of documents be deferred until reviewed by the secretariat:
  - Bundle of documents containing photos, media articles and court transcripts, tendered by Witness E.
  - Opening statement, tendered by Mr Michael Donnelly, President, Animal Care Australia
  - Animal Cruelty Report Form – horses, dated 26 August 2018, tendered by Ms Debbie Barber, Manager/Founder, Australian Equine Unification Scheme
  - Opening statement, media releases, infosheets, and other supporting documentation concerning aerial shooting of wild horses, the cultural identity of brumbies and their role in vegetation re-generation, tendered by Ms Justine Curatolo, President, Heritage Brumby Advocates of Australia
  - Photograph of dog on short leash in backyard, tendered by Mr Steve Coleman, Chief Executive Officer, RSPCA.

**5. Right of reply to evidence**

Resolved, on the motion of Mr Veitch: That the committee write to the Wagga Wagga City Council providing it with an opportunity to make a right of reply to evidence received at today's hearing.

**6. Adjournment**

The committee adjourned at 5.12 pm, *sine die*.

Rebecca Main  
**Committee Clerk**

**Minutes no. 4**

Friday 29 May 2020

Select Committee on Animal Cruelty Laws in New South Wales

Virtual meeting via Webex, 12.34 pm

**1. Members present**

Mr Pearson, *Chair*  
Mr Veitch, *Deputy Chair*  
Mr Amato  
Mr Banasiak  
Ms Boyd  
Mr Farraway  
Mr Mason Cox  
Mr Secord  
Ms Hurst (participating)

**2. Electronic participation**

Resolved, on the motion of Mr Veitch: That the draft minutes for meeting no. 4 be circulated to members electronically and be confirmed by members 24 hours after receipt of the draft minutes by agreement via email.

### 3. Previous minutes

Resolved, on the motion of Mr Veitch: That:

- the committee omit the names of the five in camera witnesses from minutes nos. 2 and 3 and replace them with 'Witness A', 'Witness B', 'Witness C', 'Witness D', and 'Witness E'.
- draft minutes nos. 2 and 3 be confirmed.

### 4. Correspondence

The committee noted the following items of correspondence:

#### *Received:*

- 25 October 2019 – Email from anonymous to committee, regarding concerns about the alleged toxic culture of the RSPCA and misconduct of management
- 4 November 2019 – Email from Ms Sandra Mayor to committee, regarding treatment of racehorses
- 19 January 2020 – Email from Nicole Daniels regarding A Current Affair story regarding horse neglect
- 17 February 2020 – Email from Hon Emma Hurst MLC, Animal Justice Party to secretariat making a declaration regarding her interaction with inquiry stakeholders
- 19 February 2020 – Email from Mr Dennis Anderson, Coalition for the Protection of Greyhounds, requesting hearing footage from his appearance be released for the purposes of uploading to the organisation's website
- 23 February 2020 – Email from Mr Michael Donnelly, President, Animal Care Australia to committee, regarding clarifications to the transcript of evidence of 12 February 2020
- 24 February 2020 - Email from Hon Emma Hurst MLC, Animal Justice Party to secretariat making a declaration regarding her interaction with inquiry stakeholders
- 5 March 2020 – Email from Ms Myriam Hribar and Ms Simone Lieschke to committee, providing additional information to the inquiry
- 5 March 2020 – Email from Ms Myriam Hribar and Ms Simone Lieschke to committee, regarding clarifications to the transcript of evidence of 13 February 2020
- 10 March 2020 – Email from Glen Curry to committee, advising of alleged cruelty to horses by an individual
- 11 March 2020 – Email from Ms Kristina Vesk, Chief Executive Officer, Cat Protection Society of NSW to committee, regarding clarifications to the transcript of evidence of 13 February 2020
- 12 March 2020 – Email from Ms Clem Harris, Director Strategic Projects, Office of the Director General, NSW Department of Primary Industries to secretariat, requesting that MOUs provided with the answers to questions on notice be kept confidential
- 12 March 2020 – Email from Ms Nichola Donovan, Lawyers for Animals to committee, providing additional information to the inquiry
- 12 March 2020 – Email from Witness C to committee, providing additional information to the inquiry
- 12 March 2020 – Email from Ms Sue Wallace to committee, providing views on new laws that could reduce cruelty to companion and farm animals
- 12 March 2020 – Email from Ms Belinda Alcorn to committee, providing examples of where alleged animal cruelty has not been appropriately managed by RSPCA
- 12 March 2020 – Email from Ms Jayne Edmondson to committee, advising of alleged cruelty to horses by an individual
- 13 March 2020 – Email from Ms Selma Burek-Celejewska to committee, providing additional information to the inquiry
- 18 March 2020 – Email from Ms Nicole Miller, Executive Director, Office of the Commissioner, NSW Police Force to secretariat, requesting that the MOUs provided with the answers to questions on notice be kept confidential

- 30 March 2020 – Email from Ms Kathryn Jurd, General Counsel, RSPCA NSW to committee, seeking to respond to an answer to question on notice provided by Australian Pork Limited, dated 26 February 2020
- 19 May 2020 – Letter from Janice Summerhayes, Director Community, Wagga Wagga City Council to committee, submitting a right of reply regarding allegations made during evidence on 13 February 2020 with a copy of an Independent Review of the Glenfield Road Animal Shelter by Dr Jacob Michelsen, dated 27 May 2016.

***Sent:***

- 25 February 2020 – Letter from Chair, to Mr Peter Thompson, General Manager, Wagga Wagga City Council providing opportunity to submit a right of reply regarding allegations made during evidence on 13 February 2020.

Resolved, on the motion of Ms Boyd: That the committee keep confidential the correspondence from anonymous to committee, regarding concerns about the alleged toxic culture of the RSPCA and misconduct of management, dated 25 October 2019, as per the recommendation of the secretariat, as it contains potential adverse mention.

Resolved, on the motion of Ms Boyd: That the committee keep confidential the correspondence from Ms Myriam Hribar and Ms Simone Lieschke, providing additional information to the inquiry, dated 5 March 2020, as per the request of the authors, as it contains identifying and/or sensitive information.

Resolved, on the motion of Ms Boyd: That the committee keep the following items of correspondence confidential as per the recommendation of the secretariat, as they contain identifying and/or sensitive information:

- Correspondence from Glen Curry to committee, advising of alleged cruelty to horses by an individual, dated 10 March 2020.
- Correspondence from Ms Belinda Alcorn to committee providing examples of where alleged animal cruelty has not been appropriately managed by RSPCA, dated 12 March 2020
- Correspondence from Ms Jayne Edmondson to committee advising of alleged cruelty to horses by an individual, dated 12 March 2020
- Correspondence from Witness C to committee providing additional information to the inquiry, dated 12 March 2020.

Resolved, on the motion of Ms Boyd: That the committee authorise the publication of correspondence received from Janice Summerhayes, Director Community, Wagga Wagga City Council, dated 19 May 2020, on the committee's website.

Resolved, on the motion of Ms Boyd: That the committee authorise the publication of correspondence received from Ms Kathryn Jurd, General Counsel, RSPCA NSW, dated 30 March 2020, on the committee's website.

## **5. Declaration**

The committee noted the following declarations made by Ms Hurst regarding her interaction with inquiry stakeholders:

- Ms Tara Ward, from the Animal Defenders Office, has recently been working as a temporary staff member in Ms Hurst's office and will likely do some further days over the coming months, received 17 February 2020.
- Over the past three months, I have been conducting a fundraiser for various animal sanctuaries affected by the bushfires. Approximately seven animal sanctuaries will be receiving a share of the monies raised, and NSW Hen Rescue is one of those sanctuaries, received 24 February 2020.

**6. In camera witnesses**

Resolved, on the motion of Mr Mason-Cox: That the committee invite the following submission authors to appear before the committee in camera: Submission author 87, Submission author 125, Submission authors 133, Submission author 137.

**7. Partially confidential submissions**

Resolved, on the motion of Mr Veitch: That the committee authorise the replacement of submission no. 137 with an amended version, with the submission to read 'Revised submission' on the cover.

**8. Confidential submissions**

Resolved, on the motion of Mr Veitch: That the committee keep submission no. 142 confidential, as per the request of the author, as it contains identifying and/or sensitive information.

**9. Attachments to submissions**

Resolved, on the motion of Ms Boyd: That the committee authorise the publication of attachment 16 (Annexure P) to submission no. 136.

**10. Transcript clarifications – 12 February 2020**

Resolved, on the motion of Ms Boyd: That the committee authorise the insertion of a footnote to pages 25 and 32 of Animal Care Australia's transcript of evidence from 12 February 2020, as requested by the witness.

**11. Transcript clarifications – 13 February 2020**

Resolved, on the motion of Mr Banasiak: That the committee authorise the insertion of a footnote to:

- pages 8, 10 and 11 of Ms Hribar's and Ms Lieschke's transcript of evidence from 13 February 2020, as requested by the witnesses.
- page 32 of Ms Vesik's transcript of evidence from 13 February 2020, as requested by the witness.

**12. Request for hearing footage – 13 February 2020**

Resolved, on the motion of Mr Farraway: That:

- the committee authorise the release of footage of Mr Dennis Anderson, Coalition for the Protection of Greyhounds at the public hearing on 13 February 2020 for the purposes of being uploaded to the Coalition for the Protection of Greyhounds website
- a signed copy of the Legislative Council's broadcast guidelines be provided to the secretariat prior to the release of the footage.

**13. Answers to questions on notice and supplementary questions**

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Australian Pork Limited, received 26 February 2020
- answers to supplementary questions from Animals Australia, received 26 February 2020
- answers to questions on notice from Animal Care Australia, received 23 February 2020
- answers to questions on notice from Australian Pork Limited, Egg Farmers of Australia, and NSW Farmers Association, received 9 March 2020
- answers to questions on notice from Pet Industry Association of Australia, received 12 March 2020
- answers to questions on notice and supplementary questions from Department of Primary Industries, received 12 March 2020
- answers to questions on notice and supplementary questions from RSPCA, received 12 March 2020
- answers to questions on notice from Animal Defenders Office, received 13 March 2020
- answers to questions on notice from Ms Selma Burek-Celejewska, received 13 March 2020

- answers to questions on notice and supplementary questions from NSW Police, received 18 March 2020
- answers to questions on notice and supplementary questions from Animal Welfare League NSW, received 26 March 2020.

**14. Memoranda of Understanding (MOUs) – requests for confidentiality**

Resolved, on the motion of Mr Faraway: That the committee keep the two MOUs between the Department of Primary Industries and the RSCPA, and the Department of Primary Industries and AWL, confidential as per the request of the Department.

Resolved, on the motion of Mr Faraway: That the committee keep the two MOUs between the NSW Police Force and the RSPCA, and the NSW Police Force and AWL, confidential as per the request of the NSW Police Force.

**15. Tendered documents from hearings 12 and 13 February 2020**

Resolved, on the motion of Mr Veitch: That the committee keep confidential the following documents tendered during the hearing on 12 February 2020, as per the suggestion of the secretariat as they were provided by an in camera witness:

- Photograph of race horse being whipped tendered by Witness C
- Copy of Questions and Answers, Legislative Assembly, 2012, Question 1859 – Whipping of race horses to Mr Greg Hunt, Minister for Tourism, Major Events, Hospitality and Racing, tendered by Witness C.

Resolved, on the motion of Mr Veitch: That the committee publish the following documents tendered during the hearing on 13 February 2020, as per the suggestion of the secretariat:

- Opening statement, tendered by Mr Michael Donnelly, President, Animal Care Australia
- Opening statement, media releases, infosheets and other supporting documentation concerning aerial shooting of wild horses, the cultural identity of brumbies and their role in vegetation regeneration, tendered by Ms Justine Curatolo, President, Heritage Brumby Advocates of Australia
- Photograph of dog on short leash in backyard, tendered by Mr Steve Coleman, Chief Executive Officer, RSPCA.

Resolved, on the motion of Ms Boyd: That the committee keep confidential the following documents tendered during the hearing on 13 February 2020, as per the suggestion of the secretariat as they contain sensitive and/or identifying information:

- Animal Cruelty Report Form – horses, dated 26 August 2018, tendered by Ms Debbie Barber, Manager/Founder, Australian Equine Unification Scheme

Resolved, on the motion of Mr Veitch: That the committee keep confidential the following documents tendered during the hearing on 13 February 2020, as per the suggestion of the secretariat as they were provided by an in camera witness:

- Bundle of documents containing photos, media articles, and court transcripts, tendered by Witness E.

**16. Consideration of Chair's draft report**

The Chair submitted his draft report entitled *Animal cruelty laws in New South Wales*, which, having been previously circulated, was taken as being read.

Ms Boyd moved: That the report be amended by removing all references to Submission 82 authored by the Animal Justice Party.

Question put.

The committee divided.

Ayes: Mr Amato, Ms Boyd, Mr Farraway, Mr Mason-Cox.

Noes: Mr Banasiak, Mr Pearson, Mr Secord, Mr Veitch.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Resolved, on the motion of Mr Banasiak: That paragraph 1.18 be amended by omitting: 'Such legal status allows the owner to determine how an animal is to be treated, which it has been argued can sometimes undermine attempts to protect animals' after 'various rights and liabilities'.

Resolved, on motion of Ms Boyd: That paragraph 2.15 be amended by omitting 'gave evidence' and inserting instead 'argued'.

Resolved, on the motion of Mr Banasiak: That paragraph 2.32 be amended by inserting at the end: 'It was noted by other participants that rules of evidence also had to apply to cases involving animals'.

Resolved, on the motion of Mr Banasiak: That paragraphs 2.33, 2.42, 2.44, 2.52 and 2.97 be amended by inserting 'Some' before 'inquiry participants'.

Resolved, on the motion of Mr Banasiak: That paragraph 2.38 be amended by omitting 'said' and inserting instead 'claimed'.

Resolved, on the motion of Mr Banasiak: That paragraph 2.39 be amended by omitting 'highlighted' and inserting instead 'claimed'.

Resolved, on the motion of Mr Banasiak: That paragraph 2.40 be amended by omitting 'indicated' and inserting instead 'claimed'.

Resolved, on the motion of Ms Boyd: That the following new finding be inserted after paragraph 2.124:

**'Finding X**

The RSPCA's policy of not investigating Approved Farming Scheme producers, coupled with the evidence from the NSW Police Force that they do not have expertise in relation to animal welfare as it relates to animals in primary production, the Approved Farming Scheme potentially compromises the ability of the RSPCA to investigate potential animal welfare breaches'.

Resolved, on the motion of Mr Banasiak: That paragraph 2.67 be amended by inserting at the end: 'The inquiry was unable to test this assertion'.

Resolved, on the motion of Mr Banasiak: That paragraph 2.118 be amended by omitting: 'The committee finds that the approved charitable organisations should be authorised to use body worn devices for the purposes of investigations into animal cruelty offences', and inserting instead:

'Given the lack of clarity by witnesses, the committee suggests the government clarifies powers of inspectors and encourages promotion through the ACO's'.

Resolved, on the motion of Mr Veitch: That Finding 1 be omitted: 'The approved charitable organisations should be authorised to use body worn devices for the purposes of investigations into animal cruelty offences', and the following new finding be inserted instead:

'The Government should conduct a review of the current arrangements for body worn devices for the purposes of investigations into animal cruelty offences with a view to permitting such devices to be worn by officers of approved charitable organisations.'

Resolved, on the motion of Ms Boyd: That the title 'Finding 1' be omitted and the following new title be inserted instead: 'Recommendation X'.



Mr Banasiak moved: That paragraphs 2.119, 2.120, and 2.121 be omitted: 'Given that RSPCA NSW and AWL NSW are the primary enforcers of the Act, the committee is of the view that these two bodies should be given the necessary powers to ensure that animal cruelty, often hidden behind fences and walls, can be investigated. RSPCA NSW and AWL NSW should have the full suite of powers currently enjoyed by the NSW Police Force in order to conduct their compliance and enforcement role. This is especially necessary given that the NSW Police Force admit that they routinely refer all animal cruelty complaints to RSPCA NSW and AWL NSW.'

The committee is encouraged by the evidence in relation to the benefits of private prosecutions, given that other Australian jurisdictions have this capacity. Restoring this capacity should provide the opportunity for more animal cruelty cases to be taken to court, potentially extending to the emergence of more tests cases. We note that up until 2007, private prosecutions for animal cruelty offences were possible in New South Wales.

The committee sees merit in the recommendation of the Animal Defenders Office that restrictions on who can institute proceedings for offences against the Act be removed. Given that the government has announced its intention to reform animal welfare legislation, we consider this to be an appropriate juncture at which private prosecutions be restored. Therefore the committee recommends that the government during its review of the Act, allow private prosecutions for animal cruelty offences'.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Mason-Cox, Mr Secord, Mr Veitch.

Noes: Ms Boyd, Mr Pearson.

Question resolved in affirmative.

Mr Farraway moved: That Recommendation 1 be omitted: 'That the NSW Government, as part of its review of the Prevention of Cruelty to Animals Act 1979, allow private prosecutions for animal cruelty offences'.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Mason-Cox, Mr Secord, Mr Veitch.

Noes: Ms Boyd, Mr Pearson.

Questions resolved in affirmative.

Mr Banasiak moved: That paragraph 2.122 be amended by omitting all words after 'required in this area', and inserting instead:

'The committee accepts that there will always be a perception held by some that not all penalties are appropriate or correspond to prescribed belief on severity. While Animal cruelty is a criminal offence, the committee does not subscribe to the view held by some inquiry participants that basic legal rights of humans such as rules of evidence gathering should be cast aside in a blind pursuit for convictions'.

Question put.

The committee divided.

Ayes: Mr Banasiak.

Noes: Mr Amato, Ms Boyd, Mr Farraway, Mr Mason-Cox, Mr Pearson, Mr Secord, Mr Veitch.

Question resolved in negative.

Mr Mason-Cox moved: That paragraph 2.122 be amended by omitting: 'The committee accepts that not all penalties may appropriately or adequately correspond with the severity of a particular breach of the Act. We also note that these penalties may not align with the community's expectations for animal welfare or

reinforce that animal cruelty is a criminal offence and has significant consequences', after 'required in this area'.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Mason-Cox, Mr Secord, Mr Veitch.

Noes: Ms Boyd, , Mr Pearson.

Question resolved in the affirmative.

Mr Banasiak moved: That Recommendation 2 be amended by omitting 'increase' and inserting instead 'consider'.

Question put.

The committee divided.

Ayes: Mr Banasiak.

Noes: Mr Amato, Ms Boyd, Mr Farraway, Mr Mason-Cox, Mr Pearson, Mr Secord, Mr Veitch.

Question resolved in the negative.

Mr Farraway moved: That paragraphs 2.124 and 2.125 be omitted.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Mason-Cox.

Noes: Ms Boyd, Mr Pearson, Mr Secord, Mr Veitch.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Resolved, on the motion of Mr Banasiak: That paragraph 2.124 be amended by inserting 'some' before 'inquiry'.

Ms Boyd moved: That the following paragraph 2.126 be omitted: 'In addition, we are of the view that the Department of Primary Industries cannot champion animal welfare of stock animals while also working to increase agricultural productivity. Therefore, the committee finds that the Department of Primary Industries has an inherent conflict of interest in both supporting agricultural industries and farmed animal welfare matters', and the following new paragraph be inserted instead:

'In addition, we are of the view that the Department of Primary Industries views the concept of 'animal welfare' within the context of agricultural industries as being synonymous with 'quality of stock'. The community, however, increasingly views animals as sentient beings, regardless of their use to humans. Given the Department of Primary Industries' role in supporting agricultural industries, the committee is concerned that the Department of Primary Industries risks maintaining a narrow and outdated view of animal welfare matters which is out of step with the broader community'.

Question put.

The committee divided.

Ayes: Ms Boyd, Mr Pearson, Mr Secord, Mr Veitch.

Noes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Mason-Cox.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

Ms Boyd moved: That the following new recommendation be inserted after paragraph 2.126:

**'Recommendation X**

That the NSW Government move responsibility for animal welfare matters out of the Department of Primary Industries'.

Question put.

The committee divided.

Ayes: Ms Boyd, Mr Pearson, Mr Secord, Mr Veitch.

Noes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Mason-Cox.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

Resolved, on the motion of Mr Farraway: That Finding 2 be omitted: 'The Department of Primary Industries has an inherent conflict of interest in both supporting agricultural industries and farmed animal welfare matters'.

Resolved, on the motion of Mr Farraway: That paragraph 2.129 be amended by omitting 'Yet, the committee questions if these workshops are in lieu of sufficient education and knowledge about the *Prevention of Cruelty to Animals Act* offered at the NSW Police Force Academy and through ongoing professional development' after 'animal cruelty and offences'.

Resolved, on the motion of Ms Boyd: That paragraph 2.130 be amended by omitting 'With reference to the studies raised by inquiry participants linking animal abuse and violence to humans, the committee finds there is a link between animal abuse, and domestic violence and violence to humans', and inserting instead 'The Committee notes the studies raised by inquiry participants linking animal abuse with violence to humans, particularly domestic violence'.

Resolved, on the motion of Ms Boyd: That Finding 3 be omitted: 'There is a link between animal abuse, and domestic violence and violence to humans'.

Resolved, on the motion of Mr Veitch: That paragraph 2.130 be amended by omitting 'The committee is encouraged by the NSW Attorney-General's announcement that a review will be conducted into the connection between animal abuse and domestic violence. We await the results of this review', and inserting instead:

'The committee is encouraged by the Attorney-General's announcement that a review of the legislation around the connection between animal abuse and domestic violence is being conducted'.

Mr Farraway moved: That paragraph 2.131 be omitted.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Mason-Cox.

Noes: Ms Boyd, Mr Pearson, Mr Secord, Mr Veitch.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Resolved, on the motion of Mr Banasiak: That paragraph 2.131 be amended by inserting at the end: 'The committee notes evidence by some participants on risks to inspectors in dealing with aggressive behaviour during the completion of their investigations. We noted evidence from NSW Police Force that they assist in providing advice to the ACO's on dealing with this issue. The committee encourages this to continue to occur'.

Resolved, on the motion of Ms Boyd: That paragraph 2.131 be amended by:

- inserting 'likely' after 'more training on the'
- inserting 'likely' after 'pertinent, given the'

- omitting 'Therefore, the committee recommends that the NSW Government fund training to the NSW Police Force and approved charitable organisations on the link between animal abuse and violence to humans, particularly domestic violence', and inserting instead 'Therefore, the committee recommends that the NSW Government institute greater information sharing links between ACO's and the police'.

Resolved, on the motion of Mr Veitch: That the following new recommendation be inserted after Recommendation 3:

**'Recommendation X**

That the NSW Government investigate data collection and sharing between the Animal Welfare League, the RSPCA and the Police in order to inform evidence based decisions about funding and education needs for the sector, and to assist in the comprehensive enforcement of laws on animal cruelty to protect animals from harm and improve their welfare, subject to information privacy principles'.

Resolved, on the motion of Mr Farraway: That Recommendation 3 be omitted: 'That the NSW Police Force and approved charitable organisations receive government funded training on the link between animal abuse and violence to humans, particularly domestic violence'.

Resolved, on the motion of Mr Banasiak: That paragraph 3.22 be amended by omitting 'highlighted' and inserting instead 'claimed'.

Mr Farraway moved: That paragraph 3.62 be amended by omitting: 'We note how unusual it is that the two approved charities rely on these charitable donations to enforce the law. Based on the evidence received regarding the large running costs and workloads of RSPCA NSW and AWL NSW inspectorates, the committee is not surprised that the annual government grants barely cover these expenses'.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Mason-Cox.

Noes: Ms Boyd, Mr Pearson, Mr Secord, Mr Veitch.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Resolved, on the motion of Mr Veitch: That paragraph 3.62 be amended by omitting 'is not surprised' and inserting instead 'finds it unacceptable'.

Resolved, on the motion of Ms Boyd: That paragraph 3.62 be amended by omitting: 'We note how unusual it is that the two approved charities rely on these charitable donations to enforce the law' and inserting instead:

'The committee was unable to identify any other area of criminal law where enforcement relied on charitable organisations'.

Mr Farraway moved: That paragraphs 3.63 and 3.64 be omitted.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Mason-Cox.

Noes: Ms Boyd, Mr Pearson, Mr Secord, Mr Veitch.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Resolved, on the motion of Mr Veitch: That paragraphs 3.63 be amended by inserting 'one of' before 'the lowest funded RSPCA'.

Resolved, on the motion of Mr Farraway: That paragraph 3.65 be amended by omitting 'The underfunding of the approved charitable organisations is emblematic of the challenges presented by the current framework, where charitable organisations are responsible for compliance and enforcement of the Prevention of Cruelty to Animals Act 1979' after 'perform their various roles and responsibilities'.

Resolved, on the motion of Ms Boyd: That the following new finding be inserted after paragraph 3.62:

**'Finding X**

The reliance of approved charitable organisations donations for the majority of their total funding has the potential to compromise their independence and/or lead to actual or perceived conflicts of interest.'

Resolved, on the motion of Mr Farraway: That paragraph 3.68 be amended by omitting: 'if the current framework is to remain, whereby approved charitable organisations are the compliance and enforcement bodies of the Act, then' after 'We conclude that'.

Resolved, on the motion of Ms Boyd: That paragraph 3.68 be amended by inserting:

- 'more' before 'adequately resource and staff'
- 'significantly' before 'increase funding'
- 'without reliance on charitable donations' after 'conduct regular inspections'.

Mr Banasiak moved: That Recommendation 4 be omitted.

Question put.

The committee divided.

Ayes: Mr Banasiak.

Noes: Mr Amato, Ms Boyd, Mr Farraway, Mr Mason-Cox, Mr Pearson, Mr Secord, Mr Veitch.

Question resolved in the negative.

Resolved, on the motion of Ms Boyd: That Recommendation 4 be amended to insert:

- 'more' before 'adequately resource and staff'
- 'significantly' before 'increase funding'
- 'without reliance on charitable donations' after 'conduct regular inspections'.

Resolved, on the motion of Mr Veitch: That Recommendation 4 be amended by inserting at the end: 'commencing with the 2021/2022 financial year'.

Mr Farraway moved: That paragraph 3.69 be omitted.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Farraway, Mr Mason-Cox.

Noes: Mr Banasiak, Ms Boyd, Mr Pearson, Mr Secord, Mr Veitch.

Question resolved in the negative.

Mr Farraway moved: That Recommendation 5 be omitted.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Farraway, Mr Mason-Cox.

Noes: Mr Banasiak, Ms Boyd, Mr Pearson, Mr Secord, Mr Veitch.

Question resolved in the negative.

Resolved, on the motion of Mr Banasiak: That Recommendation 5 be omitted: 'That the NSW Government develop a transparent model of funding for the approved charitable organisations so it is clear how the annual grant amounts are calculated' and the following new recommendation be inserted instead:

'That the NSW Government develop a quantitative funding model that is indexed in line with CPI'.

Resolved, on the motion of Mr Veitch: That Recommendation 5 be amended by inserting at the end: 'commencing with the 2021/2022 financial year'.

Resolved, on the motion of Mr Banasiak: That paragraph 4.1 be amended by omitting 'Many' and inserting instead 'Some'.

Resolved, on the motion of Mr Banasiak: That paragraph 4.15 be amended by inserting 'Some' before 'Inquiry'.

Resolved, on the motion of Mr Banasiak: That paragraph 4.31 be amended by inserting at the end: 'while others supported the approved charitable organisations retaining their position'.

Resolved, on the motion of Mr Banasiak: That paragraph 4.43 be amended by omitting 'argued' and inserting instead 'claimed'.

Resolved, on the motion of Mr Banasiak: That paragraph 4.48 be amended by omitting 'Inquiry participants recommended that the independent body should sit under the portfolios of either the Attorney General, Premier, Police, or the Ombudsman's Office with the prosecutions conducted by the Department of Public Prosecutions' and inserting instead:

'Those inquiry participants that supported the idea of an independent body suggested that it sit under the portfolios of either Attorney General, Police, or Ombudsman's Office with the prosecutions conducted by the Director of Public Prosecutions'.

Resolved, on the motion of Ms Boyd: That the following new recommendation be inserted after paragraph 4.52:

**'Recommendation X**

That the NSW Government ensure that the Act and the animal welfare framework that supports it are overhauled to better meet growing community understanding of animal sentience and expectations about animal welfare, and to reflect modern knowledge and practices regarding the treatment of animals.'

Mr Farraway moved: That Recommendation 6 be omitted.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Mason-Cox.

Noes: Ms Boyd, Mr Pearson, Mr Secord, Mr Veitch.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Farraway moved: That paragraph 4.55 be omitted.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Mason-Cox.

Noes: Ms Boyd, Mr Pearson, Mr Secord, Mr Veitch.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Farraway moved: That Recommendation 7 be omitted.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Mason-Cox.

Noes: Ms Boyd, Mr Pearson, Mr Secord, Mr Veitch.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Banasiak moved: That paragraph 4.55 be amended by omitting: 'In relation to one suggested amendment – removing statutory time limits for the prosecution of animal cruelty offences – the committee wishes to offer explicit endorsement. We therefore recommend that the government, as part of its review of the Act, remove the statutory time limit of 12 months for the prosecution of animal cruelty offences' and inserting instead:

'The committees suggest that the government consider statutory limits as part of its review'.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Mason-Cox, Mr Secord, Mr Veitch.

Noes: Ms Boyd, Mr Pearson.

Question resolved in the affirmative.

Resolved, on the motion of Mr Banasiak: That Recommendation 7 be amended by omitting 'remove' and inserting instead 'consider'.

Mr Farraway moved: That paragraphs 4.56, 4.57 and 4.58 be omitted.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Farraway, Mr Mason-Cox.

Noes: Mr Banasiak, Ms Boyd, Mr Pearson, Mr Secord, Mr Veitch.

Question resolved in the negative.

Resolved, on the motion of Ms Boyd: That the following new finding be inserted after paragraph 4.57:

**'Finding X**

The committee finds that there is no reason why the Department of Primary Industries should not make public the annual reports of RSPCA NSW and AWL NSW upon receipt'.

Resolved, on the motion of Mr Banasiak: That paragraph 4.58 be amended by omitting 'The committee therefore urges the Legislative Council to establish a standing committee with responsibility for oversight of animal welfare. One of the committee's functions will be to hold an annual Budget Estimates-style inquiry into the protection of animals and to question the ACOs on their annual reports as tabled in Parliament' and inserting instead:

'That the approved charitable organisations be invited to attend budget estimates hearings of the relevant Portfolio Committee which has primary oversight of animal welfare'.

Mr Farraway moved: That Recommendation 8 be omitted.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Farraway, Mr Mason-Cox.

Noes: Mr Banasiak, Ms Boyd, Mr Pearson, Mr Secord, Mr Veitch.

Question resolved in the negative.

Resolved, on the motion of Mr Veitch: That Recommendation 8 be amended by omitting 'with the NSW Parliament' and inserting instead 'in both houses of the NSW Parliament'.

Mr Farraway moved: That Recommendation 8 be amended by omitting 'comply with requests under the Government Information (Public Access) Act 2009'.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Farraway, Mr Mason-Cox.

Noes: Mr Banasiak, Ms Boyd, Mr Pearson, Mr Secord, Mr Veitch.

Question resolved in the negative.



Mr Veitch moved: That Recommendation 9 be omitted: 'That the NSW Legislative Council establish a Standing Committee on Protection of Animals, with one its functions being to hold an annual inquiry into Approved Charitable Organisations' exercise of their compliance and enforcement responsibilities under the Prevention of Cruelty to Animals Act 1979', and the following new recommendation be inserted instead: 'That the Legislative Council Portfolio Committee responsible for Primary Industries (or other Portfolio Committee that has primary responsibility for animal welfare) be required to conduct a one day public hearing each year involving the Approved Charitable Organisations, with the hearing to be conducted after the lodgement of the ACOs annual reports in NSW Parliament. One of the core requirements of the hearing will be to examine the ACOs compliance and enforcement responsibilities under the Prevention of Cruelty to Animals Act 1979'.

Mr Banasiak moved: That the motion of Mr Veitch be amended by inserting at the end: 'Further, that Approved Charitable Organisations be invited to attend the relevant Portfolio Committee in conjunction with representatives from NSW DPI'.

Amendment of Mr Banasiak put and passed.

Original question of Mr Veitch, as amended, put and passed.

Mr Farraway moved: That paragraphs 4.59, 4.60 and 4.61 be omitted.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Mason-Cox.

Noes: Ms Boyd, Mr Pearson, Mr Secord, Mr Veitch.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Banasiak moved: That the following paragraph 4.59 be omitted: 'These changes on their own, however significant, are not enough. The committee supports moving to a new model for enforcing the Protection of Cruelty to Animals Act. There would be two elements to this model: a specialist police unit to investigate and prosecute animal cruelty laws, and an independent statutory agency to oversee the protection of animals in New South Wales. The establishment of these two new agencies would go a long way to restoring public confidence in the system's capacity to protect animals and improve animal welfare outcomes', and the following new paragraph be inserted instead:

'There are divergent views amongst the committee as to maintaining the Approved Charitable Organisations or adopting a new model with a specialist unit and independent statutory body'.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Mason-Cox, Mr Secord, Mr Veitch.

Noes: Ms Boyd, Mr Pearson.

Question resolved in the affirmative.

Mr Banasiak moved: That the following paragraph 4.60 be omitted: 'A new, fully funded specialist police unit is warranted given the lack of resources and funding available to the ACOs, severely curtailing the ACOs' ability to fulfil their compliance and enforcement responsibilities, as well as the lack of training

provided to police officers on animal welfare laws. The new police unit would further supplement and support rather than replace the inspectorate work of the ACOs, by taking a more active and primary role in the investigation of animal cruelty offences and enforcement of the Act. By equalising the status and expertise of the police in relation to the ACOs by the formation of a specialist animal welfare unit, it is anticipated this would lead to greater investigations and prosecutions of animal cruelty offences, relieve the burden on the under-resourced ACO's and result in better animal welfare outcomes', and the following new paragraph be inserted instead:

'Evidence was taken that a specialist unit within police would complement work of the Approved Charitable Organisations while equalising status and expertise of police officers, however countering evidence was also taken that this equalisation and sharing of expertise already takes place within NSW Rural Crime taskforce and the Stock animal welfare panels'.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Mason-Cox, Mr Secord, Mr Veitch.

Noes: Ms Boyd, Mr Pearson.

Question resolved in the affirmative.

Mr Banasiak moved: That Recommendation 10 be omitted.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Mason-Cox.

Noes: Ms Boyd, Mr Pearson, Mr Secord, Mr Veitch.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Farraway moved: That Recommendation 11 be omitted.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Mason-Cox.

Noes: Ms Boyd, Mr Pearson, Mr Secord, Mr Veitch.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Banasiak moved: That paragraph 4.61 be amended by omitting 'Noting the views put forward by stakeholders on the responsibilities of this new office, the committee recommends that further consultation take place on the functions to be performed by the Independent Office of Animal Welfare', and inserting instead 'Noting the divergent views put forward by stakeholders on the need for statutory body, the committee also shares those divergent views'.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Mason-Cox.

Noes: Ms Boyd, Mr Pearson, Mr Secord, Mr Veitch.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Resolved, on the motion of Mr Veitch: That the following new recommendation be inserted after paragraph 3.69:

**'Recommendation X**

That funding for the establishment and delivery of an education program in the most effective methods of improving animal welfare outcomes be investigated and provided'.

Resolved, on the motion of Ms Boyd: That:

- a) The draft report, as amended, be the report of the committee and that the committee present the report to the House;
- b) The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, responses to the online questionnaire and summary report of these responses and correspondence, relating to the inquiry be tabled in the House with the report;
- c) Upon tabling, all unpublished attachments to submissions and responses to the online questionnaire be kept confidential by the committee;
- d) Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence be published by the committee, except for those documents kept confidential by resolution of the committee;
- e) The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- f) The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- g) Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- h) That the report be tabled on Thursday 4 June 2020.

## 17. Adjournment

The committee adjourned at 3.45 pm, *sine die*.

Emma Rogerson  
Committee Clerk

## Appendix 4 Dissenting statements

### Hon Mark Banasiak MLC, Shooters, Fishers and Farmers Party

Even though there was consensus among committee members on certain aspects of the report in evidence given before the Select Committee on *Animal Cruelty Laws in New South Wales* and the effectiveness of arrangements for the administrative and enforcement of these laws, the SFF could not agree with the following three key aspects:

Firstly, we disagree with the findings of the Committee linking animal abuse with domestic violence and violence to humans. Based on the evidence provided to the Committee, none of the claims made could be independently verified.

Secondly, the SFF cannot support the view of some inquiry participants that suggested the rules of evidence in this State should not apply to animal related investigations or prosecutions. It is disappointing that no other Committee member supported our call to include a statement that made it clear that the Committee did not support this view.

Lastly, the SFF does not support an Independent Statutory Authority. During the inquiry there were divergent views presented from organisation such as the RSPCA and Animal Welfare League, as well as NSW Department of Primary Industries, which we agree with. The SFF also hold concerns that a stand-alone Independent Statutory Authority would be infected by extreme animal rights groups, and therefore, lose its impartiality. We suspect that the RSPCA and Animal Welfare League would share our concerns.

**Hon Sam Farraway MLC, The Nationals**

In NSW, the role of enforcing the four pieces of relevant animal welfare legislation do not fall to one agency only. NSW Police is supported in its role by both the RSPCA and AWL, creating a unique and effective enforcement arrangements that effectively prosecute persons in breach of the animal welfare standards and legislation in NSW. The relevant legislation in question is the *Prevention of Cruelty to Animals Act 1979* (POCTA), the *Exhibited Animals Protection Act 1986*, the *Animal Research Act 1985* and the *Crimes Act 1900*.

The NSW Government and the Department of Primary Industries (DPI) are openly committed to the need for reform, with the Director General of DPI clearly stating in his opening remarks that "[T]he Government has, obviously, made it clear that it believes that the pieces of legislation are probably ripe to be reviewed, and for reform in the space around the legislation pieces that cover everything from POCTAA through to exhibited animals and animals in research."

**Findings that the charitable organisations of the RSPCA and AWL should be stripped of their enforcement roles and that animal welfare should be removed from the Department of Primary Industries, if enacted, would undermine animal welfare in NSW.**

This clear intent for reform from the Government should have rendered this committee irrelevant, however, there is merit in investigating all angles of a Government's work, especially when they partner with non-Government agencies to deliver outcomes. Sadly, this report has missed that opportunity.

This exercise has instead been used against those charged with enforcing animal welfare legislation to have them effectively dumped from performing some of their core functions without appropriate evidence or reason.

This report has also called for the removal of animal welfare functions from DPI and has then confusingly recommended the establishment of what appears to be mutually exclusive bodies to be formed in their place.

The report recommends for both a specialist unit with the NSW Police force and an independent statutory body to oversee the animal welfare framework - with no clear blueprint for how this would be implemented or proof that this would do anything to improve animal welfare in NSW.

This recommendation also goes against evidence provided by NSW Police that they are more than able to effectively investigate animal welfare cases both independently or in conjunction with the other enforcement agencies with the current framework.

What is more troubling, is the accusations made by the report of conflicts of interest and the crippling effect they have on the department and the organisations ability to enforce legislation effectively. This claim has been made with little to no evidence from the committee's hearings or public submissions received. This is nothing more than an ideological showing of disrespect towards many in our agricultural industry, an industry that leads the world in innovation for both production and welfare processes.

**Charitable organisations are already subject to appropriate levels of accountability.**

Both RSPCA and AWL provide their annual reports to DPI and publically release various parts including rehoming and cruelty cases investigation numbers.

As clearly noted in the RSPCA's submission, they already respond to GIPA applications.<sup>322</sup> Making this recommendation by the committee pointless. The committee should be wary not to encourage use of public access to information laws in a manner that undermines their integrity.

Ultimately, the robustness of charitable organisations' work is tested in the most transparent of forums - a Court.

Overall this report has left much to be desired and rather than taking an opportunity to enhance current efforts being made to 'update' legislation related to animal welfare, it has done its best to undermine the great work already being done in this sector by DPI, AWL, RSPCA, NSW Police and other charity organisations across NSW.

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<sup>322</sup> Submission 136, RSPCA NSW, p 43.



