
RSPCA NSW RESPONSE TO SUPPLEMENTARY QUESTIONS AND QUESTIONS ON NOTICE

Legislative Council Select Committee
on Animal Cruelty Laws in NSW

Royal Society for the Prevention of Cruelty to Animals, NSW

In addition to the questions set out below, the following further matters were taken “on notice” by RSPCA NSW in its evidence, or arose in other evidence before the Committee.

ALLEGATIONS OR ACCUSATIONS IN RELATION TO SPECIFIC CONDUCT OF RSPCA NSW

1. RSPCA NSW has not sought to respond to every allegation or assertion made in each of the approximately 140 submissions or during the two days of evidence, but has tried to confine itself to what appeared to it to be matters most directly relevant to the Committee’s Terms of Reference. The fact that some particular allegation or assertion has not been specifically responded to does not indicate that RSPCA NSW accepts the truth of the assertion or would not have a response if asked directly about it.
2. If the Committee has any questions of RSPCA NSW about a matter raised in any submission or in either public or private hearings, or intends to make a finding unfavourable to RSPCA NSW on the basis of such material, then as a matter of procedural fairness the fact or issue should be distinctly put to RSPCA NSW, which will be happy to address it.
3. Further, several witnesses were asked questions regarding the conduct of RSPCA NSW the foundation for which was not immediately apparent from an examination of the Committee’s public record. For instance, without attempting to be exhaustive, at various points in the Transcript it was said:
 - a. “We have heard submissions and some of us have been spoken to anecdotally outside this hearing about the overzealousness of RSPCA NSW in how they investigate and how they treat some farmers”¹;
 - b. “We have had a lot of people submitting that... cases of extreme cruelty were not prosecuted”²;
 - c. “... we had evidence yesterday that some people had the media show up with the RSPCA”³;
 - d. “It has been put to the Committee that the RSPCA had been accused of taking on matters that have attracted high-profile public interest to curry favour or excite people who have given donations to them”⁴;
 - e. “In some submissions over the past two days, the accusation has been made within this Committee that board members were involved in investigations”⁵;

1 Transcript at page 19.
2 Transcript at page 20.
3 Transcript at page 33.
4 Transcript at page 50.
5 Transcript at page 60.

- f. "... there have been accusations made that people will sort of stack the membership to get certain people onto the board"⁶; and
 - g. "There have been some accusations and concerns that some of the inspectors walk into industries or situations that they are not fully across"⁷.
4. RSPCA NSW refutes these non-specific, unsourced assertions. At the level of generality at which they are made, however, it is not possible for RSPCA NSW to respond specifically to such allegations by reference to actual alleged instances of specific conduct. If the Committee intends to make findings in relation to any such specific matters then RSPCA NSW would seek the opportunity to be informed of the detail of any such allegations, so that it might address them appropriately.

PARLIAMENTARY OVERSIGHT OR AN "INDEPENDENT OFFICE OF ANIMAL WELFARE"

5. The question was raised during evidence of the possibility of oversight of the operations of the Inspectorate function of RSPCA NSW by a joint committee of Parliament, similar to that which oversees the operations of the ICAC. The ICAC is independent of Government, but the existence and operations of the joint committee ensure that the ICAC is accountable to Parliament and thereby the people of NSW. The joint committee has power to monitor and review the exercise by the ICAC of its functions and has power to report to Parliament⁸. RSPCA NSW is also independent of Government⁹. It is accountable to government and to its members and supporters for its activities as a charitable organisation. It is, and should be, also accountable to the people of NSW for its exercise of investigative and enforcement powers under legislation. RSPCA NSW is committed to transparency and would have no objection to the creation of a Parliamentary committee to periodically monitor or review the activities of its Inspectorate.
6. Nor, as Mr Coleman said in his evidence before the Committee¹⁰ would RSPCA NSW have any objection to its annual report to the Minister¹¹ being made available to such a committee and, subject to the protection of any confidential material, also to the general

6 Transcript at page 60.

7 Transcript at page 61.

8 Section 64(1), *Independent Commission Against Corruption Act 1988*.

9 RSPCA NSW does not consider that the small recurrent grant provided by Government is inconsistent with its independence and conducts itself as an independent organisation, solely dedicated to the prevention of cruelty to animals in NSW.

10 Transcript at page 63.

11 RSPCA NSW and AWL are each required to report annually to the Minister pursuant to section 34B(3) of the Act, addressing such matters in relation to the exercise by themselves or their officers of functions under the Act as may be prescribed by the regulations. The regulation setting out the prescribed contents for the report is Regulation 34 of the *Prevention of Cruelty to Animals Regulation 2012*.

public¹²; although this is in its opinion a matter about which the views of the Minister should also be sought.

7. There was also discussion in the proceedings before the Committee of the possibility of the creation of an “independent office of animal welfare or advocate” which would be “not a replacement for the RSPCA and AWL but rather an overarching body that would look at the accountability of those organisations”. As was noted by several witnesses before the Committee, it is impossible to comment meaningfully on such a proposal without knowing in detail what the nature, functions and powers of such a body would be¹³. RSPCA NSW shares that concern and would seek the opportunity to provide submissions on any such detailed proposal if it is to be the subject of any recommendation by the Committee.
8. The same lack of specificity attends the result of Question 6(a) posed in the online questionnaire asked by the Committee¹⁴. That question was: “*Should the NSW Government establish a specialist unit to investigate animal cruelty and enforce animal protection laws?*” The question reportedly received responses of 58% “strongly agree” and 14% “agree”. In that regard, it is to be noted that:
 - a. No detail was provided in the question as to the nature, specific functions or powers of the proposed “specialist unit”; and
 - b. Importantly, there was no suggestion in the question that the proposed “specialist unit” would take on the investigation and enforcement of animal protection laws to the *exclusion of* RSPCA NSW. If that suggestion had been incorporated in the question, the responses given to Questions 5(i)-(iii) (which were overwhelmingly supportive of the involvement of charitable organisations in the investigation and enforcement of those laws) clearly indicate that the reaction to such a proposal would have been negative.
9. RSPCA NSW stresses again¹⁵ that it would be utterly irresponsible for any government to remove RSPCA NSW’s long-standing powers of investigation and enforcement and invest those powers in a “specialist unit” unless, at least, it were positively satisfied, upon clear evidence and careful analysis, that such a measure would, as a matter of *certainty* (rather than abstract and contentious reasoning), better protect animals from cruelty and enhance their welfare. It is respectfully submitted that the evidence taken by the

12 The joint committee of the ICAC has power to protect confidential information by taking evidence in private or making non-publication orders in respect of the contents of documents – see section 70, *Independent Commission Against Corruption Act 1988*.

13 See, for instance, the Transcript at page 26 (per Mr Michael Donnelly, Animal Care Australia): “*I would have to see the structure of that set up. Your terms of reference have asked us to consider this independent office of welfare with no understanding, no explanation, no structure, no nothing ... So I cannot answer...*” and at page 27 (per Mr John Parkinson, Pet Industry Association of Australia): “*We are opposed to a whole new body, without understanding the detail*” and (per Mr Barry Codling, Pet Industry Association of Australia): “*... we are all asking ‘What does it look like?’*”

14 See <https://www.parliament.nsw.gov.au/lcdocs/other/13089/Summary%20report%20from%20online%20questionnaire.pdf>

15 See also Transcript at page 62.

Committee and the submissions received by it do not come close to demonstrating that a “specialist unit” to investigate and enforce the animal cruelty laws, operating to the exclusion of RSPCA NSW and AWL, would achieve those outcomes.

10. A further matter of significant concern to RSPCA NSW in relation to any proposed “independent office of animal welfare” or “specialist unit” is that it will not be independent of government. Like every statutory body, the role, powers, responsibilities and funding of a government body established to address animal welfare will be assessed within a framework of competing and changeable governmental priorities. In accordance with current Government policy, such a body will sit within a “cluster” of other government bodies and will be required to compete for resources within that cluster. The constant demand for cost savings and the universal application of “efficiency dividends” can have drastic impacts on the core functions and the delivery and quality of services of such bodies¹⁶. The priorities of one government may not, and often do not, reflect the priorities of the next.
11. RSPCA NSW considers that to unnecessarily expose animal welfare and the victims of animal cruelty to the vagaries of government funding and priorities is unnecessary and unacceptable. This is particularly so in circumstances where the current model is not only free of such uncertainty, but has operated successfully for decades to deliver the highest quality of animal welfare services, based on widespread community support.

POWERS OF RSPCA NSW INSPECTORS TO ENTER LAND

12. There was some discussion in the evidence before the Committee as to the legal position regarding the power of Inspectors to enter property to investigate complaints or concerns about animal cruelty, with different views being expressed¹⁷. In fact, the position is as follows.
13. Section 24E of POCTAA affords RSPCA NSW and AWL inspectors and NSW Police (each an **enforcement officer**) the power to enter land to exercise any function under Division 2, Part 2A of the Act.

16 By way of example, the ICAC has foreshadowed to the joint committee on the ICAC (21 October 2019) and the standing Public Accountability Committee (6 November 2019) that reduced funding from Government and the application of “efficiency dividends” will lead to a loss of many staff in the next few years. That would likely include highly trained and experienced members of its Investigation Teams and would also restrict the ICAC’s ability to conduct public investigations. Further, notwithstanding Parliament’s intention that the ICAC be independent of government, it currently sits within the Department of Premier and Cabinet Cluster and competes with other government bodies within that cluster for resources.

17 For instance, at Transcript page 12 (Day 1), Ms Robinson from the DPI told the Committee that inspectors had powers of entry onto properties “if they suspect on reasonable grounds that there is a breach of the Act potentially occurring”, but could only enter houses in very specific, urgent situations or with a warrant. Mr Slater from AWL, on the other hand, expressed the view at Transcript page 30 (Day 1) that AWL inspectors could enter a property on suspicion, but had to have either “a direct line of sight to an animal suffering” or a warrant.

14. An enforcement officer can only enter a dwelling with a warrant granted pursuant to the requirements of the *Law Enforcement (Powers and Responsibilities Act) 2002*. The only exception to this is where an enforcement officer believes on reasonable grounds that:
- An animal has suffered significant physical injury, is in imminent danger of suffering significant physical injury or has a life-threatening condition that requires immediate veterinary treatment; and
 - It is necessary to exercise the power of entry to prevent further physical injury or to prevent significant physical injury to the animal or to ensure that it is provided with veterinary treatment.
15. Section 24I further provides that an enforcement officer may examine an animal if they suspect, on reasonable grounds that:
- An offence under POCTAA or its regulations is being, has been or is about to be, committed in respect of the animal;
 - The animal has not been provided with proper and sufficient food or drink during the previous 24 hours;
 - The animal is so severely injured, so diseased or in such a physical condition that it is necessary that the animal be provided with veterinary treatment and the animal is not being provided with that treatment; or
 - The animal is so severely injured, so diseased or in such a physical condition that it is cruel to keep it alive.
16. There is no requirement that an enforcement officer have a “direct line of sight to an animal suffering” in order to exercise his or her powers of entry, although this may be relevant to an assessment of whether he or she has one or more of the beliefs as to reasonable grounds set out above.

LIMITATION PERIODS

17. At Transcript page 66, RSPCA NSW was asked whether there had been instances where it had been thwarted in pursuing animal cruelty offences by the statutory limitation period for the commencement of prosecutions. The Committee was advised that there had been occasions where circumstances suggestive of the commission of an offence had come to the attention of RSPCA NSW shortly before, or shortly after, the expiration of the limitation period.
18. By way of further answer to that question, proceedings for an offence under POCTAA must be commenced not later than 12 months after the date alleged to be the date on which the offence was committed¹⁸. No distinction is drawn in that regard between serious and less serious offences; for example, the 12-month limitation period applies equally to offences of cruelty and aggravated cruelty. The burden of proving that offences

¹⁸ Section 34(4), *Prevention of Cruelty to Animals Act*.

have been commenced within the 12-month limitation period rests on the prosecution and must be established beyond reasonable doubt.

19. RSPCA NSW considers that a 12-month limitation period in respect of cruelty offences is unnecessary and undesirable. As with many environmental offences, the victims of cruelty offences are not in a position to report such crimes. Crimes against animals have to be *discovered* before they can be prosecuted. In the case of cruelty offences they are discovered by Inspectors, or they are discovered by members of the public and reported to RSPCA NSW. This can occur at a considerable time after the offence has been committed.
20. RSPCA NSW urges the Committee to recommend to Government that POCTAA be amended to reflect the approach taken to limitation periods in the *Protection of the Environment Act 1997* and the *Biodiversity Conservation Act 2016* and other legislation. In those Acts¹⁹, in addition to providing for a fixed limitation period (e.g. 2 years), 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. If this alternative limitation period is relied upon by the prosecution, the court attendance notice, information or application commencing the proceedings must contain particulars of the date on which evidence of the offence first came to the attention of the authorised officer (which is taken to be established unless the contrary is proven) and need not contain particulars of the date on which the offence was committed.

MEMORANDUM OF UNDERSTANDING WITH THE DEPARTMENT OF PRIMARY INDUSTRIES

21. At Transcript page 69, RSPCA NSW took some questions on notice in relation to the Memorandum of Understanding between it and the DPI. The Memorandum of Understanding with the DPI was executed after a detailed process of consultation between the parties. It does not govern funding arrangements and was not intended to do so²⁰.
22. The MOU does make provision for SOP and other policy documents utilised by the RSPCA NSW Inspectorate to be provided to DPI for review. That was undertaken in September 2017, and in accordance with review provisions contained within the MOU a periodic review of those policies and procedures is scheduled to commence shortly.

19 See section 216(2) of the *Protection of the Environment Act 1997* and section 13.4(2) of the *Biodiversity Conservation Act 2016*.

20 See, for example, clause 3.1 of the MOU.

LOCATION OF RSPCA NSW SHELTERS, BRANCHES AND INSPECTORS

23. At Transcript page 69, RSPCA NSW was asked to provide information as to the geographical location of shelters, branches and inspectors. In that regard:
- a. RSPCA NSW operates nine shelters, one care centre and four veterinary hospitals/clinics. The shelters are located at:
 - i. Sydney (Yagoona)
 - ii. Hunter (Rutherford)
 - iii. Illawarra (Unanderra)
 - iv. Blue Mountains
 - v. Broken Hill
 - vi. Central Coast (Somersby)
 - vii. Coffs Harbour
 - viii. Orange
 - ix. Port Macquarie
 - b. The veterinary clinics are located at:
 - i. Sydney (Yagoona)
 - ii. Hunter (Rutherford)
 - iii. Tighes Hill
 - iv. Broken Hill
 - c. The care centre is located at Tuggerah.
 - d. As at the date of filing these supplementary responses, RSPCA NSW has 23 volunteer branches and supporter groups dispersed throughout the State, which undertake fundraising events, provide emergency boarding, foster care and adoption, assist (financially and physically) with microchipping and desexing drives in disadvantaged communities and, in many cases, subsidise veterinary treatment for animals in their area. These branches are located at Albury, Armidale, Bathurst, Blue Mountains, Broken Hill, Central West, Cooma, Eurobodallah, Glen Innes, Goulburn, Gunnedah, Hunter, Illawarra, Inverell, Mudgee, Nowra, Orange, Port Macquarie, Sydney, Tamworth, Taree, Tenterfield and Ulladulla.
 - e. The RSPCA NSW Inspectorate has a Chief Inspector, a Deputy Chief Inspector, four team leaders, 32 permanent full-time inspectors and five temporary inspectors (serving in government-funded contract positions). Officers of the Inspectorate are distributed geographically across the State, with 13 inspectors and two team leaders stationed at the Sydney metropolitan office at Yagoona, six inspectors and one team leader in the Southern regional team and nine inspectors and one team leader in the Northern regional team.

SUPPLEMENTARY QUESTIONS

The following section addresses supplementary questions posed to RSPCA NSW by notice from the Committee on 20 February 2020.

COMPLAINTS INTAKE

1. On page 34 of RSPCA NSW's submission, it states that in 2018/2019, RSPCA NSW received and investigated 15,673 animal cruelty complaints, which averages at 60.2 per day. Can you advise how many staff are rostered to take the Cruelty Hotline calls and what training have they undertaken so as to make appropriate assessments and referrals?

It should be noted that, as set out in the table reproduced from page 34 of our submission, in 2018/2019, RSPCA NSW received 16,696 **complaints**, of which 15,673 were **investigated**. This is in fact an average of 43 complaints referred for investigation per day (bearing in mind the complaint hotline operates 365 days per year). Complaints which were received but not "investigated" comprised complaints which were recorded as "intel only" (see below) or complaints which were referred to the appropriate agency; e.g. complaints which fell within the jurisdiction of National Parks and Wildlife.

The RSPCA contact centre presently has a total of 11 staff members. On any given day, 4-5 staff members will be rostered on to answer the "1300 cruelty" hotline and to address reports received via on-line channels.

In addition to "on the job" training, staff members working in this area complete the following training modules specific to assessing animal cruelty related complaints:

- a. Reporting animal cruelty
- b. POCTAA 101
- c. How to identify animal cruelty
- d. How to categorise (triage) animal cruelty reports
- e. Introduction to Animal Welfare legislation

Staff members also work from Standard Operating Procedures which provides the policy framework for how to respond to, assess and action animal cruelty reports. The SOPs also include specific guidance as to "what to ask" in relation to specific types of complaint. By way of illustration, if a report is made of an animal which is "down and unable to get up", the "what to ask" guidance suggests the following questions be asked:

- a. Is there any obvious injury?
- b. How long has the animal been down?
- c. Have other agencies been contacted (Police)?
- d. Does the owner live at the property? Are they present?
- e. Is the animal thrashing or paddling?
- f. How is the animal situated? Laying flat or side, chest (sternum) or haunches?

- g. Is there vehicle access?
- h. Is there a history to the problem – has the animal been in this situation before?

Having sought the required information, the operator will then make an assessment as to whether the complaint is one of animal cruelty. All such cases are then referred to the Inspectorate for investigation²¹. Referrals are categorised, in summary, as either:

- i. Urgent – where the animal the subject of the complaint has suffered significant physical injury, is in imminent danger of suffering significant physical injury, or has a life-threatening condition that requires immediate veterinary treatment. Matters that could constitute an act of aggravated cruelty are also classified as urgent. Urgent reports are assigned to the appropriate inspector region and an inspector is notified by telephone and email of the job. If acknowledgment of the job is not promptly received, then a follow up telephone call is made to the inspector and/or the inspector's team leader;
- ii. As soon as possible (ASAP) – where the complaint is considered serious but not life-threatening (e.g. an animal which is thin or suffering from a flea infestation or mange). Such complaints are to be actioned within 48 hours of having been received by the call centre;
- iii. Routine – where there is no immediate animal welfare issue (e.g. a complaint about an historical incident where there is no suggestion that an animal is currently suffering). Routine complaints are actioned as soon as an officer is available.

In some cases (e.g. 190 instances in 2018/2019), complaints are referred to NSW Police for investigation. These referrals are generally made where a matter requires an urgent response, but no RSPCA NSW inspector is in sufficiently close proximity to attend in a timely manner. In that regard, there was a suggestion in the proceedings before the Committee²² that submissions had been received which accused RSPCA of “passing the buck” by referring complaints to others. Such referrals only occur where the urgency requires that the NSW Police respond (190 instances in 2018/2019), or where the conduct alleged is not within the jurisdiction of the Inspectorate (69 instances in 2018/2019).

2. Is every call to the Cruelty Hotline logged as a complaint?

Not all calls to the “1300 cruelty” hotline are logged as an animal cruelty complaint. This is because the hotline receives a variety of calls which are not about a situation involving a

²¹ This procedure is essentially similar to that followed by NSW Police. As Detective Inspector Whiteside said in his evidence before the Committee at Transcript 8 (Day 1): the procedure for an animal welfare complaint *“is the same as any other crime or any other incidents in general speaking terms that we receive, whether it be at the front counter, from a call centre, like the Police Assistance Line. That is assessed based on the seriousness or the need to act immediately. It is also assessed based upon the available evidence that is relayed to us – is that in an admissible form? Have we other information or intelligence to support that or otherwise? And then based upon the current workload in that area it is assessed in terms of a response.”*

²² See Transcript at page 42.

potential breach of the animal cruelty laws. These might include, for example, complaints about nuisance barking or stray animals (for which the caller is referred to the local council), general pet care advice, adoption and surrender inquiries, etc.

3. What is the definition or criterion for a 'complaint'?

Animal cruelty complaints are lodged in the system when there is a basis to believe that what is being reported might amount to a potential breach of the animal cruelty laws (including Animal Welfare Codes of Practice). In the case of uncertainty, the matter is referred to a team leader and/or the Inspectorate for consideration.

4. Are all complaints logged into a database, or only those referred for investigation?

All complaints of potential animal cruelty are logged into the system database, as are "intel" reports. An "intel" report is one which is not immediately actionable for one reason or another; for instance, a report that an animal in the area has been poisoned, without any information as to a known person of interest or plausible lead by which such a person might be able to be identified.

Calls which do not relate to a potential animal cruelty offence (e.g. inquiries about nuisance barking or stray animals, general pet care advice, adoption and surrender inquiries) are not logged on the system, although all calls are recorded.

Of the 16,696 complaints received in 2018/2019, 15,673 were investigated. Complaints which are received but not "investigated" comprise complaints which are recorded as "intel only" or complaints which are referred to the appropriate agency; e.g. complaints which fall within the jurisdiction of National Parks and Wildlife.

5. For what period of time are records of complaints kept and do Hotline staff have direct access to these records when intaking complaints?

The database currently in use contains records from 2002 onwards. Contact centre staff have direct access to all such records when taking complaints. Team leaders also have access to Inspectorate-based notes.

6. Is there a procedure or protocol to ensure that multiple contacts to the Cruelty Hotline about the same alleged perpetrator are able to be flagged so as to establish prima facie patterns of negligent or cruel behaviour?

The database identifies previous records based on the name or address of the alleged perpetrator. Once a report is logged, the database will automatically identify whether there have been multiple complaints logged in relation to the same person or address and also provides information as to other reports near the location in question (e.g. on the same street).

Information regarding offenders and persons of interest is also exchanged between Inspectors pursuant to clause 3 of the Memorandum of Understanding between RSPCA NSW and the NSW Police. That is, NSW Police will provide RSPCA NSW Inspectors with information required by RSPCA NSW for the purposes of carrying out its enforcement function under the Act. This includes providing information from the COPS system regarding:

- a. Any history of violence;
- b. Prior cruelty to animals; or
- c. Any other matter that might lead to possible concern for the safety of RSPCA inspectors or officers.

RSPCA NSW inspectors will also provide to NSW Police information requested in the same way, for example any history of cruelty to animals, or any other matter in relation to alleged criminal offences whether involving POCTAA or any other offence. In practice, RSPCA NSW Inspectors tend to have long-standing and strong professional relationships with the NSW Police officers who operate in their area and exchange information with them regularly about persons of interest, so that patterns of violent behaviour (both to animals and human beings) can be identified. Also, over time, as a result of their work and involvement in the community, Inspectors tend to develop a level of familiarity with previous incidents of animal cruelty in their area and of potential offenders and locations where there is some history of violence or other criminal behaviour.

7. On average, how long do Cruelty Hotline staff take to make an assessment about whether to refer the complaint for investigation?

The time it takes to assess whether a report is a complaint about potential animal cruelty, to obtain necessary information from the caller as to the circumstances and to classify the complaint for investigation varies from call to call. There are no performance indicators in that regard and no data is collected on “average” time taken for the task. Staff are encouraged to ask appropriate questions (guided by the Standard Operating Procedures) to identify the factual basis of the complaint in sufficient detail to make an appropriate assessment as to its seriousness and degree of urgency, without limitation as to the time spent on those tasks.

8. Based on the figures provided in the Inspectorate Outcomes table, it appears that more than 14,000 complaints received no formal action by the Inspectorate.

This depends on what one means by “formal action”. All of the 15,673 complaints in 2018/2019 referred to in the table were investigated by an Inspector. As explained in our Submission:

- a. This involved both initial visits to the location of complaints and a further 3,866 “re-visits” to follow up;
- b. POCTAA provides for a range of compliance and enforcement mechanisms, allowing Inspectors to respond in an appropriate and graduated manner to complaints;

- c. In many cases, in investigating a complaint, an Inspector may liaise with the alleged offender, offer advice and make requests regarding the treatment of the animals in question and follow up to monitor progress. If the alleged offender complies with the advice given and any requests made by the Inspector, the Inspector may consider it appropriate to close the matter without taking further action;
- d. Inspectors work closely with RSPCA NSW's Community (Education and Programs) team and, in appropriate cases, Inspectorate matters are referred for the provision of outreach assistance in lieu of enforcement action. These include matters, for example, where the animal owners or persons in charge need specialised support in the context of domestic violence, homelessness, social isolation or ill-health (whether physical or mental);
- e. In other cases, an Inspector may identify that an owner needs help in better understanding how to care for an animal or animals or how to access assistance, and the Community team may provide them with educational material on matters such as safe animal handling practices or routine animal husbandry.

RSPCA NSW considers the levels of “formal” action taken in matters investigated by the Inspectorate to be appropriate in circumstances where POCTAA regards community engagement and educational efforts by the Inspectorate to be representative of success in achieving its objects.

a. Can the RSPCA NSW explain whether a decision was recorded for each matter as to why a complaint was or was not actioned?

All complaints are “actioned”. In most cases, this is by referring it to an Inspector for investigation, although some complaints are “actioned” by being referred to another appropriate authority or recorded as an “intel only” matter (see above). The primary record of what action was taken in relation to any particular complaint is generally the notebook of the Inspector who investigated it. The complaints database also records, in a summary way, the ultimate resolution of each complaint, but will not necessarily contain any record of the reasons why any particular action was taken or not taken in relation to a complaint.

b. Can the RSPCA advise whether complaints were not actioned because of issues such as lack of evidence, lack of RSPCA powers, vexatious complaints, cruel but lawful activities or lack of resources?

All complaints referred for investigation are investigated. This typically involves an inspector visiting the location at least once to make appropriate inquiries. If the complaint is determined to have substance then the inspector may take a variety of actions²³, ranging from offering

²³ As summarised in Submission 136 at pages 12-14 and set out in the RSPCA NSW 2017 Standard Operating Procedures, 2017 Inspectorate Independence Policy and 2016 Prosecution Policy (each of which were provided to the Director General of the DPI and incorporate relevant NSW Police standard operating procedures and aspects of the NSW Office of the Director of Public Prosecutions prosecutorial guidelines).

advice and making requests regarding the treatment of the animals in question and following up to monitor progress, through written directions under s. 24N of the Act, official caution or penalty infringement notice, to prosecution for an animal cruelty offence. Decisions as to whether to proceed with a prosecution are taken in the manner summarised in our Submission (Submission 136) at page 39 and essentially involve three questions:

- a. Is there admissible evidence capable of proving the elements of the charge (or can such evidence be gathered)?
 - b. Can it be said that there is a reasonable prospect of conviction by a Court properly instructed as to the law?
 - c. Is there any other proper reason not to proceed to charging?
- c. Fourteen thousand non-actioned complaints is a very significant animal welfare public interest issue. Does RSPCA NSW have any views as to why there is such a gap between the public's concern for animal welfare by reporting incidents, and the RSPCA's ability to action their concerns?**

It is not correct to say that there were 14,000 complaints in 2018/2019 which were "not actioned". In fact, all 15,673 complaints referred for investigation in 2018/2019 were investigated by an Inspector.

If the complaint, on investigation, reveals no animal welfare issue, then it is obviously not proceeded with, but this can hardly be said to raise "a very significant animal welfare public interest issue".

Further, in all cases where an animal welfare issue is identified, *action* is taken by the Inspectorate to address that issue. It is not correct to say that, merely because no statutory written direction, official caution or infringement notice is issued or no prosecution is initiated, that "no action" has been taken.

This is because, in very many cases, if an animal welfare issue is identified, the decision will be taken that it is most effectively addressed by informal action, such as offering advice and making requests regarding the treatment of animals and following up by subsequent visits to monitor progress, or referring the owner to the RSPCA NSW's Community teams. For instance, this might involve identifying that the owner is well-intentioned but in need of specialised support to care for their animal(s); for example, because they are homeless, socially isolated or in ill-health or in a situation of domestic violence. In other cases, an Inspector may identify that an owner needs help in better understanding how to care for an animal or how to access assistance, and the Community team may provide them with educational material (e.g. copies of DPI publications regarding animal welfare codes, drought relief packages or material on safe animal handling practices).

Such informal action is entirely consistent with the objects of POCTAA (which provides for a range of compliance and enforcement measures and allows Inspectors to respond in an appropriate and graduated manner to complaints). In our experience, it is also consistent with community expectations as to the appropriate way to deal with animal cruelty complaints where the issue is one of ignorance or special need and not deliberate cruelty. We do not

accept, for instance, that not taking formal enforcement action against a well-intentioned animal owner who is doing their best to care for their animal in a situation of homelessness or domestic violence (and addressing the situation with education and support) represents a “gap” between the public’s concern for animal welfare and appropriate action or gives rise to “a very significant animal welfare public interest issue”.

d. Is it the case that many complaints are about tethered dogs that are rarely let off for exercise? If so, has RSPCA NSW ever raised this problem with the Department in formal submissions, given that s.8 of POCTAA makes prosecution for this extremely common offence very difficult?

RSPCA NSW does receive many complaints about tethered dogs and they do present a particular problem for Inspectors. This is illustrated by the photograph which was handed up by Mr Coleman during his evidence (a further copy of which is attached), which shows an example of the sort of situation an Inspector may often find in investigating a complaint that a dog is being kept tethered.

There are two sections of the Act potentially enlivened by such a situation; section 8 makes it an offence for a person in charge of an animal to fail to provide it with food, drink and shelter which is “proper and sufficient and which it is reasonably practicable in the circumstances for the person to provide” and section 10 makes it an offence for a person to tether an animal “for an unreasonable length of time”.

There are currently two common problems encountered in trying to apply these sections. First, it can be extremely difficult to prove that an animal is being tethered for an “unreasonable period of time”. This is both because it requires an Inspector to form a view about what period of time a Court will consider to be “unreasonable” in the particular circumstances and also, because a recalcitrant owner will often maintain that the animal is let off and exercised regularly (e.g. at night). In the absence of any clear evidence to the contrary (e.g. in the physical condition of the animal), this can be a difficult thing to disprove (bearing in mind that the onus of proof lies on the prosecution and requires proof beyond reasonable doubt).

The same issue is frequently encountered in relation to whether an animal is being provided with “proper and sufficient” shelter; that is, proof that shelter which is *prima facie* inadequate is in fact all the shelter that is being provided (in the face of assertions by an owner, for example, that the dog is taken in at night or in hot or cold weather) as well forming a view as to how any particular Court is likely to approach the question of what is “proper and sufficient”.

A further issue is that, under the current legislation, what is “reasonable” or “proper and sufficient” falls as a practical matter, to be determined by reference to the *physical* impact of the conduct in question on the animal, but not the *mental* distress that it may be inflicting on that animal.

These sorts of cases are particularly problematic, both because of the impact that the conduct in question may be having on the welfare of the animal concerned, and also because these difficulties in the way of an Inspector achieving a satisfactory outcome can lead to a sense of frustration on the part of the complainant, which tends to undermine their confidence in the system.

RSPCA NSW has raised these issues with the DPI in the context of the current review of the provisions of the Act and suggests that there are two principal ways in which they might sensibly be addressed. One measure would be to include in the assessment of whether conduct is cruel, its mental, and not just physical, impact on an animal. Another is by addressing the inherent uncertainty in the standards under sections 8 and 10, for instance, by providing for the imposition of clear, objective standards (e.g. by regulation) on such matters as what is “proper and sufficient” shelter for a particular type of animal or what is tethering for an “unreasonable” length of time. This could then potentially be linked to a provision casting an onus on an owner to provide satisfactory evidence that that standard of care is being provided.

9. What number of Hotline complaints are about:

- a. companion animals;**
- b. cattle;**
- c. sheep;**
- d. intensively farmed animals;**
- e. animals in research;**
- f. animals in entertainment?**

RSPCA NSW does not collect disaggregated data at a level capable of reporting at the level requested. Anecdotally, and given the numbers of complaints regarding companion animals, it is likely that they are the most common complaint received; however, generally speaking, and particularly at certain times (e.g. during drought or emerging and critical incidents affecting rural regions) there are significant numbers of calls received regarding stock animals. As RSPCA NSW Inspectors are not enforcement officers for either the *Animal Research Act* or the *Exhibited Animals Protection Act*, complaints relating only to those pieces of legislation (i.e. without an element of animal cruelty under POCTAA) will be referred to the relevant agency.

10. How much does it cost per annum to run the Cruelty Hotline and is any NSW government funding put towards its operational costs? If so, how much?

The direct operating costs of the RSPCA NSW Contact Centre costs are \$893,081 per annum. Contact Centre representatives answer calls to the 1300 cruelty complaint line, as well as rescue and ambulance requests and general enquiry calls from the public (e.g. shelter opening hours, pet care needs, adoption pricing, surrender enquiries, etc). There is no NSW government funding put towards the operational costs of the RSPCA NSW Contact Centre.

INSPECTORS

1. **RSPCA NSW states on p 34 of the submission that there are initial inspections in many locations throughout the state and a further 3,866 revisits (an average of 14.8 site visits per day) to inspect the animals the subject of an original complaint and to assess compliance with verbal advice or written directions issued. What number of investigations at the initial visit are about:**
 - a. **companion animals;**
 - b. **cattle;**
 - c. **sheep;**
 - d. **intensively farmed animals;**
 - e. **animals in research;**
 - f. **animals in entertainment?**

RSPCA NSW does not collect disaggregated data at a level capable of reporting at the level requested. Further, RSPCA NSW Inspectors are not enforcement officers for the purposes of either the *Animal Research Act 1985* or the *Exhibited Animals Protection Act 1986*.

2. **On average, how many hours are spent on investigating a complaint?**

The time it takes to investigate a complaint about potential animal cruelty varies widely from a relatively short amount of time (e.g. if the complaint proves to be mistaken or ill-founded) to potentially hundreds of hours (in a complex matter which is prosecuted to finality). There are no performance indicators in that regard and no data is collected on “average” time taken for an investigation. Inspectors are encouraged, and expected, to take as much time as is necessary to pursue a matter to a satisfactory conclusion, without limitation as to the time spent.

3. **On p 68 of the transcript CEO Steve Coleman stated, “I do not know that there is another regulator in New South Wales that would achieve a 99.9 per cent prima facie success rate.” Is the success rate so high because you select only a small proportion of the potential cases available for prosecution where there is overwhelming evidence of animal cruelty?**

RSPCA NSW prosecutes all cases where that course of action is suggested by its application of its prosecutorial guidelines (which adopt the guidelines of the NSW Office of the Director of Public Prosecutions to the extent they are applicable). Those guidelines require that there be admissible evidence capable of proving the elements of the charge and that there is a reasonable prospect of conviction by a Court properly instructed as to the law, but prosecutions are not limited to cases in which there is “overwhelming evidence”.

RSPCA NSW considers that the levels of prosecution undertaken are appropriate in circumstances where the Act regards community engagement and educational efforts as representative of success in achieving its objectives.

4. What are the criteria or guidelines for deciding to prosecute a case?

Prosecutorial decision-making in the context of animal cruelty is the same as prosecutorial decision-making in the general criminal context and the prosecutorial guidelines applied by RSPCA NSW adopt the guidelines of the NSW Office of the Director of Public Prosecutions to the extent they are applicable.

The public interest is the paramount consideration. Whether the public interest requires that a matter be prosecuted (as opposed to addressed by other enforcement measures) is resolved by determining, for each charge, the answer to three questions:

- a. Is there admissible evidence capable of proving the elements of the offence?
- b. Can it be said that there is no reasonable prospect of conviction by a Court properly instructed as to the law? This requires an exercise of judgment which will depend, in part, on an evaluation of the weight of the available evidence and the persuasive strength of the prosecution case in light of the anticipated defence and the likely course of the proceedings;
- c. Is there any other proper reason not to proceed to charging? This requires consideration of many factors, which might include such matters as (a) the seriousness of the alleged offence; (b) whether or not the alleged offence is of considerable general public concern; (c) the prevalence of the alleged offence and any need for deterrence; (d) the availability and efficacy of any alternatives to prosecution; (e) the likely outcome in the event of a finding of guilt, having regard to the sentencing options available to the court; (f) the degree of culpability of the alleged offender in connection with the offence and (g) any mitigating or aggravating circumstances.

Where the answers to these questions dictate, RSPCA NSW prosecutes²⁴.

5. How many cases have there been over the last three years where on reasonable grounds the Inspectorate suspects animal cruelty but chooses not to prosecute because of the lack of indemnity for costs?

None. If RSPCA NSW's prosecutorial guidelines dictate that prosecution is the correct enforcement option then a prosecution is undertaken, without regard to any question of indemnity for costs.

²⁴ We note that there was a suggestion in the evidence before the Committee that the DPP had responsibility for animal cruelty prosecutions being undertaken pursuant to investigations by the NSW Police – see Transcript at page 26. This is not correct. The DPP has no responsibility in relation to prosecutions for summary offences arising in any way.

ACCOUNTABILITY TO GOVERNMENT

1. **On p 40 of their submission, RSPCA NSW states that it provides an annual report to DPI in accordance with s 34B(3) POCTAA and cl 34 of the regulations requires that RSPCA NSW report on a range of detailed information about the RSPCA NSW Inspectorate. Is RSPCA NSW prepared to publish that report on its webpage and tabled in NSW Parliament?**

As Mr Coleman said in his evidence before the Committee²⁵ RSPCA NSW would have no objection to its annual report to the Minister²⁶ being made available to the NSW Parliament and, subject to the protection of any confidential material, also to the general public; although this is in its opinion a matter about which the views of the Minister should also be sought.

2. **On p 44 of their submission, RSPCA NSW states that they are not exempt from the provisions of the Government Information (Public Access) Act 2009 (NSW) (GIPA) and that Inspectors hold an office for “a public purpose by or under the provisions of a legislative instrument” and are thereby subject to GIPA. In evidence given by DPI Director General Scott Hansen, on p 15 of the transcript he stated that: There is no legal obligation on them (RSPCA) to do so. Can the RSPCA clarify if they have received legal advice that they are obliged to respond to GIPA requests in regards to Inspectorate activities?**

On page 43 of its Submission (Submission 136), in answer to the proposition that RSPCA NSW was “exempt” from the provisions of GIPA, RSPCA NSW states its understanding and position, as follows:

“RSPCA NSW is not exempt from the provisions of that legislation [the *Government Information (Public Access) Act 2009*]. In particular, RSPCA NSW considers that its Inspectors hold an office ‘for a public purpose by or under the provisions of a legislative instrument’ and are thereby subject to GIPA. Accordingly, when RSPCA NSW receives GIPA requests (either directly, or via requests from DPI for the release of information concerning the functions of the RSPCA NSW Inspectorate), it responds in line with the requirements of GIPA. In 2018/19, for instance, RSPCA NSW responded to five GIPA applications.”

This position is based on legal advice regarding the obligations of RSPCA NSW with regard to Inspectorate activities. In the Transcript at page 15, as we understand his evidence, Mr Hansen did not dispute this position in relation to requests for information regarding the Inspectorate, but was merely observing that the Act did not apply to “the broader RSPCA” (i.e. to its activities other those of the Inspectorate).

25 Transcript at page 63.

26 RSPCA NSW and AWL are each required to report annually to the Minister pursuant to section 34B(3) of the Act, addressing such matters in relation to the exercise by themselves or their officers of functions under the Act as may be prescribed by the regulations. The regulation setting out the prescribed contents for the report is Regulation 34 of the *Prevention of Cruelty to Animals Regulation 2012*.

3. Can the RSPCA NSW confirm that the reasons for decisions made by the Inspectorate in regards to investigations and prosecutions under POCTAA:

a. are only subject to internal review;

RSPCA NSW regularly appears as a party in courts and tribunals from the NSW Local Court to the High Court of Australia. Matters commenced by RSPCA NSW are prosecuted summarily in the Local Court on numerous occasions each year. These court appearances regularly subject the enforcement action of RSPCA NSW to judicial scrutiny. Moreover, summary hearings are conducted with experienced defence counsel acting for accused persons, and by senior and experienced Magistrates who adjudicate such matters on numerous occasions during the year. In the last two years, no accused person has been acquitted. Following conviction at summary hearing, matters are also regularly appealed to the District Court. Again, in the last two years, no conviction in proceedings undertaken by RSPCA NSW has been overturned in the District Court on appeal.

Additionally, RSPCA NSW Inspectors regularly apply for and obtain search warrants in accordance with the *Law Enforcement (Powers and Responsibilities) Act 2002*. To the knowledge of the Chief Inspector and General Counsel, no application for a warrant by RSPCA NSW has been refused in the last two years. Reporting forms are also submitted in respect of the execution of every warrant, providing an additional level of administrative scrutiny by Registrars of the Local Court.

In these ways, there is regular and detailed judicial consideration of the Inspectorate's exercise of its investigative and enforcement powers in NSW.

In addition, RSPCA NSW reports annually to the Minister on a range of matters, including complaints and investigations, enforcement action taken and any complaints made about RSPCA NSW or its officers and also provides detailed and timely responses to any specific requests for information made by the Minister or the DPI from time to time.

Further, commensurate with the level of public interest in animal welfare issues, the activity of RSPCA NSW in relation to the investigation and enforcement of animal cruelty offences is subject to a high degree of media attention. One by-product of this public interest is exposure to close coverage and scrutiny, both in NSW and nationally, of the activities of RSPCA NSW by a media which is ready, willing and able to hold the organisation publicly accountable.

b. do not have to be reported to the public;

It will readily be appreciated that information as to investigations and prosecutions by RSPCA Inspectors, like investigations by the NSW Police or the DPP, are not publicly reported. This is for a range of reasons, including the importance of operational confidentiality, to protect the privacy and safety of individuals and to prevent undue damage to the reputation of individuals who may be the subject of an investigation which does not lead to any formal action.

c. do not have to be reported to the Minister or his Department;

RSPCA NSW reports annually to the Minister on a range of matters, including complaints and investigations, enforcement action taken and any complaints made about RSPCA NSW or its officers. We also provide detailed and timely responses to any specific requests for information made by the Minister or the DPI from time to time. Recent requisitions have involved, for example, requests for information as to the outcome of particular prosecutions, the status and outcome of particular inspectorate investigations and complaints and inquiries in relation to stock welfare panels.

d. are not subject to judicial review; or

Pursuant to the provisions of the *Administrative Decisions Review Act 1997*, no decisions of any authorized enforcement agency under POCTAA are reviewable by the NSW Civil and Administrative Tribunal. This includes not just RSPCA NSW and AWL, but also the NSW Police. This is because the Parliament has seen fit, no doubt for sound policy reasons, to exempt such decisions from judicial review.

e. investigation by the NSW Ombudsman?

Again, Parliament has seen fit, no doubt for sound policy reasons, to exempt such decisions (whether taken by RSPCA NSW or the NSW Police) from investigation by the NSW Ombudsman.

LAKESLAND HENS CASE

1. Under the requirements of the Code of Practice for Slaughter, only healthy hens can be sent to slaughter. Why did the RSPCA send the Lakelands hens to slaughter rather than give them the opportunity of being rescued and rehomed?

In June 2018, two RSPCA inspectors, a Local Land Services District veterinarian, an expert avian veterinarian and NSW Police attended a property in Lakesland for the purpose of assessing the welfare of the chickens on the property. The flock was assessed by walking slowly through the barn looking for visual symptoms of disease, emaciation or weakness. A very substantial number of birds were identified that had signs of respiratory problems and/or were emaciated and/or had lice infestations, due to multiple husbandry problems with the facility. The owner was issued with written directions in accordance with s. 24N of POCTAA requiring him to make immediate provision of proper and sufficient food and water, and appropriate veterinary treatment. The owner was informed that an avian expert needed to be consulted, that the flock might require treatment with antibiotics and that the entire facility needed to be cleaned to reduce the risk of worsening respiratory infection and to address the lice infestation. Over the following 13 days, RSPCA NSW Inspectors attended the premises on approximately nine further occasions (including four times in the company of the District Veterinarian and once with an industry consultant), to monitor compliance with the written directions.

In April 2019, the owner was prosecuted by RSCPA NSW for aggravated animal cruelty, failing to provide veterinary treatment and failing to provide proper and sufficient food and water and was convicted. He was fined, given a Community Correction Order and a 5-year prohibition order pursuant to s. 31(1)(b) of the Act.

RSPCA NSW did not “send the Lakelands hens to slaughter”, as the question postulates. First, RSPCA NSW’s understanding is that the birds were not “sent to slaughter”, but rather, that they were euthanised by the use of gas. Secondly, the birds were never in the custody of RSPCA NSW.

The decision to have the birds euthanised was taken by the legal owner of the birds, who we understand resolved on this course of action because the flock had been diagnosed with Infectious Laryngotracheitis (ILS), which is an acute respiratory disease notifiable under the *Biosecurity Regulation 2017*. Prior to this, RSPCA NSW had been discussing the possibility of the owner surrendering the hens to NSW Hen Rescue, but these discussions were forestalled when the Local Lands Services veterinarian determined that the birds could not be released into the community because the flock had been diagnosed with ILS.

2. Was there any internal review of the actions taken by the Inspectorate in regards to the Lakeland Hens investigation? If so, will RSPCA NSW agree to provide the committee with a copy of the review?

There was an internal, after-action review of the investigation. As a matter of policy, RSPCA NSW does not release such internal reviews, in order to protect the privacy of the individuals involved and also for reasons of operational confidentiality.

3. If RSPCA NSW sends seized farmed animals to sale and slaughter, do they give the proceeds of the sale to the owner, or is the money retained to meet costs?

The birds in question were not seized by RSPCA NSW and were never in the custody of RSPCA NSW, and were not sold or “sent to slaughter.”

Any animal seized by RSPCA NSW is held by it until it is either surrendered by the owner, ordered into RSPCA custody under s 31(1)(a) of POCTAA or ordered to be returned to the owner. Animals surrendered to RSPCA NSW or ordered into its custody are re-homed if at all possible and are not sold or “sent to slaughter”.

In relation to stock welfare panels, where an order is received to seize and sell animals, the funds received from the sale are given to the owner, less disbursements, in accordance with Part 2B of POCTAA.

WALLY'S PIGGERY CASE

Several submissions make reference to the Wally's Piggery case regarding concerns about RSPCA NSW's ability to investigate and prosecute serious animal cruelty charges. All 53 charges against the managers of 'Wally's Piggery' were withdrawn and the case against them dismissed in the Yass Local Court on the 17 November 2014.

- 1. Can RSPCA NSW confirm that their official reason for the withdrawal of all charges was that the "prosecution was hindered due to unlawfully obtained video footage' despite the fact that under s138 of the Evidence Act 1995 (NSW/CTH), a court has a discretion to admit 'improperly or illegally obtained evidence'?**

It is correct to say that the prosecution was hindered by the unavailability of the video footage in question as evidence, although RSPCA NSW is not aware of any statement by it or anyone else that this was the "official reason" for the withdrawal of the prosecution in question and it was not in fact the reason why the prosecution was withdrawn in November 2014.

Nor was the reason why that video footage was not available to be used in evidence in the prosecution merely, or even primarily, that it was unlawfully obtained. As a matter of law, 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, regardless of whether or not the Court might have been prepared to exercise its discretion under s 138 of the *Evidence Act 1995* in relation to the fact that it was unlawfully obtained.

In that regard, RSPCA NSW wrote to Animal Liberation NSW and Animal Liberation ACT at the time seeking their assistance to obtain that necessary proof, but they declined to do so. It was therefore necessary for the prosecution case to be based on the evidence 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.

- 2. Can RSPCA NSW confirm that in their contemporaneous media statement, they advised that they "sought to rely on its Inspectors observations and those of other agencies and an expert when they attended in early August 2012 and not the widely distributed video footage."**

RSPCA NSW confirms that it issued a media statement on 20 November 2014 which read as follows:

"RSPCA NSW is disappointed at having to make a very difficult decision on 17 November 2014 to withdraw its prosecution against WSL Investments Pty Ltd, Wally Perenc and Stephanie Perenc (commonly referred to as Wally's Piggery).

The RSPCA NSW investigation of this matter arose as a result of footage that has been widely circulated on the internet. We are disappointed that this footage was not lawfully substantiated

by Aussie Pigs and/or Animal Liberation, who initially released the footage to the media instead of giving it directly to one of the enforcement agencies. Those responsible for capturing the images subsequently would not provide a statement to RSPCA NSW so none of the evidence released by them could be used in the prosecution.

There appears to be a common misconception that the case at Yass Local Court relates to the widely circulated footage. This is not correct. The RSPCA NSW's case in this matter sought to rely on its Inspectors observations and those of other agencies and an expert when they attended in early August 2012 and not the widely distributed video footage.

The decision taken by the RSPCA NSW on the 17th November 2014 was made in accordance with its duties as a prosecutor and after consultation with independent Counsel appearing for the RSPCA NSW.

This is a disappointing result all round given the extensive efforts of the RSPCA to bring this matter before the Court.

RSPCA NSW implores any person who witnesses or obtains evidence of animal cruelty to report it to the relevant authority immediately."

3. How does RSCPCA reconcile these two competing explanations of the way in which the case was to be prosecuted?

The premise of the question that these two propositions are "competing explanations" is misconceived. The prosecution was hindered by the fact that the video footage could not be used in evidence and it was accordingly necessary for the prosecution case to be based on evidence 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.

4. Please give an explanation detailing the exact reasons why all 53 charges were withdrawn and as a consequence, the case was dismissed.

As set out in Submission 136 at page 39, it is the duty of a prosecutor not to proceed with a prosecution unless there is admissible evidence capable of proving the elements of the charge and a reasonable prospect of conviction by a Court properly instructed as to the law. This requires an exercise of judgment which will depend, in part, on an evaluation of the weight of the available evidence and the persuasive strength of the prosecution case in light of the anticipated course of the proceedings. Judgments as to those matters are generally made by RSPCA NSW on the advice of independent Counsel and are reviewed throughout the course of a prosecution. As explained in the media statement set out above, the decision not to proceed with the prosecution in question was ultimately made in accordance with those duties and after consultation with independent Counsel appearing for RSPCA NSW. Beyond this, RSPCA NSW considers that, applying Guideline 12 of the Prosecution Guidelines of the Office of the Director of Public Prosecutions (which has been adopted by RSPCA NSW), it is not in a position to give any further explanation as to its reasons for that decision.

BROILER CHICKS – TRUCK CRASH AT YASS INCIDENT

Several submissions make reference to a poultry transport truck crash at Yass in April 2018, and the subsequent treatment of tens of thousands of broiler chicks. There were concerns raised about RSPCA NSW's ability to investigate and prosecute for mass animal cruelty.

1. Did RSPCA NSW receive any formal complaints about how the chicks were treated by various frontline responders to the crash site?

The accident occurred in the early hours of 2 April 2018. RSPCA NSW received two complaints expressing animal welfare concerns in relation to the incident; one from a member of the public (on 5 April 2018) and one from the Animal Defenders Office (on 7 April 2018).

2. Did RSPCA NSW investigate the circumstances surrounding the incident, in particular:

- a. the numbers of unharmed, injured and dead chicks;**
- b. was there a veterinarian on site to examine the chicks;**
- c. if not, who was responsible for assessing the health of the chicks & deciding what to do with them;**
- d. how were the seriously injured chicks euthanised;**
- e. what care was taken to deal with mildly injured chicks;**
- f. what happened to the unharmed chicks;**
- g. whether there was any validity to concerns that thousands of chicks were bulldozed and buried alive on site?**

RSPCA NSW did investigate the circumstances surrounding the incident. In summary, as reported to our Inspector after receipt of the complaints, the site of the accident (which occurred at approximately 2 a.m. on Easter Monday) was attended by the regional livestock manager of the company which owned the chicks (whose role was to manage the immediate animal welfare response). The regional livestock manager was also accompanied by the hatchery manager, the owner of the transport company and local Council representatives. Those personnel remained on site from the early hours of the morning of 2 April until late in the afternoon, during which time the live chicks were gathered up and transported to a company farm at Griffith and the dead chicks transported to the hatchery for disposal. The staff in attendance confirmed that when they left the site after 4 p.m. they did not see any surviving chicks (although it is possible that a few may have remained undiscovered in the debris or had escaped undetected into the nearby bush). Company staff returned to the site on 4 April and completed a final inspection and our Inspector visited the site on 5 April 2018 (upon the receipt of the first complaint). Approximately 57,000 chicks died in the accident and a further 2,000 chicks were euthanised by the regional livestock manager. There was no evidence obtained which supported the media report that "thousands of chicks were bulldozed and buried alive on site".

3. Does RSPCA NSW acknowledge receipt of a request from RSPCA NSW to advise of the outcome of any investigation?

We do not understand what request is being referred to.

4. Can RSPCA NSW advise as to the outcome of any investigation into the welfare of the broiler chicks?

See the summary above.

BECTIVE FEEDLOT NEAR TAMWORTH

Video evidence was lawfully obtained of the cattle on this property standing in 42 degrees + heat on the third day of a heat wave with absolutely no shelter. This footage was viewed by a world expert in cattle welfare, Temple Grandin. She provided a damning report describing extreme heat stress and clear breaches of POCTAA as well as the cattle and lot feeders codes. The then Chief Inspector, David O'Shannessy, said a prosecution was not commenced because a DPI vet did not agree with Temple Grandin.

RSPCA NSW is not in a position to confirm the accuracy of these asserted facts.

1. Why would RSPCA rely on a NSW DPI vet rather than a highly qualified and respected world expert?

A complaint was received by RSPCA NSW in early February 2017 about the possibility of heat stressed cattle at the Bective feed lot. In response, an RSPCA NSW Inspector visited the site with a veterinarian from Local Land Services and they together inspected all of the pens. No animals were found to be displaying signs of heat stress and the yards appeared to be well-managed. The Inspector was also informed that the cattle were inspected twice daily for any welfare concerns and were under the regular care of a veterinarian. In those circumstances, there was no basis for further action to be taken.

This was not a case of preferring the views of one expert over another. What occurred was that, on a physical inspection of the facility and the animals by an Inspector and a local, qualified veterinarian, no animals were identified which appeared to have suffered heat stress.

2. Is it RSPCA policy or procedure to rely on DPI veterinarians or experts rather than more expert and independent vets or experts when it relates to intensively farmed animals or farm animals generally?

RSPCA NSW has no such policy or procedure. All evidence of animal cruelty, including expert evidence, is evaluated on its merits.

3. Does the RSPCA acknowledge the danger of working too closely with a government department which is essentially established to protect primary industry interests?

RSPCA NSW's experience is not that the veterinary staff of the Department of Primary Industry carry out their work on the basis that their role is "to protect primary industry interests" and it does not accept that its working relationship with the DPI is "too close".

RSPCA NSW does work regularly with Local Land Services veterinarians and staff, and draws on their experience and expertise, particularly in relation to rural and livestock related matters, but its sole priority in doing so is to most effectively ensure the prevention of animal cruelty and to protect animal welfare.

QUESTIONS SPECIFICALLY FOR CEO STEVE COLEMAN

PRIMARY INDUSTRIES MINISTER, KATRINA HODGKINSON

- 1. Did the former Minister for Primary Industries, Katrina Hodgkinson, ever meet with CEO Steve Coleman to discuss the RSPCA's prosecution of cattle on cattle properties where she stated something like: "Farmers aren't cruel", "You understand I approve the government funding for the inspectorate of RSPCA"?**

RSPCA NSW does not understand how the subject matter of this question or the following question fall within the subject matter of the Committee's Terms of Reference. In particular, it notes that the only Term of Reference which addresses the issue of actual or potential conflicts of interest [1(b)], which appears to be the subject to which this question is directed, does so solely in relation to conflicts of interest or potential conflicts of interest with regard to commercial activities, membership payments or donations and private interests of board members, consultants and senior staff.

That said, Mr Coleman has met on a number of occasions with the former Minister over the years. She often said to him words to the effect: "Farming isn't cruel" or "Farmers aren't cruel" and "You have to be good at animal welfare to be a good farmer".

Mr Coleman has no recollection of the former Minister ever saying to him words to the effect: "You understand I approve the government funding for the inspectorate of RSPCA". Further, he does not believe that anything to this effect was ever said to him, as he believes he would have considered it to be a surprising and offensive thing to be said and that, accordingly, he would have remembered it.

- 2. Were those cattle properties the Minister refers to, prosecuted to finality?**

Without further context, Mr Coleman does not understand what "cattle properties" are being referred to.

GENERAL

- 1. You state in your opening statement that removing inspectorate powers from ACOs would be a radical change. On what basis would you suggest the executive or police enforcing criminal laws be more radical than empowering private charities?**

RSPCA NSW did not and does not suggest either that it being empowered to investigate and prosecute animal cruelty offences under POCTAA is "radical", or that the police doing so is "radical". What was said by RSPCA NSW in its opening statement was:

"We understand that one of the matters being considered by the Committee is the rationale of the involvement of a charity like RSPCA NSW in enforcing the animal cruelty laws. Again, this is a matter addressed in our written submissions²⁷. But, in summary, this is the tried and tested model with a long history both in Australia and internationally. We consider that it is a model which has considerable benefits to the public and the animals involved ... We believe that any radical change to that model would carry very real risks to the effective enforcement of the animal cruelty laws and animal welfare standards in general in New South Wales."²⁸

The point being made was that stripping RSPCA NSW of the powers given to it under the current legislation to investigate and prosecute animal cruelty offences would be a "*radical*" change to the present arrangements for the administration and enforcement of animal cruelty laws in NSW, and that those arrangements:

- a. Have been embodied in legislation in NSW for more than 90 years;
- b. Are a tried and tested model, with a long history both in Australia and internationally;
- c. Are common to the other Australian States and several other countries; and
- d. Have numerous and substantial benefits to the public and animals of NSW²⁹.

2. You have stated in your opening statement animal welfare compliance laws is key to RSPCA's services as a whole, as this ensures appropriate expertise and training. Are you suggesting that without coercive criminal enforcement powers charitable bodies cannot obtain appropriate training or subject matter expertise?

What was relevantly said by RSPCA NSW in its opening statement was:

"The value that our inspectors add in disaster management is linked directly with their roles in animal welfare compliance. That is, they would not have the necessary skills, experience and the capacity to undertake welfare assessments in the context of disaster management without the experience and training that they are given in the context of animal welfare compliance."³⁰

And:

"Overall we consider that there are numerous and substantial benefits to the public of New South Wales and the Government arising from the role of the RSPCA in the enforcement of the animal cruelty laws ... they include ... the ability of those inspectors to respond to animal welfare concerns in the context of disaster management and other emergencies when we are regularly activated by the New South Wales Government as recently in these catastrophic bushfires."³¹

27 Submission 136 at pages 32 to 33 and 44 to 47.

28 Transcript at page 56.

29 Summarised in Submission 136 at pages 45-46.

30 Transcript at page 57.

31 Transcript at page 56.

The point being made was that RSPCA NSW's Inspectorate, which exists in order to investigate and enforce the animal cruelty laws in NSW, incidentally comprises a cadre of highly trained and experienced specialists in animal welfare compliance, whose expertise and training can be, and often is, deployed to assist the State of NSW in responding to disaster management situations³².

The proposition in the question that, if RSPCA NSW were denied any future role in the investigation and enforcement of the animal cruelty laws in NSW, its Inspectors might be able to be trained in animal welfare compliance in other ways is misconceived. If RSPCA NSW were denied any future role in the enforcement of the animal cruelty laws, its Inspectorate would effectively cease to exist and accordingly would simply no longer be available to be deployed in response to emergencies which threaten animal welfare, such as bushfire, drought and floods.

3. You have spoken highly of RSPCA's involvement in livestock welfare panels. However you may be aware that under the POCTA Act under stock welfare panels RSPCA's involvement is mainly as an adviser to the Secretary rather than an enforcement body or decision-maker. Would this not suggest that RSPCA could be equally capable as a subject matter expert and advisory body to the Executive rather than as an enforcement body?

This question contains the same misconception as the previous question. The particular expertise of RSPCA NSW which is currently engaged in advising the Secretary in the context of livestock welfare panels is that of the Inspectorate. Again, if RSPCA NSW were denied any future role in the enforcement of the animal cruelty laws, its Inspectorate would effectively cease to exist and its ability to play a continued role in advising the Secretary in relation to livestock welfare panels would accordingly be problematic.

In addition, it should be noted that section 24Q of POCTAA operates such that an order made by the Secretary is implemented by the exercise of the powers of an enforcement officer under the Act to seize and sell animals the subject of the order. If RSPCA NSW were denied any future role in the enforcement of the Act, its officers would no longer be able to exercise that statutory function under the Act.

4. You have listed the large amount of volunteerism and work you do outside the inspectorate. In fact your submission indicates that the overwhelming majority of your staff and resourcing is dedicated to non-inspectorate activities. Does this not suggest that RSPCA is better placed as a purely private charitable service rather than empowered with criminal enforcement?

The Inspectorate exists as an integral part of RSPCA NSW, which is dedicated as an organisation to the prevention of cruelty to animals in NSW. As part of that organisation, the Inspectorate, in its role in enforcing the animal cruelty laws, relies on the complementary

³² Submission 136 at page 46 and as acknowledged by the Committee at Transcript page 67. See also the evidence of Mr Hansen, Director General of the DPI at Transcript page 9.

resources of the entire organisation, including veterinary services, animal shelters, education and support programs for animal owners in need, specialist transportation and other animal management equipment and resources³³.

Commensurately, the elements of RSPCA NSW other than the Inspectorate, including its substantial force of volunteers, draw their *raison d'être*, inspiration and enthusiasm, to a substantial extent, from the activities of the Inspectorate.

Accordingly, the distinction between the “inspectorate” and “non-inspectorate” activities of RSPCA NSW is not as clear as the question assumes. It is a serious mistake to consider the other activities of RSPCA NSW and its volunteers as if they exist separately from the Inspectorate and that the Inspectorate could simply be “removed” from RSPCA NSW without damage either to it, or to the rest of the organisation. The two are inextricably linked, not just in the reliance by the Inspectorate on the resources of the entire organisation, but also in the rationale for the very existence of RSPCA NSW, both in the minds of our members and volunteers and in the expectations of our donors and the wider public.

This fundamental point is reflected in the evidence of the CEO of RSPCA NSW before the Committee that:

“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, to 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... My view is that in the absence of an RSPCA inspectorate function our organisation would struggle over the next couple of decades.”³⁴

It is also reflected in our Submissions that:

“The Inspectorate is a fundamental and integral part of the operations of RSPCA NSW. It is a critical component of RSPCA NSW’s animal welfare framework and is essential to the delivery of better welfare outcomes for the tens of thousands of animals engaged with the organisation every year. RSPCA NSW is strongly of the view that any proposal which seeks to remove the powers currently exercised by the Inspectorate and embed those powers elsewhere, including, for example, in a newly created statutory body, will considerably compromise the prevention of cruelty to animals in NSW.”³⁵

And:

“The RSPCA NSW Inspectorate is an integral part of the organisation in every aspect and it plays a critical role in informing public perception about the rationale and role of RSPCA NSW in the State. Radical change to the role of RSPCA NSW in the enforcement of animal cruelty laws would

33 The ways in which the Inspectorate relies on the state-wide resources of the entire RSPCA NSW organisation are summarised in our Submission at page 10.

34 Transcript at page 58.

35 Submission 136 at page 3.

*potentially have extremely serious and unquantifiable impacts on its work and may even threaten its continued existence.*³⁶

And:

"In the view of RSPCA NSW's senior management and its Board, any change which caused the demise of the Inspectorate would:

- *Have a potentially devastating effect on the morale, culture and effectiveness of RSPCA NSW as an organisation; and*
- *Seriously undermine the continuing ability of the organisation to raise funds from the community to support the work not just of the Inspectorate, but of all branches of RSPCA NSW.*³⁷

These submissions were made after very careful consideration by both senior management and the Board of RSPCA NSW and are strongly pressed.

These concerns were also echoed in the evidence of Mark Slater of the Animal Welfare League that:

*"If it [the inspectorate function] were to be removed... reputationally it would be quite damaging as far as we are concerned – a 61-year-old organisation... It would take away from a lot of our fundraising opportunities, it would take away from our communications processes ... without the inspectorate ... we cannot be a well-rounded welfare organisation."*³⁸

5. You have spoken of the need for reform to the POCTA Act especially regarding community expectations and appropriate penalties. Would you not suggest any changes to penalties would be moot if animal cruelty was insufficiently detected and prosecuted under current laws?

RSPCA NSW considers that both are important. It is critical for the effective prevention of cruelty to animals that incidents of animal cruelty are identified and acted upon and that, when this occurs and is properly dealt with by prosecution, that the penalties obtained are appropriate, both to reflect community expectations and to deter offenders.

6. You have stated in your evidence that "I would have grave concerns for the future of RSPCA NSW in the absence of an inspectorate function." (page 58) Would you agree that the primary concern in which body should enforce POCTA and animal welfare laws should be what model is most effective in preventing animal cruelty, rather than whether any such action would lead a private charitable body to cease to exist?

36 Submission 136 at page 46.

37 Submission 136 at page 46.

38 Transcript (Day 1) at page 34.

The question poses a dichotomy which RSPCA NSW considers does not reflect the reality of the situation. RSPCA NSW exists in order to prevent cruelty to animals in NSW. That is the entire rationale of the organisation and its thousands of volunteers and supporters. The concern expressed in evidence was not merely that the elimination of the Inspectorate might endanger the existence of RSPCA NSW, but that such a step would have serious adverse implications for animal welfare in NSW, including (but not limited to) through its impact on RSPCA NSW. As is said in our Submission:

*"RSPCA NSW is strongly of the view that any proposal which seeks to remove the powers currently exercised by its Inspectorate and embed those powers elsewhere ... will considerably compromise the prevention of cruelty to animals in NSW."*³⁹

One aspect of such a change is that it would undermine the rationale for the existence of RSPCA NSW, both in the minds of its supporters and the public, with a potentially devastating effect on the morale, culture and effectiveness of RSPCA NSW and its ability to raise funds to support its activities. This is, however, far from the only adverse impact which would flow from such a step. For instance, such a change would also:

- a. Destroy a regime which is currently functioning as well as can reasonably be expected given current funding levels. In that regard, we note that the evidence to the Committee of Detective Inspector Whiteside, on behalf of the Commissioner of Police, was:

*"The police work very closely with the RSPCA and the Animal Welfare League NSW to make sure that animal cruelty cases are thoroughly investigated and prosecuted"*⁴⁰

And that:

*"... in my opinion it works really well that we rely on their expertise and likewise"*⁴¹.

So too, Mr Hansen, the Director General of the DPI emphasised the benefits of the current arrangement for *"the combination of government agencies, authorised charity organisations to come together with police to provide the compliance framework for animal welfare"*, under which *"Each group brings a speciality and a skill set to the table that is unique and, at times, incredibly valuable to our operations"*⁴²;

- b. Likely throw away a large part of the substantial experience and expertise of the RSPCA NSW Inspectorate;

39 Submission 136 at page 3.

40 Transcript (Day 1) at page 2.

41 Transcript (Day 1) at page 9.

42 Transcript (Day 1) at page 3.

c. Either:

- A. Throw the entire cost and burden of enforcing the animal cruelty laws on the general body of the NSW Police, which does not want that sole responsibility and is currently ill-equipped to take it on and is (and would remain) resource-constrained and subject to a wide range of competing priorities⁴³. In that regard, we note that the evidence to the Committee of Detective Inspector Whiteside, on behalf of the Commissioner of Police, was that:

*"It is not the belief of the NSW Police Force that it should take on animal cruelty as the sole law-enforcement body. This is primarily because police do not have the expertise either in animal welfare nor the use of animals in primary production"*⁴⁴

And:

*"... the fact that [the RSPCA] have an enforcement and prosecuting capability is beneficial for the NSW Police Force to address further matters and other diverse crime laws."*⁴⁵

- B. Require the setting up of an entirely new specialist police body, which would not just have to be funded, trained and given time to gain the necessary experience and skills, but would also need access, not just to law enforcement expertise, but also to a range of other resources provided by RSPCA NSW to its Inspectorate, including:
- i. veterinary care and shelter for animals that may be seized and then need to be held in shelter pending any prosecution of the owner;
 - i. specially fitted out animal ambulances, trailers and floats;
 - ii. expert veterinarians to provide evidence to support prosecutions; and
 - iii. programs for the education and support of animal owners who may be struggling to meet their animal welfare obligations, as an alternative to prosecution; and

- d. Be a significant retrograde step in terms of community involvement in the enforcement of the animal cruelty laws, through which RSPCA NSW currently inspires and draws on the financial and personal commitments of thousands of volunteers and supporters.

43 In which, inevitably and naturally, animal welfare is likely to be given a lower priority than human welfare. As was said in evidence: "... humans not only come first, but also second, third, fourth and fifth" – Ms Donovan, Lawyers for Animals, Transcript (Day 1) at page 21.

44 Transcript (Day 1) at page 2.

45 Transcript (Day 1) at page 9.

7. You have acknowledged that you refer allegations of animal cruelty in commercial premises which contain an RSPCA approval to other organisations to mitigate conflict. Why does the RSPCA continue the RSPCA approval and endorsement program when by your own admission doing so stops you from detecting and preventing animal cruelty in these organisations in the first place? Do you not see this is as contrary to the objects of the POCTA Act and your organisation?

The evidence was that the documented internal process is that any complaint which related to a producer which was a participant in the RSPCA Australia Approved Farming Scheme in NSW would not be investigated by RSPCA NSW, but referred to the NSW Police or the Animal Welfare League⁴⁶. This policy does not “mitigate” any potential conflict; it eliminates it.

RSPCA NSW does not agree that this is an “admission” that the Approved Farming Scheme “stops [it] from detecting and preventing animal cruelty in these organisations”. To the contrary:

- a. First, companies that choose to participate in the Approved Farming Scheme are required to meet RSPCA Australia’s detailed animal welfare standards and complete a rigorous assessment process and secondly there is in fact no evidence that animal cruelty has ever occurred in any participating organisation;
- b. Finally, the referral of a complaint, if it ever in fact occurred, would not leave any such animal cruelty undetected or unaddressed; it would simply shift that role to the NSW Police or the Animal Welfare League.

The rationale for the Approved Farming Scheme is to raise animal welfare standards by providing consumers with a means to act on their concerns as to animal welfare and to provide participating producers with an incentive to reach and maintain the standards for animal welfare set by RSPCA Australia under the Scheme⁴⁷. This is entirely consistent with the objects of the Act and the RSPCA to ensure animal welfare and protect animals from cruelty. Further, the licensing fees for the scheme are quarantined and used only within the scheme, to improve the lives of these farmed animals, and no fees from the scheme are distributed to RSPCA NSW or any other State or Territory RSPCA organisation, or to any other part of RSPCA Australia’s operations.

Mr Coleman was also asked during his evidence about the number of instances in which such a referral had occurred and said:

“From memory I think there may have been two over the past few years. They are not complaints we receive frequently and fact check with our national colleagues to determine if they are part of the scheme or not.”

Asked further about the details of those cases, Mr Coleman took the question on notice.

⁴⁶ Transcript page 58.

⁴⁷ As Ms Johnson of the NSW Farmers Association said in her evidence, such quality assurance programs exist “to make sure consumers can purchase animal welfare products that meet a higher standard in their production” – Transcript page 20.

Having had the opportunity to check the facts, RSPCA NSW confirms that there was an incident in August 2017 in which meat chickens at a facility supplying birds to a participant in the Approved Farming Scheme were reported (by that participant) to have gone without feed for an unacceptable period of time. RSPCA Australia reported the matter to RSPCA NSW, who referred it for investigation to the NSW Police, in accordance with the above policy. The other matter recalled by Mr Coleman proved on inquiry to be a case which did not involve a participant in the Approved Farming Scheme.

8. You have stated in your evidence (page 59) that RSPCA should not receive any money from government in order to be truly independent in inspectorate functions. Would you consider the police to be ineffective or insufficiently independent to investigate and enforce criminal offences in NSW?

This is not a correct statement of the evidence. What was in fact said, in answer to a question about the desirability of more funding from Government for the operations of the Inspectorate was:

*"It is a conflicting question in that on the one hand whoever is the primary funder of an organisation to enforce you could argue is conflicted, depending on where that funding source is derived from. It is a fact that RSPCA NSW is the most underfunded, in terms of government support, in the country when it comes to recurrent funding of the inspectorate. I have agonised over this issue of our grant. I have agonised over the issue of independence. I think I have ventilated this in different quarters over the years. **There is an argument** that we should receive no funding from government in order to be completely independent."* (emphasis added)

The point is that any organisation which depends on obtaining funding from Government is potentially subject to its decisions being influenced by the need to obtain that ongoing funding. In theory, this includes the NSW Police, just as much as any other organisation which depends on Government funding.

In fact, however:

- a. RSPCA NSW receives relatively little funding from Government;
- b. In investigating suspected animal cruelty and evaluating what action should be taken, the Inspectorate operates under detailed and strictly defined policies calculated to ensure those decisions are taken based on proper considerations, free from any conflict or improper influence⁴⁸;
- c. The officers and directors of RSPCA NSW are subject to legal obligations to exercise their powers and discharge their duties in good faith and for proper purposes⁴⁹;

48 Submission 136 at pages 11 and 22 to 26.

49 Submission 136 at page 26.

- d. The senior management and staff of RSPCA NSW are acutely conscious that the lifeblood of the organisation is its reputation for integrity and the trust which the public places in it to prevent animal cruelty, without fear or favour; and
- e. There is no instance known to the senior management or Board of RSPCA NSW in which the Government has attempted to influence any investigation or enforcement action by RSPCA NSW.

Finally, RSPCA NSW has no reason to consider that the NSW Police, or RSPCA NSW, or the Animal Welfare League, are ineffective or insufficiently independent to investigate and enforce animal cruelty offences in NSW.

9. Re above question, why should criminal enforcement powers be provided to a body entirely funded by private donors and members? Would you consider this an appropriate model for any other institution, such as crowdfunding the police?

As to the first question:

- a. Insofar as the question relates to the position of RSPCA NSW, it repeats its answer to Question 6 above and refers the Committee to its Submission in relation to Term of Reference 1(D)(d)⁵⁰ (as to whether it is appropriate for non-governmental charitable organisations to be granted investigative and enforcement powers) and Term of Reference 1(F)⁵¹ (as to whether a specialist unit should be established as part of the NSW Police or as a separate statutory body);
- b. RSPCA NSW also notes that the question contains an implicit assumption that if the vesting of investigative and enforcement powers in a charity is unique then it is “bad”. Such an assumption raises sophistry over practical reality. If the best welfare outcomes for animal welfare and the prevention of animal cruelty in NSW can be achieved by RSPCA NSW continuing to operate as it has for many decades, then it ought not to matter to anyone truly seeking the best outcome for those animals that those investigation and enforcement powers are not solely vested in a conventional law enforcement agency, but are shared by two respected charities and the NSW Police.
- c. As to the second question, RSPCA NSW does not have any opinion on that matter which, in any event, is entirely beyond the Terms of Reference and cannot sensibly be germane to the real issue; which is surely whether the current arrangements have been clearly shown to be *not* the most effective model for preventing animal cruelty and advancing the welfare of the thousands of animals in need encountered by RSPCA NSW every year.

⁵⁰ Submission 136 at pages 32 to 33

⁵¹ Submission 136 at pages 44 to 47.

The sole rationale and purpose of RSPCA NSW as an organisation is the prevention of cruelty to animals. It accordingly takes the view that the governing consideration in any proposed changes to the existing, tried and tested arrangements for the administration and enforcement of the laws of NSW for the protection of animals from cruelty should be their potential, pragmatic impact on that objective, which should not be sacrificed or undermined in the pursuit of contentious notions of theoretical or intellectual “purity”.

10. Would you consider it appropriate for any other criminal framework involving a vulnerable group to be enforced by charitable bodies? E.g. domestic violence by women’s legal centres.

RSPCA NSW repeats its answer to the second part of Question 9 above. Whether the enforcement of the criminal law in respect of vulnerable human beings should be left to a charitable body is a question which does not arise under the Terms of Reference and is entirely irrelevant to the question of whether the current, long-standing arrangements in relation to animal cruelty offences should be overturned.

The prevention of cruelty to animals and the advancement of animal welfare raise complex issues that often cannot be addressed adequately, if at all, by the conventional criminal law framework and enforcement by prosecution.

There are many vulnerable groups within our society. However, the Committee is examining the needs of only one such group and it is unnecessary and misconceived to seek to draw analogies between vulnerable animals and vulnerable human beings. Animals are voiceless; they cannot tell us what has happened to them or who is responsible and they cannot articulate their ongoing needs or how best to meet them.

The fundamental question which must be addressed under the Committee’s Terms of Reference is what is best for the animals of NSW; how can they best be protected against cruelty and neglect?

RSPCA NSW’s Inspectorate is a highly trained and experienced body of specialist inspectors, whose only priority is the welfare of the animals of NSW. Operating within RSPCA NSW, those Inspectors can draw on the entire resources of RSPCA NSW (including its vets, shelters and community support teams) to address the needs of those animals, in a way which is critical to achieving the best welfare outcomes for them.

RSPCA NSW respectfully submits that neither the evidence nor the submissions before the Committee could reasonably lead to a finding that there is a better alternative to the current arrangements; that is, a viable alternative that one could be at all confident would in fact better protect the animals of NSW from cruelty and better advance their welfare.

Dear Ms Rogerson,

I refer to your email below and respond as follows:

1. Transcript pages 61-62: This question sought information as to the process which is gone through by the RSPCA Contact Centre (1300 cruelty) when it receives an animal cruelty complaint, including how it prioritises those complaints. That process is set out in our answer to Question 1 in the Supplementary Questions, under the heading "Complaints Intake" (pages 9-10 of our Supplementary Submission).
2. Transcript page 63: This question sought information regarding the referral of complaints involving participants in RSPCA Australia's Approved Farming Scheme to other agencies for investigation. That question is answered at pages 34-35 of our Supplementary Submission.
3. Transcript page 64: This question sought information as to whether there was, to our knowledge, any other Australian jurisdictions in which Government funding for animal welfare agencies depended on a formula. The answer given was that RSPCA NSW was not aware of any such approach being taken in any other Australian jurisdiction. That remains the case. The information which we have as to the funding provided to other RSPCA organisations around Australia is summarised in Annexure P to our Written Submission (Submission 136).
4. Transcript page 69: This question sought information as to the views of RSPCA NSW as to areas of the current regulatory regime which might be improved upon in order to do a better job to protect animals in NSW. The views of RSPCA NSW in that regard are summarised in our opening address at Transcript page 57. In summary:
 - a. to bring POCTAA in line with current community expectations as to minimum standards of animal welfare and appropriate penalties for animal cruelty offences;
 - b. to better provide for cases of mental stress and cruelty to be taken up by the law;
 - c. mandating the use of body-worn camera devices;
 - d. amendments to s 31(1)(b) in relation to the orders able to be made at the conclusion of local court proceedings;
 - e. on pages 47-48 of our Written Submission (in summary, reform of POCTAA including in relation to increases in the penalties for animal cruelty);
 - f. at pages 6-7 of our Supplementary Submission (under the heading Limitation Periods) and at pages 15-16 of those Supplementary Submissions (in relation to the problems of addressing the welfare of tethered animals under the existing Act).

We believe that this information should address the questions to which you have directed our attention, but if further information is required, please do not hesitate to ask.