

Submission
No 275

**INQUIRY INTO PROVISIONS OF THE RIGHT TO FARM
BILL 2019**

Name: Name suppressed

Date Received: 1 October 2019

Partially
Confidential

I submit that actions taken by animal welfare activists to investigate and intervene in cases of cruelty to animals that take place on a number of farms (and other premises in New South Wales in which animals are kept to produce food and fibre) are reflective of their lack of faith in the ability of the current legal system, and enforcement agencies empowered under that system, to ensure that even minimal animal welfare standards are met. I suggest that the general community is also concerned about inadequate protection of animals from cruelty and neglect is reflected in well-documented consumer trends away from meat, dairy and other animal-based food products. I also suggest that the consumer trend away from animal-based food products may be motivated by food hygiene and food safety concerns raised by footage of the conditions on some sub-standard operations involved in “factory farming”.

To put it simply, people (generally well-educated young adults) who are deeply committed to protecting animals from cruelty are taking the law into their own hands because they have seen repeated instances of cruelty and criminal negligence of animals in the agricultural sector, and a limited response from government in terms of educating, investigating or prosecuting those who commit offences against the Prevention of Cruelty to Animals Act 1979 (‘POCTA’).

I submit that, rather than introduce a draconian “Right to Farm” regime that will criminalise people who wish to improve animal husbandry practices and raise community awareness of sub standard operations that inflict cruelty on farmed animals, New South Wales government should increase the resourcing of those agencies which educate, investigate and/or prosecute offences against the POCTA.

As Brendan Walker Munro wrote in 'Cattle v the Crown: is there a place for the Commonwealth as Animal Welfare Guardian?' (University of Queensland Law Journal, 2015 Vol 34(2)363):

Enforcement officers are often given wide powers to enter premises, seize evidence (including animals), seek and execute search warrants, as well as a concomitant indemnity from prosecution under most circumstances, and the criminal nature of animal welfare offences may attract criminal prosecution under the POCTA.

However, the organisations empowered to investigate and prosecute animal cruelty offences are severely constrained.

For New South Wales Police, animal law forms only a very small part of their general duty to enforce the criminal law and investigate the commission of offences.

The Royal Society for the Prevention of Cruelty to Animals and the Animal Welfare League in New South Wales are non-government community-based charities that rely almost solely on fundraising and donations to fund their operations. This funding model seems inappropriate when the cost of funding a single RSPCA Inspector can be as much as \$100,000.

The RSPCA does not have enough resources to mount animal cruelty investigations and criminal prosecutions, which require complex mechanics, immense resources and skill of legal argument. By way of demonstration, in 2013-14 RSPCA Australia reported investigating 58,591 complaints of animal cruelty nationwide but only 236 matters were prosecuted with 230 ultimately successful (in that the principal or head charges as alleged were admitted to or subsequently proven at trial). Although this prosecutorial success rate (nearly 97.5%) is certainly enviable, criminal prosecutions make up less than half of one percent of the RSPCA’s enforcement outcomes.

Judges and Magistrates hearing animal cruelty offences are generally hesitant to impose custodial sentences – although the POCTA has maximum custodial sentences attached to offences that range between one to five years, imprisonment is a rare finding in prosecutions even when the defendant engages in violent or long-running animal cruelty – even then, sentences of a few months are typical.

I conclude by suggesting that, rather than introducing regressive and repressive "Right to Farm" legislation, the Committee consider the alternative, of restructuring the existing animal welfare legislative regime and establishing a statutory, independent Animal Protection Commission, with investigation and prosecution functions. Failing that, I would suggest the creation of an Animal Protection Unit within New South Wales Police. The RSPCA and AWL could then be freed up to focus on educational and animal adoption activities, at which they excel.