

**Submission  
No 15**

## **INQUIRY INTO ANIMAL CRUELTY LAWS IN NEW SOUTH WALES**

**Organisation:** PETA Australia  
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PEOPLE FOR  
THE ETHICAL  
TREATMENT  
OF ANIMALS

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**SUBMISSION TO THE INQUIRY OF THE  
LEGISLATIVE COUNCIL SELECT COMMITTEE  
ON ANIMAL CRUELTY LAWS IN NSW**

**11 NOVEMBER 2019**

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## ***A. About PETA Australia***

People for the Ethical Treatment of Animals (PETA) Australia is the local affiliate of the world's largest animal rights organisation, PETA US, which has more than 6.5 million members and supporters worldwide. PETA is dedicated to establishing and protecting the rights of all animals, and operates under the simple principle that animals are not ours to eat, wear, experiment on, use for entertainment or abuse in any way.

PETA Australia works through public education, cruelty investigations, research, lobbying, celebrity involvement and protest campaigns to focus international attention on the exploitation and abuse of animals for their flesh, for their skins, as living test tubes in laboratories, and for "entertainment".

## ***B. PETA's response to select terms of reference***

The Legislative Council Select Committee on Animal Cruelty Laws in NSW has called for submissions as part of the Committee's inquiry process regarding the effectiveness of arrangements for the administration and enforcement of the laws of New South Wales for the protection of animals from cruelty. PETA's responses to select terms of reference are below.

We have provided commentary on select terms of reference in the sequence dictated by the published terms for the Committee's ease of reference. We would emphasise at the outset however that our principal concern arises from the limitations referred to by the posed question of "whether it is effective and appropriate for non-government charitable organisations to be granted investigative and enforcement powers for criminal prosecutions under the Act, with regard to their ability to conduct cases to test the application of legislative provisions in the Act."

PETA and our international affiliates play a key role in the undertaking and publicisation of undercover investigations that document acts and omissions that violate the Act, a role fulfilled by a growing but still small number of individuals and organisations. The overarching theme of our experience with providing evidence of these crimes to RSPCA NSW is repeated frustration with their apparent lack of motivation or will to test as-yet uncertain aspects of the laws of animal welfare and evidentiary viability. A fundamental rethinking of the ideals, goals, and priorities of the organisation that is in practice exclusively tasked with championing the judicial protection of animals' welfare is blatantly overdue.

### **(a) the effectiveness of the charitable organisations currently approved under section 34B of the Prevention of Cruelty to Animals Act 1979 ("the Act") in...prevent[ing] cruelty to animals**

By their own admission the RSPCA is perpetually under-funded and -resourced and subject to a barrage of industry and political pressures to both stay silent on matters that farming interests feel entitled to entirely self-regulate and also to shy away from prosecutions that would have wider potential consequences for established industry practices.

In addition, the complaints-reliant, reactive rather than proactive systems adhered to by all the entities tasked with investigating breaches of the Act means that prevention is rarely the goal let alone the result.

A bolder vision and more meaningful role in pushing for reforms that are unpalatable to industries chronically resistant to change is needed.

**(b) the ability of the charitable organisations currently approved under section 34B of the Act (“the approved charitable organisations”) to achieve the objects of the Act, including:**

**(iii) any conflicts of interest or potential conflicts of interest between the investigation and enforcement of the Act, and one or more of the following:**

**(a) commercial activities of the approved charitable organisations including corporate sponsorship**

- i. The imagination need not be elastic to envision a situation where a potential conflict of interest arises for the entity tasked with investigation and enforcement of welfare law breaches under current arrangements. As long as licensing royalties continue to flow in to a perpetually under-resourced charity, those paying the royalties are unlikely to be prioritised for vigorous investigation.
- ii. Further, a consistently lucrative scheme aimed at assuring consumers that certain minimum standards are being met by producers reinforces the motivation of the RSPCA to stop there – as long as producers toe the line on the minimums set down in the RSPCA’s scheme, there is no obligation nor incentive to improve welfare one jot beyond that.

As we continue to see in all farmed animal industries, minimum standards are treated as the outer limits of obligation, whether the requirements are those at law or those required to allow display of “higher welfare” labelling. While the RSPCA continues to accept royalties without requiring those making use of its name and all the consumer presumptions that flow from that to rise above the bare minimum, producers will continue to exploit that advantage for themselves.

- iii. Finally, it is arguable that the RSPCA Approved Farming labelling scheme ultimately hinders the achievement of the objects of the Act.

The RSPCA markets the scheme, and itself in the context of the scheme, as “A Brand You Can Trust”, promising “humane eggs and meat” from animals who have “a good life” (assurances all prominently displayed on the landing page of the scheme’s website). These are heartening promises and of course in and of themselves noble goals. Harried consumers can arguably be forgiven for assuming

that when they reach for the product bearing the “RSPCA Approved Farming” logo they are at least buying the body or by-product of an animal who lived a content life and died without suffering. In fact that logo is placed – and despite revelations flowing in confirming ongoing neglect and abuse,<sup>1</sup> retained – on products from animals who have been denied all of the basic “five freedoms”, who are living in filth, who are sick, injured, broken, despairing, dying individuals. For those who make it off the truck to the slaughterhouse alive, they die in the same terrifying, painful way regardless of what assurances are spruiked to consumers regarding the manner in which they were housed.

Consumers are being duped, then, into believing that they can continue to purchase animal products even if they want to avoid causing suffering. The RSPCA is aware that this is not occurring, but continues to assure consumers they can purchase these products with a clear conscience. Promoting and profiting from an endorsement scheme that simultaneously endorses systemic suffering and promises consumers that a watchdog is ensuring suffering doesn’t occur positions the RSPCA as a hindrance to preventing cruelty to animals rather than a champion of that objective.

### **(c) private interests of board members, consultants, and senior staff**

It is lamentable that little seems to have improved since the Four Corners *A Blind Eye* exposé 15 years ago laid out for the Australian public that the farming interests on the RSPCA NSW board ensured the addition of a National Farmers Federation ringer to advocate for the adoption of a policy in support of battery cages, a position endorsed by RSPCA NSW’s then CEO.

As illustrated by the differing views touched on above regarding what is “humane”, there is always going to be a fundamental philosophical tension between those who know that inflicting this suffering for food and clothing is utterly unnecessary, and those who believe it is not only justified but necessary to feed and clothe a population. While animals continue to be used for this purpose it is not our position as an animal rights organisation to say that those responsible for investigating breaches of and enforcing welfare laws must belong to one philosophical camp or another. But it is quite another matter to have commercial farmers steering the direction and decision-making of an entity so empowered.

Allowing RSPCA NSW’s board and senior staff to be peppered with individuals with a longstanding and vested interest in protecting the status quo across all farmed animal industries ensures there is no organisational will to drive reforms or improvements to welfare standards. It also in our experience incubates a reluctance to investigate and prosecute all but the most blatantly exceptional abuses, as well as a conservative as possible interpretation of what is legally passable and what is prosecutable under the Act.

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<sup>1</sup> See for instance Animal Liberation Victoria’s investigations of multiple “RSPCA Approved” facilities spanning over a year, documented at <http://freerangefraud.com/free-range-fraud/>.

**(d) whether it is effective and appropriate for non-government charitable organisations to be granted investigative and enforcement powers for criminal prosecutions under the Act, with regard to their:**

**(i) capacity to exercise those investigative and enforcement powers,**

As noted above RSPCA NSW is chronically lacking in the funding and resources needed to adequately police all the facilities subject to the operation of the Act. Even if issues of intention and motivation were miraculously resolved, a substantial injection of financial and infrastructural support would be needed to enable RSPCA NSW to meaningfully fulfil these functions.

Beyond that, as regards the effectiveness and appropriateness of a non-governmental body being granted criminal enforcement powers, our primary concerns with this stem from the lack of public accountability and transparency discussed below.

**(iii) ability to conduct cases to test the application of legislative provisions in the Act,**

Obviously, prosecution is expensive. As noted above, we acknowledge that resources are limited, and that taking a matter to court always carries elements of uncertainty. Such considerations will inevitably inform decision-making.

Our experience with RSPCA NSW's handling of eyewitness complaints and their evaluations of whether to proceed to prosecution has often been informed however not simply by an inability to conduct test cases but also by a reluctance on the part of RSPCA NSW to test untried or unsettled aspects of the law, both as regards provisions of the Act and provisions of legislation regarding admissibility of evidence in cruelty prosecutions brought under the Act. In our view they have at times veered into outright error in subjectively interpreting both areas of law in ways that ultimately favour the status quo and industry. That being the case, an overhaul of vision, mission, and leadership that would make space for test cases is in our view sorely needed.

**(v) exemption from the provisions of the Government Information (Public Access) Act 2009,**

RSPCA South Australia, RSPCA Victoria, and Animal Welfare Victoria are subject to their respective jurisdictions' freedom of information laws. Western Australia's Ombudsman has jurisdiction to investigate the decisions and actions of inspectors empowered by the state's welfare laws.<sup>2</sup> The insulation enjoyed by RSPCA NSW from the public accountability afforded by sunshine laws must and in our experience does inevitably lead to a certain amount of complacency.

Consider two examples:

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<sup>2</sup> See *Parliamentary Commissioner Act 1971* (WA).

1. In 2007 the circumstances surrounding the death of Kua, a rhinoceros confined at Taronga Zoo, attracted some media interest. Kua's autopsy report revealed that she died with 70 litres of sand in her intestines resulting in a blockage. RSPCA NSW conducted its own investigation and informed the zoo and the media that no action would be taken.

The *Sydney Morning Herald* asked RSPCA NSW for a copy of its report that formed the basis of that decision, and was informed that RSPCA NSW does not release copies of its reports.<sup>3</sup> The *Herald* then asked Taronga Zoo for a copy of the RSPCA's report into the zoo's own practices – and was informed that it had not been provided a copy. The *Herald* went on to explain that a “spokesman for the Minister for the Environment...said he had tried to obtain a copy of the report but had been told by the zoo it was the RSPCA's decision not to release its reports. The minister was powerless to demand a copy, because "the RSPCA doesn't report to us", the spokesman said.”<sup>4</sup> RSPCA NSW maintained that “a lack of transparency had [not] compromised the organisation. "Well, we think it's quite transparent as is, we're quite happy with what we've done," [then CEO Bernie] Murphy said.”<sup>5</sup>

Even allowing for the fact that RSPCA NSW was at the time structurally answerable to the then Minister for Primary Industries rather than the Minister for the Environment, this scenario still serves to illustrate the ludicrousness of RSPCA NSW's ability to shield the manner in which it carries out public powers from public scrutiny. Trust in the administration of criminal justice calls for something more than an assurance that the investigating party is itself happy with what it's done.

2. In 2013-2014 PETA's international affiliates conducted undercover investigations into the abuses occurring in Australia's shearing industry. The findings of those investigations were submitted to authorities in both NSW and Victoria.

The eyewitnesses who documented the findings were not Australian residents; they travelled back to Australia at our affiliates' expense for the sole purpose of undertaking witness interviews with the NSW and Victorian authorities. Charges laid at the recommendation of the Victorian authorities led to findings of guilt against six shearers for the abuses they inflicted on sheep, the first of their kind in the industry.

After many attempts to receive any update of any nature about the NSW complaint over a period of about eight months were met with total silence by RSPCA NSW, we eventually learned via a passing mention in a

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<sup>3</sup> See Kelly Burke, ‘Taronga casts doubt on its own autopsy report’, *Sydney Morning Herald*, 24 August 2007, accessible at <https://www.smh.com.au/national/taronga-casts-doubt-on-own-autopsy-report-20070824-gdqxun.html>.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

newspaper article that the fate of the complaint was a decision to take no action.

Putting aside the basic courtesy of a short email or call that one might think is due to a complainant that has devoted the time, effort, financial and other resources it takes to conduct a prolonged undercover investigation and indeed to eyewitnesses who have taken on the immense emotional toll of witnessing months of horrific suffering, it bears noting that criminal justice administered wholly in private is absurd.

If information regarding any aspect of a criminal investigation or outcome is to be withheld on grounds of a GIPA-supported public interest consideration against disclosure, the validity of that decision should be reviewed and litigated pursuant to the legislative procedures provided.

RSPCA NSW is tasked and empowered, in many practical ways exclusively, with administering and enforcing an area of criminal law. The current comprehensive ability of a private charity to unilaterally refuse disclosure on matters of public significance, and the lack of accountability that flows therefrom, is a failing on the fundamentals of criminal justice that needs addressing. Members of the public seeking information on enforcement of criminal law should not need to rely on the idiosyncrasies of each state's application of sunshine laws to the local RSPCA entity.

**(vi) exemption from administrative review under the Administrative Decisions Review Act 1997**

For the same reasons regarding the importance of the administration, evaluation, and conduct of criminal justice being carried out in a publically accessible and accountable manner discussed above, our view is that RSPCA NSW as an entity tasked with investigation and enforcement powers should be subject to the Act to the extent appropriate in the context of law enforcement. The Act's imposition of a duty to give reasons for a decision which encompasses the decision maker's findings of fact and understanding of the applicable law, for instance, is simply a logical fit.

**(f) whether the Government should establish a specialist unit to investigate animal cruelty complaints and enforce animal protection laws, either as part of the NSW Police Force or as a separate statutory enforcement agency**

Whichever entity or entities is ultimately tasked with carrying out public-sphere functions of investigation, prosecution, and enforcement, the core qualities to be preserved or aspired to must remain the same – good faith intent, effectiveness, independence, transparency, and accountability. The current structure of leaving a compromised and under-resourced private charity to shoulder the primary burden in this area is not meeting these needs even with the availability of referral to NSW Police. If restructuring to establish a specialist police or government unit were to be of benefit, the listed goals would need to remain central. Replication of other states' models of tasking state agricultural departments with policing



industries they are also tasked with protecting is not, for example, the direction in which to head.

It is also important that any restructuring of powers and practices take into account the calls that reflexively come from industry and industry mouthpieces to curtail RSPCA powers any time they do move to hold farmers to task in any fashion. Recall the current federal Minister for Agriculture's plan to write to the Queen to request that RSPCA Australia's 'royal title' be revoked because of its opposition to live export among other things judged by Senator McKenzie to be outside RSPCA Australia's "core business".<sup>6</sup> Decisions whether and how to administer the Act should not be influenced by explicit or perceived potential threats to access, powers, or funding regardless of whether those making them are housed within a private charity, the police force, or a government unit.

Whatever direction is ultimately taken, all we can say in conclusion is that improvements are blatantly needed. The Australian public is increasingly vehement in its demand for substantive change and real protection for animals. It is plainly evident across the range of socio-political spheres that Australians are prioritising positive animal welfare outcomes on a daily basis. As consumers, we are giving increasing weight to animal welfare considerations in our purchasing choices; as constituents, we are becoming increasingly vocal to our political representatives regarding the changes we want to see in the treatment of animals confined for human interests. The consumer realm is responding at a relatively heartening pace. The regulatory realm is not.

Spruiking 'higher welfare' options such as the RSPCA Approved scheme and reacting to individual complaints about certain types of neglect and abuse are piecemeal and inadequate measures that fail to make meaningful, real changes in animals' lives and daily experiences, and the public knows it. It is a universally accepted value that animals confined, raised and killed for human use should live and die as 'humanely' as possible, but Australians' faith in the ability – and indeed willingness – of a private farmer-beholden charity to work towards that goal has been steadily eroded by an unbroken stream of revelations of not just malicious abuse but industry-wide failures to uphold minimum standards of care across farmed animal industries at home and abroad. That those revelations almost exclusively come from animal rights groups rather than the entities exclusively vested with investigative powers is one of the key reasons for the public's disillusionment with current efforts and highlights the urgent need for deep change.

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<sup>6</sup> See eg James Glenday, 'Nationals Senator Bridget McKenzie ridiculed over attempts to ask Queen to strip RSPCA of royal title', *ABC News*, 4 June 2015, accessible at <https://www.abc.net.au/news/2015-06-04/nationals-senator-ridiculed-over-rspca-royal-title-concerns/6517860>.