

**Submission
No 25**

INQUIRY INTO ANIMAL CRUELTY LAWS IN NEW SOUTH WALES

Name: Mr Steve Amesbury

Date Received: 11 November 2019

SELECT COMMITTEE ON ANIMAL CRUELTY LAWS IN NEW SOUTH WALES

Inquiry into animal cruelty laws in New South Wales

SUBMISSION: STEVE AMESBURY,

1. Introduction / relevant experience

I thank the Select Committee for the opportunity to provide comment on this issue. I consent to publication of this submission and my name.

I have held senior executive roles in the NSW Government and private sector, but write to you today as a person with experience in the animal welfare. My roles in the wildlife welfare sector have included: president of Wildlife Rescue South Coast; founding member of the NSW Wildlife Council and founding member of the Australian Wildlife Rehabilitation Conference Inc.

As a former appointee to the NSW Animal Welfare Advisory Council (2015-2019), I have had reason to work with officers from DPI, RSPCA, AWL, NSW Police, NSW Farmers Association, Australian Veterinary Association, Livestock Transport, Pet Industry, Rodeo Association and others.

2. Conflicts of Interest

I note that the Select Committee's terms of reference includes reference to conflict of interest on the part of the charitable organisations in scope of this report, which I address in part six of this submission.

It is in the public interest that all members of the select committee declare any vested or conflicts of interest. If members of the Select Committee have had dealings or relationships with any of the organisations involved in the scope or the review, or are members of organisations which could be affected by the outcomes of this inquiry, I would expect those relationships to be declared.

3. Scope

Given the title of the select committee, it is disappointing to see that the scope of the inquiry is limited to the certain aspects of administration and enforcement of POCTAA, with a focus on questioning the role of charitable organisations. There are many aspects of the legislation which need review – a fact that has been noted recently by MPs from several parties.

4. Effectiveness

The terms of reference part 1.(a) identifies the need to inquire as to *the effectiveness of the charitable organisations currently approved under section 34B of the Prevention of Cruelty to Animals Act 1979 ("the Act") in achieving the objects of the Act.*

It is essential that the metrics by which "effectiveness" can be objectively measured are defined, and that the baselines will be normalised against:

- a) organisations providing essentially the same services in NSW (i.e. NSW Police),
- b) organisations providing essentially the same services in other Australian and international jurisdictions

For a review of effectiveness to be reasonable, it should also be compared against the effectiveness of any potential alternative service providers.

Where potential alternative service providers do not currently provide the same services, it must be shown how the assumed effectiveness of those alternative service providers is being quantified. All assumptions must be clearly identified.

When comparing the effectiveness of the charitable organisations against any other service provider, it is essential that the committee takes into account differences in:

- a) Funding and resourcing
- b) The legislative framework, including all legislation which is applicable
- c) The level of interaction with and support by government
- d) Political influence and interference (for example, political decisions that impact on animal welfare, especially those made without consultation with experts).
- e) Relative stability and longevity
- f) Knowledge and expertise of the subject matter
- g) Conflicts of interest
- h) Track record of operation both in terms of successful outcomes.

5. Capacity

Section 1(b) of the terms of reference is a critical issue: These charitable organisations can only operate within their budget, so if their operations are suffering from a shortfall of resources, it must be determined if the cause is insufficient government funding.

This is an issue the wildlife welfare sector knows all too well. Native Australian fauna is considered the property of the crown, and government agencies have the responsibility for their welfare. Yet the reality is that unpaid volunteers do close to 100% of the work of rescuing and rehabilitating native fauna, providing a service to NSW which the National Parks and Wildlife Service conservatively estimates as being valued at over \$27 million annually. While regulated by the NSW Government, none of these services are government funded.

Note that underfunding does not only apply to charitable organisations. Year after year, NSW Government agencies experience budget cuts, and despite claims to the contrary, these cuts impact on front-line services.

Thus, operational issues arising from a lack of funding for current service providers would not be 'magically' resolved by transferring responsibility to equally under-funded state government agencies. Charitable organisations are able to attract donations from the public and corporate entities - an option not available to government agencies.

6. Conflict of Interests

It is reasonable to insist that there be no genuine conflicts of interests, which allow inappropriate favourable treatment in return for donations. But care needs to be taken not to *assume* conflicts of interest where none exist. In some cases, valuable educational and welfare collaborations are necessary. For example - police working with troubled youth. Such relationships are healthy and should not be assumed to create a conflict of interest.

At the same time, there is no doubt that questionable influence does occur in government agencies, as has been witnessed and reported on many occasions, including those noted in the

example below. Transferring responsibility for compliance to government would be unlikely to significantly change the level of risk of potential conflicts.

Case Study:

Recently, a new organisation set up to lobby government to allow keeping protected native mammals (currently outlawed in NSW) lobbied government, and attempted to silence animal welfare opposition by asserting that the RSPCA should remain neutral on such issues. This lobby group represents a tiny minority of citizens, including those who stand to profit from breeding and selling native mammals as pets.

The Minister they approached then influenced government agencies to engage with this lobby group despite overwhelming evidence from State and Federal government agencies and international sources that this will create welfare issues for these animals, while contributing nothing to conservation. RSPCA & AWL have a mandate to prevent animal cruelty, and part of that responsibility requires them to oppose activities that would lead to animal cruelty. Yet lobby groups with vested interests meet with elected officials, who can (and do) influence agency staff. In cases like this, government agencies are more susceptible to being inappropriately influenced by special-interest lobby groups than would an independent charitable organisation

7. Standards of Care and Instances of Euthanasia

I refer to my comments under the “effectiveness” heading, regarding establishing objective metrics for measuring standards of care, and like-for-like comparisons with other animal welfare institutions nationally and internationally. Care should be taken to ensure that the analysis of the statistics is undertaken by a suitably qualified and non-partisan person or organisation.

I note for example that in 2017/18, statistics indicate that RSPCA NSW had high instances of euthanasia, but those statistics include council-run pounds which according to the Hon Mark Pearson MP (speeches in 2016 and 2017) have a particularly poor record in terms of standards of care and euthanasia.

Comparison with small rehoming services is unreasonable as many, if not most of these services deal with far smaller volumes of animals and can be selective about the animals they take on. It is unclear whether the mistreated, injured, maimed and dangerous animals that make it into RSPCA and AWL care would be taken in by small independent rehoming service providers.

Likewise, comparison with “no-kill” shelters needs to be considered in the context of the history of these organisations, including those with overcrowded facilities, and unwanted animals held in pens / cages for years with a questionable quality of life.

8. Granting of Investigative and Compliance Powers

This refers to Terms of Reference Items (C) and (D). Clearly RSPCA has similar powers in most states and Territories in Australia, with the exception of the Northern Territory. It has similar powers in the United Kingdom, where the RSPCA has operated since 1824 (with royal patronage since 1837). Victoria set up the first RSPCA in 1871, and NSW around two years later. NSW RSPCA received Royal Warrant in 1923. The practice of granting investigatory, compliance and prosecution powers is well established in Australia and in other jurisdictions.

Crucial to this question is not only whether it is effective and appropriate for charitable organisations to have investigative and compliance powers, but whether any alternative option would be superior. I have addressed that issue in part nine of this submission.

Moving the responsibility to a different organisation only makes sense if the other organisation has a proven track record of success in providing the same services - and has the capacity to handle the volume and disparate species of animals managed by the existing service providers. Unless a different service provider also provides rescue, rehabilitation and rehoming services, it would remain reliant to some degree on the efforts of existing animal welfare organisations, who are in the best position to identify incidents of cruelty and neglect.

Examples

The NSW Department of Primary Industries has responsibility for Animal Welfare in NSW. They have responsibility for legislation, regulations, standards, codes of practice and guidelines. The list of codes and standards for which the Department has full or partial responsibility is extensive and I understand that the department is required to review these codes and standards regularly. Many of these codes have not been reviewed for well over a decade.

In my personal experience, I have found DPI officers in these areas to be skilled, hard-working and diligent. The cold, hard fact is that the Department does not have sufficient resources to allow this work to be completed. Too little money, too few staff members, too much work.

Similarly, there are not enough front-line rangers and compliance officers within the National Parks and Wildlife Service (NPWS). Their roles include assisting police in operations involving native fauna (often incidental to other criminal activities). They are also responsible for compliance activity for a range of other operations, such as thousands of licenced native animal keepers and wildlife rescue and rehabilitation organisations (with around 6, 000 authorised volunteers). Key to their efforts is the welfare of the animals involved. Compliance activity appears to be minimal, because NPWS does not have the staff numbers to be able to undertake the appropriate level of compliance and enforcement activity.

These examples give minimal comfort that government agencies would have the capacity to take on additional animal welfare responsibilities, as they are all subject to the same intense requirement to cut costs and reduce headcount.

9. Establishment of a Specialist Government Unit

Part (f) of the terms of reference is to determine “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”.

There are many reasons why Government should not 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. Some of these I have already touched on earlier.

1. Many police stations in NSW are reportedly short staffed and some are open only during business hours. How would the police be expected to resource and prioritise expanded animal welfare investigations and enforcement, when there are barely enough officers available for general law and order enforcement?
2. As previously noted, the section of the NSW Department of Primary Industries responsible for animal welfare is under-resourced to the extent that they are unable to complete existing work. There is no reason to assume that a new government unit would fare any

better, and eventually could suffer insufficient capacity to manage investigations and prosecutions.

3. Other agencies with similar responsibilities, such the NSW National Parks and Wildlife Service do not have enough compliance staff to cope with existing workloads - another indication that Government is unlikely to adequately fund a new unit to investigate animal cruelty complaints and enforce animal protection laws.
4. NSW Government agencies are subject to an overwhelming number of machinery-of-government changes, resulting in restructures, merges and reorganisations. Public servants spend far too much time (and money) coping with these changes at the expense of their operational capacity. For example, the “culture and the arts” cluster has been reshuffled and moved from one ‘cluster’ to another four times in the last ten years. This lack of stability is not conducive to providing a better service than an NGO which has remained stable for almost 150 years.
5. As mentioned earlier, politicians can interfere with the policy and procedure of agencies on behalf of their constituents, even when the requests of those constituents are inappropriate, and the politicians have little understanding of the policies or procedures of the agency. An “arm’s length” organisation has at least some autonomy and capacity to resist the influence of misguided Members of Parliament.
6. Funding of Government agencies would become a larger drain on the public purse if the investigatory and compliance operations are transferred to the state, as agencies do not have access to supplementary income from public and private donations, as charitable organisations do.
7. The NSW Government is outsourcing many services where it is considered that the Government does not have the capacity or expertise, or where non-government organisations have superior expertise, or where the service is not considered a critical service requiring government oversight. In this environment, insourcing an operation which has been successfully “outsourced” for 150 years would be a retrograde step.
8. In terms of public trust, the RSPCA is consistently in the *Third Sector’s* list of most trusted charities.ⁱ The *Roy Morgan Trust and Distrust Monitor (2019)* rates charities in the top ten most trusted industries, but Government amongst the ten most distrusted.^{ii iii} So, it is reasonable to assume that the majority of Australians would trust the RSPCA and AWL to look after our animals, to a greater extent than they would trust a government agency.

Taking the above into account, it seems unlikely that a government agency would provide level of service equal or greater to that of the current service providers. In short, the question as to 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 can best be answered in one word: “No”.

10. Closing summary

In closing, I believe it is reasonable to review the Prevention of Cruelty to Animals Act with a view to improving the Act itself and the way it is administered. But it would likely be better to do so within the construct of a full, comprehensive legislative review, rather than selecting a limited number of aspects of the Act.

It is reasonable to undertake periodic reviews within any organisation, and this needs to be done using a comprehensive, evidence-based approach. Organisations such as the RSPCA and AWL deserve to be reviewed in their entirety, looking at their achievements such as their successful

rehoming, prosecutions and impact on illegal and unethical operators, as well as areas for improvement.

However I am concerned that a Select Committee inquiry is not the appropriate vehicle for such a review: There is no guarantee that the committee has the appropriate skills needed for such a review, and the input from parties is limited, meaning there is greater potential for individuals with bias to influence the outcomes. It is not unreasonable to assume that participants with a record of involvement with Animal Liberation and/or animal hunting have specific agendas and will not be entirely unbiased.

When reviewing the record of these charitable organisations, it is important to take into consideration:

- a. Whether funding for these organisations is sufficient, or needs to be increased
- b. Whether there is verifiable proof that a different organisation (whether in the public, private or charitable sector) could do better, in the context of the legislative framework and funding models
- c. That any strengths and weaknesses of these (alternative) service providers are looked at dispassionately and without bias, with full context

In terms of establishing a specialist government unit, there is ample evidence to suggest that government agencies are not always funded appropriately, are subject to ongoing restructure and funding cuts, and do not always provide a better service to that offered in the private or charitable sector. If government services were reliably more effective, hundreds of millions of dollars would not be spent annually on outsourcing security, human services, wildlife welfare, infrastructure, telecommunications, project management and many other services.

Sincerely

Steve Amesbury

ⁱ <https://thirdsector.com.au/2018-most-reputable-charities-revealed/>

ⁱⁱ Daily Mail Article, July 2019 (<https://whatsnew2day.com/research-has-revealed-which-industries-australians-trust-the-most-and-the-least>)

ⁱⁱⁱ <https://www.ipsos.com/en-au/its-fact-scientists-are-most-trusted-people-world>