

**Submission
No 46**

INQUIRY INTO ANIMAL CRUELTY LAWS IN NEW SOUTH WALES

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Inquiry into animal cruelty laws in New South Wales

Submission by Grant Holman

My submission addresses a number of areas within the terms of reference of the inquiry. In opening I submit that the RSPCA and Animal Welfare League as a whole are no longer the organisation's they once were when they were formed and are not able to effectively administer or enforce the laws currently in place for the protection of animals from cruelty.

Whilst this Inquiry is a New South Wales parliamentary inquiry the RSPCA has a national head.

It must be noted from the start that **RSPCA AUSTRALIA** dictates the policy direction of the state RSPCA organisations.

A) The effectiveness of the charitable organisations currently approved under section 34B of the Prevention of Cruelty to Animals Act 1979 in achieving the objects of the Act, namely

- (i) to prevent cruelty to animals,**
- (ii) to promote the welfare of animals by requiring a person in charge of an animal:**
 - (a) to provide care for the animal,**
 - (b) to treat the animal in a humane manner,**
 - (c) to ensure the welfare of the animal,**

In relation to part A and section 34B of the 'act'. The current charitable organisations in New South Wales are the RSPCA and Animal Welfare League. I believe the Animal Welfare league have only scarce resources to investigate complaints of animal cruelty and then to take the necessary action to be effective. At this time it is my view that the Animal Welfare league fails to achieve the objects of the 'act'. I submit that the Animal Welfare League be removed as an approved Charitable Organisation under 34B of the 'act'.

The RSPCA on the other hand is a large organisation throughout Australia operating under different State Acts regarding animal cruelty and welfare.

Whilst this inquiry is concentrated in New South Wales, the organisation is controlled by the National body with input from all states.

Does the NSW RSPCA achieve the objects of the ("the Act").

Firstly they would have to be a 'charitable organisation'. This has become a very hot topic of late and of great concern. The RSPCA may have been a 'charitable organisation' when it first started 40 or 50 years ago. Can it be said that it truly still is.

The RSPCA across Australia appear to confuse the terms animal care and welfare.

The RSPCA is no longer a not for profit organisation, they no longer have only charitable purposes that are for the public benefit. The RSPCA have become a political entity. It can also be said that the RSPCA are a government entity because they are part of the executive arm of government. The RSPCA across the Country come under the Australian Competition and Consumer Act when they sell

the animals up for adoption and must abide by the legislation, which is sometimes lacking because the RSPCA across Australia believe they are exempt from legislation.

Recent court cases around Australia involving the RSPCA investigation and prosecution area show that the investigators target pedigree animal breeders that do not have the funds to fight such an Organisation like the RSPCA, which has very deep pockets. How many other not for profit organisations own tens of millions of dollars in real estate. Whilst the RSPCA appear to spruik education before enforcement, this is not my experience.

I can provide real examples of the RSPCA's non effective performance in achieving the objects of the "Act".

I submit that the RSPCA does not get over the first limb in that it is not a 'Charitable organisation'.

B) Achieving the Objects of the Act-Level of Funding provided by the Government, perpetrator and community education about ensuring animal welfare.

Level of Funding by the Government

There seems to be some confusion particularly in NSW as to the level of funding and ability to enforce the Act by the RSPCA. In 2015 the NSW RSPCA received \$970,652 and till 17 October 2016 they received \$666,400¹. This funding is just the tip of the iceberg because it fails to include Commonwealth funding and tax exclusions due to its present 'charity statuses'. It also fails to include the many millions of dollars it receives from its other business interests dealt with below.

Conflicts of Interest or Potential Conflicts of Interest

The RSPCA has some real issues in achieving the objects of the "ACT" in the area of perpetrator and community education about ensuring animal welfare, conflicts of interest or potential conflicts of interest between investigation and enforcement of the Act, and the commercial activities of the approved charitable organisation.

I submit that the RSPCA doesn't truly educate so called perpetrators or the community. Where are the RSPCA in this time of drought? Why aren't they helping starving animals?

When it comes to community education, the RSPCA are the last body that should be educating when they need educating themselves. Recently in South Australia the RSPCA seized a great number of Border Collies which has been commonly called the 'border collie' case. I believe this matter may still be before the Courts in South Australia. What I can say is that RSPCA animal behavioural experts in the form of a Vet and Vet Nurse provided expert opinion to the RSPCA that all of the dogs had mental conditions and needed to be euthanized but this just wasn't the case. The border collies were rescued after much mediation between the RSPCA and the WISH Rescue organisation in Western Australia has placed these border collies into loving homes. It's just the calibre of so called expert the RSPCA use. If these so called experts were treating people there would be grounds for personal injury litigation and complaints to the medical board.

In 2009 the RSPCA changed their Policy on Pet Shop Sales promoting due diligence by prospective animal purchases. Then in March 2012 the RSPCA announced it would be rolling out a program, in

¹ Parliament of NSW, Questions & Answers Papers No 102 & 103, 4664 RSPCA Funding.

conjunction with the Pet Industry of Australia (PIAA) where by PIAA could brand their association pet shops as 'RSPCA APPROVED'²

However the NSW RSPCA CEO Steve Colman was quoted as saying "but look ultimately if we can get rid of puppy farmer's altogether that's certainly the RSPCA's position"³

No other investigation and enforcement agency in the whole of Australia has its own halal approved type industry. Yes we have all seen the 'RSPCA APPROVED CHICKEN' in the supermarkets. Just like the Hahal and Heart certifications. The RSPCA charge large fees for the "approved chicken". The RSPCA have recently entered into further commercial arrangements with private hotel chains in a promotion/business called "RSPCA Concierge". The RSPCA have also recently approved a "large scale Puppy Farm". Some would say it is an RSPCA APPROVED 'Puppy farm'. And of course there is RSPCA PET INSURANCE.

Having a so called law enforcement body and prosecutor having a sideline operation that makes it millions of dollars a year is contrary to the three arms of Government in Australia under the constitution. The NSW Police don't even have NSW Police approved "licensed premises".

A real conflict of interest occurs where there is a conflict between the public duty and personal interests of an employee that improperly influences the employee in the performance of his or her duties⁴.

This holds true with the RSPCA as well. You can't have a business organisation making money out of so called Animal Welfare and then also providing and being involved in Law making decisions, providing advice to New South Wales Government on new law or regulations that would benefit the RSPCA.

The RSPCA Code of Conduct is a 'conflict of interest' itself⁵. The Code of Conduct relates to the duty of care to the RSPCA, not the community of New South Wales. This is where the conflict of interest lies. All employees of the RSPCA have a duty towards the RSPCA⁶, including the RSPCA Inspectors that investigate and heaven forbid prosecute the public of New South Wales. The RSPCA Inspectors are appointed by the Minister not the RSPCA. The RSPCA Inspectors duty should be to the community of New South Wales, but it is not. The Inspectors Duty under the code of conduct is to the RSPCA, a commercial and incorporated business. The RSPCA Inspectors acting for the Community are seizing or having animals such as pedigree dogs, cats, horses surrendered to them and then sold by the RSPCA making a profit. They still mainly prosecute the owners of the animals.

The RSPCA in some states border on blackmail. I can provide the documents if required.

This was the case in 2017 when the New South Wales Department of Primary Industries attempted to bring in new regulations regarding dog and cat breeding. I have no doubt the RSPCA were involved with this, new regulations in relation to breeding companion animals or to put it more bluntly pedigree dogs and cats.

² Savingpets.com.au/2013/04/puppy.farms-get-rspca-approval

³ *Animal Welfare Groups welcome NSW Government Inquiry into Puppy Factories, 22 June 2015 by Fiona Pepper, accessed online 3 November 2019.*

⁴ *Australian Public Service Act (1999)*

⁵ *NSW RSPCA Code of Conduct*

⁶ https://www.rspca.org.au/sites/default/files/2016-09_OPERATIONS_MANUAL.pdf

As a result there was a massive media campaign due to the unintended consequences. The Minister at the time stopped the regulations. One has to ask were the proposed changes to the regulations really unintended or an attempt by the animal activists led by the RSPCA to gradually remove the competition from the market, for example RSPCA approved pedigree dogs and cats. This is akin to breaches of the old Trade Practice Laws that were replaced by the Australian Competition and Consumer Act.

In the States that have changed the Prevention of Cruelty to Animals Law and introduced limits on pedigree breeding numbers, with some exceptions if the breeder is a member of a recognised pedigree dog or cat registering body for example, Dogs Qld or in NSW Dogs NSW and the Cat Fanciers Association. This I believe has been circumvented by Local Councils and new rules such as ‘only two (2) cats allowed per property’, if a pedigree cat breeder wants to breed more than two then a development application needs to be submitted’.

From my investigations on behalf of accused persons into the Qld RSPCA indicate that the RSPCA are seizing pedigree animals or attempting to get owners to surrender pedigree animals because the RSPCA know how much money they can sell these animals for. Most of the owners get what is nothing short of an ultimatum ‘surrender the animals to us and you won’t have to pay the costs’.

It is common knowledge that the RSPCA do not like pedigree dog and cat breeders and its intention is to in time run the pedigree breeders out of the business so to speak. This would be against the Public Interest and public policy.

I must at this time say that I am not a pedigree animal breeder.

The RSPCA is a commercial business which was further confirmed recently with the announcement that the RSPCA had not been paying its employees properly. Woolworths Pty Ltd has also been caught out in the very same position. What is the difference between the two commercial enterprises? I submit nothing apart from the RSPCA also investigates and prosecutes.

There are many examples in NSW where members of the community have contacted the RSPCA regarding cruelty to animal’s issues for the RSPCA to appear to do nothing whatsoever when they have the power under the Act to do so. I will not go into any at this time.

C. Standard of Care and Kill Rates for stray surrendered or seized animals under the control of the approved charitable organisation.

The RSPCA slaughtered approximately 40, 206 animals in the years 2014 to 2015. That is an incredible amount⁷.

Since that time there has been a downturn in the community opinion of the RSPCA because the RSPCA shelters are not ‘no kill shelters’. If you take your animal to the RSPCA, it is highly likely that the animal will be killed. There are many no kill shelters in NSW and various rescue groups that actually practice animal care and welfare, which are totally different things.

In the Hon. Robert Brown’s media release in 2016, he comments about the infiltration of the RSPCA by the animal rights activists. This has been supported by the Hon. David Leyonlhelm⁸ reports of the same infiltration in the United Kingdom⁹.

⁷ “We need an inquiry into the RSPCA”, *Media Release, The Hon. Robert Brown MLC, 19 October 2016.*

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 address these in their entirety)

I argue that Non-governmental charitable organisations such as the RSPCA and Animal Welfare League do not have the capacity to exercise the investigative and enforcement powers that come with the granting of such powers. More to the point, can non-governmental charitable organisations be trusted to protect the rights of innocent animal owners?

In an article by Dr Stephen Tate¹⁰, Tate opines that the RSPCA be given power to randomly enter peoples properties, their homes to investigate situations that they believe should be reviewed.

This is what the RSPCA want. To be able to enter anyone's property, without a warrant or for any non-emergency or life threatening situation. In most states of Australia the Police Powers Acts deal with this. The Animal Cruelty Acts such as the Protection of Cruelty to Animals Act NSW, where bodies such as the RSPCA or Animal Welfare League and Police Officers can come onto a person's property. Normally for example under the POCTA section 24E.

No Police Officer in Australia has power's to enter someone's home or property to such extremes that 'Tate 'proposes. It is against the International Covenants on Human Rights.

An example to such abuse already in existence and used by some RSPCA Inspectors is that the RSPCA gets a phone call about an animal welfare issue such as 'the dog has no water' from a complainant that is 300 to 400 metres away and not on the property'. The RSPCA then go to the property on this information. They go to the front door and knock, no answer, they by law need to leave if they don't see any animals in need of urgent medical attention. But this doesn't happen; they walk further onto the property. Is this against the law? My view is yes. I do stand to be corrected. What is more concerning is that the RSPCA and possibly the Animal welfare league but I cannot advise further because I have not had any need to look at their practices, tend not to call as a witness the original complainant. The Inspector puts him or herself into the position of the original complainant.

From my experience, The RSPCA in NSW either doesn't have the ability to conduct cases to test the application of legislative provisions in the Act, or they just don't want to go there. The incident I use is the 'Singleton Horses' culling on the Army Base in 2018. I had a meeting with the NSW RSPCA CEO, Chief Inspector and their legal officer. I was just flabbergasted at the response from the legal officer. The advice I was given was that 'the RSPCA doesn't have the power to investigate reports on military bases, the High Court has said so'. I was sceptical because I provided the RSPCA with media articles where the Qld RSPCA prosecuted various military personnel for animal cruelty offences on a Qld Military base¹¹.

⁸ "Proposed Pet Crackdown confused animal welfare with animal rights", David Leyonljl, SMH, April 23, 2018.

⁹ Corruption of Kindness: How the RSPCA has been infiltrated by a motely bunch of militants with an extreme agenda that's ruining its precious legacy", Guy Adams, Daily Mail, 29 June 2019.

¹⁰ RSPCA Submission 69

¹¹ <https://www.smh.com.au/national/rspca-rejects-kitten-killer-soldiers-20040512-gdiwmw.html>

However some minutes later I was told that if ‘we became aware of any cruelty we would start an investigation’. Till this day I have not been provided with case law to suggest the RSPCA cannot prosecute Military personnel on military bases.

In a submission to the NSW parliamentary inquiry into ‘Animal Activists trespassing onto private farmland’ that some committee members were part of, it was argued by Solicitor Malcolm Caulfield “that the RSPCA is not the appropriate organisation to deal with allegations of animal mistreatment”¹². Caulfield said, “The RSPCA has a fundamental problem primarily because it is not a government agency”. Caulfield’s view, that governments across the board have embraced the idea of a non-governmental organisation which is a charity basically providing a cheap animal cruelty police force is on point. The RSPCA and the Inspectors appointed by the Minister are different entities but they are RSPCA Inspectors.

This is why the RSPCA as a so called charitable organisation are not appropriate to be granted investigative and enforcement powers under the Prevention of Cruelty to Animals Act.

Accountability to Government and the Community

The charitable organisations that are currently authorised to investigate and enforce the POCTA regulations are not accountable to government or the community. The RSPCA and Animal Welfare 2009, and exemptions under the Administrative Decisions Review Act 1997. This is simply not the case because these organisations are like, government contractors do come under GIPA¹³. I argue that because the RSPCA Inspectors are appointed by the Minister and the government pay for the inspectors then the RSPCA are not exempt as are the Animal Welfare league.

Are the charitable organisations currently approved to investigate and enforce the Act exempt from the Administrative Decisions Review Act?

Whilst the performance of RSPCA Inspectors is subject to parliamentary oversight and review in the form of a Parliamentary Inquiry, I do not know of any such Inquiries ever into the RSPCA inspectors because the complaints handling system in place at the moment used by the Department of Bio security and the RSPCA allow the RSPCA to conduct their own investigations into themselves, which is certainly not being oversighted by anyone.

OMBUDSMAN

With all due respect to the various ombudsman offices in New South Wales and Australia, the public have lost all faith and trust in them to stand above any government organisation let alone an incorporated charitable organisation. To explain this if we take the NSW Police which, is the state’s main law enforcement body, the Ombudsman has come under much criticism to the point at which most people don’t complain to the Ombudsman because they are a “toothless tiger”. The Ombudsman let police investigation police and just take the Police Force word for it.

¹² Parliamentary inquiry

¹³ https://www.ipc.nsw.gov.au/sites/default/files/file_manager/KU-government-contracts-and-the-GIPA-Act%20ACC.pdf

Specialist Unit to investigate animal cruelty

One of the common fallacies is that the charitable organisations are the experts when it comes to animal welfare. They have preached this for many years and have pulled the wool off the normal member of the community's eyes and most politicians for that matter.

That just isn't the case. There are many organisations with real experts on hand that have specialist expertise in breeding practices, animal care and the like. The biggest failure by the RSPCA of late has been in South Australia and I think I have already mentioned it above regarding the Border collie's.

Time and time again this was found not to be the case. The RSPCA in Western Australia had been bringing prosecutions without the authority to do so since it started. The investigation into the Victorian RSPCA has resulted in RSPCA prosecutions being referred to the ODPP before commencing proceedings.

The way it stands at the moment the NSW Public are becoming increasingly distrustful of the charitable organisations currently given the authority to investigate and enforce the Act. There are many reasons for this including inappropriate investigation and enforcement practices that have caused the community to start up separate organisations to monitor the RSPCA¹⁴. The charitable organisations have been infiltrated by animal rights organisations such as PETA, mind you so has the Department of Primary Industries¹⁵. There are many examples of inaction by the charitable organisations even after many complaints of animal cruelty. I have heard many times that the organisations have limited resources. I am just not convinced. There are many social media groups that share their stories of the different practices used such as 'the RSPCA did this' or 'make the RSPCA accountable to a third party'.

The New South Wales Department of Fisheries have their own Fisheries Inspectors that are accountable to the government. The charitable organisations do not have the chain of command.

An Investigation and enforcement body need to have an oversight body. Currently the charitable organisations do not have an oversight body. If anyone complains about an Inspector, the complaint is dealt with by the RSPCA or Animal Welfare League if it concerns them. Even the Department of Primary Industries just sends the complaint to the RSPCA to be actioned. It is not an ideal situation.

The introduction of a Specialist Unit would remove this problem. Do the charitable organisations have a profile problem? They Surely do. Contrary to what they would have you believe. A specialist unit would be a real separate entity, not just a separate entity on paper¹⁶.

Advocacy v Activism

This has become a very concerning problem of late in many areas of the executive arm of government. The RSPCA in NSW and all of Australia has gradually turned away from animal welfare advocacy to animal rights. There is a real difference. It is not for an investigator or prosecutor to proceed by way of activism or their personal beliefs in the role they play. The RSPCA is not the triar of fact although they tend to place themselves at that very level.

¹⁴ <http://savingpets.com.au/blog/the-rspca-nsw-does-it-work-for-animals>

¹⁵ <https://www.westernmagazine.com.au/story/6192050/social-media-lynch-mobs-claims-are-impacting-the-investigation-rspca/?cs=1549>

¹⁶ RSPCA Submission 69

The Inquiry into the Victorian RSPCA¹⁷ quoted Dr Tim Adams, Chief Executive Officer of Dogs Victoria, “I guess there is a general view within industry that they may have been influenced in recent years, maybe for even up to a decade, by ideologies that might pull them towards an animal rights flavour. We think that is to the detriment of the core purpose of the organisation and certainly to the detriment of the animals and the people that own them”.

I support this view and whilst the RSPCA Australia wide may dispute this, it really is unbecoming of an investigation and enforcement body to voice their political views that encroach into human rights and moving outside their long held charter and name, the “Royal Society for Cruelty to Animals” not animal rights. Such overlap is frowned upon by the Constitution itself.

Regards

Grant Holman

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¹⁷ Inquiry into the RSPCA Victoria, Parliament of Victoria, Legislative Council, 2017