

**Submission
No 50**

INQUIRY INTO ANIMAL CRUELTY LAWS IN NEW SOUTH WALES

Name: Mr Ashley Chan
Date Received: 23 November 2019

23rd November 2019

**Select Committee on Animal Cruelty Laws
in New South Wales**

Parliament of New South Wales
6 Macquarie Street
Sydney NSW 2000

RE: Inquiry into Animal Cruelty Laws in New South Wales

Dear Committee Members,

I thank you for the opportunity to make a submission into the above inquiry.

This submission focuses specifically on paragraph 1(f) in the terms of reference, but will inevitably provide answers to other paragraphs as well. Before considering whether the Government should establish a specialist unit, it is important to first note some brief facts surrounding the enforcement of animal protection laws.

Context

Almost all anti-cruelty offences are found in the Prevention of Cruelty to Animals Act 1979 (NSW) ("the Act"),¹ with the exception for one provision found in the Crimes Act 1900 (NSW).² The number of offences under the Act total 26.³ Of those 26 offences, the act provides powers of enforcement only to officers of a charitable organisation, police, and inspectors with respect to other animal regulations.

With respect to the powers of police in combatting animal cruelty, section 24D of the Act confers upon police officers, various powers relating to enforcement and investigation of the Act. Additionally, sections 24H and 34AA of the Act explicitly refers to police officers, providing them with, the power to detain a vehicle/vessel,⁴ and the authority to prosecute an offence,⁵ respectively. There are crimes that require specific enforcement by the police, and the one most relevant to animal welfare is the crime of "serious animal cruelty",⁶ while a few other offences⁷ are related to, but not considered to be, animal cruelty as such. It has been said that the bulk of animal cruelty prosecutions in Australia are instituted by the RSPCA.⁸ But why is this the case? It can be seen that police officers have significant powers under the Act in investigating and enforcing the offences set out. Yet in reality, the investigation and enforcement depend largely on the effectiveness of charitable organisations such as the RSPCA.

There are two considerations that should be noted here. Are these charitable organisations actually effective in their investigation and enforcement? And why do investigations and

¹ *Prevention of Cruelty to Animals Act 1979* (NSW) ("The Act").

² *Crimes Act 1900* (NSW) s 530.

³ The Act ss 5, 6, 7, 8, 9, 10, 11, 12, 12A, 13, 14, 15, 16, 17, 18, 18A, 19, 19A, 20, 21, 21A, 21B, 21C, 22, 23, 23A.

⁴ *Ibid* s 24H.

⁵ *Ibid* s 34AA.

⁶ *Crimes Act 1900* (NSW) s 530.

⁷ *Ibid* ss 505, 506, 507, 508, 509, 531.

⁸ Deborah Cao, *Animal Law in Australia* (Thomson Reuters, 2nd ed, 2015).

enforcements mostly depend on charitable organisations rather than police? The conclusion that will be reached in both questions is that there will be a need to create a separate agency, or unit to assist and focus on the enforcement and investigation of animal cruelty laws.

Effectiveness of charitable organisations

With regards to the effectiveness of the charitable organisations, particularly the RSPCA, it is important to consider the available reports provided. RSPCA Australia provides statistics on the number of complaints and prosecutions each year.⁹ In their latest 2017-2018 report, there were 57,092 complaints, 1162 charges, 370 prosecutions and 342 successful convictions.¹⁰

The proportion between complaints and prosecutions is clearly low, being around 0.6% last year, and having been 0.4% in 2016. Additionally, only 2% of all complaints are actually charged. It could be argued that reasons for this could be due to some complaints being trivial or insubstantial. However, the numbers still remain disproportionate. Such a disparity has been argued to be due to “a lack of resources, given the time and cost associated with bringing a prosecution”.¹¹ Additionally, in the 2018-2019 financial year, only 2% of the RSPCANSW’s funds was provided by the government.¹² The funds provided are clearly disproportionate considering how a private charity like the RSPCA, is acting as the major enforcement agency of a public interest issue, animal welfare. While the police can also enforce animal cruelty offences, the reality is that they don’t, and Malcolm Caulfield has believed that it may be time for the “proposition to be tested in an Australian court that the RSPCA and the responsible government departments are, by analogy with the police”.¹³ Subsequently, it may be necessary for the Government to consider whether there should be a public enforcement agency that would enforce animal protection laws, much like how the police would enforce crimes.

Enforcement by charitable organisations?

With regards to why enforcement depends largely on charitable organisations, it is important to consider the attitudes towards animal cruelty enforcement. One reason could be because the prescription of powers to additional bodies, such as the RSPCA, means that the police feel less inclined to enforce animal cruelty offences, especially when there may be greater, more grave offences to investigate. While there do not seem to be any statistics on the impact of police on animal law enforcement, this attitude is likely to be the case, as it has been said that “animal law enforcement would not be considered a key priority” by the police.¹⁴

⁹ RSPCA Australia, *RSPCA report on animal outcomes from our shelters, care and adoption centres 2017-18*, <https://www.rspca.org.au/sites/default/files/RSPCA%20Report%20on%20Animal%20Outcomes%2017-2018.pdf> (accessed 29 October 2019).

¹⁰ Ibid.

¹¹ Cao (n 8) 181.

¹² RSPCA NSW, *RSPCA Financial Statement 30 June 2019*, <https://www.rspcansw.org.au/wp-content/uploads/2019/10/finance2019.pdf> (accessed 31 October 2019).

¹³ Malcolm Caulfield, *Handbook of Australian Animal Cruelty* (Animals Australia, 2009) 202.

¹⁴ Cao (n 8) 230.

Attitudes towards the RSPCA as the main enforcement agency of animal cruelty, have also flowed from Australia's colonial legacy when, "during the 19th century, English laws and customs were imported into Australia",¹⁵ with one of them being "the role of the RSPCA in enforcing anti-cruelty laws".¹⁶ However, this historical consideration ultimately has little weight for any argument against establishing additional enforcement bodies.

Another reason may be because of the understanding of animals as property, or something inferior to humans. However, with the advent of the Australian Capital Territory's (ACT) recognition of animals as "sentient beings"¹⁷ with "intrinsic value",¹⁸ the distinction between animals and human beings. Whilst this approach to the definition of animals is not the norm in Australia, it is an example of a direction towards some recognition of animal rights. In light of this change, and the growing indistinction, it seems necessary to consider whether animals should be accorded rights and protections closer to humans. If this were to be the case, then should the Government not allow for the NSW Police Force, or perhaps a new statutory body, to specifically enforce the offences set out in the Act? If animals and humans are becoming more and more recognised as identical in their place in the world and the rights they are owed, it would follow that they should be accorded the same protections and protectors of those rights, through the creation of a government enforcement unit. I hope that this submission has provided some insight into the issue, and I thank you for taking your time out to consider the matters raised.

Kind Regards,

Ashley Chan

¹⁵ Caulfield (n 13) 173.

¹⁶ Ibid.

¹⁷ Animal Welfare Act 1992 (ACT) s 4A(1)(a).

¹⁸ Ibid s 4A(1)(b).