

**Submission
No 51**

INQUIRY INTO ANIMAL CRUELTY LAWS IN NEW SOUTH WALES

Name: Miss Bao Nguyen
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Dear Committee Members,

Submission to Select Committee Inquiry into Animal Cruelty Laws in New South Wales ('NSW')

I respectfully provide a submission to the inquiry into the NSW Animal Cruelty Laws, specifically addressing the terms of reference: (1)(d)(i) and 1(f).

Term of reference (1)(d)(i) – the effectiveness and appropriateness for non-government charitable organisations ('NGC') to be granted investigative and enforcement powers for criminal prosecution under *Prevention of Cruelty to Animals Act 1979* (NSW) ('POCTAA').

Effectiveness

1. Currently, RSPCA NSW and the Animal Welfare League ('AWL') are the only NGCs granted with investigative and enforcement powers under POCTAA, with the former being the primary enforcer.¹ The RSCPA NSW Inspectorate has responded to a total of 15, 673 animal cruelty complaints during the 2018/2019 financial year.²
2. Despite the high number of complaints responded to, only 77 criminal prosecutions were pursued by RSPCA NSW.³ The low prosecution figures may be due to the enforcement powers being discretionary and imposing no statutory obligations.⁴ The RSPCA NSW would understandably only undertake enforcement action in "serious cases of animal mistreatment", preferring "provisions of education and advice" to resolve animal welfare issues.⁵ The high 'cruelty' threshold that must be reached to consider prosecution speaks to the NGC's resource constraint as "education" and "fines" are arguably their only viable response.
3. It has been widely noted that both charities lack governmental support, evident through RSPCA NSW receiving only 3% of its funding from the government in 2014.⁶ The NGCs rely substantially on public donations and resources must be distributed across various competing demands of animal welfare functions including treatment, investigations, prosecutions and shelter.⁷ Thus, it is reasonably expected that the lack of resources would hinder their capacity to effectively carry out enforcement for criminal prosecutions as they are unable to adequately investigate and pursue all cases of animal cruelty,⁸ evident through the disappointing withdrawal of charges in the 'Wally Piggery' case.⁹

¹ POCTAA s 34; Department of Primary Industries, *Complaints about enforcement* <<https://www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/complaints/enforcement>>.

² RSCPA NSW, *Annual Report 2018-2019*, <https://www.rspcansw.org.au/wp-content/uploads/2019/07/2018-2019_Year-in-Review_Online.pdf>.

³ Ibid.

⁴ Deborah Cao, *Animal Law in Australia* (Thomson Reuters, 2nd ed, 2015) 181.

⁵ RSPCA NSW, *Our Powers* <<https://www.rspca.org.au/animal-cruelty/our-powers>>.

⁶ Mike Rosalky, 'Animal Law in Australia: Legalised Cruelty and why we should care' (2016) 241 *Official Publication of the Law Society of the Australian Capital Territory* 34, 35.

⁷ Voiceless Australia, *The Animal Law Toolkit* (Voiceless Australia, 1st ed, 2009) 8.

⁸ Graeme McEwen, *Animal Law: Principles and Frontiers* (BAWP, 2012) 7.

⁹ RSPCA NSW, 'Media Statement Wally's Piggery', RSPCA (online), <<https://www.abc.net.au/radionational/linkableblob/5907270/data/nsw-rspca-statement-data.pdf>>.

Recommendation 1 – Strategic Partnership Model

4. To counter this resource issue, it is recommended that a partnership model should be adopted which allows for NGC's like RSPCA NSW to strategically work with the NSW Police to share resources in investigating and enforcing for criminal prosecutions. This recommendation follows the model adopted in New York, whereby a strategic partnership was formed between New York Police Department and the American Society for Prevention of Cruelty to Animals (NYPD-ASPCA).¹⁰ The ASPCA permanently handed over enforcement and prosecutorial responsibilities to the NYPD to redirect focus on providing animal care, shelter and other supportive functions to NYPD.¹¹ A memorandum of understanding ('MOU') between the RSPCA NSW and NSW Police could be established to clearly outline the responsibilities of both parties, like in NYPD-ASPCA. Hence, RSPCA NSW could better utilise their resources in other areas of animal welfare.

Appropriateness

5. There have been debates on whether it is appropriate for NGCs to exercise public functions such as investigation and enforcement for criminal prosecutions.¹² Particularly, concerns of inappropriateness stem from the argument that NGCs are not subjected to the same accountability scrutiny as governmental authorities.¹³
6. Western Australia's (WA) 2015 inquiry into the Operations of RSPCA WA¹⁴ found that there was confusion as to whether RSPCA inspectors were regarded as "public officers" and therefore bound by the "rules which govern public functions".¹⁵ Moreover, the Canadian case of *Bogaerts v Attorney General of Ontario*¹⁶ found that police powers of prosecution granted to the Ontario Society for the Prevention of Cruelty to Animals (OSPCA) was 'unconstitutional' as it fulfilled governmental functions without any "reasonable accountability mechanisms in place".¹⁷
7. Unlike OSPCA, the NSW RSPCA and AWL Inspectors are subjected to limited oversight by the Department of Primary Industries ('DPI') in terms of "appointment", "training" and "certain reporting requirements".¹⁸ However, a transparent accountability process is still lacking to ensure that the enforcement powers are properly exercised and what disciplinary actions are available.

Recommendation 2 – Statutory Oversight

8. There should be legislative clarity as to how the DPI manages and oversees NGCs' prosecutions. Assuming the MOU in paragraph 4 is not implemented, the recommendations by the WA Inquiry should

¹⁰ ASPCA, *NYPD Partnership* <<https://www.asPCA.org/animal-protection/nypd-partnership>>; Kristin Toussaint, 'ASPCA and NYPD continue their mission to protect the animal of NYC', *Metro* (online), 30 January 2019 <<https://www.metro.us/news/local-news/new-york/asPCA-nypd-partnership-protect-nyc-animals>>.

¹¹ *Ibid.*

¹² Voiceless Australia, above n 7, 8.

¹³ *Ibid.*

¹⁴ Select Committee, Parliament of Western Australia, *Inquiry into the Operations of the Royal Society for the Prevention of Cruelty to Animals Western Australia* (2015) 62.

¹⁵ *Ibid.* 63.

¹⁶ [2019] ONSC 41.

¹⁷ *Ibid.* [90].

¹⁸ RSPCA, *How are RSPCA inspectors accountable under law* <<https://kb.rspca.org.au/knowledge-base/how-are-rspca-inspectors-accountable-under-law/>>.

be followed.¹⁹ Provisions should be incorporated in POCTAA detailing the exact reporting requirements and clear guidelines on how the Department will oversee commencement of prosecutions by NGC inspectors. Clearer statutory oversight can be incorporated by amending s 34B(4)²⁰ which already requires NGC's to produce a report on any aspect of enforcement "if requested by the Minister" of PI. For public accountability, the report should be released to the public.

Term of reference 1(f) – whether the government should establish a specialist unit to investigate animal cruelty complaints and enforce animal protection laws, either part of the NSW Police Force or as a separate statutory agency

9. Animal welfare and protection are matters of public concern and therefore government institutions should be responsible for enforcing POCTAA.²¹ Given that POCTAA criminalises animal cruelty,²² the role of the Police should naturally extend to investigation and enforcement of animal cruelty offences. The creation of a separate statutory agency would be redundant given that the Police are already tasked and statutorily empowered to execute POCTAA.

Recommendation 3 – Specialist Unit

10. Instances where the NSW Police choose to respond to "higher priority" matters may impede on effectively enforcing POCTAA.²³ However, a NSW Police Specialist Unit would counter this concern by assigning a team of officers to specifically respond to the demands who are skilled in the investigative process.²⁴ Other jurisdictions such as Norway, Sweden and Netherlands have adopted this approach as it heightens the seriousness of animal cruelty offences, and may have a greater deterrent effect.²⁵
11. A good example to follow is the NYPD's Animal Cruelty Investigation Squad (ACIS), which is a specialised detective unit.²⁶ Through the strategic partnership that offers basic training on animal cruelty, NYPD ACIS officers can also contact ASPCA for "immediate answers" and "practical assistance".²⁷ Instantaneous dialogue between the RSPCA and the Police Specialist Unit would function as a consulting service that would enhance investigations and seizure of evidence in the most appropriate manner.

Regards,

Bao Nguyen

¹⁹ Select Committee, Parliament of Western Australia, *Inquiry into the Operations of the Royal Society for the Prevention of Cruelty to Animals Western Australia* (2015) 69.

²⁰ POCTAA s 34B(4).

²¹ Kendra Coulter, *A More Humane and Safer Ontario: The Future of Animal Cruelty Investigations* (25 March 2019, Humane Jobs) 22 <.

²² POCTAA s 5.

²³ Voiceless Australia, above n 7, 8.

²⁴ Kendra Coulter, 'Why animal cruelty should become dedicated police units', *National Post* (online), 26 March 2019 <<https://nationalpost.com/pmn/news-pmn/why-animal-cruelty-should-become-a-matter-for-dedicated-police-units>>.

²⁵ Voiceless Australia, *The Animal Law Toolkit* (Voiceless Australia, 2nd ed, 2015) 14; AFP, 'Norway tests out animal rights cops', *Phys Org* (online), 27 April 2015 <<https://phys.org/news/2015-04-norway-animal-rights-cops.html#jCp>>.

²⁶ Coulter, above n 20, 20.

²⁷ Ibid.