

**Submission  
No 52**

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

**Name:** Ms Celina Lui  
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2 November 2019

The Director  
NSW Legislative Council Select Committee  
Parliament House  
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Dear Committee Members,

### **Legislative Council Select Committee on Animal Cruelty Laws in New South Wales**

Thank you for the opportunity to provide a submission to the inquiry into animal cruelty laws in NSW.

My name is Celina Lui and I am in my fifth year of a Bachelor of Laws at UNSW. I am currently studying animal law at university and have recently completed an internship at Voiceless, the animal protection institute, which has fostered my interest in animal law issues in Australia.

My submission will address paragraphs 1(b)(i), 1(d)(iii) and (iv) of the Terms of Reference.

### **The ability of the approved charitable organisations to achieve the objects of the Act**

The objects of the *Prevention of Cruelty to Animals Act 1979* (NSW) (the 'Act') include to 'prevent cruelty to animals' and to 'promote the welfare of animals.'<sup>1</sup> To achieve these objects, the Act grants a number of bodies the authority to enforce the Act, such as the police, the Minister or Secretary, and approved charitable organisations.<sup>2</sup> However, in practice, the enforcement function is carried out primarily by approved charitable organisations, namely the Royal Society for the Prevention of Cruelty to Animals NSW ('RSPCA NSW') and the Animal Welfare League NSW.<sup>3</sup> For example, in 2006 and 2007, 90% of the prosecutions under the Act were brought by RSPCA.<sup>4</sup> The framework which relies on charitable bodies to carry out enforcement functions is problematic given the lack of sufficient resources and accountability measures.

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<sup>1</sup> *Prevention of Cruelty to Animals Act 1979* (NSW) s 3.

<sup>2</sup> *Ibid* s 34AA.

<sup>3</sup> Elizabeth J Ellis, 'Making sausages and law: the failure of animal welfare laws to protect both animals and fundamental tenets of Australia's legal system' (2010) (4) *Australian Animal Protection Law Journal* 6, 18.

<sup>4</sup> NSW, *NSW Legislative Council Hansard: Prevention of Cruelty to Animal Amendment (Prosecutions) Act 2007 (NSW) Second Reading Speech*, 29.11.07, 3 (Penny Sharpe).

### *Level of funding provided by the government*

In 2018-19, RSPCA NSW received \$1,096,642 in the form of government grants. In contrast, the operating expenses of RSPCA NSW for the same period was \$53,509,618, indicating that the government funding was only able to cover 2% of the amount needed for its operations. Furthermore, it received \$7,007,130 in donations, which is over 6 times the amount of government funding.<sup>5</sup> This reflects the charitable basis of the organisation, and its reliance on voluntary donations which is not a stable source of income.<sup>6</sup> During periods where donations are low, RSPCA NSW may be further restricted from taking actions to prevent animal cruelty and promote animal welfare.

In addition, in 2018-19, RSPCA investigated 15,673 complaints but only 77 cases proceeded to prosecution.<sup>7</sup> The low level of prosecutions may indicate a lack of resources, given the time and cost associated with bringing a prosecution.<sup>8</sup> As such, an increase in funding may be needed to bring more complaints to the prosecution stage. A beneficial implication from a higher number of animal cruelty cases being brought to court is that it may raise awareness of the prevalence of certain offences, which may result in the imposition of harsher penalties and sentences for these offences.<sup>9</sup> Therefore, there may be a need for larger, secure and predictable source of income from government funding for RSPCA to be able to achieve the objects of the Act by investigating and prosecuting all animal cruelty offences as needed. The increase in prosecutions may also deter first-time and repeat offenders.

### **Effectiveness and appropriateness for non-government charitable organisations to be granted investigative and enforcement powers**

#### *Accountability*

The Act provides charitable organisations with the power enforce the provisions by investigating and prosecuting cruelty offences but does not require it to do so.<sup>10</sup> This has implications on the accountability of the charitable organisations, as organisations have absolute discretion regarding whether to step in and prevent cruelty. The government has no legislative basis to require the charitable organisations to exercise their enforcement powers.

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<sup>5</sup> RSPCA NSW Financial Report 2018-2019.

<sup>6</sup> Voiceless, 'The Animal Law Toolkit', *Voiceless, the animal protection institute* (Toolkit, 2015) <<https://www.voiceless.org.au/voiceless-animal-law-toolkit-second-edition>>.

<sup>7</sup> RSPCA NSW Annual Report 2018-2019.

<sup>8</sup> Deborah Cao, *Animal Law in Australia and New Zealand*, p 174.

<sup>9</sup> *Ibid.*

<sup>10</sup> See, eg, *Prevention of Cruelty to Animals Act 1979* (NSW) s 34AA.

### *Ability to conduct test cases*

This could also mean that RSPCA NSW may be required to be selective and not pursue 'test' cases (i.e. cases which test the application of the Act and do not have a precedent) since it cannot afford to lose the case given the lack of resources, and does not face any statutory consequences if it chooses not to pursue certain cases.<sup>11</sup> Consequently, RSPCA NSW may pursue prosecutions in a highly selective way and many cases of unacceptable animal cruelty may go unprosecuted.<sup>12</sup> On the other hand, inspections may not lead to prosecutions because inspectors choose to take alternate actions to improve animal welfare outcomes, by educating and providing advice to the alleged offender or issuing them with a verbal or written directions to improve the welfare of the animals.<sup>13</sup> Quantitative research may need to be conducted to determine the reasons behind the low ratio of investigation to prosecution. This research may shine light on whether a lack of funding and of a requirement for the organisations to enforce the Act impact the effectiveness and appropriateness of the current enforcement system.

### **Recommendation**

I submit that the current framework does not provide an adequate means of enforcing the Act. It is difficult to see how the approved charitable organisations can provide a proper level of protection to animals and achieve the objects of the Act, without sufficient funding and a statutory requirement to exercise their enforcement powers.

If the government decides to continue to engage charitable organisations as the enforcers of the criminal rules as opposed to establishing a specialist animal cruelty investigatory and prosecutorial unit, then I recommend that more funding may be needed for these organisations to be able to enforce the Act to the fullest extent. A requirement may also need to be placed on the charitable organisations to prosecute animal cruelty offences to ensure that the organisations remain accountable to the wider community.

Thank you for taking my submission into consideration.

Celina Lui

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<sup>11</sup> Malcolm Caulfield, *Handbook of Australian Animal Cruelty Law* (Animals Australia, 2008) 172.

<sup>12</sup> Steven White, 'Regulation of Animal Welfare in Australia and the Emergent Commonwealth: Entrenching the Traditional Approach of the States and Territories or Laying the Ground for Reform?' (2007) 35(3) *Federal Law Review* 347.

<sup>13</sup> *Ibid.*