

**Submission
No 74**

INQUIRY INTO ANIMAL CRUELTY LAWS IN NEW SOUTH WALES

Organisation: NSW Government

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PREPARED BY THE NSW GOVERNMENT

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Executive summary

The NSW Government recognises the importance of safeguarding animal welfare, and providing a strong and effective regulatory framework to support good animal welfare outcomes. In order to achieve these outcomes, the Government works closely with animal welfare enforcement agencies to support effective compliance under the *Prevention of Cruelty to Animals Act 1979* (POCTA) and education of our community about animal welfare.

POCTA is enforced by the NSW Police Force and two approved charitable organisations (ACOs) – the Royal Society for the Prevention of Cruelty to Animals NSW (RSPCA NSW) and Animal Welfare League NSW (AWL NSW). Inspectors of the Greyhound Welfare and Integrity Commission are also inspectors under POCTA.

The NSW Government is committed to progressing animal welfare reform through the NSW Animal Welfare Action Plan (the Action Plan). The Action Plan will ensure that people responsible for animals provide for their welfare, in line with the best available science and community expectations. The NSW Government has begun the process of developing modernised animal welfare legislation to improve the way animal welfare is regulated in NSW.

The NSW Government also supports animal welfare through its role on Stock Welfare Panels, and through significant collaboration with enforcement agencies in associated stock welfare enforcement operations.

The NSW Government acknowledges the scale and complexity of animal welfare compliance and enforcement work. The ACOs form a major part of this work and play a key role in enforcing POCTA. They offer specialised expertise and facilities to allow for effective enforcement operations and the protection of animals and their welfare in NSW. The NSW Government provides annual funding to the two ACOs that enforce POCTA and also provides funding to them for specific projects.

Authorised Inspectors have significant powers to enforce POCTA and its regulations. ACOs have legislated reporting requirements and agreed processes with the NSW Government that ensure transparency and accountability of their operations.

Enforcement of animal welfare laws by charitable organisations that are independent from government is not unique to NSW and occurs in other jurisdictions in Australia. The ACOs are able to leverage a unique combination of expertise and infrastructure for dealing with animal welfare matters, which benefits the enforcement of animal welfare laws in NSW.

Overview of animal welfare legislation in NSW

The NSW Government is committed to safeguarding animal welfare and providing the strongest possible regulatory framework to prevent cruelty and promote responsible animal ownership and care in NSW. In NSW, animal welfare is regulated under four main Acts:

- the *Prevention of Cruelty to Animals Act 1979* (POCTA)
- the *Exhibited Animals Protection Act 1986* (EAPA)
- the *Animal Research Act 1985* (ARA)
- the *Crimes Act 1900*

These Acts govern the way animals have their welfare promoted and are protected from cruelty and set the administrative and enforcement arrangements in NSW.

Summary of POCTA administration

POCTA is the primary piece of legislation that provides for animal welfare in NSW and is the Act referenced by the terms of reference for this inquiry. POCTA is administered by the Minister for Agriculture and Western New South Wales, jointly with the Minister for Local Government.

The objects of POCTA are:

- (a) to prevent cruelty to animals, and
- (b) to promote the welfare of animals by requiring a person in charge of an animal:
 - (i) to provide care for the animal, and
 - (ii) to treat the animal in a humane manner, and
 - (iii) to ensure the welfare of the animal.
- (c) to promote the welfare of dogs and cats by requiring information about them to be provided when they are advertised for sale.¹

Section 34B of POCTA states that “the Minister may, by order published in the Gazette, approve of a charitable organisation for the purposes of the exercise by its officers of law enforcement powers under this Act”.² There are currently two ACOs authorised to carry out enforcement of POCTA:

- Royal Society for the Prevention of Cruelty to Animals NSW (RSPCA NSW)
- Animal Welfare League NSW (AWL NSW)

The NSW Police Force is also authorised to carry out enforcement under POCTA, as well as inspectors of the Greyhound Welfare and Integrity Commission.

NSW Government Animal Welfare Action Plan

In May 2018, the NSW Government released the Animal Welfare Action Plan (the Action Plan) which sets out a framework to modernise animal welfare legislation that is almost 40 years old. The objective of the Action Plan is that people responsible for animals provide for their welfare, in line with the best available science and community expectations.

As part of the work under the Action Plan, the NSW Government is in the process of reforming the existing animal welfare legislative framework - including POCTA, EAPA and ARA - with the aim of developing a modern regulatory system to safeguard animal welfare in NSW. Consultation will be a key element of this process and the NSW Government will ensure that all members of industry, animal welfare groups and the community can have their say throughout the reform process.

¹ *Prevention of Cruelty to Animals Act 1979* – [Section 3, Objects of Act](#)

² *Prevention of Cruelty to Animals Act 1979* – [Section 34B, Approved charitable organisations](#)

Role of the NSW Government

The NSW Government has a significant role in supporting good animal welfare outcomes in NSW. POCTA is jointly administered by the Minister for Agriculture and Western New South Wales and the Minister for Local Government. In addition, the Minister for Agriculture and Western New South Wales also administers EAPA and ARA.

NSW DPI does not enforce POCTA, however it does enforce EAPA and ARA. Local Land Services (LLS) plays a key role in providing assistance and advice to POCTA enforcement agencies and the community, particularly with respect to rural and livestock related matters.

Stock Welfare Panels

NSW DPI and LLS play a significant role in Stock Welfare Panels, which are established under Section 24T of POCTA³. Stock Welfare Panels use a structured process to redress instances of poor animal welfare relating to stock animals.

NSW DPI convenes and provides secretariat support for Stock Welfare Panels. POCTA establishes that Stock Welfare Panels consist of a representative from both NSW DPI and LLS, along with an inspector from a POCTA enforcement agency,⁴ while the POCTA Regulation 2012 prescribes that Stock Welfare Panels may include a member of the NSW Farmers' Association, and a veterinary practitioner where no other member is a veterinary practitioner.⁵

Since being established in 2012, the Stock Welfare Panel process has been successful in facilitating better animal welfare outcomes for more than 15,000 animals.

Stock Welfare Panels were instituted into the legislation to prevent situations from developing to the point that the condition of the stock deteriorates to such an extent that it is considered cruel to keep them alive, to provide flexibility for enforcement agencies in how they deal with seized stock, and to streamline the approach in dealing with animal welfare issues affecting large numbers of stock animals. Importantly, Stock Welfare Panels provide the NSW Government and the ACOs with an opportunity to educate the person in charge of stock animals and assist them in implementing measures to restore the health of the stock without the need for direct prosecution action.

Memorandum of Understanding between the NSW Government and POCTA approved charitable organisations

The NSW Government, through NSW DPI, have established Memoranda of Understanding (MOU) with both ACOs. The MOUs provide a joint understanding and agreement on governance expectations relating to the ACOs undertaking POCTA enforcement activities.

The MOUs stipulate requirements for ACOs relating to governance and management of staff conduct in their animal welfare enforcement roles. This includes setting out the functions and responsibilities of each ACO, expected behaviours of employees, risk management and audit systems, reporting requirements, and policies to define how ACOs will maintain appropriate separation between their advocacy and enforcement functions. The NSW Government is satisfied that the ACOs have fulfilled their obligations under the MOUs.

³ *Prevention of Cruelty to Animals Act 1979* – [Section 24T, Stock Welfare Panels](#)

⁴ *Ibid.*

⁵ *Prevention of Cruelty to Animals Regulation 2012* – [Section 31A, Prescribed members of Stock Welfare Panel](#)

Collaboration between the NSW Government and ACOs

NSW Government agencies and the ACOs are effective in assisting each other, and benefit from the varying capabilities and expertise across the organisations.

The ACOs have significant experience and expertise in animal welfare and possess extensive animal care, veterinary and shelter infrastructure that can be utilised by the NSW Police Force. The ACOs also share their expertise with the NSW Police Force through formal and informal training. There is a particularly strong relationship between the RSPCA NSW and the NSW Police Force's Rural Crime Prevention Team. Some complaints against farming enterprises are made directly to the Rural Crime Prevention Team, who are able to involve RSPCA NSW and other government agencies (for example, LLS) to draw on their animal welfare and livestock management expertise.

The NSW Police Force and the ACOs assist each other. For example, in some cases the NSW Police Force are able to provide support where an ACO inspector would otherwise be undertaking a difficult inspection alone.

Charitable organisations enforcing animal welfare legislation

Operations of the ACOs

The NSW Government acknowledges the important work done by a number of charitable organisations and within the veterinary profession to support and protect animal welfare in NSW. However, the NSW Government believes RSPCA NSW and AWL NSW are currently the two organisations most capable of supporting the achievement of the objects of POCTA through compliance and enforcement action.

RSPCA NSW and AWL NSW are charitable organisations operating under their own constitutions and governance structures, and are independent of government. In addition to compliance and enforcement, these organisations operate animal shelters and veterinary clinics, and deliver educational and community outreach programs. This plays a key role in promoting good animal welfare outcomes and responsible pet ownership within the community. The ACOs are able to leverage infrastructure and expertise from their shelter operations and educational functions to support their compliance and enforcement function.

The ACOs provide valuable veterinary services and advice that seeks to reduce instances of animal cruelty and animal welfare non-compliance. This level of service is unique to the ACOs and highlights their value within the POCTA enforcement framework.

The NSW Government acknowledges the scale and complexity of animal welfare compliance and enforcement work in NSW and will continue working with RSPCA NSW and AWL NSW to support their operations in this area. The significant contribution of the ACOs is demonstrated by the latest annual statistics listed on their respective websites:

RSPCA NSW

- 29,682 animals were cared for
- 13,034 animals were rehomed
- 15,673 complaints were investigated
- 368 animals were rescued
- 77 prosecutions were commenced
- \$102,110 fines were imposed⁶

AWL NSW

- 2,472 animals were adopted
- 1,216 reports of cruelty were received
- 7,506 animals were desexed
- 429 animals were fostered
- 5,500 animals were treated⁷

Powers available to the ACOs

POCTA inspectors have significant tools and powers available to manage and respond to animal welfare issues, including the power to:

- enter land and examine animals

⁶ RSPCA NSW Annual Report 2018-2019, https://www.rspcansw.org.au/wp-content/uploads/2019/07/2018-2019_Year-in-Review_Online.pdf

⁷ Animal Welfare League NSW, Statistics webpage, <https://www.awlnsw.com.au/about-us/statistics/>

- officially warn a person/s
- issue directions to the owner to address welfare issues
- issue penalty infringement notices
- collect evidence to begin a prosecution
- seize the animal/s^{8,9}

Inspectors may also revisit the site of an inspection to ensure that directions or advice have been followed, and if they have not, may elect to take other action. The ACOs are authorised to bring forward prosecutions under POCTA.

The NSW Government acknowledges the importance of ACO inspectors being sufficiently trained given the enforcement powers they possess under POCTA. The training requirements for inspectors is addressed by the MOUs held between the ACOs and the NSW Government. This training, combined with the extensive experience of the ACO inspectorate, ensure they are capable of enforcing animal welfare in NSW.

Accountability and reporting requirements

The NSW Government also recognises the importance of continued oversight and accountability requirements for enforcement agencies, particularly those that are independent from government.

As charitable organisations, RSPCA NSW and AWL NSW are legally obligated to abide by the Australian Charities and Not-for-profits Commission reporting requirements. This involves providing an annual information statement that includes financial elements.

Under s34B(3) of POCTA, an ACO must, within three months after 30 June in each year, provide the Minister with a report addressing the exercise of its functions under POCTA and the Regulation.¹⁰ Further to this, s34B(4) requires that the ACOs “provide the Minister with a report on any matter specified by the Minister that relates to the enforcement of this Act by the organisation”.¹¹ As such, both RSPCA NSW and AWL NSW have legislated Ministerial reporting requirements that ensure oversight of their regulatory activities.

The NSW Government acknowledges that RSPCA NSW and AWL NSW are not subject to the *Government Information (Public Access) Act 2009* as they are not NSW Government agencies.

Standard of care by enforcement agencies

RSPCA NSW and AWL NSW must comply with POCTA and the associated Prevention of Cruelty to Animals Regulation 2012, and mandatory codes of practice and prescribed standards when conducting any of their operations, as is the case with any other organisation or person in charge of an animal.

The ACOs are also not exempt from investigation, and if necessary, the alternate ACO or the NSW Police Force can conduct inspections and undertake the investigation into an ACO.

The NSW Government notes that RSPCA NSW and AWL NSW do not only control and supervise animals as a result of enforcement operations, but also operate shelters and other charitable functions. The ACOs have a broad reach across NSW, are well known, and have a good reputation for caring for animals. This leads to a significant volume of animals arriving at their facilities. As a result, ACOs end up with a high volume of animals that require specialised care and assessment for suitability to rehome. Neither RSPCA NSW nor AWL NSW are no-kill shelters,

⁸ *Prevention of Cruelty to Animals Act 1979* – [Part 2A, Powers of officers](#)

⁹ Note: In the case of Stock Welfare Panels, animals can be seized and disposed of (i.e. sold).

¹⁰ *Prevention of Cruelty to Animals Act 1979* – [Section 34B, Approved charitable organisations](#)

¹¹ Ibid.

meaning animals may be euthanased if it is deemed cruel to keep them alive or is necessary to ensure the safety of other animals or humans.

Government funding to enforcement agencies

Every year the NSW Government provides funding to assist RSPCA NSW and AWL NSW in their inspectorial and enforcement functions, however these organisations operate primarily from funding provided by charitable donations.

RSPCA NSW undertakes the majority of POCTA enforcement activities in NSW and their resourcing requirements are extremely high. RSPCA NSW currently receives \$424,000 annually from the NSW Government. AWL NSW currently receives \$75,000 annually from the NSW Government to support their inspectorial and enforcement functions.

The NSW Government has also provided additional, one-off funding to RSPCA NSW and AWL NSW. This funding has helped the ACOs in their community education and animal shelter capacities, which both support their effective POCTA enforcement. The NSW Government funding includes:

Year	Recipient	Amount	Reason
2011	RSPCA NSW	\$7.5 million	Yagoona shelter rebuild
2015	RSPCA NSW	\$2 million	Education centre and education program
2016	RSPCA NSW & AWL NSW	\$200,000	Puppy factories awareness campaign
2019	RSPCA NSW	\$12 million	Renew and expand adoption facilities

Enforcement in other jurisdictions

The terms of reference for the inquiry refer to the enforcement of animal welfare laws in other jurisdictions by charitable organisations.

State-based arms of the RSPCA across Australia undertake animal welfare enforcement in all states and territories, excluding the Northern Territory. In Queensland, Victoria and Western Australia, RSPCA animal welfare enforcement primarily focuses on companion animals and non-commercial livestock with the respective state governments taking primary responsibility for compliance and enforcement in the commercial livestock sector.

In all states, police officers are authorised inspectors, with the exception of Queensland. In Queensland, the police are not appointed as inspectors but can respond to animal welfare complaints under *Police Powers and Responsibilities Act 2000 (QLD)*, particularly regarding complaints made in remote areas.