

**Submission
No 66**

INQUIRY INTO ANIMAL CRUELTY LAWS IN NEW SOUTH WALES

Organisation: NSW Farmers' Association

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**Submission to the
Inquiry into Animal Cruelty laws
in New South Wales
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About NSW Farmers'

The NSW Farmers' Association is Australia's largest State farming organisation representing the interests of its farmer members. Our purpose is to build a profitable and sustainable New South Wales farming sector.

Farmers across New South Wales produce more than \$15 billion worth of food and fibre every year, representing around one quarter of Australia's total agricultural output. Our state's unique geography means a wide variety of crops and livestock can be cultivated and nurtured. NSW Farmers is Australia's only state-based farming organisation to represent the interests of farmers of all agricultural commodities – from avocados and tomatoes, apples, bananas and berries, through grains, pulses and lentils to oysters, cattle, dairy, goats, sheep, pigs and chickens.

Our focus is not just on issues affecting particular crops or animals – it extends to the environment, biosecurity, water, economics, trade and rural and regional affairs. We also have an eye on the future of agriculture; we are advocates for innovation in agriculture, striving to give our members access to the latest and greatest innovations in research, development and extension opportunities. Our industrial relations section provides highly specialised advice about labour and workplace matters.

Our regional branch network ensures local voices guide and shape our positions on issues which affect real people in real communities. Members are the final arbiters of the policies of the Association – through our Annual Conference and elected forums such as Executive Council, members can lobby for the issues which matter to them and their community to become Association policy. Our issue- and commodity-specific Advisory Committees are elected by members to provide specialist, practical advice to decision makers on issues affecting the sector. We are proudly apolitical – we put our members' needs first.

In addition, NSW Farmers has partnerships and alliances with like-minded organisations, universities, government agencies and commercial businesses across Australia. We are a proud founding member of the National Farmers' Federation.

Executive summary

NSW Farmers Association (NSW Farmers') welcomes the opportunity to make a submission to the Select Committee's Inquiry into animal cruelty laws in NSW.

Animal welfare is of the highest importance to farmers, who have always been aware of their responsibilities in this area. As the primary care givers to animals in their production systems, farmers have a pivotal role in protecting and improving animal welfare.

NSW Farmers' strongly supports the current reform process assessing NSW's animal welfare legislative framework. We recognise the need for reform to ensure that the animal welfare legislative framework is fit for purpose. A critical component of a modern legislative framework centres on ensuring that enforcement is undertaken. Effective enforcement is key to building community trust in the legislative framework and confidence in the outcomes that it is producing.

NSW Farmers' considers that several principles must be adhered to for enforcement agencies to be effective. First, enforcement agencies must be impartial and avoid conflicts of interest. Impartiality necessitates that enforcement bodies do not engage in political advocacy, activism or public campaigns. Second, enforcement bodies must focus on animal welfare outcomes rather than enforcement of the criminal law. Critically, they must be adequately resourced and possess the necessary expertise and skills to ensure that they can effectively undertake their role. Finally, as these agencies carry out public functions their operations and expenditure of government funds must be transparent and accountable.

Finally, NSW Farmers' strongly supports the NSW Department of Primary Industries (DPI) retaining administration of animal welfare legislation, as it has the technical knowledge of welfare and the relationship needed to ensure that improved welfare outcomes are delivered. NSW Farmers' strongly opposes the establishment of an Independent Office of Animal Welfare (IOAW). We firmly believe that any removal of DPI's role in the administration of animal welfare legislation will result in a decline in achieving appropriate animal welfare outcomes and duplication of effort.

Recommendations

NSW Farmers' makes the following recommendations for consideration to the Committee:

1. The NSW Department of Primary Industries (DPI) must remain the administrator of animal welfare legislation in NSW and be resourced accordingly.
2. At its core, the animal welfare enforcement framework must focus on achieving improved animal welfare outcomes.
3. Enforcement bodies must not engage in political advocacy or activism nor conduct campaigns, to ensure that impartiality is maintained.
4. That an Independent Office of Animal Welfare in NSW should not be established.

Animal Welfare

Animal welfare is of the highest importance to farmers. As the primary care givers to animals in their production systems, farmers play the central role in protecting and improving animal welfare. In commercial animal production there is a clear economic incentive to maintain good outcomes. Farmers rely on happy and healthy animals. Reflecting these moral and economic considerations, farmers are committed to continuous improvement. They use their knowledge and skilled management, to ensure that appropriate activities are undertaken to ensure positive welfare outcomes are achieved in the production system in which the animal exists.

Animal welfare is a complex and multifaceted concept. It is critical that scientific evidence is at the bedrock of all animal welfare requirements. However, it is important to recognise that there are differing frameworks to measure welfare outcomes. Welfare can be assessed using three different frameworks, based on measures of biological functioning, affective state, or natural living.¹ The biological functioning framework accepts that welfare will be compromised if an animal is unable to adapt to its environment. The second framework assesses the affective state of the animal, which may be positive or negative. The final framework uses the concept of natural living, and it assumes that welfare is optimum when an animal can express normal patterns of behaviour. It is important to recognise that 'natural' is often poorly defined and there can be a tendency to create a humanisation of the animals' experience. Owing to these factors, this framework does not provide a rigorous scientific basis for welfare assessments.²

Animal welfare is also a value-laden concept.³ There will be a range of views on the welfare outcomes achieved by each production system and the values of the assessor have a key impact on the outcome perceived as most appropriate. Moral and ethical judgements of individuals have a substantive role in perceptions of welfare outcomes. These values are embedded in and presented by animal welfare science. NSW Farmers' recognises that the varying assessment frameworks and the impact of values means that there can be no single, correct answer in determining welfare outcomes. This variability makes it a highly complex and contentious areas to regulate.

¹ Animal Health Australia, Proposed Australian Animal Welfare Standards and Guidelines- Poultry Consultation Regulatory Impact Statement (November 2017) 46, 9.

² Ibid.

³ A.D Fisher, P.H. Hewsworth, R.A. Ankeny, H. Millar and R. Acharya, Animal welfare and values, April 2019, 1-2.

Animal Welfare Legislative Framework

Animal welfare laws aim to prohibit cruelty and promote welfare by setting minimum welfare standards. It is important to stress that the role of law is to set the minimum standard, as there is often a desire to use the law to set a standard that is well in advance of minimum requirements. Industry has and will continue to develop higher welfare standards through various industry quality assurance systems, but these must not be used to set the legislative baseline.

Current Animal Welfare Framework

NSW Farmers' believes that the current animal welfare legislative framework is offering positive welfare outcomes for animals in commercial production and that it is being sufficiently enforced. There is a clear incentive for farmers to offer their animal high quality welfare outcomes, as there is a direct correlation between positive welfare and productivity gains. Any animal that is in a positive state of welfare will be able to perform more productively than an animal that is not.

In NSW, the welfare of animals, including production and pets, is governed by the *Prevention of Cruelty to Animals Act 1979* (NSW). The objects of the Act are to prevent cruelty to animals and to promote animal welfare. The associated Prevention of Cruelty to Animals Regulation controls particular animal management procedures.

To ensure consistency across Australia, industry and government has agreed to the development of national welfare Standards and Guidelines.⁴ This is an ongoing process, designed to harmonise and streamline welfare standards through Australia.⁵ Several industries have finalised the development of their national Standards and Guidelines and other are working cooperatively to progress them.

NSW Farmers' recognise that improvements are needed as part of the standards and guidelines process. One key issue concerns the length of time taken to develop industry-specific standards and guidelines. This issue is currently affecting the poultry industry, which is causing significant uncertainty and hindering investment. We are pleased that the Commonwealth government is current reviewing the process. These reforms are being driven through the Agriculture Ministers' Forum, which has agreed to develop options to improve the national governance framework for regulating farm animal welfare in Australia. We want these reform options to deliver a streamlined

⁴ Animal Health Australia, *About- Australian Animal Welfare Standards and Guidelines*, Animal Welfare Standards <http://www.animalwelfarestandards.net.au/about-2/>.

⁵ Ibid.

process, which promotes a transparent and inclusive development process that delivers welfare standards predicated on scientific evidence and meets community expectations.

It is important to note that many animal industries set welfare standards higher than legislative requirements through the development of quality assurance programs. These additional programs are generally independently audited and can ensure that high welfare outcomes are being achieved. They are operated by a range of bodies, including industry, processors, retailers and other supply chain partners. These programs enable for consumers to be able to identify products that have been produced to meet certain welfare outcomes. The programs operate on an individual property basis, with certain enterprises agreeing to be audited to demonstrate that they are meeting certain criteria.

Reforms

The NSW Government has committed to a review of the animal welfare legislative framework, to ensure that it is modern and fit for purpose. NSW Farmers' strongly supports this review process to ensure that NSW has a modern and fit for purpose animal welfare legislative framework that promote positive welfare outcomes and prevents cruelty.

RECOMMENDATION:

- 1. The NSW Department of Primary Industries (DPI) must remain the administrator of animal welfare legislation in NSW and be resourced accordingly.***

Enforcement Bodies

Principles for effective enforcement bodies

The Government's review of the animal welfare legislative framework encompasses review of existing enforcement mechanisms. Enforcement agencies operate within a difficult framework, governed by an old piece of legislation that needs reform. For this reason, we do not consider it appropriate to assess the performance of current enforcement agencies. Instead, we will frame our comments around what an effective enforcement agency could look like at a principle level.

Conflicts of Interest and Advocacy

Enforcement agencies must be impartial and avoid conflicts of interest. Without satisfying these conditions, an enforcement agency will not be able to effectively discharge its responsibilities. Impartiality necessitates that enforcement bodies do not engage in political advocacy, activism or public campaigns.⁶ Such actions can create a conflict of interest and have the potential to cause reputational damage to the body, undermining relationships with a range of stakeholders, including the community.⁷

The potential of conflict between law enforcement and campaigning activities must be managed to ensure an effective welfare enforcement system is in place. Previous reviews have recognised that charities undertaking an enforcement role must not be political and that public campaigns in policy discussion must not occur.⁸ If a charity serves as an enforcement body, it must withdraw from public activism against lawful activity within the jurisdiction. Enforcement agencies should recognise the need for impartiality and engage in policy discussions directly with the government and other stakeholders in a manner that rebuilds their position as a trusted partner in the combined effort to improve animal welfare.⁹

For these reasons, NSW Farmers' considers that animal welfare enforcement agencies must be prohibited from engaging in political advocacy, activism or campaigning.

⁶ Economy and Infrastructure Committee, Parliament of Victoria, *Inquiry into the RSPCA Victoria* (August 2017) 24-25.

⁷ Ibid.

⁸ Neil Comrie, Independent Review of the RSPCA Victoria Inspectorate, Transformation of the RSPCA Victoria Inspectorate (September 2016) 59.

⁹ Ibid 60.

Focus on welfare outcome

Existing legislation requires that enforcement bodies focus on animal welfare outcomes rather than enforcement of the criminal law. This focus is critical for creating an effective enforcement regime as it recognises that compliance is enhanced through education rather than penalties.¹⁰ It is important that prosecution is not recognised as the only effective action for enforcement. Enforcement agencies for animal welfare must have a range of alternative to prosecution including education, counselling, monitoring, administrative sanctions and direction notices.¹¹

The benefits of this welfare focus are identifiable in the current drought conditions and the stock welfare panel mechanism. Stock welfare panels are established in serious welfare cases, with the membership involving members from the enforcement agency, the Department of Primary Industries, Local Land Services and a nominee from NSW Farmers'. These panels work collaboratively to provide directions to the manager of the animals on actions required to improve welfare. In the current drought conditions, these panels have been highly effective in producing positive welfare outcomes and are proving to be a vital mechanism within the enforcement process. NSW Farmers' considers that this mechanism needs to be incorporated into the reform legislative framework. It provides critical learnings about the importance of focusing on welfare.

Resourcing and funding

Enforcement bodies must be adequately resourced to ensure that they are able to undertake their role. Adequate funding is essential to effective enforcement, as without sufficient resources there is no capacity for the enforcement body to investigate complaints, undertake sufficient actions, and to undertake prosecution actions if required.

Expertise

It is critical that enforcement bodies have the necessary expertise and skills to be able to implement the animal welfare legislative framework.¹² For animal welfare in relation to commercial animal production this requires two key components. First, that they have a clear understanding of livestock production. Second, that have the skills and expertise in evidence gathering required to conduct a successful enforcement action.

¹⁰ Legislative Council Select Committee, Parliament of Western Australia, *Inquiry into the operations of the RSPCA WA* (May 2016) 75.

¹¹ *Ibid.*

¹² Comrie, above n 8, 54-55.

Commercial Animal Production Knowledge

Effective assessment of welfare in a commercial animal production system requires extensive knowledge of the industry and how it operates. The welfare outcomes differ distinctly from an assessment of welfare in companion animals or performance animals, such as racehorses or greyhounds. It is vital that the need for enforcement agents to have specialist knowledge is recognised and that there are assurances around their expertise.

For farmers, it is critical that enforcement bodies tasked with investigating and prosecuting animal welfare clearly understand welfare in the context of commercial animal production.

Evidence & Prosecutions

Enforcement bodies must have sufficiently skilled staff in evidence collection and prosecution to ensure that if legal action is required the case has the best chance of success.

Transparency and Accountability

Enforcement agencies carry out public functions on behalf of the community.¹³ As such, there is strong public interest in the transparency and accountability of the agencies. Any legislative framework must ensure that there is accountability in the expenditure of government funds and transparency and accountability in their operations.

RECOMMENDATION:

- 2. At its core, the animal welfare enforcement framework must focus on achieving improved animal welfare outcomes.**
- 3. Enforcement bodies must not engage in political advocacy or activism nor conduct campaigns, to ensure that impartiality is maintained.**

Other Jurisdictions

The enforcement model for animal welfare legislation in NSW is not unique. It is consistent with approaches to preventing animal cruelty across Australia and in comparative international jurisdictions.¹⁴ In these cases, the enforcement role is undertaken by a charity that provides a role in educating and meeting community expectations regarding animal welfare, especially in relation to companion animals.¹⁵ The government recognises this role and provides an annual grant to

¹³ Legislative Council Select Committee, above n 10, 88.

¹⁴ Comrie, above n 8, 9.

¹⁵ Ibid 16.

contribute to the costs of the inspectorate.

The charities provide services through the operations of adoption centres, veterinary clinics, education facilities and an inspectorate. Inspectors are an important part of the organisation. They educate the community on the proper care of animals, and gather evidence for and undertake prosecution of, cases of neglect and cruelty. Under NSW legislation the authorised bodies, currently the RSPCA and Animal Welfare League, need to be approved by the Minister.¹⁶ The basic structure of the system is similar to what operates in Victoria and Queensland, as well as New Zealand and the United Kingdom.¹⁷

A number of these jurisdictions employ various models for enforcement of welfare in relation to commercial production animals. In Victoria, for example, officers within Agriculture Victoria primarily investigate commercial livestock, while the role of charities is restricted to companion animals.¹⁸ As part of NSW's reform process, it is important that these models are investigated, so that their benefits and negatives can be discussed.

As this basic structure is a tried and tested model, NSW Farmers' would caution against any radical changes in this space. The concept of an Independent Office of Animal Welfare or the establishment of a special unit within the police is risky and untested. It is also not clear that it would result in positive welfare outcomes.

¹⁶ *Prevention of Cruelty to Animals Act 1979*, s24D.

¹⁷ Comrie, above n 8, 16-17.

¹⁸ Agriculture Victoria, *Reporting Animal Cruelty* (12 August 2019) Agriculture Victoria <http://agriculture.vic.gov.au/agriculture/animal-health-and-welfare/animal-welfare/reporting-animal-cruelty>

Administration of Welfare Legislation

Role of the NSW Department of Primary Industries

The Department of Primary Industries (DPI) administers *the Prevention of Cruelty to Animal Act 1979* and associated Regulations. The DPI has a role primarily in relation to policy, in the development of standards and guidelines under the Act. NSW Farmers' considers that the DPI must retain administration of animal welfare legislation as it has the technical knowledge of welfare and the relationship needed to ensure that improved welfare outcomes are delivered.

DPI has the expertise necessary to develop and implement successful animal welfare policy and to administer POCTA. It has the expertise in animal welfare, plays an important role in the development of national animal welfare standards, and has a significant role in animal welfare in production industries. This role is compliment by the services Local Land Services (LLS). LLS gives farmers' access to highly experienced vets and other staff with extensive welfare knowledge and these services underpins NSW's ability to deliver good welfare outcomes.

Retaining responsibility for the administration of animal welfare within the DPI is consistent with most other Australian jurisdictions where similar legislation is administrated by the agriculture portfolio.¹⁹ Other jurisdictions, such as Western Australia, have previously had their animal welfare legislation administered by another agency. This arrangement exposed a number of weaknesses. In Western Australia, for instance, it was found that the Department of Local Government was not able to meet the growing pressure on animal welfare and was unable to address needed legislative and regulatory development.

NSW Farmers does not support the establishment of an Independent Office of Animal Welfare (IOAW). We firmly believe that any removal of DPI's role in the administration of animal welfare legislation will result in a decline in animal welfare outcomes. DPI has sufficiently skilled staff, both in welfare policy and technical knowledge (with the agency employing a high number of vets). DPI also has established relationships with the key stakeholders in animal welfare, with the agencies being highly regarded within industry and within the general community. Moving the administration of animal welfare laws to another agency would have a detrimental impact on welfare and damage the collaborative outcomes focused environment that currently exists between stakeholders.

¹⁹ Legislative Council Select Committee, above n 10, 88.

NSW Farmers'' is deeply concerned with the potential powers and responsibilities of an IOAW. There is a risk that this body could be charged with developing welfare standards for individual industries, which could undermine the national standard and guidelines process.

RECOMMENDATION:

- 1. The NSW Department of Primary Industries (DPI) must remain the administrator of animal welfare legislation in NSW and be resourced accordingly.***
- 4. That an Independent Office of Animal Welfare in NSW should not be established.***