

Submission  
No 78

## INQUIRY INTO ANIMAL CRUELTY LAWS IN NEW SOUTH WALES

**Organisation:** Animal Care Australia Inc

**Date Received:** 29 November 2019

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29<sup>th</sup> November 2019

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

Animal Care Australia (ACA) is a national incorporated association representing the interests of all animal hobbyists established to lobby for real animal welfare. ACA comprises of a broad range of pet & companion animal groups, recognising we are the real animal welfare experts - those who keep, care for and breed animals. ACA strives to educate and clarify the differences between animal welfare and animal rights. The latter has no place in legislation or policy management with the keeping of pets, companion animals, animals used for educational/entertainment purposes or kept for conservation.

For the purpose of this submission the RSPCA and Animal Welfare League - charitable organisations – are to be referred to as CO's hereafter.

#### **Recommendations to be initiated by this Inquiry:**

1. CO's to be more accountable and transparent in their actions and investigations.
2. ACA recommends the accountability of the CO's be overseen by the NSW Ombudsman.
3. ACA recommends a review of the powers for enforcement – on the basis of law and the protection of the presumption of innocence until proven guilty. Animals are being seized on the presumption of guilt – this is not in the animal's best interest.
4. ACA recommends the prosecutorial stage of an investigation be transferred to the Department of Public Prosecutions. (DPP)
5. ACA supports the need for more sustainable funding – but does not support this process being a fully government funded organisation as this is contradictory to the term 'independent'.
6. ACA does not support the OC's having exemption from the provision of the Government Information (Public Access) Act
7. ACA recommends a stronger focus on welfare over prosecution within the current review of the Prevention Of Cruelty To Animals Act (POCTA).
8. ACA recommends a streamlining of POCTA ensuring a better understanding of the Standards & Guidelines required by owners and enforcement officers to guarantee best welfare outcomes for all animals.
9. ACA opposes the implementation/creation of an Independent Welfare Organisation.

For further explanation please refer to the attached documentation.

Animal Care Australia supports the current charitable organisations maintaining their roles in the enforcement and education for the prevention of cruelty to animals and sees no reason for the creation of an Office of Animal Welfare to investigate animal cruelty.

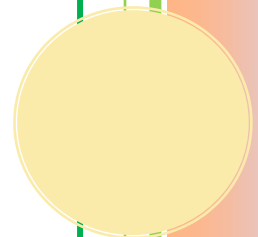
On behalf of the Animal Care Australia Committee,

Michael Donnelly  
President,  
Animal Care Australia.

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



**29<sup>th</sup> November 2019**



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

Animal Care Australia (ACA) acknowledges many cases of animal cruelty continue without enforcement or without sufficient action being taken to prevent the loss of animal lives. A multitude of factors contribute to this appearance that not enough is being done. Public opinion is equally divided as there are those who publicly condemn the organisations for inaction and those who condemn them for having too much focus on one area or set of individuals. It is with that in mind that ACA is focusing our response to this Inquiry and asking for consideration to be made in implementing the recommendations within this submission

### **Effectiveness & Suitability:**

The effectiveness of the Royal Society for the Prevention of Cruelty to Animals NSW (RSPCA) and the Animal Welfare League (AWL) – the two charitable organisations (*referred to hereafter as CO's*) under scrutiny by this Inquiry is too broad a statement to satisfactorily respond to with one answer. A multitude of factors contribute to how any legislation is seen to be effective. These factors include the outcomes of hearings and sentences right through to the public understanding of the legislation – in this case the Prevention Of Cruelty To Animals Act (POCTA).

ACA currently supports both CO's in their ongoing capacity to prevent cruelty to animals. ACA would prefer to see a stronger focus on education and pre-emptive assistance where animal welfare concerns are raised. Placing the sole responsibility of the promotion of animal welfare on to the CO's is both irresponsible & impractical. That responsibility lies with all animal owners and the government institutions that oversee the care of animals, in particular the NSW Department of Primary Industries (DPI). It is ACA's opinion that the insufficient focus on educating the public – those 'in charge of the animals' – will continue to see animal cruelty uncontrolled. Media promotion of those charged with cruelty only to be released with little or no fine/period of time sentenced does not assist in the battle to protect the welfare of our animals. Any attempt to blame the CO's for this is totally ill-founded.

The ability for the CO's to achieve the objects within the Act relies on several factors, the most important being the Act itself. Currently the Act is cumbersome and in many parts too non-specific for tangible enforcement – allowing enforcement to misinterpret the intent of the Act – thereby appearing over-zealous and uneducated. Further complicating this matter is the level of 'legal interpretation' required for both owners & inspectorate to gain a clear understanding of what the objects are. This is highlighted in 'offenders' accounts of inspectors needing to liaise by phone with their legal teams as they are performing inspections.

The ability of the CO's to educate the community and perpetrators of suspected cruelty is lacking due to the misdirection of resources. Public perception indicates focus and intent on persecution outweighs the intent to educate. This is particularly noted with the apparent 'custom' of seizing all animals rather than just those that appear to have been neglected. Multitudes of veterinary tests in a bid to find more neglect and boost the case against an offender appear to be a common factor. Despite the results of these tests, the subsequent costs are then an additional burden to the 'accused'. This provides the appearance of 'guilty'

until proven innocent which has a flow-on effect of turning the perpetrator and surrounding community against the CO, thereby reducing any incentive to be educated. This manner of enforcement must be changed and re-focused to ensuring assistance & education of the welfare needs of the animals is prioritised.

**Funding:**

The implication within the terms of reference that more government funding or establishing a fully government funded organisation is within itself contradictory to the Animal Justice Party's proposed 'Independent Office of Animal Welfare.' Fully government funded does not equal 'independent'. With recent discovery of a federal agricultural government official secretly funding animal rights – anti-farming websites – the idea of a government being independent falls way short of public expectation. It is our experience that charitable organisations are better positioned to provide value for money to government. Transferring enforcement activities to a government body will in all likelihood lead to decreased efficiencies, increased costs, an increase in non-compliance due to the public's complacent opinion of government, resulting in the lowering of animal welfare outcomes.

**Conflicts of Interest:**

Conflicts of interest appear on many platforms and this sector is no different. Rumours and accusations of conflict of interest by having a Barrister who prosecutes on behalf of the CO's and is also on the Board of Directors will continue to exist. The implication of having a rural farmer or an ex-DPI staffer on the Board of Directors again will continue – the truth of the matter is the current lack of accountability to an independent overseeing body perpetrates the voracity of these rumours. ACA is by no means confirming the validity of the rumours rather we recommend the CO's be placed under the 'audit' of the NSW Ombudsman so as to remove any perception of impropriety, conflict of interest and therefore restore the good faith the CO's so heavily rely on.

Current sponsorship arrangements such as those between a major pet store in Sydney and the CO's can be perceived by the public in varying ways. The rehoming of animals via this pet store is admirable in that it assists in moving the large numbers of animals seeking new homes. However this same pet store provides substantial donations to both organisations from customers via in-store purchases such as a portion of the cost for pet Santa photos. This in itself is not an issue until you include the fact this pet store has a development approval in Bathurst NSW for commercial breeding facility to accommodate sixty dogs. There is a certain level of public perception which suggests that the CO's could not complete an unbiased inspection of this facility. To remedy this perception a mechanism by which OC's must declare donations provided by political parties, animal welfare organisations, animal rights organisations and commercial animal businesses must be implemented.

**Kill-rates:**

ACA notes the current statistics for kill rates in NSW is higher than those in other States however we also acknowledge this is in part due to the inclusion of Local Council Pounds that are in partnership with the RSPCA. ACA takes issue with these partnerships as there is an appearance that these partnerships exist for the purpose of boosting all other statistics – such as rehoming, rescuing and return rates of pets to their owners. ACA finds it difficult to justify the use of those statistics to help boost financial support and the sudden declaration

to discount the statistics of kill-rates due to Council Pound inclusion. The organisation simply cannot have it both ways.

The issue of kill-rates being used as a mechanism of efficiency of the CO's is also misleading. Multiple factors are again at play with kill-rates and ACA again finds lack of education to be a major contributor to excessive kill-rates. Many dogs and cats are entered into the CO's care because they are unruly, with poor behaviour, bad attitudes, etc and this is 100% the result of no education within society when making the decision to purchase an animal. Next the animal is assessed by over-worked, and in some cases inexperienced assessors, again pointing to a lack of education. ACA has found the lack of inclusion of experts in assessing animals is a direct link to the unnecessary euthanasing of a large number of animals. There are a multitude of documented cases that highlight this point. The reduction of kill-rates can only be achieved through stronger education of all parties concerned. Many animals can be rehomed if the correct signs are recognised, therefore finding the correct homes and thereby serving the best interest of the animals and future owners.

ACA wants to point out that this is not possible for all animals and we acknowledge there is still a need for some animals to be euthanased – again in the best interests of the animals.

**Enforcement:**

The need for effective and appropriate investigative and enforcement powers for criminal prosecutions is paramount regardless of the organisation tasked to carry them out. This is no different to the NSW Police Force or child abuse investigations there must be appropriate provisions within the Act to achieve this. ACA does find there has been an over-zealous use of these powers – particularly in relation to entering a property. It is our understanding that under the law of New South Wales, Police may enter a home or other premises if they have a search warrant, and may also enter premises without a warrant if they believe someone there has suffered a significant physical injury, or is in imminent danger of significant physical injury, or that entry into the premises is necessary to prevent a breach of the peace.

This does not seem to apply to the CO's Inspectorate. The mere defensive claim that a phone complaint of potential animal abuse justifies the mobilisation of several inspectors to enter a property without permission, to inspect and seize all animals found on that property without apparent illness or harm having been perpetrated seems extremely over-reaching of the intent of the laws designed to protect the animals. What is apparent in many cases is the presumption of guilt over innocence, and the irresponsible and unnecessary stress inflicted on the animals – all in the pursuit of 'catching the offender'. There are too many 'stories' of perfectly healthy animals being seized, held for weeks while being tested for everything imaginable, found to have nothing wrong and then returned to their owners in worse state – particularly in temperament & stress related phobia – than when they were taken. This has to stop. ACA acknowledges the inspectorate cannot be expected to hold a comprehensive understanding of all animal species. It is our recommendation that future employment of the inspectorate must include:

- Training needs analysis within CO's for each role to determine what additional training is required for existing staff and any training deficiencies be rectified within a specified period of time.
- A skills based training program should be reviewed at specified intervals to ensure the content remains current and appropriate for the changing needs in these roles.

- If a skills based training program does not exist, one should be implemented within the next 12 months.
- Training should contain a mixture of theory and practical assignments, and should include external courses as well as internal. It should include items such as the current POCTA standards, general animal care and animal husbandry for the species' falling within the Inspectorate remit and animal behaviour.
- Successful completion of an approved training program must be a mandatory requirement prior to accreditation being given to an individual to be elevated to an Inspector role.
- Accreditation should be subject to ongoing training and renewals within specified timeframes.
- In addition to the above role based training, managers, senior managers and supervisors should be required to undertake people leadership training on a regular basis.

ACA does not find any validity for the seizure of animals that do not appear to be abused or in imminent danger. There is no justification for animals to be taken to already over-crowded and under-staffed CO's shelters for testing. An expert (veterinarian or other) should be required to carry out blood testing etc at the premises where the animals feel secure and their environment is known to them that is where the animals feel safe. This IS in the animals' best interest. This is the objective of POCTA and therefore that of the CO's – not the prosecution of the owner. It is our recommendation the 'experts' be independent of the CO's and be funded by the government to ensure more transparency, actual proof of guilt, and accountability.

ACA strongly recommends the removal of animals where blatant abuse has occurred and where it can be proven without reasonable doubt the animal's welfare was in imminent danger.

#### **Legislative Exemptions:**

In reference to the CO's having exemption from the provision of the Government Information (Public Access) Act 2009 and exemption from administrative review under the Administrative Decisions Review Act 1997 – ACA does not support the CO's being provided those exemptions. These are predominantly public-funded organisations with the responsibility of ensuring the community expectation of the protection and education of the welfare of animals is being met – and therefore should be accountable and transparent to the public.

#### **Independent Office:**

ACA opposes the proposition of a specialist unit or Independent Office of Animal Welfare to investigate animal cruelty and enforce protection laws. There is no obvious need to re-invent the wheel – the CO's currently tasked to this are more than capable of continuing to do so, with improvements such as those recommended within our submission. It should also be noted that the recently redundant staff are most likely those to be re-employed in the new office due to being the people to have the appropriate experience.

#### **Public Survey:**

ACA would like to note our disappointment in the obvious slant and direction of the public survey. It is very clear to us the 'intended' outcome this survey is prompting. While we welcome the opportunity this Inquiry has provided us to enhance the manner in which CO's and POCTA are managed, we do not agree such an 'attack' on the CO's was necessary – in



addition upon investigating the circumstances surrounding this Inquest the suggestion of conflict of interest should be equally applied to some members of this Select Committee.

In summary of the Survey:

- The OC's are the appropriate authorities to enforce legislation for the prevention of cruelty to animals
- The OC's are not sufficiently funded by the Government – but we do not recommend they be fully funded by the government.
- ACA believes there is room for improvement in relation to the investigation of animal cruelty however the OC's are capable of achieving this.
- Standard of care of animals within the custody of the OC's needs improving and more data is needed on the stray, surrendered and seized animals to assist in educating and evaluating best methods of dealing with these animals.
- It is effective for non-government charitable organisations to be the primary body required to investigate and enforce powers for criminal prosecutions under the Act. It is not appropriate for charitable organisations to be prosecuting under the Act – this should be carried out by the DPP.
- ACA agrees to the OC's suitability to exercise the powers, with more accountability measures implemented.
- ACA agrees to the OC's suitability to investigate commercial premises & intensive farms. These should be investigated with the same guidelines and outcome as any other investigation, provided no conflict of interest can be ascertained – such as investigating providers of RSPCA approved products (eggs, meat etc).
- ACA does not currently agree to the OC's regard of accountability to the community – we strongly recommend further implementation in this area.

#### **Further recommendations:**

Department of Primary Industries should ensure that regular audits of all/any private entity POCTA enforcers is completed, especially for those entities that are receiving funding from the NSW Government to be provided with continuing accreditation, covering:

- Company structures
- Operating models
- Statistics of complaints about Inspectors including the outcome of the complaint
- Data collection for items such as rehome, reunite, euthanasia
- Data collection on locations of animal cruelty complaints
- Data collection on types of complaints and animals involved (ie feral cat communities vs unregistered breeders vs registered breeders)

Data collection and analysis should be provided to DPI on an annual basis. As a society, we need to gather more detailed information between the two most popular pet species - cats & dogs - as there are large differences in the specific categories and animal cruelty law enforcement agencies are vital to this. Data collection may assist in targeting education programs by other community groups which increases the likelihood of improvement in animal welfare.

#### **Investigations:**

- Administration, Investigation and Prosecution should be separate tasks so that there is no opportunity for conflicts of interest.



- There should be a clear line of demarcation between the Inspectorate and the rest of the charity work conducted – for transparency.
- There needs to be more clarity on who bears the costs of keeping an animal when it has been seized and whether this should be capped to a specified value. Costs should be reviewed and set by an independent valuer.
- It is well documented that animals in shelters for long periods of time experience behavioural changes (becoming nervous, scared, anxious, aggressive, etc). This should be avoided and discouraged where ever possible.
- If an individual who is not successfully prosecuted cannot afford to pay the excessive sheltering costs, what are the prospects of that animal being successfully re-homed? If it cannot be successfully re-homed, it is euthanased which means no-one "wins". This is a flawed system and requires immediate rectifying.
- In situations where an individual surrenders an animal to avoid going to court or paying to defend themselves, should NOT be assumed as a "win" against the person as there has been no independent assessment of the allegations, in reality it is an outcome based on finances rather than guilt.

**Prosecution:**

- Prosecutions should be conducted via the Director of Public Prosecutions (DPP).
- OC's are tasked with enforcing Government Legislation and therefore should meet the necessary court required burden of proof as the NSW Police Force would need to when enforcing any government legislation.
- Prosecution conducted via the DPP would negate any conflict of interest involved in both investigating and prosecuting individuals, commercial or farming 'offenders'.

**Transparency:**

- Documents and reports should be available and the OC's should not be provided the same level of exemptions that private organisations receive.
- There should be parameters around what is confidential and commercial which should be excluded if disclosure would hinder future investigations and cover situations such as vexatious requests).
- Once a case is successfully prosecuted, the information should be publicly available.

**Dispute Resolution:**

- It is not appropriate that the only mechanism to lodge a complaint about an OC, a staff member or member of the Inspectorate is solely to those organisations, and therefore it is unlikely that an individual will be satisfied with the outcome of any investigation to their complaint due to the nature of dealing with said complaints.
- Our recommendation of appointing an Ombudsman would rectify many issues surrounding dispute resolution.

**Regulations & Cruelty**

- Cases of deliberate cruelty must be investigated and prosecuted efficiently. Cases of unintentional cruelty are best dealt with via education.
- Care is needed to avoid over regulation where there is no likelihood of funding corresponding sufficient compliance and enforcement operations. Animal rights organisations routinely aim to over-regulate – their major aim is to discourage animal keeping.

- Funding and resources should be directed to educating the general public so that animal welfare across the population is improved. This area deserves far greater attention and is an area where specialist organisations and clubs, such as Animal Care Australia and our affiliated network of clubs can assist.

We understand RSPCA Australia is a federation comprised of state bodies including RSPCA NSW. There needs to be a clearer distinction between these organisations, particularly with regard to RSPCA Australia's activist activities which often conflict with current legislation and hence with RSPCA NSW's inspectorate functions.

Animal Care Australia currently has an open dialogue with RSPCA NSW and as part of this dialogue, we will be jointly reviewing the Standards & Guidelines within all sections of POCTA with the goal of drafting and agreeing to Standards & Guidelines that are more readily understood, easier to be implemented and followed by animal owners and thereby when clear breaches do occur effective prosecution is achievable.

On behalf of the Animal Care Australia Committee,

Michael Donnelly  
President,  
Animal Care Australia.