

Submission  
No 82

## INQUIRY INTO ANIMAL CRUELTY LAWS IN NEW SOUTH WALES

**Organisation:** Animal Justice Party

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## **SELECT COMMITTEE ON ANIMAL CRUELTY LAWS IN NEW SOUTH WALES**

### **Submission from the Animal Justice Party**

#### **Inquiry into Animal Cruelty Laws in New South Wales**

#### **Lodged by Catherine Ward, NSW State Secretary, AJP**

November 2019

### **1. INTRODUCTION**

The Animal Justice Party (AJP) was established in 2009 in response to growing public concern over the abuse, harm and mistreatment of non-human animals across Australia. We aim to give a political voice to animals, to pursue the vital issues of animal protection through Australia's political system and to encourage political parties to adopt animal-friendly policies.

The AJP notes that a goal of the NSW Department of Primary Industries *Animal Welfare Action Plan* is to ensure "a robust animal welfare framework and the capacity and capability to effectively administer it."<sup>1</sup> Among other aims, it seeks to:

- improve the effectiveness of compliance and enforcement efforts
- identify any barriers to effective compliance and enforcement

With a view to contributing to the achievement of these goals, the AJP welcomes the opportunity to provide this submission to the Select Committee on Animal Cruelty Laws in New South Wales.

### **2. SUMMARY OF SUBMISSION**

The AJP is of the view that the Prevention of Cruelty to Animals Act (POCTAA) is an inadequate, inappropriate and outdated legal framework to prevent cruelty to animals. The Act is fundamentally flawed as it relies on non-government,

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charitable organisations (currently the RSPCA and Animal Welfare League) to implement its provisions. These organisations are inadequately resourced to undertake the policing and prosecution functions under the Act in that they receive inadequate funds from government and rely upon substantial charitable fund-raising efforts in order to administer POCTAA. Furthermore, the Act does not provide the clarity necessary for comprehensive and undisputed implementation.

The AJP is of the view that the legal responsibility for all actions to prevent cruelty to animals and bring to justice those who offend, lies properly with the NSW Government.

This submission details instances where failure, of the RSPCA in particular, to carry out the functions under the Act has led to distressing and tragic outcomes for the animals involved. Whilst under-resourcing and substantial failings in the operation of the RSPCA are identified as causal factors, the fundamental issue is the outdated enforcement model provided by POCTAA and the inadequate statutory protections provided to animals. The government 'outsources' the responsibility for the wellbeing and protection of animals. The AJP is of the view that this model is no longer acceptable.

The AJP recommends the creation of an independent animal protection statutory authority to undertake the responsibility of ensuring the prevention of cruelty to animals. Powers would include conducting research into animal sentience, making recommendations for animal protection law reform including the review of standards and guidelines, as well as operating an investigation and prosecutorial arm.

Should the NSW Government reject this recommendation, the AJP considers that the next best option is for the NSW Police to be given sole investigation and prosecution powers under POCTAA, given their expertise in criminal investigations. The NSW Government should fund the establishment of a division of 'animal cops' - specialist police who are trained in animal protection and who can call upon the services of veterinarians to assist in their work. ACOs can continue their work with community education, animal rescue and shelters.

This submission also identifies provisions in the existing POCTAA that require amendment to provide greater support for its implementation whilst a new independent body is established.

### **3. RESPONSE TO THE TERMS OF REFERENCE**

#### **TERM OF REFERENCE 1 (a)**

**The effectiveness of the charitable organisations currently approved under section 34B of the Prevention of Cruelty to Animals Act 1979 (“the Act”) in achieving the objects of the Act, namely:**

- (i) to prevent cruelty to animals,**
- (ii) to promote the welfare of animals by requiring a person in charge of an animal:**
  - (a) to provide care for the animal,**
  - (b) to treat the animal in a humane manner,**
  - (c) to ensure the welfare of the animal,**

#### **1 (a) (i) to prevent cruelty to animals**

##### **POCTAA’s enforcement model is an historic relic**

The private, charitable enforcement model is an historical relic - one which occurs in no other area of law. The contemporary outsourcing of the enforcement of a criminal statute to private charitable bodies is unique to the field of animal protection.

When the first animal cruelty laws were enacted in the 1800s in England, it was still common for prosecutions to be commenced privately by aggrieved individuals. In 1824 the Royal Society for the Prevention of Cruelty to Animals was formed to ensure animal laws were enforced, since (obviously) animals were unable to prosecute cases on their own and there was no other agency with standing. From that time, the SPCA enforcement model spread throughout Commonwealth countries.

To bring NSW’s animal protection regime in line with 21st century expectations requires a public, well-funded enforcement regime subject to freedom of information laws, administrative accountability legislation, and other oversight mechanisms that apply to virtually all other law enforcement agencies:

In NSW, officers of three different agencies can be appointed as inspectors to enforce the provisions of POCTAA: the police, the Department of Primary

Industries (DPI) and approved charitable organisations (ACOs). The RSPCA and the Animal Welfare League (AWL) are the two ACOs prescribed by the Minister for Agriculture for this purpose. In NSW, the Department of Primary Industries administers animal protection laws but has no active role in the enforcement of POCTAA.

The enforcement of POCTAA by approved charitable organisations is mostly triggered by complaints. In 2017-18 RSPCA NSW employed 32 Inspectors. It received 15,451 cruelty reports, laid 404 charges and finalised 72 prosecutions, of which 66 were successful. During that time, it carried out 87 routine inspections. In the same period the AWL received 1216 complaints, issued 59 notices of direction under s 24N of POCTAA and issued 29 penalty notices under s 33E of the Act. Although data is not available, some complaints may have been dealt with by the police, particularly in remote or regional areas where the RSPCA often lack human resources. In practice, almost all enforcement functions in relation to POCTAA are carried out by the RSPCA.

Given that there are only 32 RSPCA inspectors throughout NSW, there can be significant delays in response time for complaints. For example, there is only one inspector covering the area from Coffs Harbour to Tweed Heads. This large geographic area is home to hundreds of thousands of farmed and native animals as well as companion animals in the many towns and villages, so it difficult to see how one inspector can manage routine inspections of animal agricultural facilities, veterinary practices, petting zoos, riding schools, saleyards, slaughterhouses, marine parks, pet shops, companion animal breeders, rescue shelters and boarding kennels, as well as responding to call-outs and follow up inspections.

Although police will attend emergencies - for example animal transport accidents or animals in urgent need of assistance (such as seriously ill/injured cattle where the owner cannot be immediately located), generally matters are referred to the RSPCA. It is unknown how many such cases 'fall through the cracks' as there is no shared database between the police and ACOs, or even between ACOs.

Because data on the enforcement of POCTAA is limited, various problems arise in trying to ascertain how POCTAA is enforced in NSW. The NSW Bureau of Crime Statistics and Research does not list animal cruelty offences separately, or hold data on prohibition orders made by the courts. Only basic statistical data is included in the RSPCA NSW Annual Reports. There are gaps in the availability of data and difficulty in interpreting that which is available.

The reports of ACOs must include a statement of the number of visits or investigations made by officers of the organisation that were unrelated to received complaints, such as routine inspections of animal industries as mentioned earlier. While the NSW RSPCA Annual Reports include reference to inspections by animal type in their complaint statistics it is unclear to what extent these complaints were the result of routine inspections as opposed to being undertaken in response to complaints. RSPCA statistics for 2017/18 state that 87 routine inspections were carried out in NSW. While the statistics list examples of the types of establishments subject to routine inspections, no information is provided as to the types of establishments actually visited or the basis on which those inspected were chosen.

The AJP submits that it is neither effective nor appropriate for non-government charitable organisations to carry investigative and enforcement powers for criminal prosecutions under POCTAA.

This is because:

1. Enforcement of the criminal law is an exercise of public power. Private bodies are not accountable for their actions in the same way as an agency of the state. In particular, they are not amenable to internal or external administrative review nor are they subject to access to information laws.
2. Animal welfare organisations are not specialists in criminal procedure.
3. Private charities lack the resources to comprehensively undertake the necessary enforcement activity. While the ACOs receive some government funding, the amount is insignificant compared to the magnitude of the enforcement task. This means that the RSPCA must secure a large amount of money from bequests, donations and fundraising, in order to administer and enforce an Act of Parliament on behalf of the government.
4. The relevant agencies involved in the administration, oversight and enforcement of the legislation have competing priorities and conflicts of interests.
5. Difficulties in accessing accurate and detailed data and statistics relating to complaints, inspections, penalties and prosecutions.

As noted in 2014 by the Woolner Review of the UK RSPCA:

“The current role of the RSPCA has evolved largely outside the mainstream criminal justice system and owes more to history than any strategy...Its

prosecution role has failed to develop to accord with contemporary expectations of transparency and accountability.”

## **Animal Cruelty Prosecutions**

In 2006-2007 it was estimated that the RSPCA brought 90% of prosecutions under POCTAA. While current statistics are not available, it may be reasonably assumed that this remains the current state of affairs. The RSPCA's annual report shows that on average there are 15,000 complaints of animal cruelty recorded per annum but that only one percent of those end up in charges and convictions.

Statistics from the Bureau of Crime Statistics and Research from 2018 indicate that in relation to (unspecified) animal cruelty charges: 532 charges were finalised and 329 charges were proven (61.8%). Further, that there were 197 Defendants with a finalised charge and 158 Defendants with a proven charge (80.2%).

Another factor likely to contribute to the low number of prosecutions is the source of complaints. Commercial premises such as intensive animal production facilities and slaughterhouses are largely hidden from the public gaze and those persons likely to be aware of cruelty will often have a commercial interest in the establishment, as owner, manager, employee or service provider. This interest is unlikely to generate reports of cruelty. In such circumstances, routine inspections are a critical tool in the enforcement process.

That the ratio of prosecutions to investigations is extremely low and that only 158 individuals were convicted of animal cruelty offences is a cause for concern. It might be concluded that the scarcity of resources demand that prosecutions be reserved for those cases with a very high chance of success. This is particularly so since, to the best of the AJP's knowledge, the RSPCA is not indemnified for costs in the event that it is unsuccessful.

Prior to 2007, any person in NSW could institute a prosecution under POCTAA. In 2007, however, s 34AA was inserted into the Act to limit authority to prosecute to official bodies, except with the written consent of the government. In introducing the amendment, the government expressed concern that without limiting the power to prosecute, POCTAA encouraged persons to engage in trespass and posed a threat to the biosecurity of production facilities. While written consent may be obtained by the Minister for Primary Industries or his Director General, we have been unable to discover whether there have been any prosecutions under this provision.

The comments of Clover Moore MLA during the debate following the Second Reading Speech of the Prevention of Cruelty to Animals Amendment (Prosecutions) Bill 2007 were prescient:

“The bill will not only stop courts from hearing many cases of animal cruelty but will also encourage animal cruelty because perpetrators will know that legal action is unlikely....Private citizens will be able to initiate court action only with the permission of the Minister or the Director General of the Department of Primary Industries. That will create a conflict of interest because the Minister and the Director General are required to support industry.”

Corporate counsel for Voiceless, Katrina Sharman, asks: “Will the Minister responsible for ensuring the success of agribusiness in New South Wales, a multibillion-dollar industry, willingly endorse proceedings being commenced against factory farmers? This is a political quagmire, which the Minister would be best to avoid.”

The AJP submits that the RSPCA (the ACO with the major role under the Act) has had limited success in preventing cruelty to animals. While its 2017-18 Annual Report, refers to some ‘substantial wins’, the percentage of complaints resulting in formal proceedings is very low.

The number of finalised charges compared to the number of animals subject to a complaint raises questions about how the enforcement task is being approached and whether current strategies are the most effective. AJP submits that this outcome is partly a function of resources and partly a consequence of a ‘regulatory welfare culture’ whereby the profitability of animal industries are given priority over animal protection.

With reference to available data, the AJP has serious concerns about the over reliance on the use of s 24N direction notices and s 33E penalty infringement notices, and that excessive resort to these powers is a consequence of an overstretched inspectorate and of a regulatory welfare culture in which POCTAA is regarded as an animal welfare statute rather than part of criminal law enforcement.

Both the RSPCA and the DPI emphasise that their primary goal is to promote the welfare of animals, and that this is often best achieved through providing assistance and education, rather than employing a criminal justice response.

Department of Primary Industries:



“In the majority of cases, inspectors will seek to resolve animal welfare issues through the provision of education and advice to the owner or person in charge of an animal. They may issue written instructions to achieve this outcome.”<sup>2</sup>

RSCPA (NSW):

“In the majority of cases inspectors will seek to resolve animal welfare issues through the provision of education and advice. Enforcement action, such as the seizure of animals and initiation of prosecutions, is reserved for serious cases of animal mistreatment”<sup>3</sup>

Together with a large proportion of the community, the AJP submits that these objectives and existing responses to animal cruelty complaints do not adequately reflect the seriousness of offences committed and that the current regulatory framework has seriously failed animals in the state, especially those animals involved in commercial production operations.

In February 2019 the Victorian Sentencing Advisory Council noted that:

“Criminal proceedings involving animal cruelty offences tend to attract considerable attention from both the media and the general community. To date, however, very little research has been published on the sentencing outcomes of those offences in Victoria, or in Australia generally.”

The Advisory Council noted community concerns with the low percentage of successful animal cruelty prosecutions and stated that these concerns are reflected in the views of stakeholders whose work involves the prosecution of those offences.

### **Ingham’s Turkey farm cruelty**

In 2013 Animal Liberation NSW obtained footage of employees of Ingham’s Enterprises kicking and stomping on turkeys. The footage was aired on Australian Broadcasting Corporation and resulted in an employee being charged with three counts of animal torture. The charges were later dropped.

### **Wally’s Piggery**

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In 2014, activists released footage showing the treatment of pigs at Wally's Piggery. The exposé prompted a large-scale investigation and a raid on Wally's Piggery by Yass Police, the NSW Food Authority, RSPCA NSW and the DPI. The investigation found the piggery to be in a state of filth and disrepair, with many sows and piglets suffering from injury, disease and malnourishment. After viewing footage obtained by activists, and a subsequent investigation, the RSPCA laid 53 charges against the owners for cruelty to pigs, including pigs being beaten to death with sledgehammers. The charges included 12 counts of alleged aggravated animal cruelty, 12 charges of failing to provide veterinary treatment to pigs and piglets and 29 counts of failing to comply with the animal welfare regulations.

On the morning of the first day of trial, the prosecutor advised the magistrate that the RSPCA had decided to discontinue proceedings. The RSPCA advised that the key issue in withdrawal of all charges was the inadmissibility of the illegally captured video footage evidence.

There has never been an explanation provided as to why the RSPCA considered that the evidence obtained by multiple authorities was inadequate for a conviction. They are under no legal obligation to make public the reasons for their decision.

### **Frazer Puppy Farm**

Following a complaint to the RSPCA, a puppy farm operator near Armidale northern NSW was investigated. The RSPCA report described seeing a barely conscious and eviscerated female terrier being attacked and dragged around by a pack of dogs. The "farm" operator was successfully prosecuted, convicted of maltreatment and was fined \$11,500 and placed on a 12-month good behavior bond but not banned from owning animals or operating a puppy farm. In October 2014, anti-puppy farm activist group Oscar's Law, provided Fairfax Media with evidence of continuing animal cruelty at the farm including "squalor, malnourishment and freezing conditions". A subsequent investigation of the farm by the RSPCA did not result in a prosecution.

### **RECOMMENDATION**

That the powers of investigation and enforcement be removed from private charitable organisations that have limited resources and ability to undertake investigations and enforcement, and which lack accountability to the public for their decision-making.

## **TERM OF REFERENCE 1 (b)**

**The ability of the charitable organisations currently approved under section 34B of the Act (“the approved charitable organisations”) to achieve the objects of the Act, including:**

- (i) the level of funding provided by government,**
- (ii) perpetrator and community education about ensuring animal welfare**
- (iii) any conflicts of interest or potential conflicts of interest between the investigation and enforcement of the Act, and one or more of the following:**
  - (a) commercial activities of the approved charitable organisations including corporate sponsorship,**
  - (b) industrial proxy membership payments or donations,**
  - (c) private interests of board members, consultants, and senior staff**

### **1 (b) (i) Level of funding**

The AJP submits that the level of government funding provided by the Government to ACOs is inadequate to support their role in achieving the objects of the Act.

Overall, the RSPCA has an operational budget of \$50 million, which includes running the inspectorate, conducting education programs, undertaking rescues and seizures as well as operating shelters and related provision of veterinary treatment.

NSW government grants vary from year to year, but on average the RSPCA receives approximately \$450,000 to operate the inspectorate and engage in prosecutions.

While it is difficult to extrapolate from the figures provided in the RSPCA’s annual report, it appears that the Inspectorate’s operating budget is around \$5 million per annum. The salary and on-costs of 32 inspectors with administrative support, vehicle maintenance and a travel budget would easily consume all of the grant monies. Given that there are on average 15,000 complaints per annum, the government is clearly not providing sufficient funds to ensure the proper investigation of even a fraction of these complaints to a professional standard.

The fact that ACOs need to fundraise to carry out all their animal welfare functions is evidence that they are under-resourced for the task of enforcing the POCTAA. The AJP believes that if the public understood this, they would be scandalised by the lack of government resources allocated to the policing of animal cruelty.

To the AJP's knowledge there has never been a governmental review undertaken to determine the appropriate amount of money required to fully fund the actual cost of investigating breaches of POCTAA and conducting prosecutions. How can it be acceptable that in 2019, in the richest state in the Commonwealth, that charitable fundraising is required to conduct criminal prosecutions for animal cruelty?

### **Recommendation**

**That the NSW Government commit to fully funding the actual cost of investigating breaches and conducting prosecutions under POCTAA.**

### **1 (b) (iii) Conflict of interest**

There are evident conflicts of interest both within the RSPCA and the DPI relating to their powers and functions under POCTAA. These conflicts call into question the capacity of these bodies to operate impartially and independently.

The DPI and its responsible Minister serve the interests of the agricultural sector by supporting and promoting strategies that contribute to profitable and competitive primary industries. In its 2019-2023 Strategic Plan, the DPI notes its key role in creating stronger primary industries in NSW, including increasing the "productivity and profitability of plant and livestock systems". It seeks to "achieve a 29% GVP growth to achieve a Total Primary Industries Output of \$19.3 billion by 2023".

While such an objective is appropriate for a government department established to represent and serve the needs of the agricultural sector, it is the position of the AJP that it is entirely inappropriate for the department to also have responsibility for animal protection.

That DPI is seen as a 'friend' of animal producer interests at the same time as administering an animal protection statute, results in both a perceived and actual conflict of interest.

We have an animal welfare compliance system in which inspection functions have been assigned to the animal production industries through formal and informal recognition of industry quality assurance (QA). Consequently, if a production facility is part of a recognised industry QA scheme, it will be subject to fewer or even no routine inspections for animal welfare compliance purposes.

The Report of the Productivity Commission Inquiry into the Regulation of Australian Agriculture acknowledged there were concerns about transparency, monitoring and enforcement of animal protection legislation. The Inquiry noted that while animal welfare regulations seek to achieve welfare outcomes that meet community expectations, there was disproportionate industry influence on the development of standards, and perceptions of conflicts of interests of agriculture departments responsible for farm animal welfare policy. In its Report, the Commission argued for the creation of an independent statutory agency responsible for developing national farmed animal welfare standards using rigorous science and evidence of community values for farmed animal welfare.

### **We love our animals, but we make them to suffer to create our profits**

A common refrain of the animal agricultural industries is that they know their animals best, that they “love their animals” and that what is good for business is good for the animals. It is a refrain repeated frequently by NSW Ministers of Agriculture, both in parliament in answer to questions by AJP MPs and in the media in response to every single exposé of animal cruelty. Where the evidence of the cruelty is compelling, it is generally blamed on “a few bad apples.” Nothing could be further from the truth.

Animal industry bodies and DPI work together to produce standards and guidelines for animal welfare. The primary focus for consultation in the development of standards is on commercial production and industry management practices. It is about maximising profits with animal welfare coming in a distant second. How else can you explain the continuance of such lawful but painful practices as mulesing and castration without anaesthesia and/or pain relief?

Industry, with the support of DPI, has fought hard to retain battery cage systems in the reviewed poultry standards and yet there is considerable evidence that confinement in battery cages causes severe health problems. Lack of exercise weakens bones which are likely to fracture during depopulation, and leads to metabolic conditions such as haemorrhagic fatty liver syndrome. Claw breakage, plumage abrasion and poor foot health are also prevalent in battery caged hens.

Other lawful practices such as debeaking of layer hens and tail docking of piglets is not only done without pain relief, but in the full knowledge that such mutilations are a cheap fix to the problems caused by intensive production. Without such mutilations, there is a real risk of biting and pecking leading to cannibalism caused by the stress and boredom of being confined in barren cages and pens.

There are too many lawful cruelties to list in this submission but further examples include depriving “dairy industry wastage” bobby calves of liquid feeds for up to 36 hours in transport to the slaughterhouse and the suffering of broiler chickens that are bred to rapidly gain weight in seven weeks resulting in broken bodies and damaged cardiovascular systems.

The wide-reaching role of DPI in relation to agricultural animals severely limits the powers of ACOs. For example, RSPCA inspectors cannot bring charges against a person in relation to an offence of failing to provide an agricultural animal with sufficient food, water or shelter without first seeking advice from DPI. The process of taking action against a person in relation to agricultural animals involves the Secretary of the Department constituting a Stock Welfare Panel to investigate and advise. On receiving that advice, the Secretary may issue a warning or order the seizure of animals.

### **Commercial Arrangements between AWL and Kellyville Pets**

The AJP has concerns about the donations program set up between Kellyville Pets and the Animal Welfare League given the potential conflict of interest in accepting the money and fulfilling their role of regulatory oversight of Kellyville Pets.

Between 2015 and 2018 AWL accepted \$35,000 in donations from Kellyville Pets, Sydney’s largest pet shop. Kellyville Pets proprietor, John Grima also owns a large dog breeding business near Bathurst where more than 60 breeding dogs are kept to supply puppies to his shop. The AWL is responsible for routine inspections of pet shops and breeding facilities amongst other duties under POCTAA.

The Animal Welfare League’s national policy states that it does not condone the sale of dogs and cats in pet stores, but says if businesses choose to do so, they should “rehome dogs and cats on behalf of shelters/pounds or from government-authorised breeders who abide by a code of practice with exemplary animal welfare standards”.

Kellyville Pets considers that there is no conflict of interest because the money was sourced from customers through a Christmas-themed pet photo promotion. About \$5 was donated from the price of each photo package sold, and donations could be made via an “AWL wishing tree”.

The AJP agrees with Deb Tranter, anti-puppy farm campaigner from Oscar’s Law: “Times are changing, and for AWL to be working with one of the biggest pet shops in Sydney, I think proves they are really out of touch with community concerns.”

## **Recommendation**

**The NSW Government should accept that there is an inherent conflict of interest between DPI's support of agricultural industries and their role in determining the regulatory framework for animal welfare and protection. The latter role should be removed from the DPI portfolio and given to an independent statutory animal protection body.**

**1. (d) (ii) ability to exercise those investigative and enforcement powers in relation to commercial premises and intensive farm operations involving high numbers of animals.**

### **Limited resources for routine inspections**

As has been previously stated, the \$450,000 provided by government for the work of the 32-person inspectorate cannot be sufficient to cover routine inspections as well as complaint-driven investigations and enforcement.

Under s 24G of the Act, inspectors have the power to carry out inspections of animals and land used for commercial purposes in order to ensure compliance with the Act and applicable Codes of Practice. However, the ability of RSPCA to conduct routine inspections of commercial and farm operations is constrained by the magnitude of the task and inadequate resourcing of inspectors. In 2017-18 the RSPCA conducted only 87 routine inspections. Premises visited represent a small fraction of animal businesses in NSW. The Aussie Farms Repository lists 1446 animal agricultural enterprises in NSW. Included are 63 abattoirs, 53 beef cattle feedlots, and 316 meat chicken farms, plus entertainment and research establishments. An annual inspection of each commercial establishment would require approximately 27 inspections per week to be carried out. The RSPCA has too few inspectors for this to be a realistic goal. Inspection of sporting events, such as rodeos and horse racing would require additional resources.

As a consequence of limited resources, investigations of commercial premises such as slaughterhouses and intensive animal farming operations are largely conducted in conjunction with the investigation of a complaint.

Another factor likely to contribute to the low number of complaints received and investigated is the source of complaints. Commercial premises such as intensive production facilities and slaughterhouses are largely hidden from the public gaze and those persons likely to be aware of cruelty will often have a commercial interest in the establishment, as owner, manager, employee or service provider. This interest is unlikely to generate reports of cruelty. In such circumstances, routine inspections are a critical tool in the enforcement process.

## **ACOs struggle with limited resources when responding to large scale animal welfare incidents**

### **Lakesland Hens case**

In 2018 a member of the public contacted an animal rescue group after waiting for RSPCA Inspectors to attend a layer hen facility from which she had witnessed distressed birds escaping onto a roadway.

After a social media post causing a public outcry, the RSPCA finally attended the premises on several occasions. Following the RSPCA inspections, it was found that of those birds still alive, most were "underweight to emaciated" and half were suffering "a respiratory disease with mucoid discharge". All the birds were found to have had severe lice infestations and appeared to be hungry and very thirsty, spending most of the time attempting to drink from the nipple drinkers and search for food.

Body cam footage taken by inspectors was admitted into evidence and voice recording revealed the inspectors' uncertainty about how to progress with the investigation. This highlights some significant shortcomings in the experience and training of RSPCA inspectors in the legal processes of investigation and enforcement, and the protocols for gathering and management of evidence. It seemed that the RSPCA was also ill-equipped to manage a welfare crisis involving thousands of distressed and dying birds. Ultimately all the surviving birds were collected and killed. It is not known why this was considered necessary as not all the birds required euthanasia.

The owner was ultimately convicted with multiple animal cruelty offences. For causing pain and suffering to 4000 individual animals, the owner was convicted and fined \$6500, placed on a 16-month community corrections order and prohibited from having any animals in his care for a period of five years.

Why was the RSPCA so slow to act in response to reports that thousands of distressed and dying birds were found without food and water? Why did they not have expertise in either biosecurity management or dealing with a large-



scale animal welfare crisis? There is also the question of why the RSPCA ordered the killing of hens that could have been rescued and rehabilitated.

## **RECOMMENDATION**

**POCTAA should provide authorised bodies with the resources and full powers to conduct routine inspections, independently of agriculture agencies of government, of all commercial premises involved in the exploitation of animals, such as intensive production operations and slaughterhouses.**

### **1. (d) (iv) accountability to government and the community**

#### **Reporting**

Data on the enforcement of POCTAA are limited, hence it is difficult to ascertain how the Act is enforced.

The NSW Bureau of Crime Statistics and Research does not list animal cruelty offences separately, or hold data on prohibition orders made by the courts. Only basic statistical data are included in the RSPCA NSW Annual Reports. RSPCA statistics for 2017/18 list 87 routine inspections as having been carried out in NSW. Listing gives the types of establishments subject to routine inspections, but precise information about the actual places inspected or the reasons for inspection is not provided.

AJP is of the view that the reports of authorised bodies under the Act must include a statement of the number of visits or investigations made by their officers that were unrelated to received complaints, such as routine inspections of slaughterhouses, veterinary practices, pet shops or sale yards.

## **RECOMMENDATION**

**That annual reports of ACOs must include a statement of the number of visits or investigations made by their officers that were unrelated to received complaints, such as routine inspections.**

**1. (d) (v) exemption from the provisions of the Government Information (Public Access) Act 2009**

**(vi) exemption from administrative review under the Administrative Decisions Review Act 1997.**

Charitable organisations are exempt from the Government Information (Public Access) Act 2009, and administrative review under the Administrative Decisions Review Act 1997. Thus, conducting a complete analysis to gain a true account of the ineffectiveness of charitable organisations to enforce criminal law is not possible.

Access to information about investigations, particularly in relation to agricultural animals, is unavailable. There is a lack of accountability, no data is collected and even if there was, access to information would be blocked due to the above exemptions.

## **RECOMMENDATION**

**Establish an independent animal protection statutory authority (with POCTAA investigation and enforcement powers) that is subject to both Government Information (Public Access) Act 2009, and administrative review under the Administrative Decisions Review Act 1997**

### **TERM OF REFERENCE 1 (e)**

**Whether any limitations and deficiencies of the administration and enforcement of the *Prevention of Cruelty to Animals Act 1979* are common to other national or international jurisdictions which use similar models**

The enforcement model using charitable organisations is common to other Australian and overseas jurisdictions. Examination of inquiries and reviews of the operation of the model in other jurisdictions reveals that many issues and concerns are reflected in the implementation of the NSW Act. Three examples are outlined below.

### **Victoria**

A 2016 inquiry into the Victorian RSPCA described workloads within that organisation as “very high” and unevenly distributed across the state. The inquiry expressed concerns at the lack of internal cohesion within the RSPCA in relation to the Inspectorate functions. Inquiry respondents commented that the Inspectorate was “not sustainable” and that “major change is required to

protect the inspectors, the reputation of the organisation and the welfare of the animals it serves". Key concerns were that:

- The current arrangements for prosecution of Inspectorate cases are inefficient and present a range of serious risks for the RSPCA
- The current workload of Inspectors is unsustainable and is a factor in the relatively low number of prosecutions annually
- Actual levels of animal cruelty are significantly under-reported, particularly in commercial animal production and scientific testing
- The prosecutions completed in the year of the inquiry equated to less than one percent of the cruelty reports received by the RSPCA
- Responses to animal cruelty reports were slow
- The absence of financial indemnity for the RSPCA in Victoria was a cause for concern and the reason for the very low number of cases prosecuted
- In most prosecutions, the RSPCA seeks to have an order for costs made by the courts to cover some of the substantial expenses involved in those cases. The Review found that although the court orders these costs be paid to the RSPCA, in many instances this does not occur.

## **Ontario, Canada**

Prior to March 2019, the Ontario SPCA was responsible for enforcing animal protection laws in the Province of Ontario. It responded to nearly 16,000 animal welfare complaints per year, similar to those of NSW. Although it received the equivalent of \$6.6m AUD per annum from the Ontario Government, it was necessary to fund-raise in order to enforce the law, run shelters and care for animals.

In March 2019, the OSPCA announced that it would withdraw from enforcing animal protection laws in the province of Ontario as of 31 March 2019, when its funding agreement with the province expired. This move was a response to a legal decision which found some of the enforcement powers held by the province's animal welfare agency to be unconstitutional, and to issues identified by a 2016 Review of the OSPCA which found significant deficiencies in relation to staff conditions and performance. In particular the Review identified:

- Widespread concern about the insufficient number of Inspectors
- Inadequate powers of Inspectors
- Inadequate penalties imposed by courts for cruelty offences
- Deficiencies in operational policies and procedures
- Slow response to animal cruelty complaints
- Substantial backlogs in the preparation and processing of briefs,

- causing significant delays in bringing matters before the court
- Complex and confusing administrative arrangements with enforcement roles and responsibilities spread across a range of authorised agencies
- A lack of transparency and accountability
- Out-of-date legislation which no longer reflects community expectations regarding animal welfare.

The decision has been applauded by animal protection groups in Canada who believe it will prompt the government to implement a well-funded, public law enforcement regime that will be better equipped to protect animals from cruelty and suffering.

Such a move is not without precedent. Other provinces in Canada have already moved away from private animal law enforcement. The Edmonton Humane Society announced in January 2019 that it would abandon this model, concluding that it is no longer appropriate for a donation-supported body to fulfill a public enforcement function. Manitoba animal protection laws are primarily enforced by the office of the Chief Veterinary Officer, a public agency. In Newfoundland, the police enforce animal protection laws.

### **United Kingdom**

In 2014 a review into the prosecution activity of the RSPCA UK was undertaken. The RSPCA had attracted criticism for a number of years about the relationships between its responsibilities of investigation and prosecution of animal cruelty reports, its law reform campaigns, direct welfare action and its commercial activities. The review found that:

- Many of the problems identified stem from the unsatisfactory infrastructure for enforcement of animal welfare law
- The RSPCA's role in relation to enforcement of animal welfare law is insufficiently defined for it to develop an effective enforcement strategy
- The RSPCA's prosecution role is poorly defined and has failed to develop in accord with contemporary expectations of transparency and accountability
- The current role of the RSPCA has evolved largely outside the mainstream criminal justice system and owes more to history than any clear strategy

### **RECOMMENDATION**

**The historic model of using charities to enforce animal protection laws has been found to be deficient in other Commonwealth jurisdictions concerned about effectiveness, transparency and accountability. The**

## **NSW Government should remove ACOs' powers under POCTAA.**

### **TERM OF REFERENCE 1 (f)**

**Whether the government should establish a specialist unit to investigate animal cruelty complaints and enforce animal protection laws, either as part of the NSW Police Force or as a separate statutory enforcement agency.**

#### **The case for an independent statutory animal protection agency**

The AJP submits that under the existing enforcement model, animals are not being protected. This submission gives examples of failure of ACOs to prevent cruelty to animals for reasons related to under-resourcing, conflicts of interest, and lack of empowerment to enforce the law with respect to animals in agriculture.

The private, charitable enforcement model is an historical relic, one which occurs in no other area of law. We are not alone in questioning whether it is appropriate in 2019 for a private charity to enforce public laws. The low ratio of prosecutions to complaints, and inadequate penalties for those who are convicted, are not only features of NSW law but apply generally throughout Australia, New Zealand and other overseas jurisdictions. These characteristics suggest that animal cruelty is viewed differently from other types of violent criminal conduct, despite the serious consequences for animals, and the link between deliberate cruelty to animals and other forms of human violence. We submit that animal cruelty should not be regarded as a purely regulatory offence and ought to be located in its proper context on a continuum of other forms of violent and antisocial behaviour.

To bring NSW's animal protection regime in line with 21<sup>st</sup> century community expectations requires a public, well-funded enforcement regime subject to freedom of information laws, administrative accountability legislation, and other oversight mechanisms that apply to virtually all other law enforcement agencies.

The AJP is of the view that the state of NSW should take responsibility for protection of its animals and ensure that perpetrators of animal cruelty are appropriately charged, prosecuted and sentenced.

Cruelty to animals should be regarded with the same level of seriousness as violence towards humans and, to this end, the responsibility for animal cruelty law enforcement needs to be put in the hands of properly resourced public agencies.

## **Independence – enforcement in agricultural production**

Independence is necessary to avoid actual and perceived conflicts of interest between animal protection and the commercial priorities associated with agricultural production.

The need for independent enforcement of animal cruelty laws is particularly salient in the context of animals kept in commercial production facilities. The current regulatory framework in NSW creates an environment where ‘regulatory capture’ is likely to exist. Regulatory capture occurs where regulators serve the interests of the industry being regulated rather than the public interest.

As mentioned earlier, the Productivity Commission has recommended that: there be improvement to the regulation of “on-farm animal welfare” by government taking responsibility for ensuring that scientific principles (and by inference, not industry demands) guide the development of farmed animal welfare standards. To do this, the Productivity Commission recommends the establishment of a stand-alone statutory organisation - the Australian Commission for Animal Welfare (ACAW). Its function would include the development of standards using good-practice public consultation, and members should be appointed on the basis of skills and experience, not as representatives of a particular industry, organisation or group. It should also include animal science and community ethics advisory committees.

Of particular concern to the AJP is the limited protection provided in POCTAA for animals in commercial production facilities, referred to in the legislation as ‘stock animals’. Such operations are covered by Guidelines, Codes of Practice and Standards which are developed and enforced by an administrative agency centered in agriculture and industry.

While failure to comply with an applicable Code may give rise to a charge of cruelty under POCTAA, adherence to the Code may be a defence against a charge of cruelty. Specifically, POCTAA provides different levels of protection according to the function and/or context of the animal concerned, with the status of an animal determining whether an act is considered cruel, or whether it is regarded as ‘necessary’ or ‘reasonable’ for the carrying out of business. In the case of ‘stock animals’, a number of ‘routine agricultural practices’ which, in other contexts would be considered cruel, are given legal sanction by animal welfare codes. For example, s 9(1A) POCTAA provides that ‘stock’ animals other than horses are exempt from the requirement that animals receive adequate exercise, making it lawful for this category of animals to be confined for their entire life.

An independent animal protection agency in NSW would avoid perceived conflicts of interest in which animal protection functions are subordinated to

commercial imperatives. In addition to its enforcement functions, it would address some central concerns with the way in which farm animal welfare is currently regulated and would assist to:

- clarify the objectives of standards and guidelines;
- ensure that such standards and guidelines be evidence-based; and
- ensure independence in the development of standards.

For these reasons, the AJP calls for an inspectorate and enforcement agency that operates independently of the Department of Primary Industries in administering anti-cruelty legislation.

### **A possible role for the police**

Under the current NSW model, members of the NSW police force are ‘officers’ with enforcement powers under POCTAA, but in practice their role is generally secondary to those of the charitable agencies which carry out the bulk of inspection, enforcement and prosecutorial duties. A greater role for the police in the enforcement of the Act, such as the establishment of a specialised unit within the force dedicated to animal cruelty law enforcement, could lead to increased success in detection, arrest and animal cruelty prosecutions. Police officers are trained in law enforcement protocols ensuring investigator safety, managing the initial investigation for vulnerable animals and people, and the correct identification of evidence.

The RSPCA has a Memorandum of Understanding with NSW Police whereby the police prosecutors conduct mention hearings for RSPCA cases. For contested cases, the RSPCA briefs a commercial legal company, which then briefs barristers to represent the RSPCA in appropriate cases. Such legal costs may be significant. These lawyers also provide legal advice on various matters regarding animal cruelty and occasionally provide advice directly to Inspectors relative to brief preparation. Some of this ad hoc legal advice has been provided on a pro bono basis.

### **The Victorian Model**

There may be valuable lessons from the Victorian model which preserves the RSPCA investigatory role but contracts out brief preparation and local court prosecutions to salaried specialised animal prosecutors within the police force. Higher court appeals are handled by the DPP. The Police are also resourced to provide relevant formal training to Inspectors through the training programs available in that organisation.

These arrangements were instituted following an independent review of the RSPCA Inspectorate in 2016. The review found, among other things, that the significant issues around the preparation and processing of briefs and the costs

to RSPCA of outsourcing and failed prosecutions.

### **The United Kingdom**

The RSPCA in the United Kingdom has established a structure which replicates the relationship between the police service and the Crown Prosecution Service whereby prosecution decision-making is separated from the investigation function of the RSPCA. It comprises a Head of Prosecutions and Prosecution Case Managers working under the supervision of the Society's Chief Legal Officer. Prosecutions are conducted by solicitors or barristers instructed on behalf of the RSPCA.

### **US jurisdictions**

There are precedents from a number of jurisdictions in the United States where specifically trained divisions of the police force have been charged with the responsibility for enforcing animal cruelty laws. The operation of specialised units has resulted in marked increases in arrests, prosecutions and numbers of rescued animals.

In 2014 the American Society for the Prevention of Cruelty to Animals handed their law enforcement and prosecution duties back to the New York Police Department because of the difficulties arising from their reliance on donations to function. The NYPD established an Animal Cruelty Investigation Squad and took the lead role in responding to all animal cruelty complaints in New York City, while the ASPCA expanded its direct care for animal cruelty victims. They reported record increases in arrests and numbers of animals rescued in the first six months after the partnership was established. It also saw the number of prosecutions of cruelty increase dramatically.

In the State of Virginia, Animal Protection Police Officers assist with a wide array of encounters between animals and humans, from reports of stray dogs, to potential neglect or cruelty situations. APPOs are trained law enforcement officers responsible for enforcing county ordinances and state laws that pertain to animals and their treatment.

In New Jersey, Humane Law Enforcement Officers are sworn officers commissioned by the Superintendent of the New Jersey State Police. They are armed and have full law enforcement powers and authority and are authorised to enforce any law or ordinance enacted for the protection of animals. HLEOs conduct investigations and surveillance for animal cruelty cases, sign complaints and issue summonses for criminal charges and/or civil violations, confiscate and seize animals, and make arrests with or without warrant for violations of New Jersey animal cruelty laws.



In January 2018, the power of humane law enforcement was transferred from the New Jersey Society for the Prevention of Cruelty to Animals to County Prosecutors. In addition to each municipality and police department having a designated humane law enforcement officer, the law also requires each County Prosecutor to designate an Animal Cruelty Prosecutor to investigate, prosecute, and take other legal action as appropriate for violations of the animal cruelty laws of the state.

## **RECOMMENDATION**

**That in the alternative to establishing an independent statutory office of animal protection, the NSW police take on the primary role of investigation and enforcement of POCTAA.**

## **CONCLUSION**

The first animal cruelty laws were passed in early Victorian England. This led to the establishment of the RSPCA which raised private funds to bring offenders before the courts at a time when there was no publicly funded police force to pursue criminal prosecutions. The focus was on the most horrendous treatment of animals; forcing injured and sick cattle to market, dog and bear baiting, cock fighting and the overburdening of carriage horses.

Fast forward to the 21<sup>st</sup> century and the community has a strong desire to see that our animal protection system is fit for the purpose. We have a far greater understanding of the sentience of animals, their ability to feel pain and fear, boredom and frustration.

Just as we do not expect the Salvation Army to raise funds to investigate child abuse, we do not expect animal welfare charities to shoulder the burden of policing animal abuse.

The AJP considers there are minimum standards for a modern society that condemns all forms of animal cruelty. We want an independent government funded animal protection investigation and enforcement system that can deliver these outcomes:

- authorities that can respond quickly to allegations and complaints
- authorities that are independent from animal industries and government
- authorities that are pro-active in policing animal industries
- accountable and transparent decision-making by authorities
- adequate numbers of skilled investigators and prosecutors
- authorities that can meet the cost of investigations, inspections and prosecutions.

- those who perpetrate acts of cruelty against animals to be found out, investigated to determine the extent of criminal behaviour, stopped from continuing their acts of criminality and to receive fair punishment upon conviction.

The time has arrived for justice for all animals.

**Signed .....**

**Catherine Ward  
NSW State Secretary  
Animal Justice Party**

**29 November 2019**

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