

Submission  
No 84

## INQUIRY INTO ANIMAL CRUELTY LAWS IN NEW SOUTH WALES

**Organisation:** Animals Australia  
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29 November 2019

Hon Mark Pearson MLC  
Committee Chair  
Select Committee on Animal Cruelty Laws in NSW  
NSW Legislative Council  
6 Macquarie Street  
Sydney NSW 2000

**Submitted by email:** [animalcrueltylaws@parliament.nsw.gov.au](mailto:animalcrueltylaws@parliament.nsw.gov.au)

### **Animals Australia submission to the Inquiry into Animal Cruelty Laws in New South Wales**

Dear Mr Pearson,

Animals Australia welcomes the opportunity to provide input in response to the Inquiry into Animal Cruelty Laws in NSW.

We agree that it is critically important to consider the effectiveness of the arrangements for the administration and enforcement of the *Prevention of Cruelty to Animals Act 1979* ("the Act"). Clearly the community, through the NSW parliament's passing of the Act in 1979, has acknowledged the sentience of animals, and thus the need for a regulatory regime to provide animals with protection from pain and suffering.

The Act is currently administered by the Department of Primary Industries and enforced by the NSW Police, the Royal Society for the Prevention of Cruelty to Animals (RSPCA) NSW inspectors and Animal Welfare League (AWL) NSW inspectors. It is incumbent on the parliament to ensure that these arrangements and the performance of all agencies are adequate to provide protection to animals, and we therefore welcome this inquiry.

However, as Animals Australia has in recent years focussed particularly on national issues, and has no **direct** insight into the monitoring and/or animal welfare complaints, investigations or prosecutions in NSW, our responses here are somewhat limited. Regardless, Animals Australia has significant experience in animal welfare policy development nationally and in those States where our representatives serve on the advisory committees. We therefore make recommendations (below) relevant to the need for additional resources and greater independence needed in the monitoring and enforcement of even the existing (inadequate) animal welfare laws.

<p><b>(a) The effectiveness of the charitable organisations currently approved under section 34B of the Act in achieving the objects of the Act.</b></p>
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We do not have sufficient information to be able to comment on the "effectiveness" of the two charitable organisations approved under section 34B of the Act. Indeed we look to this inquiry (and its subsequent report) to provide comprehensive information on this important issue.

We do, however, make the suggestion that the Committee consider one appropriate method for evaluating whether the objects of the Act are being met may be through an analysis of sentencing.

Such an analysis was recently undertaken by the Sentencing Advisory Council of Victoria, which reviewed animal cruelty offences and sentences in that state between 2008 and 2017<sup>1</sup>.

The Council's report provided important insights, albeit only relevant to those cases which reached prosecution stage. Council Chair Professor Arie Freiberg stated:

*'This report provides the first ever insight into how animal cruelty is sentenced in Victoria. There is clear community interest in animal welfare, and in how the criminal justice system responds to animal cruelty committed by individuals or corporations.*

*'One of the most important findings in this research is that most animal cruelty in Victoria is not the kind of sensational cruelty that generates much news, but rather involves people who have, for whatever reason, not provided adequate food, drink or veterinary treatment for their animals.*

*'We hope this report will provide policy makers, courts, prosecuting agencies, animal welfare organisations and the wider community with new and useful information to help inform public debate about when and how it is appropriate for the criminal justice system to respond to animal cruelty.'*

Animals Australia notes here that neglect cases are the most prevalent (prosecuted Victorian) offences, which signals the need for greater education in regard to animal care and responsibility, and greater monitoring and surveillance by those enforcing the Act. More fully resourced enforcement agencies are likely to reduce animal suffering, particularly where those agencies play an educative role and are also able to escalate cases where owners/carers fail to improve their inadequate behaviour.

### **Failure of the Act to protect all animals**

It is important to note however that the Act, similar to the relevant animal cruelty acts in other states, does not treat all sentient animals equally before the law; i.e. entire classes of animals remain essentially unprotected from harm and cruelty. We make here special mention of the inadequate protection afforded to farmed animals. Farmed animals comprise the majority of animals in human care in NSW, and yet compliance with voluntary agricultural codes of practice provides **an exemption** from the cruelty provisions of the Act (Section 34A). The adopted codes of practice (now also national Standards and Guidelines) provide only a minimum standards, and have for decades (since the 1980s) merely reflected usual farming practice. Purported consideration of animal welfare science and community expectations during the reviews of those codes are inaccurate<sup>2</sup>. The (NSW adopted farmed animal) Codes allow practices that would constitute cruelty if judged under Section 5 (cruelty) or Section 6 (aggravated cruelty) of the Act.

This exemption for farmed animals provides and allows for practices that fall way below expected community standards. For example, due the 'code exemption' it is legal to keep a laying hen permanently in a battery cage for the purposes of egg production, and to clip the tail and teeth of a piglet, mules a lamb and castrate cattle and sheep without any pain relief. The same invasive (surgical) acts carried out on animals that are classified as "domestic pets" would constitute an offence under the Act.

The welfare issues caused by the low-bar of current agricultural codes or standards are in our view in large part a function of the decisions on standards needing to be agreed by all jurisdictions, and thus a 'lowest common denominator' outcome emerges. For example, whilst Tasmanian sheep farming bodies (during the sheep Standards review process) made public comments indicating their acceptance of pain relief for mulesing being regulated, the other states representatives would not.

During that review process NSW Farmers representatives even opposed the use of the word "competency" in regard to sheep handlers in the Standards. Instead it was replaced by-

<sup>1</sup> Sentencing Advisory Council, 'Animal Cruelty Offences in Victoria', February 2019.

<sup>2</sup> The author has been a member of all national farmed animal code reviews since the 1990s and has witnessed the failure to adequately consider these stated aspects of the reviews; the bias within the review committees and the subsequent Agriculture department/ministerial decision-makers, has been acknowledged by the Productivity Commission and other similar independent bodies.

*“[a] person must have the relevant knowledge, experience and skills to perform a general husbandry task in a manner that minimises the risk to an animal’s welfare or be supervised by a person who has the relevant knowledge, experience and skills”.*

Even then some farmer stakeholders rejected this wording (including the then Sheepmeat Council of Australia), as they were concerned that formal training may be required to undertake husbandry practices.

The result (using these two example) is that the current sheep and cattle standards do not use the word ‘competency’ for fear some existing farmers or employees would be judged not to be competent. As a result, for example, several million lambs each year will be mulesed and suffer to an unnecessarily high degree in each state and territory with no legal redress available.

This double standard in the treatment of animals under the current laws will (perhaps unfairly) impact the reputation and effectiveness of any organisation or charity administering and enforcing the Act. Community members are and will continue to be frustrated by inadequate responses to observations of animal suffering whilst ever this inequality in the treatment of different animals continues. We recommend the Act be reviewed to ensure the current exemptions are removed such that the Objects of the Act (Section 3) can be achieved – those being,

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

**(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**

Further to the concerns and points made above, there is significant work needed to raise animal care standards in NSW and in Australia. That this task in NSW is largely left to two non-government organisations, primarily using charitable donations to fund the work, is totally unacceptable and inadequate in our developed nation in 2019.

The RSPCA NSW reportedly investigated 15,673 cruelty cases in 2018/19, commencing 77 prosecutions<sup>3</sup>. It is difficult to comprehend how 32 individual inspectors were able to fully investigate such a vast number of complaints, across the expansive state of NSW, in just one year.

For the same time period, the level of government funding the RSPCA NSW received (\$1,096,642) was far less than the cost of funding the RSPCA inspectorate (\$6,810,509)<sup>4</sup>. It appears therefore that the RSPCA NSW inspectorate is not being adequately resourced by the Government.

The most recent annual report for the AWL NSW reveals it’s inspectorate received 1,292 complaints in 2017/18, issuing 59 notices of direction and 29 penalty notices<sup>5</sup>. The AWL NSW was denied an annual grant by the NSW Government, with some politicians even questioning the need for two societies to investigate animal cruelty. Clearly the government has outsourced it primary responsibility to enforce the Act, and in our view then failed to even adequately resource those organisations.

Animals Australia stresses the importance of adequate Government funding being allocated to enable to the full investigation of animal cruelty complaints, regardless of the organisation(s) tasked with enforcing the Act.

<sup>3</sup> RSPCA NSW Annual Report 2018/19, page 8.

<sup>4</sup> RSPCA NSW Financial Statement for financial year 2018/19, page 31.

<sup>5</sup> Animal Welfare League NSW Annual Report 2017/18, page 5.

The ability to fund sufficient numbers of animal cruelty inspectors and the resultant necessary prosecution should not be reliant on charitable donations from the public. Animals Australia recommends that the NSW government reconsider its obligation to improve animal welfare in the state and provide significantly more funding to that end.

**(c) The adequacy of the standard of care and kill rates for stray, surrendered or seized animals under the control or supervision of the approved charitable organisations.**

Animals Australia does not have sufficient information to form a robust view on this matter.

**(d) Whether it is effective and appropriate for non-government charitable organisations to be granted investigative and enforcement powers for criminal prosecutions under the Act.**

As indicated above – Animals Australia is certainly greatly concerned that currently the enforcement obligations of the government have been out-sourced and is (largely) reliant upon charitable funding; significant changes must be made to this model.

However, regardless of the body conducting investigations and undertaking enforcement activities, community expectations are that those functions will be carried out in a professional and effective manner. This principle addresses the TOR 1(d) (i) – (iv) in regard to capacity, ability and accountability that must be demonstrated by inspectors and in the management of prosecutions (including public interest cases).

Further, and because Animals Australia believes the Act itself, and specifically the breadth of animals and animal-use activities it covers, must be reviewed and updated, supports the establishment of an **Independent Office for Animal Welfare** (IOAW) to assist with the support, improvement and oversight of enforcement activities. We elaborate on the proposed role and activities of an IOAW under ToR (f) below.

**TOR 1(d) (v) and (vi)**

Animals Australia believes that the inspectorate (**any** inspectorate) tasked with enforcing the Act should be subject to the *Government Information (Public Access) Act 2009* and *Administrative Decisions Review Act 1997*. It is critically important that the organisation(s) with statutory powers to enter private or commercial premises, seize animals, investigate complaints and prosecute offenders are held accountable for their decisions and actions. These are publicly endorsed enforcement activities and so should be subject to the same scrutiny as other public order functions.

Considering that the RSPCA NSW and AWL NSW undertake other un-related functions, such as rehoming surrendered animals, we recommend that only their inspectorates be subject to freedom of information requests and independent inquiries.

**(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.**

Animals Australia does not have sufficient information to form a robust view on this matter.

**(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.**

Our current system has consistently failed animals for decades, both at the Federal and State levels. Agriculture/primary industry Departments and Agriculture Ministers charged with looking after animal welfare (in NSW and most States) have as their primary stakeholders the very industries that cause animals the greatest routine suffering (intense confinement and invasive and painful husbandry techniques). With this clear conflict of interest, the welfare of animals has often come second to the economic interests of the animal agriculture lobby and indeed the stated aims of increased productivity and profitability of animal industries and Government departments.

**It is our strong view that an Independent Office of Animal Welfare (IOAW), a separate statutory enforcement agency, is needed to monitor and investigate matters impacting on animal welfare.** An IOAW would have the authority to recommend changes to policy and make decisions that are first and foremost in the interests of animals. To ensure its 'independence' from vested interests, particularly from commercial agricultural interests, its reporting structure would not reside within the agriculture portfolio i.e. the Attorney General's or Premier's Department is suggested.

We would envisage the statutory authority with a CEO and staff with expertise in animal welfare, policy development, legislation/enforcement, investigation and administration. To inform its deliberations and recommendations it should have an expert Advisory and Standard Setting Panel (ASSP) with an independent chair, experts in animal welfare science/veterinary medicine, and representatives from community animal advocacy groups, animal use groups, and Australian and State/Territory governments. The ASSP could be modelled on the European Scientific Panel on Animal Health and Welfare and/or the NZ National Animal Welfare Advisory Committee.

The tasks we envisage for this independent body could include:

- Conduct inquiries and prepare reports and recommendations (in a similar manner to the 'Productivity Commission') to highlight and address current issues/deficiencies of animal protection laws and their enforcement.
- Provide expert advice to Government, including on international developments and social research in regard to community views.
- Facilitate the development and setting of enforceable animal welfare Standards based on expert scientific input, practical knowledge and community expectations (through the ASSP).
- Liaise with animal protection enforcement bodies and develop appropriate training, inspection, and enforcement policy support for relevant authorities' inspectorates.
- Collect, report and distribute animal welfare information (e.g. an annual report and a 5-yearly 'State of Animals' report to be tabled in Parliament and which require Government/Ministerial response).
- Assess priorities and provide advice to funding bodies about the research needed to inform and underpin sound animal protection reform measures (impartial 'public good' research rather than industry-directed research).

It should be noted that a similar body was proposed by the Productivity Commission in its report on Regulation of Agriculture released in March 2017<sup>6</sup>. Recommendation 5.1 supported the establishment of a stand-alone statutory organisation not unlike the suggested IOAW, called the Australian Commission for Animal Welfare.

*Recommendation 5.1*

*To facilitate greater rigour in the process for developing national farm animal welfare standards, the Australian Government should take responsibility for **ensuring that scientific principles guide the development of farm animal welfare standards**. To do this, a stand-alone statutory organisation — the Australian Commission for Animal Welfare (ACAW) — should be established. The functions of ACAW should include:*

<sup>6</sup> Available here - <https://www.pc.gov.au/inquiries/completed/agriculture/report>

- *Determining if new standards for farm animal welfare are required, and if so, to develop the standards using good-practice public consultation and regulatory impact assessment processes*
- *Publicly assessing the efficiency and effectiveness of the implementation and enforcement of farm animal welfare standards by state and territory governments*
- *Publicly assessing the efficiency and effectiveness of the livestock export regulatory system and making recommendations to improve the system to the Australian Government Minister for Agriculture.*

*ACAW should comprise no more than five members (including a Chair) appointed by the Australian Government following consultation with state and territory governments. **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 to provide independent, evidence-based advice on animal welfare science and community values.***

Whilst the Productivity Commission recommendation was for a national body focussed on farmed animals, the principles are consistent with the Animals Australia recommendation for a NSW IOAW. Similarly, support for a national IOAW has come from numerous groups over time, World Animal Protection, Voiceless, RSPCA Australia, Animal Liberation and The Greens.

Most recently and most relevantly, the NSW Select Committee on the Use of Battery Cages for Hens in the Egg Production Industry recommended a similar body in NSW:

*“That the NSW Government establish an independent office of animal welfare, as a distinct authority, separate and independent from the NSW Department of Primary Industries, to be responsible for animal protection issues”<sup>7</sup>.*

Importantly, an IOAW need not replace the existing charitable organisations tasked with enforcement of the Act, but rather provide an expansion and greater level of enforcement, thereby strengthening the State’s approach to protecting animals from cruelty.

The NSW Police Force already has an enforcement role under the Act. We suggest a specialist police task force, working alongside the charitable organisations and an IOAW, would assist in achieving the objects of the Act.

We commend these recommendations to you. Please contact me if further clarification is required.

Yours sincerely,

**Glenys Oogjes**  
Chief Executive Officer

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<sup>7</sup> NSW Legislative Council Select Committee on the Use of Battery Cages for Hens in the Egg Production Industry, Report 1, page X.