

**Submission
No 91**

INQUIRY INTO ANIMAL CRUELTY LAWS IN NEW SOUTH WALES

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Submission – Inquiry into animal cruelty laws in NSW

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To the Select Committee,

Thankyou for the opportunity to lodge a submission to this long awaited, much needed but also welcome Inquiry into animal cruelty laws in NSW.

Animal cruelty legislation in NSW is failing all non-human animals miserably. Generally Australians are a nation of animal lovers and would expect that here in NSW we would have a high regard for animals and their welfare and that the laws would be protecting them adequately but this could not be further from the truth. Our current legislation extends far more protection to some species over others, despite all animals being capable of feeling fear, loneliness, pain, terror and also joy, comfort and happiness. Industry Codes are allowing industry to be exempt from animal welfare laws. Animal cruelty laws are being administered by charitable organisations who are lacking the funds and resources to adequately do their job. There is an increasing culture of animal cruelty and a lack of adequate law enforcement. Australians have a growing awareness of the sentience of non-human animals and the current laws in NSW are not meeting public expectations or offering legal protection or justice to non-human animals.

There is a growing lack of social licence for the live export of animals; for animals used in sport and entertainment such as greyhound racing, horse racing, rodeos and circuses; companion animals being mistreated, baited by poison or killed in pounds and shelters; inhumane culling of animals; farm animals suffering in intensive animal agriculture; animal experimentation; and the suffering already being experienced by many species due to the effects of the climate crisis, drought, floods, bushfires and exposure and also habitat loss and fragmentation. Australians have been outraged by the many recent reports of intentional cruelty to animals including to our wildlife

As such the majority of Australians fully support public money going towards comprehensive investigations, prosecutions and court outcomes which deliver meaningful justice for the animal victims. Australians want strong laws to protect all animals, authorities to follow through with enforcement, and a judicial system which delivers real justice in a consistent manner. The public also desires government to lead by example and acknowledge that all animals matter and animal cruelty will not be tolerated and that our government policies and policy direction will align with public expectations with animal cruelty, whether it is legal or not.

Our current animal cruelty laws are inadequate and inconsistent, and the public are justifiably getting distressed about this. There is also a lot of criticism of the agencies that are authorised to act under the Prevention of Cruelty to Animals Act (POCTAA) with many reports of cruelty either not being followed up, a significant delay in time or lack of action. There is also public dismay at the results being delivered by the judicial system, with either no penalties given or penalties considered no more than a slap on the wrist, showing time and time again that cruelty to animals is not being taken as the serious matter that it should be. Particularly when you take into account that cruelty to animals can often be a precursor to other significant crimes. The current predominance of domestic violence also often involves cruelty to animals.

Animal cruelty is a crime and should be dealt with like all other criminal prosecutions, and that is not by a charitable organisation but by the police or a body best equipped to investigate and prosecute criminal matters.

Our NSW animal cruelty legislation is failing to deliver its intended and stated purpose of protecting non-human animals, deterring acts of animal cruelty and administering justice in line with community expectations. Similarly, current NSW laws do not ensure or deliver the necessary and expected monitoring, enforcement, prosecution outcomes or deterrents as expected with criminal matters.

The animal cruelty laws in NSW are outdated, weak, inadequate and only protect some animals. There is a substantial difference in the protection given to wild animals, companion animals and farmed animals. The laws include a myriad of qualifying terms and exemptions and conflicts of interest and they do not deliver satisfactory protection for animals. The legislation is weak, inadequate and totally ineffective and the negligible penalties given are totally out of touch with community expectations and do nothing to discourage further similar crimes.

There are also limitations and failings of the authorised animal cruelty authorities. Whilst I understand that a charitable organisation such as the RSPCA is ill equipped and very inadequately funded to perform criminal prosecutions and that they also have some good staff and many good volunteers, there is a growing public perception of their failings on many levels to not only protect animals in their own care but to administer the POCTAA. There is a conflict of interest with RSPCA's commercial interests such as RSPCA approved meat, and an arrangement with Kellyville Pets. And many question that they are there for 'all animals great and small'. A local rescue group was established to rescue dogs and cats from the local pound entirely because the local RSPCA shelter were not only not rescuing animals from there but were putting dogs and cats into the pound to be killed. There are many documented incidents where animals were failed by the RSPCA and consequently ended up dead. I also have many personal experiences of their failings.

The Government is also responsible for giving support and assistance to enable cruelty to animals in the farming sector. Common and legal procedures such as mulesing, tail-cutting, beak-trimming, the maceration of day old chicks, killing of week old dairy calves, sow and boar stalls, battery hen cages, etc etc. The issuing of the toxic poison 1080 results in a harrowing and drawn out death which no animal should be subjected to. Where are the protections from cruelty and neglect for these animals? The Government is endorsing and normalising animal cruelty in these instances.

Animal cruelty is a serious criminal matter and it needs our urgent attention. Our current animal protection laws are failing and we must consider other Australian state and territory laws and systems in addition to international models where better and successful outcomes have been and continue to be achieved.

To a large extent, inadequate and weak legislation and inconsistency with court verdicts contributes to the effectiveness or ineffectiveness with the administration of POCTAA and achieving the objects of the Act. The authorised agencies are not adequately funded and resourced to prosecute and are unable to deliver satisfactory outcomes.

POCTAA is not meeting the needs of non-human animals who rely on this legislation for their protection. The many exemptions to the act and minimal protection given is also impacting on the number of successful animal cruelty prosecutions being made.

Neither POCTAA or the authorised agencies are meeting public expectations about what is considered adequate and necessary protection against cruelty including provisions to prevent cruelty towards animals, and promote the welfare of animals. There is a diminished level of public confidence and this increases frustration by the public with reporting cruelty, prosecutions and sentencing outcomes in relation to the authorised agencies and the judicial system.

POCTAA urgently needs a total overhaul, including 'intent' sentencing provisions and those authorised under the Act. While this outdated legislation remains law, all corresponding CoPs, standards, policies and policy direction continues to be inadequate and is failing the animals and the NSW public.

There is ample evidence to suggest a high level of public dissatisfaction with the adequacy of the standard of care and kill rates for stray, surrendered or seized animals under the control of the approved charitable organisations; and an increased public demand for the introduction of No Kill Programs which have achieved significant success. The majority of stray, surrendered or seized companion animals fall under the responsibility of local government councils, many of which continue to operate in a non-compliant manner.

In no other circumstances is a charitable organisation such as RSPCA or AWL relied on to achieve the objects of a criminal Act.

Whilst adequate consideration must be given to protection of privacy and sensitive investigations and prosecutions, given the nature of the work undertaken by NSW Police, RSPCA NSW and AWL NSW regarding animal cruelty matters, it is important that the public and the media can access important information through the Government Information (Public Access) Act 2009. Public interest information should not be hindered by the charity status of RSPCA or AWL who should not enjoy exemptions from GIPA or the Administrative Decisions Review Act 1997.

In June 2018, a Discussion Paper was published by NSW DPI covering current animal cruelty legislation, penalties and emerging issues. NSW DPI had a strong public response to 2 public surveys, yet there has been no report released with the results or recommendations.

There is a strong public expectation that all organisations and especially those which are publicly funded or receive some level of public funding operate in a completely transparent manner. All authorities involved with the monitoring, enforcement and prosecution of animal welfare matters, which includes NSW Police, NSW DPI, NSW OLG, NSW RSPCA and NSW AWL, need to be transparent, impartial and provide accurate and comprehensive reports which are publicly available. The public particularly expect this when public funds are involved.

Personal experience

One of my own personal experiences with an animal cruelty case which involved up to a thousand animals was an exercise in disbelief and frustration both at the lack of laws protecting animals, the incompetence of the organisation who prosecuted the case, and the lack of support and information given to the primary witness which was myself. And I was left in no doubt that any animals that would continue to be left in the care of these people, who were charged with multiple animal cruelty and neglect charges, would be subject to the same appalling conditions, treatment, pain, suffering and death as had been inflicted on them prior to the case.

On this particular day which was over 40 degrees in temperature I visited a rural property where up to a 1000 animals of different species were being kept in shocking conditions, all in very exposed conditions without adequate shelter, many without any water available, many emaciated and in poor condition, many dying of heat stress, and dead bodies amongst the living in tiny overcrowded restrictive and exposed cages. I reported this matter to RSPCA NSW the following day and animals were seized from the property, and it took nearly 2 years to get to court.

Without my persistence in this matter this would never have got to court. The RSPCA lost my written statement and photos as evidence in this case not once but on 2 separate occasions. Luckily I had extra copies with me at the court case for it to go ahead.

When I rang RSPCA to enquire about the final verdict in the case I was told " I am not sure if I can divulge that to you". But of even more concern was when I asked if these people would be checked on in the future to see if they were complying with regulations, I was told " We cannot check on them unless we have a new complaint against them " I have found out just recently after the death of one of the persons charged that the RSPCA were compiling a new case against this same person for similar offences. (16 years later)

In summary this case showed that up to a thousand animals were suffering and dying under the care of people who were eventually taken to court thanks to a member of the public, and despite the feeble efforts of the enforcement agency, were charged for animal cruelty and neglect but that these same people were allowed to continue to inflict harm and suffering to a multitude of animals on a continuing basis until their death. The faces of some of the animals that I left behind at that property that day 16 years ago still haunt me. How many animals must have suffered over the years.

There were 40 dogs on this property and it would be classified as a puppy factory yet still today we have no legislation outlawing puppy factories, or the overbreeding of companion animals or adequately protecting animals in this situation from years of confinement, neglect, and deprivation. There were farm animals on this property and the Prevention of Cruelty to Animals Act (POCTAA) currently does not give the same protection to farm animals as it does to companion animals so is failing to protect animals on farms.

I have also had decades of experience rescuing dogs and cats out of pounds in NSW and have seen firsthand the lack of care and consideration given to these poor animals by local Government bodies, where even the most basic needs are not met and where killing is used as the first option rather than rehoming. Pounds with successful rehoming outcomes are often dependent on volunteers and funds from the community rather than any effort by the local Government body themselves. Pound reform is desperately needed in NSW and killing should never be the first option. All pounds and shelters in NSW should be adopting the "No Kill philosophy. My local council currently does not even have a pound despite having a population of 90,000 people. It is operating out of a boarding kennel with public access denied and in recent years the kill rates have climbed significantly. Public access is also denied to the Pound facility in the adjoining LGA. All these pound statistics should be consistent and readily available to the public not manipulated and shrouded in secrecy.

I am a conservationist and have been an advocate for wildlife and particularly koalas who are currently on a trajectory to extinction in NSW. Our laws are failing to protect them and their habitat. The culture of disregard for our wildlife is leading to horrific acts of intentional animal cruelty and these crimes are often hard to find a perpetrator. Even when a perpetrator is found these crimes are not being met with satisfactory punishment if at all. Education about animal welfare and about our iconic wildlife and their needs must be implemented in schools and in tertiary education. Wildlife are

suffering right now as bushfires rage across NSW and they are being left to die in their forest homes. All animals including wildlife need protection from harm and need assistance in emergencies. And the rescue, rehabilitation and release of our wildlife should be publicly funded.

Inadequacies of Current Laws

Our current animal welfare laws are more concerned about the protection and consideration of humans than of non-human animals. POCTAA may give some protection to companion animals but only gives other animals some protection to the extent that people may still exploit or consume them. Farmed animals have their legal protections removed by Industry Codes of Practice which condone “standard” harms. If an animal is harmed in a way that is covered by one of these Codes, then that harm is legally neither neglect nor cruelty. Codes exist which permit acts that would be punishable under POCTAA when done by farmers, hunters, slaughterhouses, breeders, racing clubs and scientists. These Codes are also written by the same people who profit from the animal exploitation in that industry. They are designed to place such industries beyond any real public or legal scrutiny. And with a recent push for Ag Gag style laws which would criminalize whistleblowers it makes it even more difficult for the public to expose acts of extreme cruelty in industry.

Most of these codes only suggest best practice methods rather than have any enforceable or mandatory content. An example of this is the use of Sow stalls in piggeries where sows suffer for months on end without even being able to turn around.

Two thirds of the meat eaten in Australia each year comes from factory farms where animals are raised in sheds, often not seeing the light of day, breathing in fresh air or feeling the warmth of sunlight on their skin until the day they are brutally trucked off to slaughter. We owe them so much more than treating them with disdain and cruelty. And raising animals for food is not only exploiting them but also destroying our environment.

Animals should be seen as individuals and not as property. All animals are capable of feeling fear, loneliness, pain and suffering, just as they can also experience companionship and joy. Legislation should guarantee the bodily security of non-human animals with protection from undue human interference. Animals should be given protection as individuals rather than being treated as an exploited commodity.

Intentional Animal Cruelty

I along with many other Australians are so so sick of the cruelty being inflicted on animals, both domestic and wild in our community which seems to be escalating in recent times. An example is the case of the 21 kangaroos (including joeys) that were tortured and killed by being deliberately mowed down with a truck in the south coast of NSW near Bega earlier this year and on November 26,2019 the man who admitted to his role in the killing spree which took more than an hour and sparked widespread outrage in the community avoided jail time and was only ordered to complete 500 hours of community service. This is a clear failure of the justice system.

There was also the recent case in Western Australia where a kangaroo was beaten, punched and tortured to death whilst being filmed and laughed at. Four men were charged for this crime including the accomplice who filmed the torture who was sentenced to six months prison for aiding

the attack and illuminating the scene. Whilst I personally think these charges were also lenient jail time is sending a very clear message that this sort of animal cruelty will not to be tolerated and even if you are an accomplice you are also committing a crime. A very different result to the case above in NSW.

Animals used in sport and entertainment

Whilst Greyhounds and horses are used and abused in the racing industry they should get the same protections as companion dogs and horses. Whips and tongue-ties should be illegal like jiggers and drugs. These industries need to be fully accountable for the numbers they breed and send to slaughter. All self regulation needs to stop. Banning of these industries is the only way to rule out the cruelty and death to animals.

Rodeos are extremely cruel, particularly the event called calf-roping which sadistically abuses young animals. Rodeos need to be banned.

Pet shops should not be allowed to sell cats, dogs, rabbits or wildlife and ideally not any live animals but just promote rescue animals and sell supplies.

Petting zoos are inherently cruel just like circuses where animals, often babies are on display for a long duration of time and transported all over the country. This is not kind or educating people on the correct way to care for animals.

Aquariums and zoos are also inherently cruel in confining animals to unnatural living conditions.

Climate Change

With our climate in crisis with extended droughts, lack of water, frequent and intense storms, flooding and fire events animals are being placed in even more danger.

Animals who are confined on farms need to be given protection from the elements. This is particularly obvious with grazing animals who can often be seen in paddocks where there is not one tree to provide shade from the sweltering heat. A law needs to be introduced to make it compulsory to provide shade of some form for animals.

Emergency plans also need to be provided for farm animals in the case of floods, fire, heat stress or other emergencies. Thousands of animals can be trapped inside sheds in intensive animal agriculture without any provisions to stop them being burnt alive or drowned or suffocating to death. This type of intensive animal agriculture does not have a social licence and is being hidden away from the public and personally I think it should be banned. We should be showing compassion and empathy towards non-human animals and any industries that continue to use animals to profit by should truly have the animals welfare at heart for the duration of their short lives. Flood prone land should not be used for animal agriculture.

Animals that are transported need to be protected from the elements. We are continually seeing transportation accidents where trucks have overturned and all the animals are either killed or have to be euthanased on the spot or worse still sent off to slaughter injured.

Any person dealing with animals in any capacity needs to be taught the correct handling methods and taught to have respect and compassion for the animals in their care or they will face adequate consequences.

NATIVE ANIMALS

Protection of native animals currently comes under various laws concerning environmental conservation. Some native animals are declared pests and then protection is removed altogether. If the same applied to humans who are doing the most harm of all the animal species, we would surely have all our protections removed.

One example of the lack of protection for our wildlife is koalas who currently are having their forest homes logged at an unprecedented rate and the environmental laws have been slashed by the current Government so that koalas unless they have been previously reported to the NSW Atlas can be logged as they peacefully sleep in their home tree. There is no requirement to do ecological surveys or even look for their presence before logging commences. Also the laws pertaining to clearing for animal agriculture have also been relaxed allowing devastation to habitat of many different species of native animals. Where is the protection for these animals?

And our iconic kangaroo is slaughtered in the dark of night in an industry based on animal cruelty and deception regarding their accurate numbers. Kangaroos are killed in the largest wildlife slaughter to take place on earth. Something that we as Australians should be utterly ashamed of. And kangaroos use far less water and adapt to climate changes, which introduced farm animals do not. We need to start protecting and valuing our iconic native wildlife.

Currently many of our unique native species are classified as pests and can be culled, often without the need for paperwork or accountability when economic priorities take priority. Introduced species face an even worse fate.

Some native animals are allowed to be kept as pets in cages and have licences issued and others are exempt from legislation altogether. Ie The Sulphur-Crested Cockatoo. Again there is no uniformity in the laws.

No native animal should be allowed to be kept as pets as their needs which often include specialist diets and nocturnal living make them totally unsuitable to be kept as pets.

The current violent acts of cruelty towards wildlife needs to be stopped by introducing robust laws and strong enforcement measures.

ANIMALS DEEMED AS PESTS

Many animals such as rabbits, foxes, cats and dogs which have been introduced and spread by us are now deemed as a pest species and when it comes to their treatment it seems nothing is out of bounds. Killing by trapping, shooting, bludgeoning, and poisoning by 1080 are just some of the methods.

Death by the toxic 1080 poison is particularly evil delivering a very prolonged and painful death to not only the target species but also to wildlife and to other non-target animals in the food chain. 1080 also poisons the environment. 1080 needs to be banned and funds spent on research to develop non-lethal forms of animal control.

Shooting of brumbies from helicopters is another horrendous way for an animal to die and can lead to prolonged suffering.

Rabbits still sold undesexed from Pet shops and without adequate information being given for their care are routinely dumped and then local councils are left to deal with their extermination.

Death should not be the automatic solution to problems that we have created.

RECOMMENDATIONS

- Abolish the property status of animals and introduce uniform legislation which applies to all species of animals and protects them from human interference or harm.
- Introduce a publicly-funded and well resourced Independent Animal Protection Agency (IAPA) to enforce new legislation.
- Abolish Industry Codes of Practice and IAPA to oversee any transition period.
- Abolish self-regulation of any industry body that involves the use of animals.
- Facilitate Information sharing between law-enforcement agencies to stamp out animal abuse.
- Implement public awareness campaigns, education in schools and tertiary institutions and in industry training about non-human animals, their importance and their welfare needs. Education in compassion and empathy towards all species of animals must be included.
- Ban the use of 1080 and cruel lethal methods of animal control.
- Introduction of mandatory reporting of animal cruelty.
- Establish an Animal Cruelty Abusers register.
- Establish appropriate MOU's with all relevant government departments and/or agencies where animal welfare/cruelty matters apply.
- Create a dedicated and sufficiently funded and resourced Animal Cruelty Investigation unit within NSW Police or as a separate statutory enforcement agency
- Appoint specialist animal welfare police at all NSW Police stations and include better training for all NSW Police regarding their statutory role and responsibilities under POCTAA.
- Increase the animal welfare/cruelty focus within the NSW Police Rural Crimes unit and review and ensure adequate funding and resourcing for specialist training, investigative, enforcement and prosecution tasks.
- Realignment of RSPCA Inspectorate powers and funding, permitting it to refocus on animal care and to engage in public advocacy for animal welfare without any perception of conflict of interest.
- A complete comprehensive review and overhaul of POCTAA and all Codes of Practice, removing exemptions, introducing enforceable standards, and broadening the legislation to include all non-human animals that are exploited by humans, subsequent to: (1) publication and comprehensive review of the 2018 NSW DPI Discussion Paper (Animal Welfare) public survey results, and (2) undertaking and publishing specific evidenced research into the sentencing outcomes of NSW animal cruelty offences in NSW as was undertaken in February 2019 by the Sentencing Advisory Council and their 'Animal Cruelty Offences in Victoria' Report.
- Review existing MOU's between local, state and federal government departments and any other relevant office including the NSW state ombudsman to examine the sharing of information and handling of animal cruelty matters or potential animal risk, impact or

cruelty matters, including complaints about the operation and performance of authorised animal welfare authorities.

- Remove the capacity of any POCTAA authorised animal welfare agency or authority board member, executive staff or employees to benefit financially from the operations of the organisation through in-house or referred work without a public tender process being undertaken to ensure transparency and merit.
- Overhaul and strengthen all NSW planning laws and the Secretarys Environmental Assessment Requirements (animal welfare inclusion) including local government LEPs and bylaws which impact the welfare of animals.
- Introduce a new Animal Welfare NSW State Environmental Planning Policy (SEPP) to guide decision making with all matters involving the welfare of animals and introduce an animal welfare component in all other NSW SEPPs where the welfare of animals may be at risk.
- Introduce a new and independent process for complaint investigations where complaints involve the operation, conduct or behaviour of any POCTAA authorised animal welfare agency or authority.
- Introduce a new reporting criteria, format and frequency for POCTAA authorised animal welfare agencies or authority including a requirement for NSW Police to report to the relevant Minister.
- Introduce annual government grant opportunities for all volunteer-based animal advocacy, rescue and re-homing organisations via annual grants funding. (as has been done in Victoria)
- Through the Justice department, engage lawyers and members of the judiciary to provide a greater level of awareness and up to date resources in regards to legal precedents and public expectations regarding sentencing with animal cruelty cases including cases involving domestic or other human related violence which may lead to animal cruelty or involve animal cruelty.
- Introduction of annual publicly accessible reporting by the responsible Minister to the NSW parliament on animal welfare matters including the performance of all animal welfare authorised agencies, prevalent and emerging issues and the outcomes achieved including through the courts.

Our animal protection laws must also link directly to all other legislation where animals are central and key stakeholders. This includes current and emerging policy direction and legislation involving planning and development, environment and climate change. At present, an intensive animal agriculture planning development application which may be deemed designated or integrated or both, will for example accommodate pigs and link to specific CoP's, inadequate as they are, however if the application is for an intensive companion animal breeding facility, the companion animals are not even recognised. Animals known to suffer fear, anguish and cruelty during transport, in sale yards, in intensive animal production, on farms and feedlots with inadequate shelter, feed and water, in slaughter houses, in animal testing laboratories, and in circuses and rodeos continue to suffer across NSW in spite of POCTAA or related CoP's and Standards. The current NSW animal protection laws are failing animals and public expectations in their arrangements for the administration and enforcement of these laws intended to prevent animal cruelty and promote animal welfare.

CONCLUSION

The recognition of sentience includes agreement that all animals have the capacity to feel pain, fear, pleasure and each are unique individuals' with complex needs. They are all someone not something; Exemptions, notably for farm animals raised for food and by-products which permit cruel and abusive legally endorsed practices, scientifically evidenced as causing pain, suffering and cruelty, for some and not others, makes a mockery of the intent of laws to protect animals, prevent cruelty and promote welfare.

Animal cruelty is endemic in the commercial use of animals. Double standards abound, including within the consumer population. Exemptions are common in other jurisdictions and these exemptions are embedded in COPs. Although we like to believe that we live in a civilised society, our practices in relation to animals seem to indicate otherwise. Much of the problem arises from social, cultural and commercial conditioning. Public expectations have shifted dramatically thanks largely to significant awareness raised by animal advocates and activists. The Australian Department of Agriculture commissioned report titled Australias Shifting Mindset on Farm Animal Welfare <http://agriculture.gov.au/SiteCollectionDocuments/animal/farm-animal-welfare.pdf> found that 95% of people view farm animal welfare to be a concern and 91% want at least some reform to address this. Legislation designed to protect non-human animals must protect all animals in line with the scientific evidence of animal sentience and the internationally recognised Five Freedoms. This must apply equally to physical and mental well-being and cruelty prevention laws must apply equally to all species, be they native, companion, animals used on farms or introduced species. We must show compassion and empathy to all animals and our animal cruelty laws must reflect that.

Susie Headerder

28th November, 2019