

Submission  
No 104

**INQUIRY INTO ANIMAL CRUELTY LAWS IN NEW SOUTH  
WALES**

**Name:** Name suppressed  
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Partially  
Confidential

The Director  
Select Committee on Animal Cruelty Laws in New South Wales  
Parliament House  
Macquarie Street  
Sydney NSW 2000

Dear Committee Members,

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

Thank you for the opportunity to provide a submission to the inquiry into animal cruelty laws in NSW.

### **Summary of submissions**

With respect to the Terms of Reference, I submit that:

- In NSW, animal welfare is regulated under four different Acts:<sup>1</sup>
  - *Prevention of Cruelty to Animals Act 1979* (NSW) ('POCTA');
  - *Exhibited Animals Protection Act 1986* (NSW) ('EAP Act');
  - *Animal Research Act 1985* (NSW) ('ARA'); and
  - *Crimes Act 1900* (NSW)

This often results in a lack of clarity and coherence with regards to how animal cruelty and animal protection law is to be applied in NSW. The current structure of law and policies relating to animal welfare and the prevention of animal cruelty lacks cohesion and clarity with regards to how it is to be applied in NSW.

- POCTA enforcement agencies (RSPCA NSW, Animal Welfare League NSW, and the NSW Police) are unable to effectively perform the powers bestowed upon them by the Act. Due to a lack of resources, these agencies are often restricted with regards to the extent to which they can investigate animal cruelty complaints and enforce animal protection laws more widely.

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<sup>1</sup> This is not to mention the number of delegated legislation and codes of practice that have uncertain status.

- Enforcement of the *Animal Research Act 1985* and the *Exhibited Animals Protection Act 1986* rests upon the Animal Welfare Branch of the NSW Department of Primary Industries. However, enforcement relies heavily upon the work of animal ethics committees and the Animal Research Review Panel.
- The enforcement of animal welfare and animal protection laws is complicated where the law governing activities are unclear and/or where responsibility to enforce or ensure compliance is divided or duplicated between several different agencies. The NSW government should therefore establish a specialist unit to ensure compliance with animal protection laws.

## Discussion

### *Lack of clarity and cohesion*

The objects of the POCTA is expressed in terms of preventing cruelty to animals and promoting their welfare. Section 5 of POCTA prohibits: direct acts of cruelty against an animal;<sup>2</sup> the commission of acts of cruelty against an animal by a person in charge of that animal;<sup>3</sup> and the failure of a person in charge of an animal to take steps to prevent cruelty, alleviate pain, or provide veterinary treatment.<sup>4</sup> Section 6 of POCTA prohibits aggravated acts of cruelty against animals.<sup>5</sup> Sections 7-23 of POCTA contain a range of specific offences of animal cruelty.

In contrast to POCTA, the *Crimes Act 1900* contains two offences relating to animal cruelty.<sup>6</sup> Section 530 provides that a person who, with the intent of inflicting severe pain, commits a serious act of cruelty, seriously injures, or causes prolonged suffering, to an animal, will be guilty of a crime. Section 531 deals with animals used for law enforcement. Significantly, the element of intention is required in order to raise a complaint under the *Crimes Act*, distinguishing it from offences under POCTA.

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<sup>2</sup> *Prevention of Cruelty to Animals Act 1979* (NSW) s 5(1) ('POCTA Act').

<sup>3</sup> *Ibid* s 5(2).

<sup>4</sup> *Ibid* s (3).

<sup>5</sup> *Ibid* s 6(1).

<sup>6</sup> These provisions were inserted by the *Crimes Amendment (Animal Cruelty) Act 2005* (NSW).

Moreover, the ARA and EAP Act often provide a defence against offences outlined in POCTA if the act or omission was carried out in the accordance with the aforementioned laws. This drastically reduces the extent to which POCTA can effectively operate to prevent cruelty to animals and promote their welfare. While the focus of POCTA is penal, the ARA and EAP Act allow for the lawful use of animals in certain circumstances, subject to licences and other forms of regulation. Rather than preventing animal cruelty entirely, these Acts function to reduce or mitigate its occurrence.<sup>7</sup>

### ***Limited enforcement abilities***

Current enforcement agencies responsible for ensuring animal welfare and the prevention of animal cruelty are severely limited in operation. Under POCTA, majority of enforcement procedures and processes are carried out by RSPCA NSW, meaning that the enforcement of the primary animal welfare statute in NSW is carried out by a charitable organisation. The NSW Police Force have an extremely limited role in enforcing POCTA and are mostly confined to investigating and prosecuting offenders under the *Crimes Act 1900*.

As a charitable organisation, RSPCA NSW are subjected to resource limitations. Although recognised as a principal animal law enforcement agency, RSPCA NSW remains inadequately funded and supported by the government. This is particularly problematic as it means that, where complaints of animal cruelty are investigated, it is likely that formal proceedings and prosecution would be sought in the most serious cases (see Figure 1). The number of cases brought to court compared to number of cases investigated – 77 out of 15,673 in the 2018-2019 Financial Year – raises some serious questions about the effectiveness of this current system of enforcement.

With regards to the ARA and EPA Act, the Animal Welfare Branch of the DPI relies heavily upon industry self-regulation and animal ethics committees.<sup>8</sup>

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<sup>7</sup> Keely Boom and Elizabeth Ellis, 'Enforcing Animal Welfare Law: The NSW Experience' (2009) 3 *Australian Animal Protection Law Journal* 6, 10.

<sup>8</sup> Boom and Ellis (n 7) 12-13.

	FY 2018-2019 <sup>9</sup>	FY 2017-2018 <sup>10</sup>	FY 2016-2017 <sup>11</sup>
<i>Cases investigated</i>	15,673	15,451	14,955
<i>Investigators</i>	32	31	31
<i>Prosecutions commenced</i>	77	-	-
<i>Successful prosecutions</i>	-	43	111 (59 fines; 3 jail sentences)
<i>Fines imposed</i>	\$102,110	-	-

Figure 1. Overview of enforcement tasks carried out by RSPCA NSW

## Recommendations & concluding comments

- It is recommended that the NSW government addresses the inadequacies and shortcomings of the current system of management for animal protection and animal welfare.
- The spread of responsibility for the enforcement animal protection and welfare between different agencies and various statutes creates confusion and difficulties with accountability, effective distribution of resources, and communication.
- The government should establish one specialist body to oversee all animal welfare enforcement tasks and responsibilities. This will better enable to agency to be resourced appropriately and normalise a certain approach to how animal welfare and protection law is to be approached and dealt with. It will avoid the doubling up or division of roles that undermine the intention of animal protection laws.

Thank you for the opportunity to make this submission. I hope it will assist in the genuine improvement to the methods through which animals are protected.

<sup>9</sup> RSPCA NSW, *Your Year in Review* (Annual Report, 2018-2019).

<sup>10</sup> RSPCA NSW, *Animals Annual Report* (Annual Report, 2017-2018).

<sup>11</sup> RSPCA NSW, *The Year in Review* (Annual Report, 2015-2016).