

**Submission
No 117**

INQUIRY INTO ANIMAL CRUELTY LAWS IN NEW SOUTH WALES

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Submission to NSW Legislative Council Select Committee on Animal Cruelty Laws in New South Wales

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Approach of this submission

- 1.1 This submission makes brief reference to one recent legislative reform in relation to companion animals to illustrate broader problems with current arrangements for the administration and enforcement of animal cruelty laws in NSW.

Companion animal reform: s 23A *Prevention of Cruelty to Animals Act 1979* (NSW)

- 2.1 One of the recommendations of both the 2012 NSW Companion Animals Taskforce and the 2015 Joint Select Committee on Companion Animal Breeding Practices in NSW was that animals advertised for sale via any medium must include an identifying number. As part of the government's response, the then Minister for Primary Industries, Niall Blair, introduced the Companion Animals and Other Legislation Amendment Bill into parliament in 2018 to give effect to this, and some of the other recommendations.
- 2.2 Accordingly, in NSW, it is now an offence for a person to advertise a (regulated) dog or cat for sale, or to be given away, without inclusion of an identification number. This can be either a microchip number, a breeder identification number or a rehoming organisation number. Failure to include an identification number attracts a maximum penalty of 50 penalty units (currently \$5500), as does giving an identification number that a person knows, or ought reasonably to have known, is false. On introducing the Bill, Mr Blair stated that this reform will 'empower animal welfare enforcement agencies to perform their functions more effectively' and 'to identify breeding and selling patterns to better target compliance activities and to enforce animal welfare laws.'¹
- 2.3 This provision took effect on 1 July 2019. Since then, I have repeatedly examined advertisements for cats and kittens on the online trading site, Gumtree. Many advertisers fail to include an identification number or include a number that is obviously false. Some include a number which appears legitimate but yields no record on the buyer search tool on the NSW Pet Registry site, or only a record for an older cat when kittens are advertised.

¹ NSW, *Parliamentary Debates*, Legislative Council, 23 May 2018, 36.

While I do not pretend to have undertaken a scientific study, my checks suggest a major failure of compliance in relation to the new law, as well as a mismatch between the breeder identification number accepted and the number given by many breeders.

- 2.4 Although the advertising ID requirement only commenced on 1 July, the Minister expressly stated when introducing the legislation in 2018 that the implementation of the provision would be delayed to allow familiarisation with the required change.² Implementation *was* delayed but clearly familiarisation has not occurred. In any case, the requirement to microchip a cat before it is sold (or given away), even if it is younger than 12 weeks, is a longstanding feature of NSW law. A few of the ads without microchip numbers claim the animal will be microchipped before sale but most are silent with respect to this requirement also.
- 2.5 As the advertising ID requirement has been inserted as s 23A of the *Prevention of Cruelty to Animals Act 1979* (POCTAA), it is enforceable by the RSPCA, the AWL and NSW Police, not local government personnel. The Office of Local Government (OLG), however, is responsible for managing the NSW Pet Registry and local councils are responsible for enforcing the *Companion Animals Act 1998* (CAA). This Act includes other contemporaneous reforms which impact animal welfare, for example the requirement to obtain an annual permit for an undesexed cat that is four months old or older.
- 2.6 In September, I made my concerns about the apparent lack of compliance with the advertising ID requirement known to both the NSW Department of Primary Industries (DPI) which administers POCTAA and to the OLG which administers the CAA. In addition, I noted the inconsistency between the breeder identification number required by the Pet Registry and the number being used by many breeders. I also raised the lack of compliance with a representative of RSPCA NSW in November. He confirmed that no specific funding has been provided to the RSPCA for the labour-intensive task of monitoring and enforcing s 23A.
- 2.7 NSW has an Animal Welfare Advisory Council (AWAC) and a recently created position of Chief Animal Welfare Officer but it is unclear what contribution, if any, either makes to monitoring the efficacy of this and other reforms. The AWAC is a non-statutory body and I can find no details publicly about its work, other than a list of its members. As is typically the case with animal welfare committees, its membership is dominated by representatives whose concern with animal welfare is potentially in conflict with other organisational interests. NSW also has an Animal Welfare Action Plan but the information online about its progress is very general. With respect to the third goal, for example, the Plan suggests that barriers to effective compliance and enforcement were identified in 2018, a progress report hard to reconcile with the problems noted above.

² NSW, *Parliamentary Debates*, Legislative Council, 23 May 2018, 36.

Wider implications

- 3.1 Pet overpopulation continues to be a major animal welfare problem, particularly for cats. While legislative initiatives are welcome, consideration of the advertising ID requirement suggests that reforms may have little impact without major changes to current administration and enforcement practices.
- 3.2 But the problems associated with the implementation of this legislative reform have a significance well beyond the welfare of cats and dogs. Companion animals receive stronger legislative protection than other animals and are also more visible to the general community. *If existing deficiencies in administration and enforcement can undermine the efficacy of reforms in relation to their welfare, the impact with respect to the welfare of other animals is likely to be even greater.*
- 3.3 A central issue is the administration of POCTAA by the DPI. It is unrealistic to expect animal welfare to be a high priority for an agency whose overall goal is 'to increase the value of primary industries and drive economic growth across NSW'.³ Even more problematic is the inherent conflict of interests in this administrative arrangement. This conflict cuts across all commercial contexts but may be particularly acute in the case of farmed animals. The belief that the DPI has a 'vested interest, not a conflict of interest'⁴ is only tenable if animal welfare is equated with productive efficiency, a view which does not accord with current science.⁵
- 3.4 Although the DPI is not responsible for enforcing POCTAA, its administrative responsibilities include policy advice and, importantly, participation in the development of the Australian Animal Welfare Standards and Guidelines. The extensive delay in finalising the proposed standards in relation to poultry is indicative of the difficult and sensitive task of reconciling industry interests with contemporary understanding of animal welfare, and with growing community concern in relation to it.
- 3.5 The DPI also administers the *Animal Research Act 1985* and the *Exhibited Animals Protection Act 1986* and has regulatory powers under both these statutes. Other agencies with some regulatory responsibility for animal welfare include the Office of Environment and Heritage in relation to wildlife and the Food Authority with respect to slaughter. This fragmentation of

³ www.dpi.nsw.gov.au/about-us/who-we-are (accessed 28 November 2019).

⁴ Evidence to Legislative Council Select Committee, NSW Parliament, *Use of Battery Cages for Hens in the Egg Production Industry*, Sydney, 13 August 2019, 4 (Scott Hansen).

⁵ Jed Goodfellow, 'Regulatory capture and the welfare of farm animals' in Deborah Cao and Steven White (eds), *Animal Law and Welfare – International Perspectives* (2016) 195-235, 214.

functions leads to confusion about agency responsibility and muddies lines of accountability.

- 3.6 Although the RSPCA has the power to inspect commercial premises in NSW, it lacks the resources to undertake the number of routine inspections needed to ensure compliance with existing regulations.⁶ With only 32 inspectors for the whole of the State,⁷ the work of RSPCA NSW is largely confined to acting on complaints, mostly in relation to companion animals. Even so, recurrent government funding for the work of the RSPCA's inspectorate constitutes a fraction of its actual cost, with inadequate enforcement the inevitable result. This problem is exacerbated when reforms are introduced without the deployment of matching resources.
- 3.7 In any case, it is no longer appropriate to outsource the enforcement of a penal statute to the RSPCA and the AWL, private charities which lack the public accountability of governments. This abandonment of government responsibility also frames animal protection as a charitable concern rather than what it is - an important matter of public policy - and allows governments to avoid responsibility when enforcement is inadequate. Nor is it appropriate to transfer all responsibility to the DPI, for the reasons already noted; or to the police, who lack specialist expertise and are likely to view animal welfare as a lower priority than many other criminal matters.
- 3.8 Access to detailed and comprehensive information about the administration and enforcement of animal welfare is critical to an assessment of the efficacy of current arrangements, as well as to the evaluation of legislative reforms. Information is not readily available, however, even for professionals, let alone members of the general public. For example, the DPI provides no routine public information about its compliance activities in relation to exhibited animals and as far as I can ascertain the annual reports the RSPCA is required to submit to the minister under s 34B(3) of POCTAA and cl 34 of the *Prevention of Cruelty to Animals Regulation 2012* are not released by the government.
- 3.9 The need for much greater independence and transparency in the institutional arrangements governing animal welfare has been widely recognised. In 2016, the mainstream Productivity Commission called for the creation of a national independent Australian Commission for Animal Welfare. In addition, the Productivity Commission recommended that state and territory governments separate agriculture policy from farm animal welfare monitoring and enforcement, increase transparency in relation to these activities and ensure adequate resourcing to support their effective discharge.⁸ In October 2019, a NSW Legislative Council Select Committee recommended that the NSW

⁶ RSPCA NSW carried out 87 routine inspections of commercial premises in 2017-18. RSPCA Australia, *National Statistics 2017-2018*, Table 5.

⁷ www.rspcansw.org.au/what-we-do/animal-welfare/our-inspectorate/#1500602646476-5f6a7cec-9204 (accessed 28 November 2019).

⁸ Productivity Commission, *Regulation of Australian Agriculture*, Report no. 79 (2016) 236.

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.⁹

- 3.10 Animal welfare regulation in NSW requires a thorough overhaul not tinkering at the margins. This includes establishment of an independent statutory agency to assume responsibility for animal protection, including the publication of comprehensive, up to date compliance and enforcement data. The structure and composition of a statutory body would require careful consideration to avoid replicating existing problems, including the disproportionate representation of industry and other commercial interests. It would also require a level of funding commensurate with such a large and important task; in other words, a real commitment by government to a major reform, not mere window dressing.

⁹ Legislative Council Select Committee, NSW Parliament, *Use of Battery Cages for Hens in the Egg Production Industry* (2019) 38, Recommendation 1.