

Submission
No 126

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

Name: Name suppressed
Date Received: 29 November 2019

Partially
Confidential

Inquiry into animal cruelty laws in New South Wales

Submission

Introduction

The current enforcement of NSW animal cruelty legislation and regulations is not protecting large numbers of animals from cruelty or distress. In particular, many hundreds if not thousands of animals species designated as stock animals under the Prevention of Cruelty to Animals Act (1979-POCTA) which are currently being neglected due to the drought are experiencing prolonged periods of distress leading to deaths of many by starvation, dehydration and/or disease. This is occurring despite the significant efforts being undertaken by the RSPCA/Animal Welfare League (AWL) and Department of Primary Industries (DPI) to deal with an increasing number of animal welfare cases.

Property rights take precedence over animal welfare in cases involving animals designed as stock animals under POCTA

The current POCTA privileges the rights of animal owners above providing for the timely and immediate amelioration of animal suffering due to acts of cruelty or neglect. This is particularly so in the case of stock animal species which the current regulations prevent the RSPCA from taking immediate action to remove animals that are in distress from situations in which they are experiencing neglect. Instead, the RSPCA must provide evidence that the owner's non-compliance with POCTA is longstanding, request the formation of a SWP, the SWP must provide the owner with yet more time to ameliorate the distress of their animals before a seize and dispose order can be issued to remove the subject animals from the neglect of the owner.

The RSPCA is only permitted to euthanise distressed animals where it is subjectively determined that it would be cruel to keep the animal alive- anecdotally interpreted as the animal being so emaciated or sick that it is unable to rise or is severely injured. This means that animals that both the RSPCA inspectors and the independent SWP members have assessed as being in distress through malnutrition, lack of husbandry or lack of veterinary care, but are not so debilitated that they can be legally euthanised on the spot, are left with the owner who has failed to provide the necessary care, until such time as a seizure is enacted. During this period, the condition of the distressed animals is not generally monitored nor are any formal steps taken by RSPCA or DPI to improve their welfare until the seizure is enacted and the RSPCA takes control of their care. This can result in the condition of the distressed animals deteriorating to the point whereby they are finally euthanised at seizure on the basis that it would be cruel to keep them alive. Depending on the complexity of the case, it can take months from the first inspection by RSPCA staff to the conclusion of the SWP process and the seizure of the animals.

This is a manifest failure of the system to protect and ameliorate the welfare of animals for which there is ample and independently assessed evidence of inability of their owner to care for them appropriately. In essence, the welfare of these animals is allowed to deteriorate with the knowledge of the RSCPA and DPI because the current laws privilege the property rights of the stockowner above the welfare of the animals. This prevents the RSPCA and DPI from removing or euthanizing the animals sooner. If these animals were companion animal species such as dogs or cats, the RSPCA would be authorised to seize, provide care for or euthanise them at the time of the initial assessment of their poor welfare state. This delineation of companion animals and stock animals fails to protect the welfare of stock animals during welfare investigations.

Investigation and prosecution of animal cruelty and animal welfare cases

Consideration should be given to transferring the investigation and prosecution of animal welfare cases to a specialist unit within NSW Police rather than relying on charitable organisation which is also involved in advocacy, fund raising as well as overseeing accreditation schemes for the very livestock industries they are also charged with conducting enforcement activities against. Alternatively, RSPCA/AWL inspectors and legal personnel could be seconded to work directly with NSW Police and/or the Director of Public Prosecutions (DPP) so the investigation and prosecution activities were kept independent from the advocacy, product accreditation and fundraising function of the respective charities.

That it is the RSPCA and AWL as charitable organisations, and not the NSW Police that have carriage over the enforcement of these laws sends a strong message to the community and in particular to potential offenders, including farmers who fail to provide the legally mandated minimum standards of care for their livestock, that the laws are not taken seriously and that breaching them is unlikely to result in negative consequences.

We do not sub-contract out the enforcement and prosecution of other branches of the law. Animal cruelty laws should not be treated differently. If the government of the day has determined that laws for the treatment of animals should be made, it should also ensure that such laws are enforced and prosecuted with the same level of resources and commitment as the enforcement of other laws, such as drug, property or driving laws.

The decision to prosecute alleged breaches of animal cruelty laws should be made on the merits of the case, and not whether or not sufficient funds exist to mount the case, as occurs currently with the reliance on a charitable organisation to fund and prosecute cases. This also absolves the government from accountability with respect of the type and number of cases brought and the quality of the prosecution of such cases. The transferring of responsibility for mounting animal cruelty cases to NSW Police and the DPP with or without the involvement of seconded RSPCA/AWL officers, would enable a higher level of accountability to the community for the enforcement and prosecution of these laws.

The use of the NSW Police and DPP or seconded RSPCA/AWL officers, rather than the RSPCA or AWL as standalone organisations to investigate and prosecute animal welfare breaches would improve the transparency of the process for both the community and those prosecuted. It would ensure that prosecution of animal welfare cases were subject to the same rules regarding the Government Information (Public Access) and Administrative Decisions Review Acts as occurs with other functions of government. The enforcement of animal cruelty laws in respect of the process of working with individual animal owners on a day to day basis could remain with the RSPCA and AWL including retaining their powers of entry to monitor compliance.

Laws on the treatment of animals should be brought under a single instrument and apply consistent standards for all animals irrespective of species or use.

The various acts covering the treatment of animals, including companion animals, livestock, racing greyhounds, racing horses and research animals should be brought under a single legislative instrument. The principles governing the husbandry, care and treatment of animals be applied to all species, irrespective of the putative uses to which the animals are put. Such standards should be based on the best available and current research findings in animal welfare and behaviour. Animal welfare should be considered holistically, taking into account both health and mental/psychological indicators that are relevant for each species covered by the law.

Breaches of the law should be assessed against universal welfare standards and rather than on a species or use case, given that the ability of all sentient animals to experience both good and negative welfare is not depending on whether they are a food producing animal, a racing animal or a companion animal. That is, there should not be exemptions for harmful practices or the mandatory provision of pain relief because the species concerned is a stock animal and not a companion animal.

Enforcement actions should prioritise animal welfare over property rights.

Regulations and procedures for interactions with owners whose animals are in distress or which have been treated cruelly should prioritise the timely and ideally immediate amelioration or ending of suffering or distress of the animals, not the property rights of the owner. The regulations should empower all accredited persons involved in animal welfare cases to override property rights where owners have demonstrated a significant or sustained failure to comply with the POCTA. Especially where such failure is long standing, which is the case in the vast majority of instances involving animals experiencing starvation. A starving animal has not been fed properly for an extended period. Animals do not get emaciated overnight. The presence of large numbers of emaciated animals is strong evidence of a sustained failure by an owner to care for their animals and should be taken as sufficient evidence to justify taking immediate actions to seize, euthanise or provide care for those animals. Safeguarding the welfare of animals, not the owner's property rights should be the focus of the enforcement of animal welfare regulations.

Proactive compliance and enforcement model

A risk based model should be applied to the proactive monitoring of compliance with and enforcement of animal welfare regulations in industries or contexts where there is likely to be non-compliance or where non-compliance leads to poor animal welfare outcomes or outright cruelty. Examples include road transport of animals and their handling at saleyards under the Land Transport of Animals standards where there is next to no monitoring of the actual as opposed to legislated maximum travel times, time of feed and water, stocking densities or management of downed or unfit to load animals. Abattoirs and slaughtering establishments are another where regular monitoring for compliance with welfare standards, not just meat hygiene standards could ensure that welfare standards are systematically implemented, rather than egregious breaches being identified by activist groups and covert filming methods. The same is true for intensive animal agriculture and drought affected areas, as well as any establishment keeping large numbers of animals, such as greyhound kennels, dog breeding establishments and racing stables. Proactive compliance monitoring, as occurs in the racing industry which conduct spot checks by stewards could be implemented across all establishments holding large number of animals to actively assist owners and managers of these animals to comply with law. This could prevent minor welfare breaches turning into major cases which then require the costly intervention of the RSPCA and DPI to remedy.

Mandatory accreditation in animal welfare principles and assessment

Not all veterinarians undertake structured, evidenced-based training in animal welfare principles or the holistic assessment of animal welfare during their undergraduate training. A holistic assessment of animal welfare takes into account a range of factors, including the mental or psychological state of an animal as well as its health, nutrition and disease status. To ensure that the assessment of animal welfare by vets during welfare cases is based on a holistic welfare methodology, all vets contracted to the RSPCA and Local Land Services for animal welfare monitoring or compliance functions should be given mandatory training in evidence based animal welfare principles, using

metrics based on Quality of Life or Five Domains methods that have been validated in other jurisdictions such as the EU, New Zealand and Canada. Indeed, all persons involved in the investigation, enforcement or monitoring of compliance with animal welfare regulations should be hold formal or validated accreditation in holistic animal welfare principles and assessment. This could lead to improved welfare outcomes for animals in neglect cases. For example, where an animal has been assessed as being in distress, decisions about euthanasia, particularly where there is no realistic prospect that the animal will be appropriately cared for by the owner, would be made on the basis of the health and mental state of the animal, not only on its health status. This would have a particular benefit for distressed stock animals whose condition is highly likely to deteriorate sharply during a SWP process. By implementing earlier euthanasia or seizure on the basis of poor mental as well as health status, these animals could be protected from unnecessary and preventable suffering.

29 November 2019