

Submission
No 129

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

Name: Name suppressed
Date Received: 29 November 2019

Partially
Confidential

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

Dear Committee Members,

Submission to the Legislative Council Select Committee on Animal Cruelty Laws in NSW

Thank you for the opportunity to provide a submission to the Inquiry into Animal Cruelty Laws by the NSW Legislative Council Select Committee.

As an animal law student at UNSW, I recognise the power and importance of instilling the next generation of lawyers with an awareness of animal protection issues and the overwhelming insufficiencies of our current regulatory framework. This issue is not only a matter of ethics - to be the voice that protects animals from cruelty, neglect and exploitation - but also imparts a duty to understand and reflect changing attitudes in the community, which the legal system seeks to represent.

Overview:

In relation to 1(b) and 1(f) of the Terms of Reference, I submit that the current arrangements in NSW for the administration and enforcement of laws granting investigative and enforcement powers to non-government 'approved charitable organisations' ('ACOs') under the Prevention of Cruelty to Animals Act 1979 ('the Act'), are ineffective for the protection of animals against cruelty. This regards the inability of ACOs to achieve the objects of the Act due to inadequate funding provided by the government, and therefore, creates the need to establish a specialist unit to investigate animal cruelty complaints and enforce protection laws.

Submissions:

1(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

In NSW, the ACOs in accordance with s34B of the Act are the RSPCA and AWL. I wish to highlight the importance of adequately funding these bodies, where the issue of limited funding and resources undermines the effectiveness of animal welfare laws.

In the 2018/19 financial year, RSPCA NSW received 2% of its total income from Government grants,¹ covering only 1.9% of its total expenditure. Considering that RSPCA inspectors perform the primary functions of investigation and enforcement, it would be expected that a major proportion of the budget would be utilised for supporting this purpose. However, the associated costs of funding the inspectorate team was covered by only 12% of its total budget.² Similarly, AWL received \$190,657 in grants, constituting only 2.4% of its total income and covering only 2.5% of expenditure for its services in 2017/18.³ ACOs also require funding for administrative, veterinary and support services, costs of infrastructure, and legal fees, and both organisations rely heavily on fundraising, charitable donations and bequests from the community, and the significant contribution of pro-bono legal work by law practitioners to compensate for inadequate funding and resources. With the growing number of complaints due to increasing awareness of animal welfare issues and standards, and intolerance of animal cruelty, this struggle for funding will only be exacerbated as more resources will be necessary to ensure complaints are investigated.

With 32 RSPCA inspectors covering NSW,⁴ it is unsurprising that of the 15,451 complaints of animal cruelty investigated in 2017/18,⁵ there were only 72 finalised prosecutions. Of these, 66 prosecutions were successful, which is 0.43% of all investigated cruelty reports. This result supports the argument that ‘prosecutions of cruelty cases are [often] limited by budgetary constraints’,⁶ and that ACOs may lack the resources and procedural expertise necessary for criminal investigations,⁷ where prosecution is only reserved for the most serious cases of animal cruelty. However, highly successful prosecution rates of at least 92% in the last 5 years,⁸ reveal the Court’s recognition and affirmation of community values, legitimacy of issues and animal interests deemed worthy of protection.

¹ The Royal Society for the Prevention of Cruelty to Animals New South Wales, *General Purpose Tier 2 Financial Report* (30 June 2019) page 8 <<https://www.rspcansw.org.au/wp-content/uploads/2019/10/finance2019.pdf>>.

² RSPCA NSW (n1) 31.

³ Animal Welfare League NSW, *Annual Report 2016-2017*, page 7 <https://www.awlnsw.com.au/wp-content/uploads/2019/05/AWL_NSW_AnnualReport2018-1.pdf>.

⁴ The Royal Society for the Prevention of Cruelty to Animals New South Wales, *Your Year in Review* (2019) <https://www.rspcansw.org.au/wp-content/uploads/2019/07/2018-2019_Year-in-Review_Online.pdf>.

⁵ *Ibid.*

⁶ Deborah Cao, *Animal Law in Australia* (Lawbook Co, 2nd ed, 2015) 157.

⁷ E. J. Ellis, ‘Making sausages and law: the failure of animal welfare laws to protect both animals and fundamental tenets of Australia’s legal system’ (2010) (4) *Australian Animal Protection Law Journal* 6, 20.

⁸ RSPCA NSW achieved a successful prosecution rate of 92% in the 2017-2018 financial year:

<https://www.rspca.org.au/sites/default/files/RSPCA%20Australia%20Annual%20Statistics%202017-2018.pdf>
97% in 2016-2017:

<https://www.rspca.org.au/sites/default/files/RSPCA%20Australia%20Annual%20Statistics%20final%202016-2017.pdf>

98% in 2015-2016:

<https://www.rspca.org.au/sites/default/files/RSPCA%20Australia%20Annual%20Statistics%202015-2016%20.pdf>

93% in 2014-2015: https://www.rspca.org.au/sites/default/files/website/The-facts/Statistics/RSPCA_Australia-Annual_Statistics_2014-2015.pdf

97% in 2013-2014: https://www.rspca.org.au/sites/default/files/website/The-facts/Statistics/RSPCA_Australia-Annual_Statistics_2013-2014.pdf.

Therefore, due to insufficient government funding ‘in a manner commensurate with the magnitude and complexity of the enforcement task’,⁹ ACOs cannot be exclusively relied upon to achieve effective law enforcement and necessary criminal prosecution of animal cruelty offences under the Act.

1(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

Lack of government funding and resources to ACOs risk making the current statutory protections afforded to animals futile. Furthermore, it is unacceptable, unreasonable, and systematically flawed to expect a privately funded charity to enforce criminal legislation, a function which would be better delegated to State or local government bodies. Therefore, it is necessary for the NSW Government to establish an independent statutory authority to fill this substantial gap in the investigation of animal cruelty complaints, enforcement of protection laws, and criminal prosecution.

Recommendation:

I submit that the enforcement agency should ideally, take the form of an Independent Office of Animal Welfare (‘IOAW’) within the Department of Justice, similar to that previously proposed by the Voice of Animals (IOAW) Bill 2015 (Cth).¹⁰ It would perform a comparable function to the Australian Commission for Animal Welfare recommended by the Productivity Commission,¹¹ but operating beyond the agricultural context and at a State level. This independent authority should be sufficiently government-funded and well-resourced, with the scope of its function and powers enshrined in legislation. It should be responsible for the development of a uniform set of standards and guidelines for animal welfare and be empowered to investigate and prosecute breaches of standards, and to an extent, relieve ACOs from their enforcement duty. Furthermore, in light of the currently limited information provided by ACOs and inconsistencies with publicly available data, the IOAW should be subject to regular public reporting in order to facilitate law reform, judicial decision-making, and allow for effective comparative analysis of its enforcement and prosecution activity. This may provide opportunities for collaboration with ACOs, and ensure a more transparent, efficient and effective state-wide animal welfare network which utilises shared information, and further generate involvement of the public to increase community awareness and efforts to combat animal cruelty.

Thank you for the opportunity to provide this submission for your consideration.

2 November 2019

⁹ Ibid.

¹⁰ Voice for Animals (Independent Office of Animal Welfare) Bill 2015 (Cth).

¹¹ Productivity Commission, *Productivity Commission Inquiry Report No. 79 – Regulation of Australian Agriculture* (15 November 2016) <<https://www.pc.gov.au/inquiries/completed/agriculture/report/agriculture.pdf>>.