

Submission  
No 141

## INQUIRY INTO ANIMAL CRUELTY LAWS IN NEW SOUTH WALES

**Organisation:** NSW Young Lawyers and its Animal Law Committee

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# Inquiry into Animal Cruelty Laws in New South Wales

**18 December 2019**

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Select Committee on Animal Cruelty Laws in New South Wales  
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The NSW Young Lawyers Animal Law Committee (**Committee**) makes the following submission in response to the Terms of Reference on the Inquiry into Animal Cruelty Laws in New South Wales (**Terms of Reference**).

## **NSW Young Lawyers**

NSW Young Lawyers is a division of the Law Society of New South Wales. NSW Young Lawyers supports practitioners in their professional and career development in numerous ways, including by encouraging active participation in its 15 separate committees, each dedicated to particular areas of practice. Membership is automatic for all NSW lawyers (solicitors and barristers) under 36 years and/or in their first five years of practice, as well as law students. NSW Young Lawyers currently has over 15,000 members.

The Committee comprises a group of over 400 members interested in animal protection and laws regulating the treatment of animals. The Committee aims to raise awareness and provide education to the legal profession and wider community, while increasing understanding about the importance of protecting animals from abuse and neglect. A common theme amongst Committee members is a passion and desire to use their legal skills and the law to improve the protection of animals.

## **Summary of Recommendations**

The Committee considers that this inquiry presents an opportunity to highlight the deficiencies and limitations currently prevalent in NSW in enforcing, investigating and prosecuting animal cruelty, and thereby achieving the objects of the *Prevention of Cruelty to Animals Act 1979 (Act)*. The current framework does not allow for animals to be adequately protected from cruelty and the Committee submits that urgent action by the NSW government should be taken to ensure the objects of the Act are achieved.

1. The Committee comments on the Inquiry with respect to the Terms of Reference as follows:
  - (a) The current enforcement of animal cruelty laws by the charitable organisations currently approved under the Act (**Approved Charitable Organisations**) is insufficient to achieve the objects of the Act.
  - (b)
    - (i) That insufficiency is largely due to the fact that the Approved Charitable Organisations, are significantly underfunded by the NSW government and, consequently, animal protection laws are not being enforced as adequately as required to achieve the objects of the Act.

- (ii) Australia, including NSW, needs to vastly improve its education on animal care and protection.
  - (iii) An increase in public funding for Approved Charitable Organisations is vital to assist to reduce such organisations' dependence on bodies that display potential conflicts of interest.
- (c) The standard of care and high level of kill rates for stray, surrendered or seized animals under the control or supervision of the Approved Charitable Organisations is currently unsatisfactory which again highlights that the objects of Act are not being achieved.
- (d) A specialised focus, deeper understanding and more extensive geographical coverage are required to adequately investigate and enforce animal cruelty offences. Non-government charitable organisations (NGCOs) such as the Approved Charitable Organisations fit this criteria and should be delegated these powers (as they currently are).
- (e) Other Australian jurisdictions have similar limitations and deficiencies of the administration and enforcement of the Act that are prevalent in NSW. A national framework similar to the Australian Animal Welfare Strategy should be created to assist in achieving stronger animal welfare outcomes.
- (f) In addition to the powers that should be delegated to NGCOs, a specialist animal protection unit should be established within the NSW Police to deal with the most serious and complex investigations, for example in respect of systemic cruelty within industry.

## Discussion

The Committee comments on each of the Terms of Reference as follows:

- 1. That a select committee be established to inquire into and report on the effectiveness of arrangements for the administration and enforcement of the laws of New South Wales for the protection of animals from cruelty, and in particular:**
  - (a) the effectiveness of the charitable organisations currently approved under section 34B of the Prevention of Cruelty to Animals Act 1979 (“the Act”) in achieving the objects of the Act, namely:**
    - (i) to prevent cruelty to animals,**
    - (ii) to promote the welfare of animals by requiring a person in charge of an animal:**

- (a) to provide care for the animal,**
- (b) to treat the animal in a humane manner,**
- (c) to ensure the welfare of the animal**

**(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**

It is convenient to deal with these terms of reference together, as in the Committee’s view the greatest limitation upon the ability of charitable organisations to achieve the objects of the Act is the currently inadequate level of funding provided to support their investigative functions.

The charitable organisations currently approved under section 34B of the Act are the Royal Society for the Prevention of Cruelty to Animals NSW (**RSPCA NSW**) and Animal Welfare League NSW (**AWL NSW**) (**Approved Charitable Organisations**). Animal cruelty laws are primarily enforced by the Approved Charitable Organisations, and not by police or the NSW government.<sup>1</sup> In fulfilling that function, the Approved Charitable Organisations are the only charities that are tasked with enforcing and prosecuting criminal laws<sup>2</sup>.

While the RSPCA NSW and AWL NSW have both made significant contributions to achieving prevention of animal cruelty and the promotion of animal welfare in their investigative capacities,<sup>3</sup> their capacity to effectively achieve these objectives is significantly compromised by their funding and resources as charitable organisations, and the Committee accordingly considers them to be insufficient by themselves to achieve the objects of the Act.

In that respect, RSPCA NSW received \$1,096,642 in government grants for 2018-2019.<sup>4</sup> This accounts for 3.9% of RSPCA’s total revenue.<sup>5</sup> Over this period, the RSPCA NSW investigated 15,673 cruelty cases and commenced just 77 prosecutions.<sup>6</sup> With an estimated expenditure of \$1,120,566 to care for inspectorate

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<sup>1</sup> NSW Government, *Parliamentary Debates*, Legislative Council, Thursday, 8 August 2019, 16:05 (David Shoebridge).

<sup>2</sup> *Ibid.*

<sup>3</sup> *Prevention of Cruelty to Animals Act 1979* (NSW), s 3(b).

<sup>4</sup> *The Royal Society for the Prevention of Cruelty to Animals New South Wales Financial Report 2019* (RSPCA NSW, 30 June 2019) 38, 8.

<sup>5</sup> *Ibid.*

<sup>6</sup> *RSPCA NSW Annual Report 2018-2019* (RSPCA NSW, October 2019) 7.

animals,<sup>7</sup> RSPCA NSW has only 32 inspectors, including only 14 in regional areas.<sup>8</sup> This small number of inspectors and the reliance on public donations indicates that only the most flagrant violations of law are likely to be prosecuted.<sup>9</sup>

AWL NSW operates at a smaller level, with \$190,657 in grants between 2017 and 2018, accounting for 2.4% of their total income.<sup>10</sup> Over this period, AWL NSW completed 1,944 attendances by inspectors, delivered 59 notices of direction and 29 penalty notices.<sup>11</sup>

That is, the Approved Charitable Organisations are operating on government funding of less than \$100 per investigation. That is inclusive of the costs of caring for animals received in the course of those investigations (which, as stated above, by itself exceeds the entire government funding for RSPCA NSW) and the costs of any prosecutions. It is unrealistic to expect the goals of the Act to be achieved on such a level of funding.

The inadequacy of the present levels of funding, and the barriers it imposes upon enforcement activity, can be shown by reference to the numerous animal cruelty breaches have been exposed by covert filming, photography and/or reporting of cruel practices, including in abattoirs, live export, animal agriculture and dog breeding.<sup>12</sup> For example, in 2013/2014, People for the Ethical Treatment of Animals (**PETA**) released footage of violent mistreatment of sheep in shearing sheds in NSW, VIC and SA.<sup>13</sup> While the RSPCA investigated, there were no prosecutions in NSW, which the Committee submits to be indicative of significant financial, legal and resource-related setbacks, causing limitations on investigation and prosecution.

This conclusion accords with the findings of a World Animal Protection report in 2016 that found that Australia's lack of action to address animal cruelty – significantly as a result of dire shortages of funding across the country – had resulted in animal welfare falling short of community expectations<sup>14</sup>.

Accordingly, notwithstanding the significant efforts of the Approved Charitable Organisations, the Committee submits that the current levels of government support do not allow the Approved Charitable Organisations to achieve the objects of the Act.

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<sup>7</sup> Ibid.

<sup>8</sup> RSPCA NSW, Animal Welfare (2018) <<https://www.rspcansw.org.au/what-we-do/animal-welfare/#1505874101079-1d4874ba-225f>> cited in Whitfort, Amanda "Justice and the Vulnerable: Extending the Duty to Prevent Serious Crimes Against Children to the Protection of Agricultural and Research Animals" [2018] *Adelaide Law Review* 5.

<sup>9</sup> Steven White, 'Regulating Animal Welfare in Australia and the Emergent Commonwealth: Entrenching the Traditional Approach of the States and Territories or Laying the Ground for Reform?' (2005) 35 *Federal Law Review* 347, 354.

<sup>10</sup> *Animal Welfare League NSW Annual Report 2017-2018* (Animal Welfare League NSW, 2018) 7.

<sup>11</sup> Ibid 5.

<sup>12</sup> Ibid.

<sup>13</sup> AAP, 'Sheep 'abuse' prompts RSPCA inquiry' (10 July 2014) *The Sydney Morning Herald*

<<http://www.smh.com.au/environment/animals/sheep-abuse-prompts-rspca-inquiry-20140710-zt3f2.html>> accessed 28 May 2015>.

<sup>14</sup> Dr Jennifer Ford, *Advance Australian animal welfare: the urgent need to re-establish national frameworks*, (World Animal Protection, 29 February 2016) 5.

**(ii) perpetrator and community education about ensuring animal welfare,**

*Educating the community*

In the last financial year, the RSPCA delivered educational seminars and training programs to more than 100,000 school students and 25,000 pet owners.<sup>15</sup> Despite these efforts, however, Australia ranks fairly poorly compared to other countries on animal welfare education, in part due to the slow change to animal welfare legislation in Australia.<sup>16</sup>

World Animal Protection ranked 50 countries around the world on their animal welfare standards and legislation, with marks ranging from 'A' (the highest score), through to 'G' (the lowest score).<sup>17</sup> Australia scored an overall rank of 'C', with countries such as New Zealand, United Kingdom and Austria all scoring a much higher 'A'. On the education spectrum, Australia's overall education on animal care and protection was given the significantly low score of 'E'.<sup>18</sup> Austria scored one of the highest in this area due to their existing legislation that requires the federal, state and local governments, and authorities, to raise public awareness on animal welfare, particularly among young people.<sup>19</sup> The Committee submits that the standard set by Austria is the standard that Australia should seek to achieve.

That is, the Committee submits that education as to animal welfare matters should not be left to charities and other non-governmental organisations, but rather should be directly supported by the government, including by supporting schools in providing education on the subject.

*Educating the perpetrator*

Within Australia, the majority of animal welfare cases aim to be resolved by way of education and advice to animal owners<sup>20</sup> rather than by way of enforcement action. However, the funding limitations already identified in this submission necessarily limit the ability of the enforcement bodies (that is, principally, the Approved Charitable Organisations) to conduct follow-up visits or otherwise ensure that their advice is being followed.

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<sup>15</sup> Submission no 116 to the Productivity Commission, *Contribution of the Non-Profit Sector*, (4 June 2009) 1.

<sup>16</sup> Ibid.

<sup>17</sup> 'Animal Protection Index', *World Animal Protection* (Web Page)

<[https://api.worldanimalprotection.org/?\\_ga=2.118557833.1445315575.1510019261-923385865.1510019261#](https://api.worldanimalprotection.org/?_ga=2.118557833.1445315575.1510019261-923385865.1510019261#)>.

<sup>18</sup> 'Animal Protection Index; Australia', *World Animal Protection* (Web Page)

<<https://api.worldanimalprotection.org/country/australia>>.

<sup>19</sup> 'Animal Protection Index; Austria', *World Animal Protection* (Web Page)

<<https://api.worldanimalprotection.org/country/austria>>.

<sup>20</sup> 'Inspections and enforcement', *Department of Primary Industries*, (Web Page) <<https://www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/inspections-and-enforcement>>.

**(iii) any conflicts of interest or potential conflicts of interest between the investigation and enforcement of the Act, and commercial activities of the approved charitable organisations including corporate sponsorship**

The Department of Primary Industries (**Department**) has competing responsibilities in promoting farm animal welfare while also promoting economically profitable agricultural industries.<sup>21</sup>

The enforcement powers of the Approved Charitable Organisations are granted, controlled and regulated by the Department.<sup>22</sup> A report by World Animal Protection concluded that the current administration of animal welfare law displayed activity of regulatory capture (that is, that regulatory agencies are dominated by the industries or interests they are charged with regulating), rather than in the public interest the regulatory agencies are meant to serve.<sup>23</sup> With these competing interests, animal welfare may become a second priority when the primary objective of the Department is to promote a productive and profitable agricultural sector.<sup>24</sup>

Further, with minimal funding from the NSW government, the charities heavily rely on funding by corporate sponsorships and collaborations to carry out their investigative and enforcement duties. The vast majority of RSPCA NSW's funding in 2018–2019 came from private donations, investments, sponsorships and bequests.<sup>25</sup>

However, some of these sponsorships that the charities receive have been met with criticism amongst the community and in the Australian media for displaying potential conflicts of interest. By way of example, AWL NSW, tasked with independently auditing one of the largest pet retailers in Sydney, was gifted nearly \$35,000 in payments organised by the pet retailer over a three year period.<sup>26</sup> Furthermore, the RSPCA accrediting PACE Farm Eggs, one of the largest egg producers in Australia, received 2% off the wholesale price of the eggs.<sup>27</sup>

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<sup>21</sup> Ibid.

<sup>22</sup> Deborah Cao et al (eds), *Animal Law and Welfare – International Perspectives* (Springer International Publishing 2016) 228.

<sup>23</sup> Dr Jennifer Ford, *Advance Australian animal welfare: the urgent need to re-establish national frameworks*, (World Animal Protection, 29 February 2016) 5.

<sup>24</sup> Productivity Commission, *Regulation of Australian Agriculture*, (Report no. 79, 15 November 2016) 244.

<sup>25</sup> RSPCA above at 4

<sup>26</sup> Christopher Knaus, 'NSW animal welfare inspector accepted \$35,000 from puppy retailer it audits', *The Guardian* (online at, 10 January 2018) <<https://www.theguardian.com/world/2018/jan/10/nsw-animal-welfare-inspector-accepted-35000-from-puppy-retailer-it-audits>>.

<sup>27</sup> M Frith, 'Our big appetite for eggs', *The Sydney Morning Herald* (online at 2 March 2008) <<https://www.smh.com.au/environment/our-big-appetite-for-eggs-20080302-gds3bz.html>>.



While the Committee does not suggest that the Approved Charitable Organisations are acting in anything other than good faith in accepting those payments, the dependence of the organisation upon such funding from those they may be called upon to investigate – that dependence in part driven by the lack of public funding – does create the risk of negative public perceptions or, even if inadvertently, the influencing of investigative decisions. By increasing public funding for the Approved Charitable Organisations' investigative activities, that dependence can be reduced, mitigating the risk of conflicts of interest.

**(c) the adequacy of the standard of care and kill rates for stray, surrendered or seized animals under the control or supervision of the approved charitable organisations**

The RSPCA annually collects and publishes the statistics on the numbers of animals (including dogs, cats and 'other' animals such as horses, livestock, small animals and wildlife) that have been received by RSPCA shelters across Australia.<sup>28</sup> The RSPCA's policy is to accept any animal offered into its care '*where it has the facilities, resources and legal capacity to do so*'.<sup>29</sup>

Due to over-breeding of animals and the failure to maintain the proper identification of companion animals, there are more animals than the number of responsible homes available to house them, and the overflow of animals are surrendered or offered to the RSPCA and other charitable donations for care.

The increased use of microchip identification of companion dogs has been reported as significantly assisting in the reuniting and reclaiming of lost dogs with their owners.<sup>30</sup> This, in turn, has encouraged pro-active tracing and re-uniting services, care and rehabilitation, which has decreased the rates of euthanasia of companion dogs. While recent amendments to the *Companion Animals Act 1998 (NSW)* have gone some way in seeking to address the issues of the identification and registration of companion animals, the full impact of these legislative amendments have yet to be observed in practice.

Notwithstanding these positive developments, the issue remains that animal shelters do not have the capacity and/or funding to support vast numbers of surrendered and stray animals (whether they are microchipped or not). In 2017-2018 alone, over 13.84% of dogs (being 5,577 dogs), 23.79% of cats (being 12,610 cats) and

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<sup>28</sup> RSPCA 'RSPCA Australia Annual Statistics 2017-2018' (Report, 2018) <<https://www.rspca.org.au/sites/default/files/RSPCA%20Australia%20Annual%20Statistics%202017-2018.pdf>>.

<sup>29</sup> RSPCA 'Operation of RSPCA Shelters Position Paper A6' (Position Paper, 24 September 2012), at 3.1 <<https://kb.rspca.org.au/wp-content/uploads/2019/01/PP-A6-Operation-of-RSPCA-Shelters.pdf>>.

<sup>30</sup> RSPCA 'RSPCA report on animal outcomes from our shelters, care and adoption centres 2017-18' (Report, 2018) page 5, <<https://www.rspca.org.au/sites/default/files/RSPCA%20Report%20on%20Animal%20Outcomes%202017-2018.pdf>>.

47.39% of other animals (including horses, livestock, wildlife and small animals) (being 18,651 other animals) received by the RSPCA alone were euthanised.<sup>31</sup> These statistics do not include the animals that were euthanised by veterinary practices or other charitable organisations and animal shelters in Australia.

While overall the percentage of euthanasia has decreased, the kill-rate of stray, surrendered and/or seized animals under the control or supervision of the Approved Charitable Organisations are inadequate and again highlights that the objects of the Act are not currently being achieved.

**(d) whether it is effective and appropriate for non-government charitable organisations to be granted investigative and enforcement powers for criminal prosecutions under the Act, with regard to their:**

- (i) capacity to exercise those investigative and enforcement powers,**
- (ii) ability to exercise those investigative and enforcement powers in relation to commercial premises and intensive farm operations involving high numbers of animals,**
- (iii) ability to conduct cases to test the application of legislative provisions in the Act,**
- (iv) accountability to government and the community,**
- (v) exemption from the provisions of the Government Information (Public Access) Act 2009,**
- (vi) exemption from administrative review under the Administrative Decisions Review Act 1997**

The Committee submits that the investigative and enforcement powers permitted under NSW animal cruelty legislation and regulations ought to:

- continue to capitalise on the specialisation and objectives of animal-oriented NGCOs in seeking better animal welfare outcomes and realisation of the applicable regime's aims, including by potentially expanding the number of NGCOs authorised to exercise powers under the Act; but
- be revised to reflect and respond to recent and current trends in animal cruelty offences and outcomes.

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<sup>31</sup> RSPCA 'RSPCA Australia Annual Statistics 2017-2018' (Report, 2018)  
<<https://www.rspca.org.au/sites/default/files/RSPCA%20Australia%20Annual%20Statistics%202017-2018.pdf>>, Table 1.

*The current picture*

While the NSW Police retain the usual criminal investigative and enforcement functions with respect to animal cruelty offences as they do with other criminal matters, their involvement, both at law and in practice, is less prominent.

The Act provides for inspection powers to be vested in RSPCA NSW and AWL NSW, thereby formally delegating certain police powers.<sup>32</sup> In addition, recent statistics illustrate that, in practice, NGOs are more likely to be contacted and otherwise directly involved in responding to animal cruelty offences.

Between 2010 and 2015, just over 900 animal cruelty-related offences were recorded by NSW Police.<sup>33</sup> However, in the 2013/14 financial year alone, the RSPCA received 58,591 complaints of animal cruelty and/or neglect.<sup>34</sup> While this figure is a nationwide one and some of those complaints led to the offences recorded by the NSW Police, ultimately, the RSPCA alone undertakes more law enforcement actions with respect to animal cruelty than all state and territory police forces and departments of primary industries combined.<sup>35</sup>

Furthermore, in the latest financial year, the AWL NSW Inspectorate responded to upwards of 1,300 complaints and undertook nearly 2,000 investigations.<sup>36</sup>

Sections 1(a) and (b) of this submission describe the limitations of the current Approved Charitable Organisations in preventing cruelty to animals and promoting the welfare of animals, largely as a result of funding considerations. While that should be addressed by increases in much-needed funding, as an additional measure consideration should be given to authorising additional NGOs to engage in enforcement activities so as to lighten this burden on the resources of the existing two charities and facilitate a more comprehensive investigative (and, as addressed below, enforcement) coverage.

*Inadequacies in the alternative – enforcement by police and government departments only*

As mentioned above, the involvement of NSW Police in animal cruelty prevention is significantly less than that of NGOs in NSW. This is despite consistent links being drawn between such offences and the eventual commitment of violent crimes against humans. By way of example, one survey identified that 61.5% of

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<sup>32</sup> Sections 4, 34B.

<sup>33</sup> Dimond, Juliet, 'Act now on animal cruelty' (May 2015) *Police Monthly* pp 8-10.

<sup>34</sup> RSPCA Australia, *Submission on Criminal Code Amendment (Animal Protection) Bill 2015*, 12 March 2015.

<sup>35</sup> *Ibid.*

<sup>36</sup> Animal Welfare League NSW, 'NSW Animal Cruelty Laws Under Review' (8 November 2019) <<https://www.awlnsw.com.au/have-your-say/>>

convicted animal cruelty offenders had also committed an assault, 17% had committed a sexually abusive offence and 8% had arson convictions. Further, a recent Australian study clearly established the link between animal abuse and domestic violence in rural, regional and suburban communities.<sup>37</sup>

While the alternative of delegating relevant functions to NGCOs may be seen as problematic with respect to certain powers and probity, the Committee submits that vesting those functions solely in the government is at least equally problematic in that:

- as outlined in the statistics mentioned above, NSW Police have not historically met, and currently do not meet, the state's animal welfare needs in its enforcements and investigation;<sup>38</sup>
- the present regime is arguably outdated from a husbandry and welfare viewpoint to begin with, and entrusting a far more generalised and potentially stretched police force to advance its improvement is unrealistic;<sup>39</sup> and
- the potential for conflicts of interests arise when government departments entrusted with ensuring the economic prosperity of animal industries (including agriculture) are also entrusted with welfare watchdog duties.<sup>40</sup>

#### NGCOs as the preferred option

As outlined above, NGCOs already carry the bulk of the burden of NSW's animal cruelty investigation and response roles, and are leaders in animal care and understanding.<sup>41</sup> NGCOs present a logical and specialised option for improving animal welfare outcomes and policing animal cruelty offences.

As an example of the specialisation of these NGCOs beyond the functions envisioned under the Act, many of AWL NSW's inspectors perform a range of other relevant roles, including sitting on advisory committees, performing animal rescues, and assisting other agencies such as the Department of Primary Industries, National Parks and Local Councils in other related areas.<sup>42</sup>

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<sup>37</sup> Dimond above at 1.

<sup>38</sup> Ellis, Elizabeth, '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* 6-26.

<sup>39</sup> Tomaselli, Paige M., 'Detailed Discussion of International Comparative Animal Cruelty Laws' (2003) *Animal Legal and Historical Center* <<https://www.animallaw.info/article/detailed-discussion-international-comparative-animal-cruelty-laws>>

<sup>40</sup> Whitford above at 6.

<sup>41</sup> RSPCA above at 3.

<sup>42</sup> Animal Welfare League NSW, 'NSW Animal Cruelty Laws Under Review' (8 November 2019) <<https://www.awlnsw.com.au/have-your-say/>>

More generally and more purposively, NGCOs do, by their nature, have the betterment of animal welfare outcomes and the prevention of animal cruelty at their core.<sup>43</sup> Such a motivation is highly compatible with the cruelty prevention objectives under the Act and the *Crimes Act 1900*.

In the pursuit of preventing animal cruelty offences, a specialised focus, understanding of animal welfare issues, and geographical coverage accompanied by local knowledge are required. The Committee submits that NGCOs fit these specifications in ways that cannot easily be met by either by ordinary police (lacking the necessary focus and expertise) or even a specialised unit (lacking the combination of geographical reach and local knowledge).

In any case, even to the extent there might be any perceived limitations in the ability of NGCOs to deal with large-scale or test cases in relation to animal cruelty, the use of NGCOs does not prevent the government engaging in its own enforcement activities addressing such areas. As addressed later in this submission, the Committee supports the formation of a specialist unit to focus upon precisely those kinds of major, complex cases.

#### *Potential mechanism to address concerns*

It is accepted that delegating law enforcement responsibilities to non-law enforcement personnel is not to be done lightly. However, if enabled in an appropriate manner, the Committee submits that a desirable, effective outcome can be achieved.

Some potential issues and the Committee's responses are as follows:

- A. *Funding*: As community-supported (even if partly government supported) entities, NGCOs can operate with a reduced burden to the taxpayer compared to wholly government-funded enforcement.
- B. *NGCOs suitable qualification beyond their animal expertise to execute the functions provided under the Act and, where applicable, the Crimes Act*: Appropriate training can be provided, particularly for 'new' NGCOs that may become involved other than the RSPCA and Animal Welfare League. Accreditation requirements may be also be incorporated.

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<sup>43</sup> Ellis, Elizabeth, '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* 6-26.

C. *Oversight inclusions:*

- (i) To ensure that NGCOs are suitably equipped with the legal enforcement skills that would ordinarily be carried by the police force, NGCOs may report to a designated police officer for oversight and professional development purposes. Certain permissions from an overseeing officer may be required for certain steps to be taken, including the commencement of particular classes of proceedings, such as aggravated animal cruelty.
- (ii) The signoff of an overseeing officer may assist in facilitating Judicial Review avenues for certain offences if a judicial challenge is sought.
- (iii) An oversight role for police may assist in maintaining legal enforcement probity while broadening those enforcement capabilities.
- (iv) Oversight may assist in alleviating concerns with respect to the investigation and/or inspection of commercial premises.
- (v) Regular correspondence and interaction between government and NGCOs can allow relevant correspondence to be captured by the provisions of the *Government Information (Public Access) Act*. Suitable training as to the implications of this would, in the Committee's view, be appropriate.
- (vi) Accountability may be improved by an oversight mechanism.

D. *Functions that may be included:* In addition to the functions already conferred upon the RSPCA and AWL NSW under the Act, responsibilities similar to those of an 'officer' (as defined in the Act) may be granted to NGCOs (with suitable oversight as required and outlined above).

Accordingly, the Committee submits that the potential issues can be addressed in order to pave way for the use of NGCOs in the investigative and enforcement initiatives provided under NSW anti-animal cruelty legislation and regulations.

**(e) whether any limitations and deficiencies of the administration and enforcement of the Prevention of Cruelty to Animals Act 1979 are common to other national or international jurisdictions which use similar models**

The limitations and deficiencies of the administration and enforcement of the Act that are prevalent in NSW appear to be prevalent in other Australian states and territories.

In this respect, progress was being made at a national level by way of the Australian Animal Welfare Strategy, until it was regrettably terminated as part of the 2014/2015 national budget. The termination of that program has left Australia with no national funding, leadership, or strategy for the management of animal welfare issues.

While the creation and coordination of such a national framework is accepted to be well beyond the scope of the present inquiry (and the power of the NSW Parliament), the Committee nonetheless hopes that such a framework may once again be created so as to permit greater coordination and planning of animal welfare activities throughout Australia.

**(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**

Further to the recommendation made in Section (d) of this Submission with respect to NGCOs, the Committee submits that a specialist animal protection unit should also be established as a part of the NSW Police Force.

Under Part 2A of the Act, officers and inspectors are able to enforce invasive actions such as seizure and disposal of stock animals<sup>44</sup> and land entry.<sup>45</sup> The legislation allows for the extension of enforcement to Approved Charitable Organisations.

Contrary to the Approved Charitable Organisations, which have comparatively limited resources and funding, the NSW Government and Police Force should have adequate capacity to accommodate the administration of and investigations into animal welfare cases. However, as discussed in Section (d) above, the involvement of the police in enforcing animal cruelty laws is inadequate due to a lack of expertise in animal welfare.

A dedicated unit – that may develop that needed expertise by its specialisation - may prioritise urgent action addressing systemic, industry-wide acts of cruelty (such as the highly publicised poor animal welfare practices and outcomes in parts of the greyhound and horse racing industries) without competing with crimes against people.

Aside from the resourcing and capacity issues, there exists a duty to protect the welfare of investigators in potentially dangerous situations, in which the investigation of animal cruelty may require seizure of at-risk animals or entry to personal premises. In the event NSW Government introduces a dedicated office to enforce the Act, then adequate training, resourcing and oversight would need be allocated.

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<sup>44</sup> *Prevention of Cruelty to Animals Act 1979* (NSW), s 24P.

<sup>45</sup> *Prevention of Cruelty to Animals Act 1979* (NSW), s 24E.

The Committee suggests that enforcement be provided at a level consistent with a criminal investigation and in line with police protocols, legitimising the efforts to preserve animal welfare. Systemic acts of cruelty should be managed by those with adequate training, support and governmental insurance to protect the welfare of the officers at the coalface of abuse violations<sup>46</sup>.

Officers responsible for animal protection and welfare should be supported by an enforcement team which would provide more capacity to ensure prevention and early detection of animal cruelty breaches. Enforcement officers ought to be able to work with rescues, veterinary staff and interest groups to intervene early and assist in the regulation of animal-centric care.

## Concluding Comments

NSW Young Lawyers and the Committee thank you for the opportunity to make this submission.

If you have any queries or require further submissions, please contact the undersigned at your convenience.

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President

NSW Young Lawyers

**Alternate Contact:**

**Daniel Cung**

Chair

NSW Young Lawyers Animal Law Committee

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<sup>46</sup> "Greyhound Mass Grave Found In Sydney", *Newscomau* (Webpage, 2019) <<https://www.news.com.au/lifestyle/real-life/news-life/rspca-workers-uncover-greyhound-mass-grave-on-property-in-sydney/news-story/0aed41d7f7f6b67b86878f7ac71a2046>>.