



The Secretary
 Economy and Infrastructure Committee
 Parliament House, Spring Street
 EAST MELBOURNE VIC 3002

Submitted 31 March, 2017

Dear Secretary and Committee Members,

Thank you for the opportunity to contribute to this inquiry.

Introduction

Edgar's Mission is a not-for-profit sanctuary for rescued farmed animals situated in the Macedon Ranges, Victoria. Thousands of orphaned, neglected and homeless animals have found refuge and the care they desperately needed at Edgar's Mission, many being rehomed with loving families. Our sanctuary is now home to over 450 residents.

Our vision is of a future where all animals are treated with kindness and respect, to this end and to complement our direct animal rescue activities, we encourage people to expand their circle of compassion to include all animals through advocacy and education programs.

By way of our campaigns, outreach and social media presence, we regularly engage with and receive feedback from the public. This gives us a unique opportunity to gauge community expectations on how they believe animals should be treated. By far the over-arching message is that a significant portion of the community identify as having a strong affinity with animals and value the contribution animal protection organisations, such as ours, make. Further we have learnt that most people abhor animal cruelty and support greater protection for animals, and many feel our current animal protection laws (notably the enforcement of these) are wanting.

As an organisation who has the interests of the animals who are farmed for food and fibre at its core, the main focus of this submission will be in reference to the RSCPA's ability to protect them.

Terms of Reference for Submission on Inquiry into the RSPCA Victoria

1. The appropriateness and use of its powers pursuant to the Prevention of Cruelty to Animals Act 1986, including in the context of its other objectives and activities.

Edgar's Mission acknowledges the noteworthy work of the RSPCA in many areas of animal welfare, in particular educating the public about the care and needs of companion animals, providing shelter for the lost, stray or abandoned pets and campaigning against chicken hatching projects, puppy farms, live export and duck shooting. However, as a not-for-profit charity the RSPCA lacks the wherewithal to provide the policing, enforcement and prosecution of cases under the Prevention of Cruelty to Animals Act 1986 (2010 amendment; PoCTA) that is in keeping with public expectations. It should never be the charter of any charity to fulfil the arduous, often costly and time-consuming task of law enforcement.

The Legal Issue

First and foremost, the RSPCA's powers are limited by the presiding legislation – which itself falls short of public sentiment and supports injustice. In a 2007 study by Graham Coleman in Victoria, when asked to rate their responses to a range of statements, 60% agreed that “[w]elfare of animals is a major concern” while 71% agreed that “[f]arm animal welfare is an important consideration.”ⁱ The majority of Victorians are concerned about the welfare of farmed animals, however the greatest number of animals in human care (these very animals) are excluded from the state’s animal cruelty legislation.

The Prevention of Cruelty to Animals Act 1986 (2010 amendment; PoCTA) states that its purpose is to:

- (a) prevent cruelty to animals; and
- (b) to encourage the considerate treatment of animals; and
- (c) to improve the level of community awareness about the prevention of cruelty to animals.

Yet, written into this same Act are important and untenable exemptions. Section 6, on pages 10 and 11, specifically states the PoCTA does not apply to:

- (a) the slaughter of animals in accordance with the Meat Industry Act 1993 or any Commonwealth Act; or
- (b) except to the extent that it is necessary to rely upon a Code of Practice as a defence to an offence under this Act the keeping, treatment, handling, transportation, sale, killing, hunting, shooting, catching, trapping, netting, marking, care, use, husbandry or management of any animal or class of animals (other than a farm animal or class of farm animals) which is carried out in accordance with a Code of Practice; or
- (c) any act or practice with respect to the farming, transport, sale or killing of any farm animal which is carried out in accordance with a Code of Practice; or
- (d) anything done in accordance with the Catchment and Land Protection Act 1994; or
- (e) the treatment of any animal for the purpose of promoting its health or welfare by or in accordance with the instructions of a veterinary practitioner; or
- (f) the slaughter of a farm animal on a farm if—
 - (i) it is slaughtered for consumption on that farm; and
 - (ii) it is slaughtered in a humane manner; and
 - (iii) it is not slaughtered for sale; and
 - (iv) it is not slaughtered for use in the preparation of food for sale; and
 - (v) it is not removed from that farm; or
- (g) any fishing activities authorised by and conducted in accordance with the Fisheries Act 1992.

The body of evidence, scientific and philosophical, has proven beyond any doubt that farmed animals possess the same capacity to suffer as family pets – a confined pig feels the same frustrations, discomfort and pain as a dog would if kept similarly deprived of exercising natural instincts and behaviours. From animals seeking out pleasurable experiences,ⁱⁱ recognising animals as empathetic and self-aware beings through their behaviours and body language,ⁱⁱⁱ to exploring the rich emotional world of farmed animals^{iv} – we know animals feel. The capacity to suffer is equal across all species and as such legislation should reflect recognition of such capacity.

Every year in Australia over 600 million farmed animals endure lives of confinement on factory farms.^v Here they are deprived of everything that would give their lives meaning: chickens are unable to spread their wings, perch, dustbathe or breathe fresh air, mother pigs are unable to build nests, forage, turn around or nurture their piglets, piglets are castrated and have their tails docked with no pain relief, dairy calves are taken from their mothers shortly after birth while the males are sent to slaughter at only days old. These examples are systemic and legally sanctioned, by the PoCTA exemptions and relevant Codes of Practice,^{vi} however if one of these farmed animals were replaced by a family pet, the acts would be considered cruelty and illegal.

In light of such legal inconsistencies, the RSPCA is unable to investigate or prosecute the vast majority of cases of animal cruelty.

Memorandum of unfairness

Another impediment to the RSPCA meeting the objective of justly protecting “all creatures great and small” is the memorandum of understanding (MOU) between itself and the Department of Economic Development, Jobs, Transport and Resources (DEDJTR). Under the MOU, the DEDJTR is responsible for investigating animal cruelty cases regarding commercial livestock (ten or more farmed animals).^{vii}

Agriculture Victoria is under the umbrella of the DEDJTR, its core aim is to “create the conditions to sustainably develop the Victorian economy and grow employment.” In animal-use industries, economic growth and good animal welfare are predominately mutually exclusive, it is often more costly and time-consuming to give animals space, veterinary care and enrichment – a life worth living. Considering battery hens, for example, industry will argue unhealthy animals or those lacking in a “good” quality of life will not produce eggs,^{viii} this point is contentious at best, with science increasingly proving that chickens suffer immensely in the intensive conditions.^{ix} Dr Jean-Loup Rault asserts “[t]hey can be very unhappy, in which case they won't lay eggs, but they may lay eggs and not have the optimal or maximum welfare state or happiness.”^x In contrast, Egg Farmers of Australia promote cage eggs as “the cheapest form of protein” for consumers.^{xi}

It is difficult to argue *the animals will always come first* when the bottom line is profit. By allowing the institution focussed on economic viability (and profit) to police standards and execution, they are in effect allowing the industry to self-regulate.

Considering farmed animals are excluded from the nation’s animal cruelty legislation, the likelihood of the policing body defending them is bleak at best. A self-regulating industry driven by profits has deep and overwhelming interests in not prosecuting its own members; the financial and reputational risks far outweigh the needs of the voiceless and unrepresented animals it commodifies for economic gain.

Self-regulation carries with it a conflict of interest and raises important ethical questions, particularly for industries responsible for the well-being of the vulnerable. The fact that farmed animals look differently to family pets is an erroneous justification for the stark contrast in legal protection, as stated earlier – the two share like cognitive and emotional capacities.

The moral implications are that there is no body seriously investigating or enforcing the proper treatment of farmed animals – a grave realisation considering the vast majority of Australians believe the welfare of farmed animals is important.

Financial indemnity

Another barrier to the RSPCA working effectively is the threat of financial indemnity. In a recent example the RSPCA was found liable for \$1.176 million for euthanising 131 cattle they argue were “abandoned and emaciated”.^{xiii} While a breeder, who was keeping 80 dogs in cages and filthy conditions in cages, many said to be without water, is attempting to sue the RSPCA for damages and

costs.^{xiii} In order to prosecute with confidence the authority responsible for this should be indemnified by the State, not a not for profit charity.

Limited Powers

RSPCA officers suffer from limited legal and enforceable powers: to enter property, to seize animals and arrest individuals. The community is increasingly expressing discontent for the handling of animal welfare matters, especially where farmed animals are concerned. As an organisation, Edgar's Mission has been called to numerous rescues where members of the public have been told by the RSPCA that there's nothing they can do to help the animal/s in question.

The RSPCA has scaled back its animal rescue function, leaving a gaping hole in the investigation and policing of Australia's binding, anti-cruelty legislation. The RSPCA does have a strong role to play in public education, animal rescue, rehabilitation and rehoming – it is a valuable player in the animal protection movement. By moving policing out of the hands of the RSPCA, the organisation would have more public money available to focus on the areas it can have the most impact. It is far better to educate the public on the proper treatment of animals than to allow these same animals to slip into such a dire straight their welfare is compromised and euthanasia a very real (and kind) outcome.

The Solution

Edgar's Mission appreciates the difficulties the RSPCA faces due to the constraints mentioned, but the situation is untenable for a society that cares deeply about animals and their welfare. A charity should never shoulder the burden of policing and enforcing alone.

Firstly, we strongly argue that the MOU between the RSPCA and the DEDJTR must be abolished for animal cruelty legislation to be justly and properly enforced. An animal in need is an animal in need, regardless of which side of the fence they stand or how many other animals stand with them. Likewise, the DEDJTR must be relieved of all self-regulatory abilities.

The establishment of an independent arbitrator of animal welfare is essential to the proper carriage of justice.

What this looks like:

Responding to and the policing and prosecution of animal welfare matters are given to a dedicated Animal Cruelty Investigation unit of the Victorian Police. As many police will not be trained in animal behaviour and handling, utilisation of existing RSPCA officers would greatly assist in this area.

Such a model was developed and trialled in New York in 2013 and instituted in 2014, where the ASPCA and the NYPD forged a partnership playing to their respective strengths. The ASPCA describes: "the NYPD took the lead role in responding to all animal cruelty complaints in New York City, while the ASPCA expanded its direct care for animal cruelty victims by providing critical support including forensic evaluations, medical treatment, behavior[u]r assessments, housing and placement, as well as backup legal support and training."^{xiv}

Any discussion involving animal welfare in Australia must, in part, broach the establishment of an Independent Office of Animal Welfare. There is a groundswell of support from the Australian community and animal protection organisations to see the well-being of animals taken from the hands of those who profit from them and into the hands of a wholly independent body. Further, any stakeholder truly concerned about the welfare of animals must support the transition towards an independent arbiter of animal welfare – free from the impediments of both animal protection and animal-use industry organisations.

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