

# Submission on the Inquiry into the approved charitable organisations under the *Prevention of Cruelty to Animals Act 1979*

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The NSW Young Lawyers Animal Law Committee (**Committee**) makes the following submission on the Inquiry into the approved charitable organisations under the *Prevention of Cruelty to Animals Act 1979 (Inquiry)*

## **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 16 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 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 protections for animals.

The Committee welcomes the opportunity to make a submission on the Regulations.

## Summary of Recommendations

1. An independent body for animal protection (**IBAP**) should be established, supported by charitable organisations.
2. The IBAP should be adequately funded, proportionate to the scale of its function.
3. There ought to be an increase in cross-body information sharing between approved charitable organisations, police and law enforcement, and the IBAP, orchestrated by the IBAP as overseer of those processes.
4. The IBAP should have an education function along with its enforcement function to improve rehabilitation and reduce recidivism.
5. Powers and functions provided under the *Prevention of Cruelty to Animals Act 1979* (**POCTAA**)<sup>1</sup> (and related Acts) should not be vested in any existing government bodies, in particular the Department of Primary Industries (**DPI**).

### Submission 1: An independent body for animal protection should be established, supported by charitable organisations

1. Presently, investigation and enforcement of animal welfare matters in NSW are undertaken principally by the Royal Society for the Prevention of Cruelty to Animals NSW (**RSPCA**) and the Animal Welfare League NSW (**AWL**), the two approved charitable organisations (**ACOs**). While these ACOs play a valuable role in the State's animal welfare matters, it is the Committee's view that those principal functions should lie with an independent government body.

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<sup>1</sup> *Prevention of Cruelty to Animals Act 1979 (NSW)* ('**POCTAA**').

## Transparency and Accountability

2. The compliance and enforcement functions of the ACOs under POCTAA is a public function. It is the Committee's position that principles of openness, transparency and accountability ought to apply to all entities and decision-makers exercising public functions.
3. As private charitable organisations, information held by the two ACOs in relation to their public functions are not subject to disclosure under the *Government Information (Public Access) Act 2009* (NSW).<sup>2</sup> ACOs may therefore provide limited information about compliance and enforcement programs in their Annual Reports (see further in our submission that 'The IBAP should be adequately funded, proportionate to the scale of its function', at paragraph 10). This lack of transparency, and the resultant limited available data, makes it difficult to undertake any detailed analysis of the effectiveness of the ACOs in meeting the objects of POCTAA.

## Other Jurisdictions

4. The Animal Protection Index ranks nations on a range of indicators and provides an overall ranking ('A' to 'G') on important aspects of animal protection. Australia's overall ranking on this index is 'D',<sup>3</sup> which is lower than the 'C' ranking achieved in 2014.<sup>4</sup> This ranking places Australia behind New Zealand, the United Kingdom, Mexico, and all but one of the countries evaluated in the European Union. In the area of government accountability for animal welfare, Australia's ranking is 'G', one of only six countries to rank this low on the accountability indicator (alongside China, Morocco, Iran, Vietnam, and Ukraine).<sup>5</sup> While this is a national ranking, the issues of accountability are applicable to State and Territory governance.
5. A key distinction between Australia and the higher scoring nations on this indicator, such as Austria and Sweden, is the oversight of animal welfare matters by independent committees and bodies. Austria, for example, has Animal Protection Ombudspersons in each province and cross-party representation on an Animal Protection Commission and Animal Protection Council that are tasked

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<sup>2</sup> *Government Information (Public Access) Act 2009* (NSW) s 4 (definition of 'agency' and 'government information'); *Government Information (Public Access) Regulation 2018* cl 12.

<sup>3</sup> 'Animal Protection Index: Australia', World Animal Protection (Web Page) <<https://api.worldanimalprotection.org/country/australia>>.

<sup>4</sup> World Animal Protection, *Australia Animal Protection Index 2014 Ranking: C* (Report, 2014) <[https://api.worldanimalprotection.org/sites/default/files/api\\_australia\\_report\\_0.pdf](https://api.worldanimalprotection.org/sites/default/files/api_australia_report_0.pdf)>.

<sup>5</sup> 'Indicators', World Animal Protection (Web Page) <<http://api.worldanimalprotection.org/indicators#>>.

with providing oversight and various regulatory and advisory functions.<sup>6</sup> It is the Committee's position that an independent body for animal protection would address, in part, the identified issues with government accountability in animal welfare matters.

## **Public Sentiment for Specialist Unit or Independent Body**

6. Animal welfare is an area of growing public interest and importance. Independent research commissioned by the Commonwealth Department of Agriculture and Water Resources has shown that Australians are displaying an increasing level of concern for animal welfare (particularly for farmed animals) with a shift in public sentiment toward improved animal welfare protections.<sup>7</sup> There is also growing demand for a specialised unit to enforce animal protection laws or for an independent body for animal protection. The results from the Select Committee on Animal Cruelty Laws in NSW Online Questionnaire indicated an overwhelming majority of respondents (72%) either agreed or strongly agreed with the establishment of a specialist unit to investigate animal cruelty and enforce animal protection laws.<sup>8</sup> The Committee submits that an independent body for animal protection would bring the oversight of animal welfare matters in line with community expectations.

## **Submission 2: The IBAP should be adequately funded, proportionate to the scale of its function**

7. As it stands, the Committee submits that a lack of secure, adequate, and recurrent government funding demonstrably compromises the ACOs' ability to effectively meet the objects of POCTAA: to prevent cruelty to animals and promote animal welfare.<sup>9</sup>
8. In financial year 2020 (being the most recent financial report period available), the AWL received a total of \$397,190 in government grants which was an increase from \$111,294 the previous year.<sup>10</sup> In that same year, the AWL inspectorate conducted 956 attendances (including re-checks) arising out of

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<sup>6</sup> World Animal Protection, *Animal Protection Index 2020 Republic of Austria: Ranking B* (report, 2020) <[http://api.worldanimalprotection.org/sites/default/files/api\\_2020\\_-\\_austria\\_0.pdf](http://api.worldanimalprotection.org/sites/default/files/api_2020_-_austria_0.pdf)>.

<sup>7</sup> 'Australia's Shifting Mindset on Farm Animal Welfare' *Futureeye* (Report, 2018) <<https://futureeye.com/resources/>>.

<sup>8</sup> Select Committee on Animal Cruelty Laws in New South Wales, *Summary Report from Online Questionnaire* (Report, 19 February 2020) 3

<<https://www.parliament.nsw.gov.au/lcdocs/other/13089/Summary%20report%20from%20online%20questionnaire.pdf>>.

<sup>9</sup> POCTAA s 3.

<sup>10</sup> Animal Welfare League, *Financial Report for the Year Ended 30 June 2020* (Report, 2020) 8

<<https://www.awlnsw.com.au/wp-content/uploads/2021/01/Audited-Financial-Statements-FY20.pdf>>.

741 complaints.<sup>11</sup> 275 animals were seized or surrendered with only 8 penalty notices issued and 8 prosecutions finalised for that year.<sup>12</sup> 108 routine inspections were completed across various commercial enterprises.<sup>13</sup>

9. In financial year 2021, the RSPCA received a total of \$8.385 million in government grants.<sup>14</sup> It should be noted that this 2021 figure includes non-recurrent building grants for the reconstruction of the Sydney shelter and improvements to other RSPCA facilities across the state.<sup>15</sup>
10. Grants received by the RSPCA between 2016-2019 were, on average, just over \$1 million per year.<sup>16</sup> In 2021, the inspectorate conducted 13,838 cruelty investigations with 38 inspectors.<sup>17</sup> The RSPCA Annual Report does not provide any detail on the number of routine inspections, prosecutions, penalty notices, or animals seized through the inspectorate.
11. The level of funding provided to the ACOs to perform the public function of investigating and enforcing animal welfare offences in NSW is, in the Committee's view, inadequate when considered against the scale and extent of commercial and domestic animal use across the state; in NSW, the livestock industry generated \$7.276 billion of output for financial year 2020,<sup>18</sup> and it is estimated that 1,668 commercial animal facilities are in operation.<sup>19</sup> Additionally, a 2020 report indicated that approximately 64% of individuals in NSW care for at least one pet.<sup>20</sup>
12. It is the Committee's view that the underfunding of ACOs has several practical consequences for the actual and perceived effectiveness of their compliance and enforcement functions:

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<sup>11</sup> Animal Welfare League, *Annual Report 2019-2020* (Report, 2020) 6 <[https://www.awlnsw.com.au/wp-content/uploads/2021/01/AWL\\_NSW\\_AnnualReport20\\_28pp\\_soft.pdf](https://www.awlnsw.com.au/wp-content/uploads/2021/01/AWL_NSW_AnnualReport20_28pp_soft.pdf)>.

<sup>12</sup> *Ibid* 7.

<sup>13</sup> *Ibid*.

<sup>14</sup> RSPCA NSW, *Financial Report 20 June 2021* (Report, 2021) 7 <<https://www.rspcansw.org.au/wp-content/uploads/2021/10/RSPCA-2021-final-FS-27.09.21-FINAL-SIGNED-BY-BOTH.pdf>>.

<sup>15</sup> RSPCA NSW, *Annual Report: Your Year in Review 2020-2021* (Report, 2021) 6 <[https://www.rspcansw.org.au/wp-content/uploads/2021/12/RSPCA-Impact-Report-f-3-compressed\\_compressed-compressed.pdf](https://www.rspcansw.org.au/wp-content/uploads/2021/12/RSPCA-Impact-Report-f-3-compressed_compressed-compressed.pdf)>.

<sup>16</sup> See 'Annual Report', RSPCA NSW (Web Page) <<https://www.rspcansw.org.au/annual-report/#1601936271150-a05da935-8017>> for Financial Reports for years 2016 – 2019.

<sup>17</sup> RSPCA NSW (n 7) 8.

<sup>18</sup> 'Livestock', Department of Primary Industries (Web Page) <<https://www.dpi.nsw.gov.au/about-us/publications/pdi/2020/livestock-overview>>.

<sup>19</sup> 'Facilities: State NSW', Farm Transparency Project (Web Page) <<https://www.farmtransparency.org/facilities.php?state=NSW&country=Australia>>.

<sup>20</sup> Roger Wilkins et al, *The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 18* (Report, 2020) 153 <[https://melbourneinstitute.unimelb.edu.au/\\_\\_data/assets/pdf\\_file/0009/3537441/HILDA-Statistical-report-2020.pdf](https://melbourneinstitute.unimelb.edu.au/__data/assets/pdf_file/0009/3537441/HILDA-Statistical-report-2020.pdf)>.

- a) To address the gap in government funding and operational costs, ACOs must seek funds from other sources (fee-for-service, bequests, corporate partnerships and donations), which is a significant divergence of its efforts and can be unreliable.
- b) Receiving funds from other sources, such as through donors or revenue generated through programs such as the 'RSPCA Approved' certification program, could create a perception or possibility of impartiality in decision-making.
- c) Support for proactive and preventative measures such as routine inspection and community education are potentially jeopardised, and the benefits of those initiatives under-utilised, because the overall ACO operation is not adequately and consistently funded.
- d) Scarcity of resources can make systemic, complex, or difficult cases less feasible to pursue when compared with other matters that are more straightforward.

13. The Committee therefore submits that when creating an independent body for animal protection, that it will be crucial to consider the appropriateness of funding to ensure that the aims of transparency and independence are achieved, as well as to ensure the efficacy of that body.

### **Submission 3: There ought to be an increase in cross-body information sharing between approved charitable organisations, police and law enforcement, and the IBAP, orchestrated by the IBAP as overseer of those processes**

14. The operations and effectiveness of branches of the RSPCA have been the subject of recent inquiries in both Western Australia (2016)<sup>21</sup> and Victoria (2017).<sup>22</sup> Victoria's inquiry found that the Victorian Government and RSPCA Victoria needed to "provide more transparency, information and detail" regarding the powers of RSPCA Victoria inspectors.<sup>23</sup>

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<sup>21</sup> Select Committee into the operations of The Royal Society for The Prevention of Cruelty to Animals Western Australia (Inc), *Report of the Select Committee into the RSPCA* (Report, May 2016) <[https://parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/86FCFAE46BAA08E148257FB8000D7205/\\$file/ra.rpa.160519.rpf.001.committee+report.pdf](https://parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/86FCFAE46BAA08E148257FB8000D7205/$file/ra.rpa.160519.rpf.001.committee+report.pdf)>.

<sup>22</sup> Economy and Infrastructure Committee, *Inquiry into the RSPCA Victoria* (Report, August 2017) <[https://www.parliament.vic.gov.au/images/stories/committees/SCEI/RSPCA/EIC\\_58-10\\_Text\\_WEB.pdf](https://www.parliament.vic.gov.au/images/stories/committees/SCEI/RSPCA/EIC_58-10_Text_WEB.pdf)>.

<sup>23</sup> Ibid 19.

15. It is plausible that if an inquiry of a similar nature were conducted in NSW, that a finding of a similar nature could be reached. Implementing an IBAP and a process conducive to information sharing across bodies would, in the Committee's submission, address this common finding with respect to transparency.
16. Successful cross-body information sharing is already happening to an extent in NSW. An example of this can be seen in the NSW Government's Puppy Factory Taskforce operating through collaboration between the RSPCA and the NSW Police.<sup>24</sup> Increased funding<sup>25</sup> and more effective utilisation of resources have contributed to the success seen thus far. If an IBAP was to be established, cross-body information sharing could be facilitated more broadly across a more robust and organised NSW animal welfare system.
17. NSW Police are training a range of officers – including detectives and prosecutors – to assist in their response and enhance their capability.<sup>26</sup> Despite their training, NSW Police acknowledges that they lack the knowledge to investigate themselves, thus demonstrating the system's reliance on ACOs for enforcement of animal welfare legislation in NSW and the criticality for independent oversight in the sharing of information.<sup>27</sup>

## **Submission 4: The IBAP should have an education function along with its enforcement function to improve rehabilitation and reduce recidivism**

18. The Committee submits that the IBAP, if and when established, should have an education function along with its enforcement function to improve rehabilitation and reduce recidivism amongst persons who have breached animal welfare laws. This should include that the IBAP:
  - a) facilitate the improvement and expansion of the role of 'Stock Welfare Panels' to prioritise animal welfare;

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<sup>24</sup> NSW Government, 'Statewide Crackdown on Illegal Puppy Factories', *NSW Government* (Web Page, 23 Oct 2020) <https://www.nsw.gov.au/news/statewide-crackdown-on-illegal-puppy-factories>; Department of Primary Industries, 'Crackdown Begins: Puppy Factory Taskforce Launches First Raids' (Media Release, 12 Nov 2020) <<https://www.dpi.nsw.gov.au/about-us/media-centre/releases/2020/ministerial/crackdown-begins-puppy-factory-taskforce-launches-first-raids>>.

<sup>25</sup> Animal Welfare League (n 2), 5.

<sup>26</sup> Select Committee on Animal Cruelty Laws in New South Wales, *Animal cruelty laws in New South Wales* (Report, June 2020), 25 [2.98] – [2.99].

<sup>27</sup> *Ibid*, 20 [2.66].

- b) prioritise education and rehabilitation in all cases and stages of case management; and
- c) in line with Victoria, benefit from a legislative mechanism by which the judiciary can impose conditions on animal ownership/control for persons found not guilty of animal cruelty due to mental impairment.

## Current education programs

19. Currently, when an animal welfare issue arises, the RSPCA, DPI and Local Land Services Veterinarians will attempt to work with the animal owners/handlers to improve animal welfare conditions. If this approach fails, a 'Stock Welfare Panel' may be used, being structured panels which provide an opportunity to educate and assist people in charge of "stock" animals, so that prosecution can be avoided. According to the RSPCA, Stock Welfare Panels have facilitated better animal welfare outcomes for more than 28,000 animals since 2012.<sup>28</sup>
20. Whilst Stock Welfare Panels are a valuable initiative, they have some limitations, some of which have been raised in previous submissions made by the Committee.<sup>29</sup> Firstly, the current definition of 'depastured' animals excludes a large number of animals, such as those used in intensive agricultural practices. Secondly, the panels currently require one inspector, at least one currently employed DPI department member and at least one Local Land Services representative both with expertise in animal welfare or livestock management.<sup>30</sup> As highlighted in the Committee's previous submissions, whilst expertise in livestock management is important when considering commercial aspects, it may not be sufficient to appropriately address animal *welfare* concerns. Instead, panel members should, in the Committee's view, display a background more rooted in animal care and welfare, including veterinary training.
21. Even if these issues are addressed as a result of this Inquiry, Stock Welfare Panels are only positioned to assist certain people and cases. This does not include cases related to mental health issues and following individuals following prosecution. In the Committee's submission, this shortcoming could be remedied by a broadening of the scope of matters to which Stock Welfare Panels (or a similar initiative that moves the focus away from "stock" animal alone and towards a wider array of animals) can contribute, along with an increased emphasis on animal welfare amongst their members.

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<sup>28</sup> RSPCA NSW, 'Your Year in Review 2019-2020' <<https://www.rspcansw.org.au/wp-content/uploads/2020/10/1920-AR.pdf>>.

<sup>29</sup> NSW Young Lawyers Animal Law Committee, Submission to Department of Primary Industries, *Submission on the NSW Animal Welfare Law Reform Discussion Paper* (16 September 2021).

<sup>30</sup> POCTAA s 24T.

## Recidivism and education/rehabilitation

22. Whilst there are limited in-depth reports examining animal cruelty (and related offences) recidivism in NSW, there has been an increasing body of research demonstrating the relationship between education/rehabilitation and recidivism. It suggests that criminal prosecution may not always be the most effective method to reduce reoffending. In particular, where animal welfare knowledge is low, education and rehabilitation are vital.
23. The Committee submits that in cases of deliberate animal cruelty, rehabilitation should be prioritised. A recent Victorian Sentencing Report found that individuals convicted of deliberate animal cruelty had higher rates of recidivism than other animal cruelty offenders and the general rate of recidivism.<sup>31</sup> Also, in response to South Australia's 2008 increase in animal cruelty penalties, some researchers have questioned whether increased penalties alone tackle the root of the problem.<sup>32</sup> They highlight evidence that targeted education programs and rehabilitative measures, such as counselling and non-violent conflict resolution training, may be more effective at deterring future offenders.<sup>33</sup>
24. These changes are particularly important as court orders and prohibitions with respect to animal welfare offences may not be recognised in every Australian state due to the lack of cross-jurisdictional recognition. Education and rehabilitation by contrast may assist individuals even if they later move interstate.
25. The Committee further submits that in the case of reckless/negligent animal cruelty, education should be prioritised in the sentencing process. For example, under the Victorian "control orders", one farmer was ordered to undertake a sheep management course and pay for regular veterinary inspections.<sup>34</sup>
26. Mental health can also play an important role; a recent report on animal hoarding in NSW found that around 24% of offenders between 2005-2011 reoffended.<sup>35</sup> The report warned that amongst offenders

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<sup>31</sup> Paul McGorriery and Arie Freiberg, 'New report shines light on who commits animal cruelty and how they are punished', *The Conversation* (online, 18 January 2022) <<https://theconversation.com/new-report-shines-light-on-who-commits-animal-cruelty-and-how-they-are-punished-111262>>.

<sup>32</sup> Rochelle Morton, Michelle Hebart and Alexandra Whittaker, 'Increasing Maximum Penalties for Animal Welfare Offences in South Australia - Has it Caused Penal Change?' (2018) 8(12) *Animals* 236.

<sup>33</sup> *Ibid.*

<sup>34</sup> Paul McGorriery and Arie Freiberg, 'New report shines light on who commits animal cruelty and how they are punished', *The Conversation* (online, 18 January 2022) <<https://theconversation.com/new-report-shines-light-on-who-commits-animal-cruelty-and-how-they-are-punished-111262>>

<sup>35</sup> M. Joffe, et al, 'Characteristics of persons convicted for offences relating to animal hoarding in New South Wales' (2014) 92(10) *Australian Vet Journal* 369.

with associated psychological disorders, if those offenders are not handled correctly, “recidivism approaches 100% even with prosecution and removal of the animals.”<sup>36</sup>

27. In those circumstances, it may not be appropriate to simply prosecute. The Committee submits that the judiciary should still be able to assist those individuals and protect future animals from danger. In line with Victoria,<sup>37</sup> provisions should be introduced that facilitate Court-ordered conditions on animal ownership/control for persons not found guilty due to a mental impairment. This will enable individuals such as animal hoarders to receive help without a conviction.

28. Education and rehabilitation are vital to reducing recidivism as in addressing the root causes of animal cruelty. This is the case in relation to both deliberate and negligent animal cruelty. It is important that an IBAP prioritises and integrates these functions in relation to all stages of case management.

## **Submission 5: Powers and functions provided under POCTAA (and related Acts) should not be vested in any existing government bodies, in particular the DPI**

29. The Committee agrees that the powers under POCTAA should not be vested in any existing government bodies – particularly not the DPI, given that the DPI is industry-focused and there is a high risk of incompatibility between an animal industry regulator and an animal welfare regulator.

30. The DPI has a range of responsibilities and in their 2019-2023 Strategic Plan, state relevantly in relation to animal welfare, that they wish to deliver on “track[ing] community sentiment to build and maintain trust in primary industries” and a “5% increase in stakeholder satisfaction and community awareness”.<sup>38</sup> The Committee does not consider that these goals are focused on animal welfare especially when compared with the other measurable deliverables such as “29% GVP growth to achieve a Total Primary Industries Output of \$19.3 billion by 2023”.<sup>39</sup>

31. Animal welfare is usually seen as an additional cost to producers and conflicts with the DPI’s informal role as partners of the industry. The framework of the DPI blurs the line between economic goals,

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<sup>36</sup> Ibid, 9.

<sup>37</sup> *Prevention of Cruelty to Animals Act 1986* (Vic) s 12(1).

<sup>38</sup> NSW Department of Industries, ‘NSW DPI Strategic Plan 2019-2023’ (online, 2019) <<https://www.dpi.nsw.gov.au/about-us/publications/nsw-dpi-strategic-plan-2019-2023>>.

<sup>39</sup> Ibid.

which serve the industry, and regulatory goals, which serve the public interest. It is an actual or perceived risk that the DPI as the regulator will serve the interest of the regulated industry and not the broader public interest to the extent of a conflict between those interests.<sup>40</sup> This alignment allows industry to strongly influence the regulator in a manner disproportionate to those outside industry attempting to advance animal welfare goals<sup>41</sup> and is referred to as “regulatory capture”.<sup>42</sup>

32. The existing regulatory framework in Australia is the main cause of regulatory capture in animal welfare. A study of 96 Australian business regulatory agencies found that agencies were more likely to have a cooperative (non-prosecutorial) regulatory practice when they regulated:

- a) smaller numbers of client companies;
- b) a single industry rather than in diverse industries;
- c) situations where the same inspectors were in regular contact with the same client companies;  
and
- d) those where the proportion of inspectors with a background in the regulated industry was high.<sup>43</sup>

33. While these conditions foster cooperation between the regulator and the industry which may result in more efficient solutions to regulations, they are also the conditions that promote the evolution of regulatory capture and, actual or perceived corruption.<sup>44</sup> By creating a separate regulator and a tripartism model of regulation, the Committee submits that this would minimise any actual or perceived risks of corruption.<sup>45</sup>

34. When considering the broader public interest, there has been a marked shift in community standards relating to animal welfare in Australia and an expectation for higher levels of animal protection. Since 2010, several Australian animal industries have been under public scrutiny and raised suspicion from

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<sup>40</sup> Jed Goodfellow ‘Regulatory Capture and the Welfare of Farm Animals in Australia’, in D Cao and S White (ed) *Animal Law and Welfare - International Perspectives* (Springer, Switzerland, 2016) 195, 196.

<sup>41</sup> Jill Fernandes, et al. ‘Costs and Benefits of Improving Farm Animal Welfare. Agriculture’ (2021) *Agriculture* 11(2) 104, 5 <<https://doi.org/10.3390/agriculture11020104>>.

<sup>42</sup> Ian Ayres and John Braithwaite ‘Tripartism: Regulatory Capture and Empowerment’ (1991) *American Bar Association*, 437 [https://www.anu.edu.au/fellows/jbraithwaite/documents/Articles/Tripartism\\_Regulatory\\_1991.pdf](https://www.anu.edu.au/fellows/jbraithwaite/documents/Articles/Tripartism_Regulatory_1991.pdf).

<sup>43</sup> Ayers and Braithwaite, [n 64].

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

consumers and the community that animal welfare concerns by the industry are not sincere.<sup>46</sup> Following the exposé on live cattle and sheep export, the DPI responded by restricting live exports and supporting penalties for directors of export companies,<sup>47</sup> however, in the immediate wake of the report, the Minister for Agriculture opposed any proposal to ban live export as it would “punish farmers”.<sup>48</sup>

35. In response to a Bill proposing that crustaceans and cephalopods be considered animals under POCTAA, the then Minister for Agriculture and Western NSW, Mr Adam Marshall in a 2021 DPI press release states that he “couldn’t imagine a single one of our fishers wanting to inflict unnecessary harm on any being, but with NSW home to the strongest suite of animal cruelty penalties, I know these act as a deterrent to any member of the public who considers doing this.”<sup>49</sup> This exemplifies how the DPI’s policy relies on criminal prosecution of individuals, as opposed to strengthening industry-wide standards, and a tendency to address animal welfare by making an example of ‘bad apples’, which for reasons discussed above, the Committee submits is unlikely to be sufficient in improving animal welfare overall. Instead, the Committee submits that the DPI should focus on being proactive and consider changes to key industry-wide practices with the assistance of animal welfare protection groups, academics, scientists, and community stakeholders.
36. The Committee notes it is not acceptable in the context of the aims of POCTAA to frame animal welfare in relation to industry profitability, though this is an argument which is often made to and by industry and regulators in relation to animal welfare. This is particularly as concerns about animal welfare may come from non-users of animal industry products and so would not affect an industry’s profitability.<sup>50</sup> While many industry stakeholders may care about animal welfare, few would argue that the goal of commercial agriculture or animal racing is animal welfare.<sup>51</sup> It is therefore essential to centre animal

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<sup>46</sup> Jordan O. Hampton, Bidda Jones, and Paul D McGreevy, ‘Social License and Animal Welfare: Developments from the Past Decade in Australia’ (2020) *Animals* 10(12), 2237 [5.4] <<https://www.mdpi.com/2076-2615/10/12/2237/htm>>.

<sup>47</sup> Calla Wahlquist, ‘Live exporter charged with animal cruelty over deadly Awassi shipment’, *The Guardian* (online, 31 July 2019) <https://www.theguardian.com/australia-news/2019/jul/31/live-exporter-charged-with-sheep-cruelty-over-deadly-awassi-shipment>.

<sup>48</sup> Paul Karp and Calla Wahlquist, ‘Bill Shorten calls for suspension of live sheep exports’ *The Guardian* (online, 19 April 2018) <<https://www.theguardian.com/australia-news/2018/apr/19/bill-shorten-calls-for-suspension-of-live-sheep-exports>>.

<sup>49</sup> Minister for Agriculture and Western NSW, ‘Government fights for fishing rights’ (Media Release, Department of Primary Industries, 21 November 2021) <<https://www.dpi.nsw.gov.au/about-us/media-centre/releases/2021/ministerial/government-fights-for-fishing-rights>>.

<sup>50</sup> Dr Sarah Chaplin ‘Where Animal Welfare Meets Profit’ (2018) 13(01) *Contemporary Issues in Rural Australia*, Occasional Paper Series <<https://marcusoldham.vic.edu.au/wp-content/uploads/2018/03/201301MOC-CSA-Where-Animal-Welfare-Meets-Profit-by-Sarah-Chaplin.pdf>>.

<sup>51</sup> Jason Lusk, ‘Are Animal Welfare and Profits Well Aligned?’ *Jason Lusk: Food and Agricultural Economist* (Blog, 23 April 2018) <<http://jaysonlusk.com/blog/2018/4/23/are-animal-welfare-and-profits-well-aligned>>.

welfare as a primary aim of any enforcement body, and not a secondary byproduct of industry growth or productivity.

## 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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