

# Submission on the Review of Philanthropy

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## The NSW Young Lawyers Animal Law Sub-Committee (**Sub-Committee**) makes the following submission on the Review of Philanthropy

### **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 sub-committees, each dedicated to particular areas of practice. Eligibility 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 Sub-Committee comprises a group interested in laws regulating the treatment of animals. The Sub-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 Sub-Committee members is a passion and desire to use their legal skills and the law to improve protections for animals.

The Sub-Committee welcomes the opportunity to make a submission on this review, and makes comments on Terms of Reference 2.ii, 2.iii, 3.i, 5 and 6.

## Summary of Recommendations

The Sub-Committee submits that:

1. Deductible Gift Recipient status should expand to all animal charities, including animal charities that advocate for the interests of animals or prevent animals from being harmed in the first place.
2. A suggestion for amending the relevant wording of the *Income Tax Assessment Act 1997* (Cth) is as follows: "An institution whose principal activity is one or more of the following:
  - (a) providing short-term direct care to animals (but not only native wildlife) that have been lost or mistreated or are without owners;
  - (b) rehabilitating orphaned, sick or injured animals (but not only native wildlife) that have been lost or mistreated or are without owners;
  - (c) conducting advocacy, research, campaigning or other activities aimed at the prevention of cruelty to animals (but not only native wildlife), including educating the public on animal welfare and promoting responsible animal ownership."
3. While a less preferable alternative, the definition of a PBI could also be expanded to include animal charities.
4. It is the responsibility of the legislature to ensure that animal welfare organisations can operate effectively and receive the support they need to do their important work.
5. The NSW government and the people of NSW recognise the importance of and are committed to promoting animal welfare.

## Animal charities

1. Animal charities play an important role in protecting the welfare and rights of animals, but their ability to do so is limited by the current Australian legal framework. This submission by the NSW Young Lawyers Animal Law Sub-Committee (the Sub-Committee) highlights the legal issues that make it difficult for animal charities to receive Deductible Gift Recipient (DGR) status and suggests ways to improve the framework.

## The importance of DGR status for animal charities

2. DGR status is crucial in enabling animal charities to conduct their work more effectively by raising more funds and being able to employ talented staff more easily. Without DGR status, animal charities are at a significant disadvantage compared to charities that have DGR status.

## Categorisation under the *Income Tax Assessment Act*

3. There are many animal organisations which are classified as charities under the *Charities Act 2013* (Cth). However, under item 4.1.6 of section 30.45 of the *Income Tax Assessment Act 1997* (Cth) (*Tax Act*) animal charities can only receive DGR status if they provide short-term direct care to animals or rehabilitate orphaned, sick or injured animals.
4. In practice, this means that impactful charities like Animals Australia Federation (ABN 65 016 845 767), which, among other valuable endeavours, campaigns against greyhound racing,<sup>1</sup> cannot receive the benefit of DGR status, while a charity which rehomes injured greyhounds which are victims of the racing industry (such as Greyhound Rescue Incorporated (ABN 89 282 387 425)) can receive that benefit. In addition, organisations such as Edgar’s Mission (ABN 75 001 177 836) can receive DGR status due to their mission to look after animals who have been cruelly treated in factory farms on-site, but organisations which campaign to prevent animals from requiring this care in the first place cannot receive DGR status.
5. Important animal charities which currently do not benefit from DGR status include:
  - a. Animals Australia Federation, as discussed above, which campaigns against, investigates and exposes cruelty to animals;<sup>2</sup>

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<sup>1</sup> ‘Ban greyhound racing Australia-wide!’, *Animals Australia* (Web Page, 3 December 2021) <<https://animalsaustralia.org/latest-news/ban-greyhound-racing/>>.

<sup>2</sup> ‘Our impact’, *Animal Australia* (Web Page) <<https://animalsaustralia.org/our-impact/>>.

- b. The Animal Law Institute Ltd (ABN 65 204 071 916), an independent community legal centre which provides legal advice to clients through its Anti-Puppy Farm Legal Clinic and pursues beneficial legal change for animals;<sup>3</sup>
  - c. Australian Alliance for Animals Limited (ABN 68 654 428 690), which aims to co-ordinate Australian animal protection organisations to create an animal welfare policy framework for the benefit of animals;<sup>4</sup>
6. The narrow categorisation under the *Tax Act* excludes animal charities that advocate for the interests of animals or prevent animals from being harmed in the first place. Expanding the relevant category under the *Tax Act* would enable more efficient and effective use of donations, as in the long run, fewer animals will require care or rehabilitation.

## Case law: Sea Shepherd

7. The case of *Sea Shepherd v Commissioner of Taxation*<sup>5</sup> illustrates the limitations of the current categories of DGR eligibility for animal charities. In this case, the Court dismissed Sea Shepherd's (an anti-whaling campaign organisation) argument that preventing whales from being harmed by whalers constituted care for the whales.<sup>6</sup>
8. The Sub-Committee reiterates it is counterintuitive that only helping an animal after it has been harmed is considered a DGR-eligible charitable purpose, while preventing animals from being harmed is not.

## Public Benevolent Institution status

9. Animal charities are also excluded from being classified as Public Benevolent Institutions (PBI), which is an alternative way for a charity to attain DGR status. The Australian Charities and Not-for-

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<sup>3</sup> 'Who are we?', *The Animal Law Institute* (Web Page) <<https://www.ali.org.au/who-are-we>>.

<sup>4</sup> 'About the Alliance for Animals', *Australian Alliance for Animals* (Web Page) <<https://www.allianceforanimals.org.au/about>>.

<sup>5</sup> [2013] FCAFC 68.

<sup>6</sup> *Ibid*, [38].

profits Commission itself has said: “A PBI must assist people. An organisation that relieves the suffering of animals is not a PBI.”<sup>7</sup>

## Case law: RSPCA Queensland

10. In *Federal Commissioner of Taxation v Royal Society for the Prevention of Cruelty to Animals, Queensland Inc* the RSPCA Queensland was not considered a PBI.<sup>8</sup> The judgment of Fitzgerald P begins with “*This is entirely a technical question, the answer to which does not depend simply upon whether or not the Society makes a valuable contribution to the community.*”<sup>9</sup> The Sub-Committee agrees with this statement.

## Other avenues for DGR eligibility

11. The only avenue for an animal welfare charity which does not fall into the relevant category in the *Tax Act* is for it to be listed by name.<sup>10</sup> This is the reason the RSPCA and its state branches currently have DGR status. To defer to University of Sydney Associate Professor Celeste Black, “This is inherently a highly political process and one for which no guidelines have been provided. Each listing is decided on a case by case basis.”<sup>11</sup> There must be more expedient and clear ways for animal charities to receive the benefits of DGR status.

## Suggestions for reform

12. The current restrictions on DGR status for animal charities are overly narrow and prevent many important organisations from receiving the benefits of tax-deductible donations. The Sub-Committee submits that the categories in the *Tax Act* for DGR eligibility in relation to charities which improve animal welfare should be expanded.

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<sup>7</sup> Australian Charities and Not-for-profits Commission, ‘Commissioner’s Interpretation Statement: Public Benevolent Institutions’ (Interpretation Statement, 19 December 2016) 10 <[https://www.acnc.gov.au/sites/default/files/documents/2021-07/commissioners\\_interpretation\\_statement\\_-\\_pbis.pdf](https://www.acnc.gov.au/sites/default/files/documents/2021-07/commissioners_interpretation_statement_-_pbis.pdf)>.

<sup>8</sup> [1992] QCA 271.

<sup>9</sup> Ibid.

<sup>10</sup> Celeste M Black, ‘Tax Concessions and Animal Protection Organisations: Benefits and Barriers’ [2009] 2 Australian Animal Protection Law Journal 5, 14 <[https://www.animallaw.info/sites/default/files/australia\\_journal\\_vol2.pdf](https://www.animallaw.info/sites/default/files/australia_journal_vol2.pdf)>.

<sup>11</sup> Ibid.

13. A suggestion for amending the relevant wording of the *Tax Act* is as follows: "An institution whose principal activity is one or more of the following:
- (a) providing short-term direct care to animals (but not only native wildlife) that have been lost or mistreated or are without owners;
  - (b) rehabilitating orphaned, sick or injured animals (but not only native wildlife) that have been lost or mistreated or are without owners;
  - (c) conducting advocacy, research, campaigning or other activities aimed at the prevention of cruelty to animals (but not only native wildlife), including educating the public on animal welfare and promoting responsible animal ownership."
14. While a less preferable alternative, the definition of a PBI could also be expanded to include animal charities.
15. Given that the relevant case law is not in favour of animal charities receiving DGR or PBI status, it is the responsibility of the legislature to address this issue and ensure that animal welfare organisations can operate effectively and receive the support they need to do their important work.

## **Policy Objectives and community priorities**

16. Animal welfare is an issue of great importance in New South Wales (NSW), and the government is fully committed to ensuring the well-being of animals and preventing their suffering, in line with the expectations of the community. To achieve this, the *Animal Welfare Action Plan* was introduced to modernise the legislation and deliver an animal welfare system that reflects evolving animal welfare science and community expectations.<sup>12</sup> Its objective is to safeguard animal welfare and promote responsible animal ownership and care in NSW.<sup>13</sup>
17. Meanwhile, the objectives of the *Prevention of Cruelty to Animals Act 1979* (POCTAA) are to "prevent cruelty to animals, promote the welfare of animals by requiring a person in charge of an animal to

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<sup>12</sup> 'NSW Animal Welfare Action Plan', *Department of Primary Industries* (Web Page) <<https://www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/animal-welfare-reform/action-plan>>.

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

provide care for the animal, and to treat the animal in a humane manner, and to ensure the welfare of the animal.”<sup>14</sup>

18. To further strengthen animal welfare legislation in NSW, the *Prevention of Cruelty to Animals Amendment Act 2021* was passed to increase penalties and improve court orders for welfare offences, ensuring that those who mistreat animals are held accountable for their actions.<sup>15</sup> In addition, *Prevention of Cruelty to Animals Amendment (Prohibitions for Convicted Persons) Act 2022* will commence in 2023. This Act amends both the POCTAA and the *Exhibited Animals Protection Act 1986* with a focus on persons convicted of animal welfare or cruelty offences and interstate prohibition orders.<sup>16</sup> This amendment is crucial in preventing individuals with a history of animal cruelty from acquiring or owning animals.

19. As such, it is clear that both the government and the people of NSW recognise the importance of and are committed to promoting animal welfare.

## Statistics about community valuing animal welfare

20. A 2018 report published by consultancy firm, Futureye, for the Department of Agriculture and Water Resources, surveyed 1,521 Australians and found that 95% of respondents are concerned about animal welfare, and 91% want animal welfare reform.<sup>17</sup> The category with the highest level of concern for the survey participants was “Poor animal welfare in live export ships” (57%).<sup>18</sup> In conjunction with this, a 2022 study undertaken by the University of Adelaide, surveyed a representative sample of the Australian public and found that 50% of respondents wanted increased sentences for those found

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<sup>14</sup> ‘*Prevention of Cruelty to Animals Act 1979*’, *Department of Primary Industries* (Web Page) <[<sup>15</sup> ‘Increasing penalties and improving court orders’, \*Department of Primary Industries\* \(Web Page\) <\[>\]\(https://www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/animal-welfare-reform/increasing-penalties-and-improving-court-orders\)>.](https://www.dpi.nsw.gov.au/about-us/legislation/list/prevention-cruelty-animals#:~:text=The%20objects%20of%20this%20Act,the%20welfare%20of%20the%20animal.></a>>.</p></div><div data-bbox=)

<sup>16</sup> ‘*Prevention of Cruelty to Animals Amendment (Prohibitions for Convicted Persons) Act 2022*’, *Department of Primary Industries* (Web Page) < <https://www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/animal-welfare-reform/prevention-of-cruelty-to-animals-amendment-prohibitions-for-convicted-persons-act-2022> >.

<sup>17</sup> Futureye, *Commodity or Sentient Being? Australia’s Shifting Mindset on Farm Animal Welfare* (2018, Futureye Pty Ltd) <<https://www.sheepcentral.com/wp-content/uploads/2019/05/190129-Commodity-or-Sentient-Being-Australias-Shifting-Mindset-on-Farm-Animal-Welfare-v.-7.0.pdf>> 1.

<sup>18</sup> *Ibid.*

guilty of animal cruelty.<sup>19</sup> 80% of participants expressed that they believe that out of all people being found guilty of animal cruelty, a higher amount of them should be prosecuted.<sup>20</sup>

## **Other jurisdictions where DGR or a similar status is afforded to a wider range of animal charities**

21. In the United States, the range of charities for which donations are tax deductible appear to be broader in that they extend to (but are not limited to) "a community chest, corporation, trust, fund or foundation, organized or created in the United States or its possessions, or under the laws of the United States, any state, the District of Columbia or any possession of the United States, and organized and operated exclusively for charitable...purposes, or for the prevention of cruelty to animals" as set out in the *Internal Revenue Code* (§ 170(c)).

22. This highlights that other jurisdictions provide avenues for donors of animal welfare organisations to obtain tax deductions for their donations. We submit that Australia should follow suit by expanding DGR status to include all animal charities.

## **Concluding Comments**

NSW Young Lawyers and the Sub-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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<sup>19</sup> Morton, Hebart, Ankeny, and Whittaker, 'An investigation into "community expectations" surrounding animal welfare law enforcement in Australia' (2022) *Frontiers in Animal Science*, 1.

<sup>20</sup> *Ibid.*

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