

## **Act to Protect Animals by Reporting Animal Cruelty**

### **Frequently Asked Questions**

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1. *What is animal cruelty?*
2. *What is mandatory reporting?*
3. *What are the benefits of mandatory reporting of animal cruelty?*
4. *Are there any other consequences of applying a mandatory reporting strategy?*
5. *To whom would the mandatory reporting obligation apply?*
6. *Under what circumstances would a 'Responsible Person' be required to make a report?*
7. *What protections would be afforded to the reporting person?*
8. *How would these requirements affect attending veterinarians?*
9. *Should mandatory reporting include requirements to relinquish footage or photographs of animal abuse?*
10. *What is an appropriate time frame for reporting incidents of animal cruelty?*
11. *What information would a Responsible Person be required to report?*
12. *To what agency would the reports be made?*
13. *What legislative change is needed to implement mandatory reporting of animal cruelty?*
14. *What is the RSPCA's view of 'Ag-gag' type laws?*
15. *How does mandatory reporting relate to proposed 'Ag-gag' type laws?*
16. *What is the RSPCA's position on Senator Chris Back's proposed Private Member's Bill?*
17. *How does the RSPCA currently gather evidence of animal cruelty?*
18. *What powers do RSPCA Inspectors have?*
19. *Can the RSPCA conduct routine inspections?*
20. *What forms of evidence can the RSPCA accept?*

## 1. *What is animal cruelty?*

Animal cruelty can take many different forms. It includes overt and intentional acts of abuse or violence towards animals, and also includes animal neglect or the failure to provide for the welfare of an animal. Animal cruelty is not restricted to cases involving physical harm. Causing an animal psychological harm in the form of distress, torment or terror can also constitute animal cruelty.

As a result of there being so many possible forms of animal cruelty, state and territory animal welfare legislation does not attempt to define it in an exclusive way, rather, animal cruelty is described generally as **any act or omission that causes unnecessary or unreasonable harm to an animal**. Most animal welfare legislation provides particular examples of cruelty, such as:

- torturing or beating an animal
- confining or transporting an animal in a way that is inappropriate for its welfare
- killing an animal in an inhumane manner
- failing to provide appropriate or adequate food or water for an animal
- failing to provide appropriate treatment for disease or injury
- failing to provide appropriate living conditions.

State and territory animal welfare legislation prohibits all forms of animal cruelty and imposes obligations on all animal owners to provide for the welfare needs of their animals. **Breaching animal welfare legislation is a crime**. Serious cases can result in fines, imprisonment and bans on owning animals.

## 2. *What is mandatory reporting?*

Mandatory reporting is where key persons with responsibility for the care, protection or management of animals are required by law to report incidents of cruelty to the relevant authorities. The concept of mandatory reporting of animal cruelty is based on existing provisions in child protection legislation.

As with children, animals rely on the people responsible for their care, protection or management to protect them from cruelty. The RSPCA believes that mandatory reporting of animal cruelty should be introduced for all persons in such positions of responsibility and who, by virtue of their role, are expected to have an understanding of animal welfare legislation (these people are termed *Responsible Persons*).

## 3. *What are the benefits of mandatory reporting of animal cruelty?*

The introduction of mandatory reporting and accompanying training efforts helps those responsible for the care, protection or management of animals to develop an improved awareness of what constitutes animal cruelty and creates conditions which require *Responsible Persons* to report those cases and protect them as reporters.

Mandatory reporting acknowledges the prevalence, seriousness and often hidden nature of animal cruelty, and enables early detection of cases which otherwise may not come to the attention of relevant agencies. It helps create a culture where people are aware of their responsibilities to protect animals from cruelty and which will not tolerate serious abuse and neglect of animals.

Mandatory reporting also reinforces the moral responsibility of community members to report suspected cases of animal cruelty.

## 4. *Are there any other consequences of applying a mandatory reporting strategy?*

One obvious and direct consequence of mandatory reporting is an increase in the level of reporting of animal abuse. A number of measures need to be taken to ensure that those responsible for both reporting and responding to reports are adequately prepared and resourced:

- *Responsible Persons* need to receive training and accurate information to ensure they know what cases they have to report, and what they should not report.
- Public education is needed to ensure the community is made aware of the extent of their responsibility to report animal abuse.
- Regulatory agencies need to be adequately resourced to respond to an increased level of reporting of animal abuse.

### **5. To whom would the mandatory reporting obligation apply?**

The mandatory reporting obligation would be intended to apply to all persons who:

- by virtue of their role, are expected to have an understanding of animal welfare legislation; and
- hold a position of responsibility in an organisation, the duties of which include the care, protection, handling, management of animals or other activities involving direct contact with animals or supervision of others with such duties.

Such *Responsible Persons* would include those in a management or professional role, such as veterinarians; vet nurses; livestock managers including those on farms, feedlots, shearing sheds, saleyards, ports and abattoirs; event organisers for horse shows, dog shows, agricultural shows, and rodeos; zoo managers and zookeepers; researchers; animal trainers; animal control officers.

It is not intended that mandatory reporting obligations would apply to workers who are not required to have an understanding of animal welfare legislation as part of their employment. However, such people still have a moral obligation to report suspected animal cruelty to their manager.

### **6. Under what circumstances would a 'Responsible Person' be required to make a report?**

A *Responsible Person* would have a duty to report if that person has reasonable grounds to suspect that an animal has experienced or is at risk of significant harm, and those grounds arise during the course of or from the person's work.

Significant harm to an animal would be intended to include any one or more of the following circumstances:

- the animal's basic physical or psychological needs are not being met or are at risk of not being met;
- the person responsible for the animal has not arranged and is unable or unwilling to arrange for the animal to receive necessary veterinary or other medical care;
- the animal has been, or is at risk of being, physically or psychologically abused or ill-treated.

Examples of such circumstances may include cases where an animal has been beaten, tortured or tormented; abandoned; deprived of adequate food, water, living conditions including shelter from weather extremes, or treatment for injury or disease; confined or transported in an inappropriate way; killed in an inhumane manner; or otherwise caused unnecessary harm.

### **7. What protections would be afforded to the reporting person?**

Some people are reluctant to report animal cruelty for fear of reprisals from the person they are reporting, especially if they have a personal or professional relationship with the person, e.g. they are a family member, neighbour, co-worker or employer.

A *Responsible Person* who makes a report in good faith would be provided with a range of statutory protections, including:

- protection from identification by any person, other than the responsible agency, without the *Responsible Person's* consent;
- protection from being found to have breached professional etiquette or ethics, or to have departed from accepted standards of professional conduct, as a consequence of having made the report;
- immunity from liability in any civil, criminal or administrative proceeding for defamation, malicious prosecution, conspiracy or any other cause of action relating to the report;
- a prohibition on having the report, or evidence of its contents, used in evidence in any proceeding without the *Responsible Person's* consent, other than a proceeding under the relevant state or territory animal welfare law;
- protection from being compelled in any proceeding to produce the report or to disclose or give evidence as to any of its contents; and
- where the person is an employee/contractor and the report relates to their employer, protection from persecution, victimisation, disciplinary action, dismissal, or other reprisal (whistleblower protection).

A person who makes a false, misleading, or vexatious report or otherwise makes a report not in good faith would not be afforded these protections and in addition will be made liable to an offence.

### **8. How would these requirements affect attending veterinarians?**

In the case of veterinarians, concerns have been expressed that mandatory reporting requirements on veterinarians may discourage owners from seeking essential treatment for their injured animals<sup>1</sup>.

The legislation would acknowledge the unique position of veterinarians in having to balance potentially competing professional and ethical obligations with the mandatory reporting duty. In the case of a veterinarian, who in the course of providing veterinary services is presented with reasonable grounds to suspect that an animal is at risk of significant harm, the duty to report would take into account:

- the veterinarian's first priority in treating the animal's immediate injury or disease;
- any material risk of deterring a person responsible for an animal from seeking veterinary treatment in both a general and specific sense; and
- the veterinarian's obligation to prevent further harm and abuse to the animal subject of the report or any other animal.

### **9. Should mandatory reporting include requirements to relinquish footage or photographs of animal abuse?**

Mandatory reporting means that *Responsible Persons* must inform the relevant authorities of their grounds for suspecting that animal cruelty is taking place. There would be no requirement for relinquishing specific types of evidence at the time of reporting, however, all evidence available should be provided to the relevant authority as soon as possible.

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<sup>1</sup> <http://www.ava.com.au/policy/12-animal-abuse>

The RSPCA believes the focus of mandatory requirements for reporting should be on those people witnessing animal abuse or signs of abuse, not on the form in which the abuse has been documented or recorded.

Requirements for mandatory reporting must be framed to protect the animals concerned while also protecting the confidentiality and liability of the reporter.

### **10. What is an appropriate timeframe for reporting incidents of animal cruelty?**

Anyone who observes what they consider to be cruelty to an animal or animals should report this to the relevant authorities within a reasonable time.

The mandatory reporting obligation would require a *Responsible Person* who has reasonable grounds to suspect an animal is at risk of significant harm to report the grounds for that suspicion as soon as practicable after the person becomes aware of those grounds. In determining what is practicable in the circumstances, the legislation would include considerations such as:

- the nature of the risk of significant harm including the time it took to materialise;
  - *For instance* – the risk of significant harm to an animal arises immediately upon the beating of an animal, while it may take several days to arise in the case of failing to provide an animal with adequate food.
- the immediacy of any future risk to the animal subject of the report, or any other animal, posed by the person causing the initial risk of significant harm; and
- the desire to obtain evidence of the risk of serious harm including as to its repeated or systemic nature.

The RSPCA believes that requiring reporting of all incidents within a fixed time period (e.g. 24 or 48 hours as required under some US 'ag-gag' legislation) regardless of their nature could act against the objective of preventing cruelty by reducing reporting rates of actual cruelty and increasing unwarranted complaints. A fixed reporting time fails to recognise the specifics of individual circumstances and would place an unreasonable demand on those witnessing cruelty to form a judgement about the nature of what they have witnessed within that period of time.

The current statute of limitations for litigation under animal cruelty legislation is between 12 months and 2 years, depending on the jurisdiction.

### **11. What information would a 'Responsible Person' be required to report?**

The report of a Responsible Person who has reasonable grounds to suspect an animal is at risk of significant harm would be intended to include:

- a description of the animal at risk with the particulars necessary to sufficiently identify the animal
- the grounds for suspecting the animal is at risk, including the nature of the risk posed, and if known the identity of the person responsible for causing the risk
- details of the location, date, time and any other witnesses.

Responsible agencies would be intended to facilitate the reporting process by providing clear options for making such reports, including direct telephone lines, mailing addresses, and prescribed hardcopy and online forms.

### **12. To what agency would the reports be made?**

Each state and territory jurisdiction would be expected to nominate a particular agency or agencies for receiving the mandatory reports. These agencies may include state and territory RSPCA Inspectorates, state government departments responsible for the administration of animal welfare legislation including departments of primary industries and agriculture, and state police forces.

### **13. What legislative change is needed to implement mandatory reporting of animal cruelty?**

Under the Australian Constitution, animal protection is a matter of State and Territory responsibility. Accordingly, mandatory reporting of animal cruelty would be most appropriately placed within State and Territory animal protection legislation. National consistency in definitions and requirements would be desirable.

In the case that mandatory reporting for animal cruelty is proposed as a Commonwealth law, it would be most appropriately situated within the *Criminal Code Act 1995* (Cth). However, questions over the Constitutional basis of such a law would be expected.

### **14. What is the RSPCA's view of Ag-gag type laws?**

Australian consumers place great importance on transparency around the treatment of livestock. Proposing Ag-gag laws in this climate is only likely to lead to greater suspicion and distrust of livestock production practices and accentuate existing tensions between city and rural communities.

The RSPCA believes the interests of livestock industries are far better served by strategies aimed at building consumer confidence through greater community engagement and a more open and transparent operating environment than through the introduction of Ag-gag laws.

Acknowledging the need for incremental improvements, setting targets for achieving them, and keeping the community informed about progress will go a long way to building trust and ensure the long-term future of livestock production.

### **15. How does mandatory reporting relate to proposed 'Ag-gag' type laws?**

Around Australia there is a strong push from some individuals in the agricultural sector for 'Ag-Gag' type legislation. The proposals vary, but all appear to aim to restrict the capacity of individuals with concerns about animal cruelty from taking footage of agricultural animals, and some may require the immediate reporting of documentary evidence of animal mistreatment. Such laws have significant implications for the RSPCA and those taking video or photographic recordings of animals in an agricultural setting.

Plans to introduce laws relating to the taking of footage or reporting of animal cruelty (abuse or neglect) or the publication of documentary evidence of animal cruelty have been suggested in four Australian jurisdictions (NSW, SA, Victoria and Federal). The proposed laws in SA and NSW do not currently affect reporting requirements for animal cruelty (although the SA law does affect the capacity to publish footage if obtained covertly). However, from information available to date, it appears that the Federal proposal may mandate reporting of evidence of animal cruelty when it is obtained by animal activists, and may only apply to agricultural animals. Such a law would not ensure that all persons witnessing cruelty or in a position of responsibility are required to report animal cruelty when they witness it or become aware that it has taken place.

### **16. What is the RSPCA's position on Senator Chris Back's proposed private senator's bill?**

Senator Chris Back has announced that he intends to introduce a private senator's bill that will contain the following two components:

- a) An obligation upon any person who takes visual images in the belief they record malicious cruelty to report the act and supply the images to responsible authorities with a minimum of delay; and
- b) An offence for any person who intimidates, threatens or attacks a person associated with a legally operating animal enterprise, or trespasses onto or vandalises the property of anyone conducting a legally operating animal enterprise.

The RSPCA has concerns about each component of Senator Back's proposed bill.

First, a mandatory reporting obligation that only applies to those who film or photograph acts of animal cruelty fails to acknowledge that eye witness testimony is equally, if not more important as evidence. The mandatory reporting obligation should not be limited to the form in which the abuse has been documented or recorded. We believe that all persons in a position of responsibility for the care, protection and management of animals who witness, are informed about, or otherwise have reasonable grounds to suspect an animal is being abused, have a responsibility to report such grounds to responsible authorities.

Second, the proposed offence contained in the second component of the bill is superfluous as such actions already constitute criminal offences under State and Territory law. We do not believe that an extra layer of criminality should be applied to offences such as trespass or intimidation, simply because the alleged offender is acting with the intention (misguided or otherwise) of protecting animals, as opposed to some other motivation.

### **17. How does the RSPCA currently gather evidence of animal cruelty?**

As an organisation that employs Inspectors with powers to enforce animal welfare legislation, the RSPCA is often the first point of call for the public reporting incidents of cruelty. Cruelty complaints can also be received and investigated by the Police, State and Territory departments of agriculture (or equivalent), and in NSW, by the Animal Welfare League NSW. In the NT there is no RSPCA Inspectorate: cruelty complaints are dealt with by the NT Government Animal Welfare Unit or the Police.

RSPCA Inspectors investigate complaints about all kinds of animals in all kinds of situations, right across Australia. The most common complaints are failure to provide animals with appropriate food, water, shelter or veterinary treatment, or concerns relating to their living conditions. **Box 1** outlines the various stages of the reporting and investigation process.

The RSPCA is a charity that conducts enforcement activities within its limited resources.

To exercise powers in the investigation of a complaint, RSPCA Inspectors require **reasonable grounds to suspect that an animal cruelty offence has been committed**. Depending on the nature of the complaint, it may take some time before an Inspector believes they have 'reasonable grounds'. For example, cases of neglect may take several days or weeks to reach this point, whereas in cases of physical injury or abuse this may be obvious immediately.

The function of an investigation is to:

- a) protect and secure the welfare of the animal concerned
- b) advise and instruct persons with the care or charge of the animals; and
- c) investigate whether animal welfare legislation has been contravened and if so, take appropriate action.

No-one within the Inspectorate is able to reveal the details of someone who reports or witnesses animal cruelty. All contact details remain strictly confidential and are protected in accordance with the law.

### **Box 1 How the RSPCA investigates reports of animal cruelty**

1. **Case reported:** an individual contacts the RSPCA by phone, the internet or by attending one of the RSPCA's facilities.
2. **Contact details:** contact details are taken from the person making the report. These details are confidential and are not provided to the nominated person of interest.
3. **Dispatch Inspector:** the report is assessed and dispatched to an Inspector via a database and vehicle communication system as appropriate. The Inspectorate may contact the reporter for further information
4. **Attend premises:** an RSPCA Inspector will attend the nominated location. They have the power to enter the premises and inspect animals without the presence or knowledge of the occupant. They will view the animals in question and will attempt to speak to the occupant regarding the condition of the animals, their environment or the report generally.
5. **Take action:** all reports are actioned. The action taken depends on whether offences are determined under the legislation. The Inspector will do one of the following: give advice, issue instructions to rectify a matter, issue an on-the-spot-fine, or commence a prosecution (which may involve the seizure of animals). Inspectors will revisit to check if instructions have been complied with.

### **17. What powers do RSPCA Inspectors have?**

RSPCA Inspectors are appointed under state and territory animal welfare legislation. This legislation gives Inspectors a range of powers to investigate cases of animal cruelty and to enforce animal welfare law. These powers are similar in nature to those afforded to police officers. In the course of investigating animal cruelty offences, Inspectors are empowered to:

- enter property
- seize animals
- seize evidence of animal cruelty offences
- issue animal welfare directions/notices
- issue on-the-spot fines
- initiate prosecutions under animal welfare legislation.

Inspectors do not have the power to enter property unless they have a reasonable belief that an offence has taken place.

Although Inspectors are afforded these powers, in the majority of cases Inspectors will seek to resolve animal welfare issues through the provision of education and advice. Enforcement action, such as the seizure of animals and initiation of prosecutions, is reserved for serious cases of animal mistreatment.

### **18. Can RSPCA Inspectors conduct routine inspections?**

RSPCA Inspectors also conduct routine inspections of premises or locations where animals are kept for commercial purposes, for example, pet shops, breeders, shows, and intensive livestock industries. In some jurisdictions these inspections can be unannounced while in others prior notice must be given. All RSPCA Inspectors have the power to make unannounced visits where a complaint has been received and there are reasonable grounds to require an investigation.

### **19. What forms of evidence can the RSPCA accept?**

Evidence of animal cruelty is received by the RSPCA in many different forms. These range from online submissions and phone calls from individual members of the public to detailed written evidence, video and photographs. Information may be received from individual members of the public or organisations.

When the RSPCA Inspectorate receives footage of animal cruelty it is dealt with in the same manner as any other type of cruelty complaint. The first response is to examine the available evidence and where necessary instigate an investigation.

Footage or photographs can be received by the RSPCA as part of a cruelty report: our online submission forms allow such evidence to be provided at the time of reporting. Such footage will often be obtained without permission of the owner. For example, an individual may take photographic evidence of a dog in a neighbour's backyard from over the fence. Our advice to complainants is that they should not trespass on other people's property in order to obtain evidence, but if such evidence is provided we have a moral and legal responsibility to act on it.

Whether footage or photographs obtained via illegal means can be used as evidence in an animal cruelty prosecution is ultimately a matter for the court to decide. In making this determination the court will take into account a range of factors including the degree of criminality involved in obtaining the evidence and the public interest in seeing the conviction of criminal offenders.

## **Relevant links**

### ***About the RSPCA Inspectorate***

ACT <http://www.rspca-act.org.au/animal-cruelty>

Qld <http://www.rspcaqld.org.au/Home/AnimalEmergencies>

NSW <http://www.rspcansw.org.au/our-work/inspectorate>

SA <http://www.rspcasa.asn.au/about-us/inspectorateandrescue/>

TAS <http://www.rspcatas.org.au/what-we-do/inspectorate>

VIC <http://rspcavic.org/services/inspectorate/>

WA <https://www.rspcawa.asn.au/report-cruelty/item/1491-rspca-inspectors/1491-rspca-inspectors.html>

### ***Reporting cruelty***

ACT <http://www.rspca-act.org.au/animal-cruelty/report-cruelty>

NT [http://www.animalwelfare.nt.gov.au/make\\_a\\_complaint](http://www.animalwelfare.nt.gov.au/make_a_complaint)

Qld <http://www.rspcaqld.org.au/Home/AnimalEmergencies>

NSW <http://www.rspcansw.org.au/contact/report-a-cruelty-case>

SA <http://www.rspcasa.asn.au/how-to-help/report-cruelty/>

TAS <http://www.rspcatas.org.au/report-a-cruelty>

VIC <http://rspcavic.org/services/inspectorate/report-cruelty/>

WA [https://www.rspcawa.asn.au/report-cruelty.html#ff\\_form8](https://www.rspcawa.asn.au/report-cruelty.html#ff_form8)