



Animal Defenders Office
Using the law to protect animals

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The Animal Defenders Office is accredited by Community Legal Centres Australia Inc.

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Dr Warren Mundy
Attorney-General's Department
Robert Garran Offices
3-5 National Circuit
Barton ACT 2600

By email: submissions@nlapreview.com.au

Dear Dr Mundy

Thank you for the opportunity to contribute to the independent review of the National Legal Assistance Partnership (NLAP) and related matters (**the Review**).

About the Animal Defenders Office

The Animal Defenders Office (**ADO**) is a volunteer-run community legal centre (**CLC**) that specialises in legal issues involving animals. These issues arise in large part due to the fundamental role animals play in the lives of humans and especially disadvantaged and vulnerable people.

The ADO:

- provides free legal and support services to disadvantaged individuals and grass-roots community organisations with legal matters involving animals;
- works to advance the interests of those who care for animals through law reform and community education; and
- produces information to raise community awareness about responsible animal ownership and animal protection issues.

The ADO (also referred to in this submission as **the Centre**) opened its doors in 2014 and has been accredited by the National peak body for Community Legal Centres since 2017.¹ The Centre is currently run by a small group of volunteers and receives no government funding. The Centre has one full-time volunteer managing solicitor, who also teaches animal law at the University of New South Wales (from 2008 to the present), has served on a university animal ethics committee (from 2016 to the present), and is on the Board of the ACT's only wildlife rescue and rehabilitation organisation. The ADO has a small Board of Management made up of lawyers, other professionals, and retired senior public servants. The ADO services all Australian jurisdictions and carries out its national pro bono work from a single-room office in a building tenanted by community organisations in Canberra's CBD. In 2018 the ADO received a Pro Bono Service Award from the ACT Law Society, in

¹ Formerly the National Association of Community Legal Centres and currently Community Legal Centres Australia: <https://clcs.org.au/>. The ADO is also a member of CLCNSW: <https://www.clcnsw.org.au/>.

recognition of the Centre's advocacy for and on behalf of socially or economically disadvantaged people in the ACT, and its commitment to the advancement of access to justice. ADO volunteer lawyers have also come to be recognised as experts in areas of the law affecting animals and are consulted by members of Parliament and parliamentary committees at both Commonwealth and State/Territory levels.

The ADO has never received Commonwealth funding under the NLAP. In 2022 the ADO received a small one-off grant as part of the NSW Government's Social Sector Support Fund.² This grant enabled the ADO to hire a solicitor for 6 months. The ADO has not received any other funding from other Commonwealth or State and Territory government sources. The ADO's next major milestone is to secure ongoing funding to hire at least one solicitor on an ongoing basis and to ensure the long-term viability and sustainability of the pioneering legal services the Centre is providing to the community.

Types of services

The ADO provides free legal assistance and representation to clients who would not otherwise be able to access legal services. The ADO assists both individuals and not-for-profit organisations with legal issues involving animals. The ADO provides a mixed service delivery model depending on the client's needs. The services can include once-off assistance such as giving legal advice, providing information, making referrals, and preparing documents. The ADO also represents clients in Courts and Tribunals, and provides legal services by phone, via email, and in person.

The ADO's volunteer lawyers offer services to disadvantaged and other members of the community with legal problems involving animals. Its advice and representation services cover areas of civil law including contract, property, consumer, estates, discrimination, defamation, corporation, tort and criminal law. The ADO also provides advice and representation services in more specialised areas such as companion animal, anti-cruelty, biodiversity conservation, biosecurity, and surveillance devices law. The ADO's experience is that clients find the Centre, or are referred to it by other legal and government agencies, because other legal assistance services are unable to assist due to a lack of resources and/or expertise.

In terms of its reach, the largest proportion of ADO services is provided in NSW, the most populous jurisdiction in Australia, followed by the ACT then Queensland and Victoria, and then the other States and Territory.³

Animal law

Animal law is a specialised and fast-growing area of law. It is taught as a discrete subject in many universities in Australia. The ADO's Executive Director has taught animal law at the University of NSW since 2008. The Australian Law Reform Commission's journal *Reform* dedicated an entire edition to animals and the law,⁴ and several Australian textbooks have been published since at least 2009,⁵ including most recently in 2022.⁶

² <https://www.dcj.nsw.gov.au/covid-19.html>.

³ Based on ADO Annual Reports since 2020-21: <https://www.ado.org.au/ado-annual-reports>.

⁴ Australian Law Reform Commission, 'Animals', *Reform*, Issue 91, Summer 2007-08; available at: <https://www.alrc.gov.au/wp-content/uploads/2009/11/Reform-91.pdf>.

⁵ P Sankoff and S White, *Animal Law in Australasia*, Sydney: Federation Press, 2009.

⁶ E Ellis, *Australian Animal Law Context and Critique*, Sydney University Press, 2022.

However, despite the growth of animal law, the ADO is the first community legal centre on mainland Australia to focus on animal-related issues, and one of only two animal law CLCs currently in operation (the other being the Animal Law Institute in Victoria⁷).

In this submission the ADO will address selected 'key issues' from the Review.⁸

2. Legal needs

One of the difficulties in practising in a relatively new area of law and providing services to emerging communities is that there is limited information demonstrating legal need. For example, the recent 100-page publication on 'Evidence of legal need in NSW' does not contain a single mention of animals or pets.⁹

Yet ADO volunteers know there is a significant legal need for the Centre's services because the demand far exceeds the Centre's ability to meet it.

The broad social context in which the ADO operates is one of widespread concern about animal welfare and a high incidence of animal custodianship in the general population.

Studies show that up to 91% of Australians consider that animals deserve protection from harm and exploitation.¹⁰ According to Animal Medicines Australia (**AMA**)'s latest national survey, 69% of Australian households have a companion animal and 93% of Australian households have had a companion animal at some point, and there are almost 29 million pets in Australia today.¹¹ Of relevance to the Review and its priority groups¹², the AMA has found that 74% of pet owners are rural households¹³, and 64% are women.¹⁴

The benefit that companion animals provide to individuals is also starting to be formally recognised. The Australian Government 2023 report on Australia's welfare discusses these benefits including physical and mental health benefits, lowering experiences of social isolation, and positively influencing experiences for older people.¹⁵

In addition to overall numbers, research shows that animals play an increasingly important role in people's lives, with the vast majority of carers regarding their animals as members of the family, rather than being, for example, 'fun for the children' or 'ornamental'.¹⁶ This correlates with the ADO's experience that invariably, clients refer to their animal/s as members of the family.

⁷ <https://www.ali.org.au/>. The ALI specialises in consumer law claims against dog or cat breeders.

⁸ The Review p 14.

⁹ Law and Justice Foundation of New South Wales, *Evidence of legal need in NSW to support the Cameron Review implementation*, 2018.

¹⁰ P Chen, *Animal Welfare in Australia: Politics and Policy*, Sydney University Press, 2016, p 49.

¹¹ Animal Medicines Australia, *Pets in Australia: A national survey of pets and people*, 2022, p 6; https://animalmedicinesaustralia.org.au/wp-content/uploads/2022/11/AMAU008-Pet-Ownership22-Report_v1.6_WEB.pdf.

¹² The Review, section 4.4, p 18.

¹³ Ibid p 12.

¹⁴ Animal Medicines Australia, *Pets in Australia: A national survey of pets and people*, 2019, p 11; https://animalmedicinesaustralia.org.au/wp-content/uploads/2019/10/ANIM001-Pet-Survey-Report19_v1.7_WEB_high-res.pdf.

¹⁵ Australian Institute of Health and Welfare (2023) *Australia's welfare 2023 data insights*, catalogue number AUS 246, AIHW, Australian Government, p 34.

¹⁶ Animal Medicines Australia, *Pet Ownership in Australia*, 2016, <https://animalmedicinesaustralia.org.au/report/pet-ownership-in-australia-2016/>.

The higher the incidence of animal guardianship, the higher the likelihood of legal issues arising associated with animals. When the wellbeing or possession of a client's animal(s) is threatened, the ADO finds that it is the highest priority matter in the client's lives.

Relevantly for the Review, the ADO's data on the use of its legal services show that a significant proportion of the Centre's clients are individuals from disadvantaged backgrounds, often in trouble with authorities regarding their animals. The problem usually exacerbates pre-existing mental health issues. The clients can receive fines associated with the incidents which they often cannot afford to pay, contributing to the cycle of poverty, unpaid fines and potentially jail. ADO clients are often in public housing and/or in regional, rural and remote areas around the country. ADO volunteers do their best not to turn clients away, not only because of the relevant issues but also because it can be a niche area of the law, there are usually short limitation periods so time is of the essence, the client has presented having been turned away from everywhere else, and there is an animal (or animals) usually in circumstances where their welfare is compromised. The ADO's own data also shows that the Centre receives a growing number of referrals from a range of sources including legal aid offices, Tribunals, other CLCs, Indigenous health centres, and Human Rights commissions.

While 'external' research and evidence about community legal needs involving animals is virtually non-existent, the ADO's data shows that the Centre receives far more requests for information, advice and representation services than our volunteer Centre can take on.¹⁷ This demand for its services, and the fact that the ADO is the only CLC offering our services, indicate that there is a critical service gap in our areas of legal assistance across Australia.

4. Disadvantaged groups

As mentioned, a significant proportion of the ADO's clients are individuals from disadvantaged backgrounds.

For example, the ADO's data shows that in 2022, 78% of ADO cases involved a disadvantaged client.

More generally, the ADO's case history shows that people from socially disadvantaged backgrounds can have a wide range of legal needs involving animals, including:

- seizure and impoundment of companion animals (regarded as members of the family by those caring for the animal);
- ownership disputes, particularly where there is a history of family/domestic violence, alcoholism, financial hardship; or being in remote and rural areas and dealing with abandoned animals, especially horses;
- consumer law disputes—breeders selling puppies or kittens who are sick and/or have a congenital or hereditary defect, causing financial hardship to the new 'owner' through expensive veterinary treatment;
- disputes between animal foster carers and councils;

¹⁷ The ADO provides approximately 200 written advices and commences 12-15 ongoing cases every year. The number of inquiries that do not end up as an advice or case is usually approximately 150 a year. This last category includes turn-aways.

- rights of aged care residents to keep or to feed animals (eg 'communal' cats);
- neighbour disputes eg trapping and removing pet cats;
- discrimination against people with a disability and/or mental health issues and their support animals.

Women

The ADO notes the recent increase in NLAP funding for increased legal assistance for vulnerable women.¹⁸ In the ADO's experience women are overrepresented in terms of animal carers needing legal assistance. This is particularly evident in certain existing and emerging groups.

Victim survivors of domestic and family violence

Studies show that companion animals figure in domestic and family violence, as either victims (53% of women in violent relationships reported that their partner had hurt or killed one of their pets)¹⁹ or as complicating factors (35% of female pet owners delayed leaving their violent relationship because of concerns for their pet's welfare)²⁰.

The relevance of animals to the issue of domestic and family violence usually experienced by women has been accepted by Governments and Parliaments through law reform. For example, in 2020 the NSW Parliament passed the *Stronger Communities Legislation Amendment (Domestic Violence) Act 2020* (NSW) which amended NSW laws in relation to domestic violence matters involving animals. The Amendment Act extended the meaning of 'intimidation' as defined in the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (**CPDV Act**) to include harm to an animal in particular circumstances, and to clarify that the mandatory prohibition imposed by an apprehended violence order under the CPDV Act relating to destroying or damaging property of a protected person, extends to the harming of an animal.²¹

The prevalence of companion animal issues in family violence demonstrates the need for experts in animal law to assist these vulnerable individuals, for example to regain custody of stolen pets (often a means adopted by perpetrators to inflict emotional pain on victims), help bring charges of animal cruelty against offenders, and to provide expertise in policy development.

Wildlife carers

It is estimated that there are approximately 20,000 volunteers who rescue, rehabilitate and release injured and/or orphaned Australian wildlife.²² A recent study attempted to address the chronic knowledge gap about the physical, financial and emotional effects of their activities on the individual carers.²³ 85.6% of carers in the study were female and the 'highest proportion of female participants was in the 46–60 age group and the highest proportion of males were over 60 years of age.' This shows that women and older persons feature significantly in this emerging community. The study reveals that the community feels

¹⁸ The Review, p 18.

¹⁹ *Journal of interpersonal violence*, 23(9), 2008.

²⁰ *Domestic Violence Clearinghouse Newsletter* 10:4-7, 2002.

²¹ <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3815>.

²² B Englefield et al, 'The Demography and Practice of Australians Caring for Native Wildlife and the Psychological, Physical and Financial Effects of Rescue, Rehabilitation and Release of Wildlife on the Welfare of Carers', *Animals* 2019, 9(12), 1127; <https://doi.org/10.3390/ani9121127>.

²³ *Ibid.*

neglected by government agencies to the point where their welfare is at risk of being compromised. In the ADO's experience the number of individuals from this emerging community seeking legal assistance continues to grow. Issues can include entry and seizure powers of enforcement officers, governance issues, animal welfare issues, and whistle-blower concerns.

Assistance animals

Another emerging community needing legal assistance is the growing number of people with disabilities wishing to use assistance animals in Australia. The Australian Human Rights Commission recently reported a 40% increase in complaints about discrimination against people with disabilities who use assistance animals.²⁴

Whistle-blowers

Other growing and emerging client groups include animal-cruelty whistleblowers needing advice about public disclosure and defamation laws, and young animal advocates requiring advice about, and representation in, police matters.

Grassroots animal rescue organisations

The ADO's data indicates another growing community with discrete legal needs is animal rescue and protection groups. These grassroots organisations provide a service that is highly valued by society, ie rescuing, rehabilitating, rehoming and advocating for injured, abandoned, orphaned and abused animals. They have a range of unmet legal needs due to the organisations' scarce financial and human resources, and which hinder or prevent them from carrying out their core business. The ADO's data indicates that the top legal problems for these charities include: regularising their corporate structure; obtaining deductible gift recipient status; drafting contracts and forms for receiving/rehoming/fostering abandoned/surrendered animals; licences and permits; dealing with council pounds; biodiversity and biosecurity issues in relation to keeping certain types of animals; and estate matters involving bequests to the charities.

Aboriginal and Torres Strait Islander peoples

Research suggests animal guardianship amongst people who identify as Aboriginal and/or Torres Strait Islander is high.²⁵

The ADO has provided a range of services to Indigenous clients, including by representing them in Tribunal matters that challenge decisions by government authorities regarding their animals.²⁶ As an indication of the legal need for the ADO's services, Indigenous clients have been referred to the ADO by local indigenous health centres and Aboriginal Human Rights programs. Not being able to access legal assistance regarding their animals would exacerbate the disproportionate disadvantage affecting Indigenous people across the justice system as a whole, including difficulties in accessing legal assistance.²⁷

²⁴ <https://humanrights.gov.au/our-work/disability-rights/projects/assistance-animals-and-disability-discrimination-act-1992-cth#Number%20of%20complaints>.

²⁵ Animal Medicines Australia, *Pets in Australia: A national survey of pets and people*, 2022, p 12.

²⁶ See for example *Oliver v Registrar, Domestic Animals Act 2000* (Appeal) [2021] ACAT 93, <https://www.acat.act.gov.au/decisions/oliver-v-registrar,-domestic-animals-act-2000>.

²⁷ The Review p 9.

Intersectionality

Most if not all ADO clients consider their animal/s as members of the family. This is significant because the ADO has observed that persons experiencing multiple forms of disadvantage (eg mental illness, low education, financial hardship, homelessness, isolation relating to age, family violence) are particularly traumatised when they experience a legal problem involving a companion or other animal. Having an animal seized by authorities or being issued with an animal destruction notice or becoming involved in an ownership dispute can have a devastating effect on the person's already fragile mental stability. It becomes the most important issue in their lives, overshadowing or exacerbating other legal, social and health problems they may have (housing, fines, personal violence, police matters, mental illness).

A significant barrier faced by these client groups is a lack of available services. The ADO regularly receives calls from distraught clients around the country who could not find anyone else to deal with their problem because it involved an animal. This lack of access to justice further exacerbates the client's already considerable distress associated with their situation.

ADO services to disadvantaged communities

The ADO provides unfunded pro-bono services to the above disadvantaged communities. The clients require assistance in determining their legal options and/or with their Court or Tribunal matters that are already underway. The ADO provides assistance by advising clients on the strength of their case which can lead to discontinuing Court or Tribunal applications if appropriate and in the interests of efficient and just Court/Tribunal processes. This benefits the client as well as the Courts and Tribunals. The ADO also provides representation services to disadvantaged clients who would otherwise self-represent.

As a funded centre the ADO would continue to ensure alternative dispute resolution options are pursued when providing representation services. Often government entities resist going to mediation or preliminary conference, but the ADO has successfully diverted many cases to alternative dispute resolution with positive outcomes for clients and their animals. Again, this contributes to the efficiency of Courts and Tribunals, and it is in the best interests of clients if they can secure a positive outcome without having to attend a full hearing.

5. Regional, rural and remote

The ADO's data suggests that a substantial proportion of ADO clients are people residing in rural or remote areas. This aligns with the projected high proportion of animal guardianship by people in regional and remote areas.²⁸ Conflicts with neighbours and local councils about animals, and high rates of perceived animal neglect together with very limited access to animal welfare organisations or enforcement agencies are often the reasons why people in these areas seek assistance from the ADO.

As an efficient small team already operating as a digital and paperless office, the ADO is well placed to provide diversified and remote services and alternative sources of advice and assistance to people in rural or remote or isolated communities in Australia, with 'reduced conflict of interest concerns'.²⁹

²⁸ Animal Medicines Australia, *Pets in Australia: A national survey of pets and people*, 2022, p 12.

²⁹ The Review, pp 19-20.

6. Funding models

The ADO is currently run entirely by volunteer legal practitioners, graduates, and student interns. Other volunteers provide pro bono administrative and other services such as IT and graphic design.

Funding for at least one solicitor would provide a far more sustainable and viable foundation for the ADO into the future.

The ADO's funding needs would be directed towards employing one 2-3 PAE solicitor. The majority of services would be legal advice services delivered over the phone, by email, or by other modes of electronic communication, and representation where appropriate. This is based on our Centre's experience and on appropriate service delivery methods for priority client groups.³⁰

With a funded solicitor, the ADO would use its subject-matter expertise to help disadvantaged people deal with the complex regulatory frameworks surrounding animals via advice, representation, information and CLE services. For example, the complex laws applying to domestic animals often apply harshly to the most vulnerable in society. Their animals are often part of their family, and can be the only family they have. With one funded community solicitor the ADO would find solutions to reunite carers and animals, and ensure carers know how to comply with the law affecting their animals. Once reunited with their animals, these individuals are better able to reintegrate with society as they suffer from less anxiety with their animal(s).

10. Advocacy

The ADO has a strong focus on the systemic prevention of injustices to disadvantaged and vulnerable members of our community, especially those experiencing legal problems involving animals. For this reason the ADO contributes to law reform debates and projects, and this would continue and develop under a funded service. For example, since 2020 ADO volunteers have made over 40 written submissions to government and parliamentary law reform inquiries on matters of social justice law reform, and published several guidelines to major reforms to assist members of the public to write their own submissions.³¹

As a result of its submissions ADO volunteer lawyers are now regularly invited to give evidence at the public hearings associated with the inquiries, and the Centre's evidence and written submissions are relied on and cited in the inquiry reports.

These services would build on and consolidate the ADO's program of community outreach and education on animal-law related matters.³² The Centre regards this as an important strategy for preventing legal problems arising and escalating, and for advancing access to justice. The strategy would achieve these objectives by raising awareness of legal obligations and responsibilities, as well as options and remedies for assistance.

³⁰ Law and Justice Foundation of New South Wales, *Evidence of legal need in NSW to support the Cameron Review implementation*, 2018.

³¹ <https://www.ado.org.au/submissions>.

³² <https://www.ado.org.au/outreach>.

15. Opportunities

The best evidence the ADO has to demonstrate how the Centre would address the critical service gap it aims to fill is its caseload. While it is understood that the Review does not require case studies, this case study is offered only because of the niche and relatively new nature of the ADO's services.

One of the ADO's longest-standing clients is an Indigenous Elder. This person's traumatic past includes being a member of the Stolen Generation and participating in the Royal Commission into Child Sexual Abuse, having an acquired brain injury, and being in and out of the criminal justice system. The one thing in life keeping this person going was their companion dog, who ended up being impounded. The individual was already engaged with numerous support services, but the services did not have expertise in dealing with the complex regulatory framework surrounding seized dogs. However, they found the ADO and its volunteer lawyers provided pro bono assistance to the client. ADO volunteer lawyers advocated on the client's behalf to government authorities and represented them in Tribunal hearings about the dog over several years. Ultimately the government authority refused to set aside its decision, and the client lost their battle to save the dog. ADO volunteers helped the client during the traumatic process of surrendering the dog for 'destruction'. ADO volunteers coordinated the retrieval of the dog's remains, which the client asked the ADO to mind while they grieved the loss of their best friend. The client visits the ADO to this day to pay their respects to their deceased companion. The ADO has also helped the client with their current pet dog to ensure compliance with regulatory requirements including registration, microchipping, desexing, vaccinations, and assistance-animal training. This is the ADO's way of ensuring that this highly vulnerable client's multiple legal needs regarding their pet are addressed. It also ensures that the client does not have to repeat the traumatic experience of what they went through with their previous companion. Finally, it helps to rebuild the client's confidence as a responsible dog owner, to overcome their distrust in government and other regulatory bodies, and to help nurture a close and rewarding relationship with their support animal, while at the same time reducing any risks to public safety from dogs who are not adequately cared for or controlled.

This case study demonstrates the range of services the ADO would continue to provide to socially, economically and culturally disadvantaged clients throughout Australia if adequately funded. The ADO would also augment its funded services with volunteer and PLT opportunities for law students, graduates and practitioners. The Centre would continue to offer pro bono legal work at night and on weekends, which ADO volunteers do because they are passionate about using their skills and abilities as lawyers to help those in need—and often those most in need in our community are those who care for animals.

Thank you for taking these submissions into consideration. The submissions were prepared with the assistance of Oliver Blythe and Toni Narciso, volunteer Legal Interns, ADO.

Yours sincerely

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