

20th May 2024

PORTFOLIO COMMITTEE NO. 4 – REGIONAL NSW
E: PortfolioCommittee4@parliament.nsw.gov.au

**2023 INQUIRY INTO THE OPERATION OF THE CHARITABLE ORGANISATIONS UNDER THE PREVENTION OF CRUELTY
TO ANIMALS ACT 1979**

HEARING – Friday, 26 April 2024

SUPPLEMENTARY QUESTIONS

Animal Care Australia would like to thank the Committee for the opportunity to provide additional information via the below four Supplementary Questions.

- 1. In evidence, you said you have to sit in a room with the inspector you are complaining about the CEO. Can you identify a specific example where that occurred?**

Firstly, the question as stated above is confusing as it implies that Michael Donnelly is stating an Inspector would be present in order to hear a complaint against the CEO. This is not correct.

We acknowledge this question likely meant to say ‘.. with the inspector you are complaining about **with** the CEO.’

Please refer to Appendix 1 for an outline of a specific scenario where this occurred.

- 2. Can you please provide the advice from DPI and legal about lifetime bans for PIN offences?**

Please refer to Appendix 2 for the explanation provided by Mr Sam Davis – ACA Vice President.

- 3. Can you please provide details about the structure for an independent office as envisaged by ACA?**

Please refer to Appendix 3 for an outline of Animal Care Australia’s proposed Animal Welfare Commission.

We are currently in the process of drafting, and having a more detailed proposal including the proposed Bill to introduce the Commission, evaluated and finalised. Until that can be completed, the attached outline is all Animal Care Australia is able to provide at this time.

We also feel it would be inappropriate to provide the finalised proposal without first presenting to and consulting with the current government.

- 4. What evidence do you have that NSW Police declared there was no concern with the Great Dane example?**

Please refer to Appendix 4 for this evidence. Animal Care Australia notes the Committee had already been provided with this evidence in a submission from the owners of the Great Dane to this Inquiry and we query the purpose for this request.

We note the informant was the RSPCA and despite the NSW Police stating the dog was well, the informant (RSPCA) disregarded the advice and would send their officers to attend after the weekend.

Please do not hesitate to make contact if we can assist further.

Kind regards,

Michael Donnelly
President

Appendix 1:

Animal Care Australia has been requested to keep identifying details of this scenario protected due to the very real fear of retribution should anyone within the RSPCA recognise or remember the individual circumstances.

Animal Care Australia has redacted details and where possible has placed an explanation for the words redacted. For the purpose of explaining the scenario. Animal Care Australia has transcribed the scenario described to us via telephone conversation. It should be noted that Animal Care Australia knows this individual, and has no reason to doubt the account of the incident below.

The individual (we will call 'Jane') had made a complaint about an inspector to the CEO about bullying during a raid of Jane's property. The inspector's behaviour distressed individuals witnessing the raid after they were threatened with prosecution if they did not cooperate with the inspector.

A written complaint was made to the CEO, as Jane felt the Inspector's behaviour was unprofessional and an abuse of power. Jane would not let them ignore it – she followed up for a response and did not want to just leave it be.

Jane was later invited by the CEO to have a meeting at Yagoona. Her husband accompanied her to the RSPCA offices. They expected to meet with the CEO.

In the meeting room Jane was introduced to the CEO, the Chief Inspector and the inspector that the complaints were being made against. Jane and her husband were not expecting the person they were complaining about to be present given the veracity of the complaints. In fact they were not informed the Chief Inspector would be in attendance.

As the confrontation unfolded, Jane was asked to repeat her complaint verbally in front of the inspector. She was upset and felt bullied and felt no option but to continue. The inspector then denied all allegations, and her version of the events was accepted with a resulting statement that the matter was now closed and that would be the end of the complaint. Despite attempting to complain about the process she was immediately shut down. They both were feeling extremely intimidated and did not argue further. They did not see the point.

Jane was then instructed to provide RSPCA with personal documentation and paperwork, such as her resume, business documentation and qualifications (animal and non-animal related) and when she queried why they would need this and how it was relevant, they turned on her, threatened herself and her staff with prosecution if she didn't comply. Jane and her husband felt trapped, bullied, vulnerable and threatened. They believed the lives of their animals were at risk.

She described the meeting to her lawyer later and he told her not to provide any of the requested information.

Jane then wrote a complaint to the Minister (at the time) who responded that she needed to address any complaints directly with the RSPCA. She then contacted other ministers – and met with [REDACTED] (a sitting MLC at the time). She explained the circumstances and left the meeting having been informed that because she worked with animals professionally, he believed she deserved whatever poor treatment from RSPCA that she got.

This scenario was not the first time that Jane felt the RSPCA was abusive and over-stepping their powers. She felt bullied during every interaction with the organisation's vets, inspectors, and

management. The staff on the phone appeared helpful until they knew why she was calling and would then rudely terminate the interaction.

Jane's case is not the only case of abuse of power or bullying and intimidation. Many of the respondents to the online survey conducted by Animal Care Australia provided scenarios of similar situations. The inspector is always 'right' despite complaints or even situations where the veterinary instructions by an inspector have been contradicted by their own veterinary advice and when they have questioned that - threats from the RSPCA only increase. 'Do as you are told by us, or we'll seize your animals' is often the go to threat.

Animal Care Australia is also aware of circumstances where 'victims' have verbalised their treatment on social media only to receive communications threatening prosecution if they do not remove their comments.

At one point in time others have questioned the potential conflict of interest of inspectors and even the then CEO who just happened to also have been the lawyer representing the RSPCA during prosecutions. All were contacted with a demand to cease and desist.

This is extremely hypocritical when the RSPCA has the full and unchallengeable power to release public statements about their cases – often making it very clear who they are referring to – with no recourse by those individuals.

It is clear to us that there is one rule for the public and carte blanche for the RSPCA.

10/05/2024

RE: Automatic Ban Issues

Following is in response to Emma Hurst MLC question (p16,17 of the transcript) at the *2023 Inquiry Into The Operation Of The Approved Charitable Organisations Under The Prevention Of Cruelty To Animals Act 1979* at Macquarie Room, Parliament House, Sydney on Friday 26 April 2024

1. This matter affects anyone convicted of any animal cruelty offence after 1 January 2023, no matter its severity, such that they are banned from breeding or involvement in breeding or related activities. Exhibitor licences will be revoked if anyone involved in the animal display establishment enterprise has ever been convicted of any animal cruelty offence.
2. Animal Care Australia (ACA) opposed and continues to oppose the Amending Act. Our complete submission discusses the original bill and is on our website https://www.animalcareaustralia.org.au/wp-content/uploads/2022/10/NSW_Prohibition-for-convicted-persons-bill.pdf
3. We understood the amendments would encourage bans to be imposed by the courts, whilst allowing the courts to use their discretion. This is not what was passed by parliament, and Hansard evidence during the Second Reading Debate on 9 November 2022 indicates what was passed was not the intent of a range of members in the legislative council.
4. ACA opposes blanket automatic bans such as those now in force via Section 31AD of the NSW *Prevention of Cruelty to Animals Act 1979* (POCTAA) and Section 30(1A) of the NSW *Exhibited Animals Protection Act 1986* (EAPA).
5. As a result of the Amending Act, the definition of an animal cruelty offence was altered to include offences within the regulations (Section 4 POCTAA). This single change has a range of perverse and far-reaching effects that we believe were not the intent of parliament.
6. Clause 26 of the *Prevention of Cruelty to Animals Regulation 2012* (POCTAA Regulations) essentially makes it an offence under the regulations to fail to comply with a relevant Code of Practice or of the relevant Standards.
7. We stated in our submission...

These "Code of practice and standards" include a range of administrative and other clauses that aim to improve animal welfare and prevent cruelty, they are not of themselves examples of cruelty.

8. For example, readers should consider the standards within the following documents which are specified in the POCTAA Regulations for pet shops and for dog breeders.

https://www.dpi.nsw.gov.au/_data/assets/pdf_file/0012/1310421/Animal-welfare-code-of-practice-animals-in-pet-shops.pdf

https://www.dpi.nsw.gov.au/_data/assets/pdf_file/0013/1310431/INT21-114956-Breeding-Code-Document.pdf

9. Many Clause 26 POCTAA Regulation infractions are dealt with by penalty infringement notices (PINs). This is an acknowledgement that such infractions are minor. However, it is now the case

that contesting such a PIN and consequently being found guilty and convicted will result in an automatic ban on breeding, etc. under Section 31AD of POCTAA.

10. ACA sought and received the following advice from Director of Policy and Industry Insights, NSW Department of Primary Industries (DPI) on 20/11/23 regarding PINs.

The below is some general information about the issue and should not be considered legal advice. If there is a specific issue / matter up for consideration, then legal advice should be sought by the affected individuals.

- *The Fines Act 1996 applies to PINS issued under POCTAA, and payment is not regarded as an admission of liability.*
- *PINS can be reviewed via an internal review process (separate to court electing) and either confirmed or withdrawn. I understand the RSPCA NSW have previously advised a parliamentary committee this can be done via a Revenue NSW process - <https://www.nsw.gov.au/money-and-taxes/fines-and-fees/fines/request-a-review#toc-how-the-review-process-works>*
- *Most convictions in NSW are capable of becoming spent under the Criminal Records Act 1991. If a conviction is spent, a person is not required to disclose it, and it cannot be taken into account in a question concerning the persons criminal history (except for certain professions such as working with children). If a Court finds an offence proven, or that a person is guilty of an offence, without proceeding to a conviction, the conviction is spent immediately, or at the end of a period, or compliance with conditions, imposed by the Court (such as a conditional release order or good behaviour bond).*

I would like to note that as per our discussion, we are aware there is some ambiguity around the wording of the relevant provisions of POCTA. As you know the NSW Government has committed to reviewing POCTA and there is an opportunity to clarify the intent of this provisions and its application as part of that process.

11. The above advice indicates significant ambiguity regarding contesting PINs via the courts, and other informal verbal legal advice concurs. Given the possible and likely extreme consequences it would be unwise for a person to contest a PIN.
12. Similar unreasonable consequences will now result for exhibitors for minor infractions under a range of Acts. Again it remains ambiguous as to whether POCTAA Regulation offences, such as code infractions will in practice be included, there is little ambiguity with regard to EAPA Section 30(1A). EAPA Section 30(1A) means complete loss of licence to operate as an animal display establishment is mandatory once convicted.
13. There are many other animal cruelty offences under POCTAA and other Acts where the circumstances do not reasonably warrant an automatic ban on animal breeding, keeping or related activities and operation. ACA continues to support providing the court with discretion on all bans.
14. The problem outlined by Natalie Ward MLC in her contribution to the Second Reading Debate (Hansard 9 November 2022 p7249) is now a reality. Contesting a PIN is now a very risky undertaking as it could result in an automatic ban for life.

15. Emma Hurst MLC made the following comment (Hansard 3 October 2022 p7248). Her comment opposes the notion of blanket legislated consequences of crime, in direct conflict with the matters discussed here and put to parliament by Emma Hurst MLC in her support of the Amending Act.

What is known, however, is that wrongfully convicted people, who are already subject to significant harm in the criminal system, would be further punished by the bill. The bill would provide no leniency for people who are unable to provide information about the location of a victim's body or remains. This presents an impossible situation for wrongfully convicted persons.

16. The Legislative Review Committee (Legislation Review Digest No. 48/57 - 11 October 2022, p13) expressed concern regarding the above matters, specifically regarding Section 31AD of the POCTAA and Section 30(1A) of the EAPA.
17. Given the concerns of the Legislative Review Committee, members from both sides and cross bench of the chamber during the Second Reading debate, our advice from members during consideration in the chamber, and subsequent DPI and legal advice it is clear the above matters deserve urgent reconsideration.
18. Note this is a different matter to the optional disqualification orders available to the courts under POCTAA Section 31. Although we have some concerns regarding Section 31, they are different and not as pressing as this matter.
19. ACA notes that there are other less pressing issues as a consequence of the Amending Act. We look forward to discussion and resolution of these additional matters as part of the development of the anticipated Animal Welfare Bill.

We look forward to Parliament resolving these issues.

Regards,

Sam Davis
Vice President – Animal Care Australia

References

The Amending Act is here...

<https://legislation.nsw.gov.au/view/pdf/asmade/act-2022-69>

And details of the Amending Act passage through parliament is here...

<https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=4001>

POCTAA is here...

<https://legislation.nsw.gov.au/view/html/inforce/current/act-1979-200>

POCTAA Regulations are here...

<https://legislation.nsw.gov.au/view/whole/html/inforce/current/si-2012-0408>

EAPA is here...

<https://legislation.nsw.gov.au/view/html/inforce/current/act-1986-123>

Hansard Legislative Council 9 November 2022 is here (from p7244)...

<https://api.parliament.nsw.gov.au/api/hansard/search/daily/pdf/HANSARD-1820781676-91011>

Hansard Legislative Council 13 October 2022 is here (from p7248)...

<https://api.parliament.nsw.gov.au/api/hansard/search/daily/pdf/HANSARD-1820781676-90544>

Legislative Review Digest 48 is here...

<https://www.parliament.nsw.gov.au/ladocs/digests/684/Legislation%20Review%20Digest%20No.%2048%20-%202011%20October%202022.pdf>

Appendix 3:

Animal Care Australia's (preliminary) proposal for an Animal Welfare Commission

Aim

To improve animal welfare outcomes throughout the state.

Objective

The objective is to establish a body with broad advisory and oversight functions for the purposes of informed animal welfare management throughout the State.

Vision

1. To ensure education relating to animal welfare is being met with the intent to improving skills and capacity of those caring for their animals.
2. To ensure fair treatment for all parties & to allow an independent overview where a dispute about the enforcement or lack thereof of the Act occurs.
3. To provide clarity and transparency in relation to the enforcement of the (*insert relevant Acts - POCTA etc*).
4. To ensure there is a robust process around creating a set of standard operations procedures and continuous improvement to ensure best practice standards are achieved.

We propose to create an Animal Welfare Commission to manage all animal welfare matters throughout the state of NSW.

1. The Animal Welfare Commission would be placed independent of all ministers responsible for portfolios that include legislation (existing Acts) relating to animals and their welfare – this would include, but is not limited to, portfolios for agriculture, environment, animal research, companion animals, etc.
2. A Commissioner to head the Commission is appointed by the Governor, on the recommendation of the government of the day.
3. The Commission has two main responsibilities.
 - a. To advise government on all animal welfare management matters.
 - b. To oversee the management, compliance, enforcement and prosecution of all animal welfare legislation in the state, including all sections of all Acts dealing with animal welfare management matters.
4. An Animal Welfare Commission Advisory Council is formed with representatives from animal industries. The Council advises the Commission on all animal welfare management matters.
5. Some staffing (such as the Chief Animal Welfare Officer) for the Commission may be resourced from existing positions within the Department of Primary Industries where the appropriate relevant experience is proven however appointments would be made as per the

appropriate requirements of the Public Service under the Government Sector Employment Act 2013 to enable the Commission to exercise its functions.

The Commission, with the assistance of the Council, has the following general functions—

- (1) To provide the Government with independent advice on animal welfare management.
- (2) To appoint and withdraw appointment of all animal welfare officers who are responsible for education, compliance and enforcement of animal welfare legislation, excluding NSW Police Officers.
- (3) To determine the qualifications and standard operating procedures for animal welfare officers.
- (4) To oversee the compliance and enforcement of all animal welfare legislation in the state.
- (5) To prosecute all offences under animal welfare legislation in the state.
- (6) To specify and oversee independent complaint resolution processes with regard to animal welfare officers.

Reporting

- (1) The Commission is to provide the Minister with reports on the exercise of all its functions, including on the outcomes of any audits or inquiries it has undertaken during the reporting period.
- (2) The Commission must undertake annual audits of all officers authorised with compliance and enforcement duties of legislation and prepare a report to the relevant Minister.
- (3) Each report of the Commission is to be made public within a reasonable time after it is provided to the Minister.

683283-20112021 requested by N55018 on Monday, 22 August 2022 at 12:22 AM

Incident Header

683283-20112021 16:38 C Priority 3 Animal Complaint (006) Contact Inft If Required (149) N9934296
 [REDACTED] 2159, 2159 HO

INFT HAS BEEN INFORMED BY A PASSERBY THAT THERE IS A LARGE GREY WEIMARANER BREED DOG TIED UP IN A PADDOCK AT LOC NEAR A GREEN SHED & CAN BE SEEN FROM THE ROAD - THE DOG IS VERY EMANCIPATED & APPEARS HALF DEAD - THERE IS NO WATER OF FOOD FOR THE DOG OR ANY COVER - INFT WISHES POLICE TO ATTEND LOC AS THERE ARE NO RSPCA OFFICERS IN AREA & SHE WISHES TO BE CONTACTED BY POLICE AFTER ATTENDING - NFI

Informant Details

KYLA - RSPCA Third Party 97815926
 No Informant Address

Call Sign Details

CSign	stn	R	Assigned	Alerted	Mobile	On Scene	Back On
KU16			19:17:26			21:17:02	21:27:58

Officer Details

Off	Location	Name	Assigned	Alerted	Mobile	On Scene	Back On
N55018	HO		21:17:02			21:17:02	21:27:58
N54895	HO		21:17:02			21:17:02	21:27:58

Incident Narrative

Date	Time	User	Source	Message
20/11/21	16:38:56	N9934296		Recipient 5 Added
20/11/21	16:38:56	N9934296		Address Update - Exact Address Location
20/11/21	16:38:56	N9934296		Forms MLP Call Collection Form2 IVR *: No (000) Details: INFT HAS BEEN INFORMED BY A PASSERBY THAT THERE IS A LARGE GREY WEIMARANER BREED DOG TIED UP IN A PADDOCK AT LOC NEAR A GREEN SHED & CAN BE SEEN FROM THE ROAD - THE DOG IS VERY EMANCIPATED & APPEARS HALF DEAD - THERE IS NO WATER OF FOOD FOR THE DOG OR ANY COVER - INFT WISHES POLICE TO ATTEND LOC AS THERE ARE NO RSPCA OFFICERS IN AREA & SHE WISHES TO BE CONTACTED BY POLICE AFTER ATTENDING - NFI Police: Station: E/Net: 31049 Coordinates: [REDACTED]
20/11/21	16:38:56	SYS		Incident Broadcast Automatic ALL RESOURCES broadcast for 683283-20112021
20/11/21	16:38:57	N9934296		Caller Phone Number changed from [REDACTED]
20/11/21	16:38:57	N9934296		Call Collection Form2(1) message recorded
20/11/21	16:38:57	SYS		Successfully sent to Verint.
20/11/21	16:39:52	N2002147		Recipient 5 set to Viewed
20/11/21	16:39:59	N2002147		Incident Broadcast ALL RESOURCES broadcast for 683283-20112021
20/11/21	16:50:27	N2004511		LOI Web Link Attached: Summary - [REDACTED]
20/11/21	16:54:58	N2002147		Incident Broadcast ALL RESOURCES broadcast for 683283-20112021
20/11/21	16:55:10	N2002147		Incident Broadcast ALL RESOURCES broadcast for 683283-20112021

20/11/21 17:26:43 N2002147		Incident Broadcast ALL RESOURCES broadcast for 683283-20112021
20/11/21 17:52:48 N2002147		Incident Broadcast ALL RESOURCES broadcast for 683283-20112021
20/11/21 18:22:05 N2004511		Incident Broadcast ALL RESOURCES broadcast for 683283-20112021
20/11/21 18:34:15 N2002147		Telephonist Message timed at 18:34:02, ended at 18:34:15 KU14 - KEEP CALLING OS JOBS
20/11/21 18:36:57 N2004511		Incident Broadcast ALL RESOURCES broadcast for 683283-20112021
20/11/21 19:07:31 N2004158		Incident Broadcast ALL RESOURCES broadcast for 683283-20112021
20/11/21 19:17:26 N55018	KU16	Informed of incident 683283-20112021
20/11/21 19:17:26 N55018	KU16	KU16 with N54895, N55018 Status changed from B - Broadcast to A - Acknowledged
20/11/21 21:17:02 N55018	KU16	KU16 with N54895, N55018 Status changed from A - Acknowledged to O - On Scene
20/11/21 21:17:02 N55018	KU16	Status Update KU16 with N54895, N55018 Status changed from BO - Back On Available to OS - On Scene
20/11/21 21:17:02 N55018	KU16	KU16 with N54895, N55018 Assigned to Incident 683283-20112021
20/11/21 21:27:58 N55018	KU16	KU16 with N54895, N55018 Status changed from O - On Scene to F - Finished
20/11/21 21:27:58 N55018	KU16	Status Update KU16 with N54895, N55018 Status changed from OS - On Scene to BO - Back On Available
20/11/21 21:27:58 N55018	KU16	KU16 with N54895, N55018 Clear from Incident 683283-20112021
20/11/21 21:28:24 VIM4		Write-Off input records created successfully PAL Event Number: 0 Link ID: 6380455913609934296 Message ID: VNEW20210441914D5 78517
20/11/21 22:28:05 SYS		Incident Closed

NSW POLICE PRD
NSWP:BARCLAY JACK

COPS
Enquire CAD Message Link Details

22/08/2022 00:23
KRGW11:OOKAB

CAD Incident : ANIMAL COMPLAINT Inv : NO
Resp Police : CAD DEFAULT Created : 20/11/2021 16:38
Location :
Informant : Priority : 3
Status : CTC I Resource :
Text : UBD= 91 M15 SYD

INFT HAS BEEN INFORMED BY A PASSERBY THAT THERE IS A LARGE GREY W
EIMARANER BREED DOG TIED UP IN A PADDOCK AT LOC NEAR A GREEN SHED >

Mobiles : KU16 > CAD : 683283-20112021

----- Attendance Details -----

Mobile : KU16 Attend/Leave: 20/11/2021 21:17 to 20/11/2021 21:27

Reg No Surname 1st Init Rank

55018

52102

Action text: BONA FIDES CHECKED. SEE BELOW
INFORMANT SPOKEN TO >

Fastpath () PF5=Show PF keys

CID307M2

NSW POLICE PRD
NSWP:BARCLAY_JACK

COPS
Enquire CAD Message Link Details

22/08/2022 00:23
KRGCWT11:OOKAB

CAD Incident : ANIMAL COMPLAINT Inv : NO

COPS CAD Actions
Actions:
BONA FIDES CHECKED. SEE BELOW INFORMANT SPOKEN TO

Narrative: POLICE ATTENDED AND ASSESSED THE DOG. THE DOG APPEARED TO BE WELL AND WAS BARKING. POLICE CONTACTED THE INF AND ADVISED THEM OF THE SITUATION. THE INF STATED THAT THEY WOULD SEND SOMEONE FROM RSPCA TO ASSESS THE DOG.
Rec by PROCON BARCLAY, JACK WALT on 21/11/21 18:28
Verified: 21/11/21 Reg 47500

PF7/PF8
to
scroll