

**Submission
No 93**

INQUIRY INTO ANIMAL WELFARE POLICY IN NEW SOUTH WALES

Organisation: Animal Care Australia

Date Received: 28 February 2022

28th February 2022

Standing Committee on State Development

RE: Inquiry into Animal Welfare Policy NSW 2022

Animal Care Australia (ACA) is a national incorporated association established to lobby for real animal welfare by those who keep, breed and care for animals. Our goal is to promote and encourage high standards in all interactions with the animals in our care.

An overview of the Draft Animal Welfare Act 2022 reflects an act that is predominantly focused on regulation rather than on animal welfare. There are no elements of educating the public built into the act. The Act has been clearly influenced by compliance and animal rights stakeholders. This is extremely disappointing and a loss of the opportunity to develop a modern animal welfare act designed to encourage the betterment of animal welfare in NSW.

Additionally, consultation including an Inquiry directly relating to the draft Act without the associated draft Regulations is not in the best interests of those being consulted. It requires the a ‘crystal ball’ to imagine and provide an educated opinion on details that are important but as yet are unknown.

ACA acknowledges this will require further consultation in the coming year and request the opportunity to provide an additional submission and in-person testimony with this Committee upon the release of the draft Regulations.

Therefore, ACA strongly recommends:

1. **The release of draft Regulations must accompany the draft Act as it enters Parliament, to ensure and confirm the intent and direction of the Act.**
2. **Prosecutorial powers of the RSPCA NSW to be removed within the Act.**
3. **An additional section MUST BE inserted into the Act that includes a process for any person charged with an offence the right to:**
 - a. **challenge the claims prior to appearing before a court – given court proceedings may be up to three years from date of being accused.**
 - b. **get a second unbiased professional opinion prior to the finality of euthanasia or surgery on an animal seized - without requiring a court order to do so.**
4. **The creation of a Companion Animals Welfare Panel – to provide professional input into how the provisions of the Act should be implemented with the goal of educating and improving the welfare outcomes for the animals.**
5. **The removal of ‘psychological suffering’ from the definition of ‘harm’.**
6. **The inclusion within the Act of a requirement that ALL Standards & Guidelines documents must be developed/consulted with key stakeholders and cannot be altered without public and stakeholder consultation.**
7. **Further measures of accountability and transparency must be included in the Act, including requiring the DPI to outline and enshrine the objectives and procedure for an ‘independent external complaints mechanism’ originally implied within the Animal Welfare Discussion Paper – now missing in the Act.**
8. **The State to be responsible for all costs associated with the seizure and shelter of animals and prosecution of offences to the Act.**

9. Consultation to address inconsistencies including overlap between the Draft Animal Welfare Act and the Companion Animals Act – components included in the Welfare Act are NOT welfare specific and do not belong.
10. Sections relating to the powers of the Courts be reviewed to ensure the innocent receive full opportunity to defend themselves AND the courts are not used as a convenient tool by authorised officers to circumnavigate the law, destroy evidence or impede the right to a fair trial.

ACA would like to thank the Standing Committee on State Development for providing us with the opportunity to provide feedback for this Inquiry, and the NSW Department of Primary Industries for providing us with the opportunity to consult as a key stakeholder throughout the process of the Animal Welfare Action Plan.

This submission can be publicly listed. We look forward to the opportunity of providing testimony at this Inquiry.

On behalf of the Animal Care Australia Committee,

Michael Donnelly
President, Animal Care Australia.

**Standing Committee on
State Development -
Inquiry into Animal
Welfare Policy in NSW.
2022**



Animal Care Australia
2022

FEBRUARY 28 2022

**ANIMAL CARE AUSTRALIA
STAKEHOLDER SUBMISSION**

Standing Committee on State Development - Inquiry into Animal Welfare Policy in NSW. 2022

Introduction:

Animal Care Australia Inc. (ACA) represents the interests of all hobbyist and pet animal keepers nationally. Our members are comprised of most major animal keeping representative bodies including those representing dogs, cats, birds, horses, small mammals, reptiles, fish and exhibited animals.

Animal Care Australia would like to thank the Standing Committee on State Development for providing us with the opportunity to provide feedback for this Inquiry, and the NSW Department of Primary Industries for providing us with the opportunity to consult as a key stakeholder throughout the process of the Animal Welfare Action Plan.

We look forward to the opportunity of providing testimony at this Inquiry.

Response to the Terms of Reference:

- 1. That the Standing Committee on State Development inquire into and report on the State's animal welfare policy, regulatory and legislative framework, including any measures required to:**
 - a) streamline animal welfare laws in New South Wales,**
 - b) reduce and remove unnecessary regulation, and**
 - c) ensure existing policy and regulatory arrangements remain appropriately balanced.**

Throughout the consultation process ACA has supported the combining of the three existing animal welfare acts, the Prevention of Cruelty to Animals Act 1979 (POCTA), Animal Research Act 1985 (ARA), and Exhibited Animals Protection Act 1986 (EAPA) into one single animal welfare act. However now having seen the proposed, ACA is concerned that there is insufficient inclusion of the Animal Research Act in this draft, supporting our previous concerns that that the Animal Research Act 1985 may be predominantly absorbed into the Regulations, and not maintain the emphasis of welfare requirements currently enforced by the ARA 1985 and in the future will be subject to animal rights extremist (ARE) ideological influence under a different minister/government.

In previous consultation with the NSW Department of Primary Industries (DPI ACA strongly recommended the focus of the Animal Welfare Review should be on improving and ensuring the welfare of animals rather than its current focus on cruelty to animals. Priority should focus on improving animal welfare outcomes throughout NSW, for all species, in all situations governed by the new Act and the Regulations.

Additionally, asking for consultation and an Inquiry directly relating to a draft Act without the associated draft Regulations is perhaps of a political nature and is not in the best interests of those

being consulted and therefore requires the use of a ‘crystal ball’ to imagine and provide an opinion on details that are important but as yet are unknown.

ACA acknowledges this will require further consultation in the coming year and request the opportunity to provide an additional submission and in-person testimony with this Committee upon the release of the draft Regulations.

Therefore, ACA **strongly** recommends:

The release of draft Regulations must accompany the draft Act when being proposed to Parliament, to ensure and confirm the intent and direction of the Act.

Currently the detail that matters is largely unknown.

As part of ACA’s consultation with our Species Advisory Groups, an opinion has been expressed that is of concern. The general opinion is that this is the **Draft Animal Regulations Act** and **NOT** an **Animal Welfare Act**.

It is also clear that attempts to provide an Act that is balanced and designed in a manner that is both understandable and achievable by the public have been over-shadowed by the obvious influence of those seeking more power under this Act.

Despite promises within previous Discussion Papers, there is little to no level of holding those with the power to any form of transparency, accountability or liability.

Section 160 – Protection from Liability clearly removes any liability from the charitable organisations even for actions that were omitted during the course of their functions.

Section 160 (2) In this section—

done includes omitted to be done.

liability—

(a) means civil liability, and

(b) includes action, claim or demand

They cannot be held liable for something they omitted (neglected) to do?

This Act also does not enshrine any form of appeals process – as promised by the DPI.

Of major concern is the ability of the accused to defend or appeal the charges brought against them.

One highly contentious issue is the refusal of the RSPCA NSW to take into account the fact an animal is being treated by a veterinary practitioner and their refusal to consult with said practitioner.

ACA is aware of countless numbers of cases where animals that were under veterinary instructions at the home of their owners were seized, supposedly assessed, and subsequently euthanised, without the confirmation of their treating vet. Additionally attempts by the treating vet to contact the RSPCA veterinary practitioner on the animal and owners behalf were constantly thwarted or ignored.

Excuses such as “it’s a conflict of interest for our vet to consult” to “they’d only try to cover their own mistakes so why would we consult?” and more have been repeatedly provided to animals’ owners when queried.

Attempts to have the animals assessed by an independent vet are denied and then in most cases the animals are euthanised, cremated and disposed of removing any opportunity to appeal or provide the Courts with a suitable reason as to the animals’ condition. This also denies the treating vet the opportunity to defend or explain their treatment.

This process is extremely contradictory to the spirit of the law (**natural justice**) where those charged have the right to a fair trial. Many owners have an emotional bond with their animals and being denied the opportunity to fairly protect their animals, or even to say goodbye to their animals, or worse still denied the opportunity to collect the remains of their animals is barbaric and inhumane – regardless of their POTENTIAL guilt!

This Act is written with the clear intent that the authorised officers (and the organisations’ veterinary practitioners) can do no wrong, that they are extreme professionals and have a full and unabated knowledge of all species and their illnesses. **NOTHING COULD BE FURTHER FROM THE TRUTH!**

This Act and the ongoing attitude and actions of the RSPCA NSW appear to forego the fact a person is **innocent until found guilty in a court of law**. The actions of removing an animal from its home and known environment, subjecting it to ongoing tests by strangers, placing it in ‘storage’ (a shelter) while it assists in building up husbandry and housing costs, to euthanasing it, cremating it and not returning it to its owner – WHO HAS NOT YET BEEN FOUND GUILTY - are all actions carried out under the assumption of guilt over innocence.

When society protects its children from abuse the courts seek out the opinion of the child’s treating physician, schoolteacher and counsellor, any treating psychiatrist, even to the extent of interviewing neighbours, other family members and so on.

Any officer of the court (Family & Community services or NSW Police) must provide as much evidence as possible, and IT MUST BE PRESENTED to the accused for a defense.

When it comes to protecting our animals (and their owners) why do we not have the same level of compassion and assurance to investigate the WHOLE truth, rather than the current process of affording an authorised officer from a charitable organisation carte blanche to all the power without any of the accountability or liability?

As a society we should be better than that! That system, that process – MUST BE CHANGED!

ACA therefore recommends:

An additional section MUST BE inserted into the Act that includes a process

- **for any person charged with an offence the right to challenge the claims prior to appearing before a court – given court proceedings may be up to three years from date of being accused.**

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- **when an animal is taken from an owner's premises there must be an allowance for that person to get a second unbiased professional opinion prior to the finality of euthanasia or surgery without requiring a court order to do so.**

Throughout this submission ACA's focus is on the following priorities:

- 1. to promote education over regulation**
- 2. to promote positive welfare of animals by ensuring the intent of the 5 freedoms are reflected within the Act and all associated Standards & Guidelines (Codes of Practice)**
- 3. Animal welfare standards developed for specific species (or species groupings) should be the baseline upon which compliance is measured. Standards must be specific, understandable and known to those they seek to regulate.**

Animal Care Australia's Review of the Draft Animal Welfare Act:

Section 3 Objects of Act

The Act should strive to improve the welfare animals through education. This is missing from the objects.

**ACA strongly recommends Section 3 (a) be re-worded to read:
(a) to improve and promote the welfare of animals, and**

Section 4 – How objects are to be achieved

4 (a) (iii) - requiring information about dogs and cats to be provided when the dogs and cats are advertised for sale or to be given away, and ...

ACA questions why this clause exists within the Act? This requirement does not equate to the direct welfare or object of cruelty to an animal, in this case, dogs and cats. The provision of regulating advertising is covered within the Companion Animals Act 1998.

ACA recommends the removal of Section 4 (a) (iii) from the draft Act

Alternatively, if there is an argument to be made concerning the implication of poorly bred dogs and cats being advertised, then the combining of the Companion Animals Act 1998 and the draft Welfare

Act would be one method of returning full ownership and responsibility of legislation relating to the breeding of dogs and cats back under one government department (ie the Department of Primary Industries), rather than the DPI, Office of Local Government and department of Planning (zoning and planning laws).

ACA recommends the separation of legislation relating to the breeding of dogs and cats be united under one department and not split across the current three departments.

Section 4 – How objects are to be achieved

To ensure education of the public is adequately enshrined:

**ACA recommends a new Section 4 (a) (iii) be added to read:
(iii) ongoing testable educational programs are implemented and monitored to verify animal welfare improvements**

Section 7 - The Act of Cruelty:

ACA questions the use of ‘unreasonable’ while defining an act of cruelty. While ACA understands there is a need for the change of language the interpretation and therefore implementation of what is *unreasonable* is too broad and subject to any individual’s mind-set and may not be based on facts. A basis that will prove necessary when determining when an animal is not being treated reasonably. Therefore, defining what is reasonable is vital. For the purpose of the Act:

‘Reasonable’ means meeting the minimum standards of care (or higher) as well as other standards outlined for that species, or action.

Section 7 (2) (d) - advertising, promoting or taking part in an activity in which an animal participates in a steeplechase or hurdle race,

In respect to animals other than horses, hurdles are often used as part of animal displays of agility and sports, for example dogs and mini goats. Of particular concern are dog shows where ‘flyball’ activities and other dog showing techniques require dogs to jump over hurdles in a quick and speedy manner. Those activities do not constitute animal cruelty, for mini goats it is a good activity to provide exercise and enrichment, and yet these do not appear to be exempt.

ACA STRONGLY recommends Section 7 (2) (d) be re-drafted to clearly defined this clause relates to horses and other ridden animals, or otherwise add exemptions for other animals.

Section 11 - Meaning of 'harm'

Inclusion of psychological suffering within this meaning: Psychological pain/suffering is the result of the infliction of other forms of cruelty and is specific to each individual species and therefore very difficult to measure within most animals. The ability to determine the extent of psychological pain is unclear. Scientific methods have been proven to provide inaccurate results. Therefore, directly determining if an offence has been committed is not currently possible.

If under the scrutiny of an unqualified person such as an inspector who is also unfamiliar to specific species behaviours and responses, an undefined non-obvious behaviour can potentially be damaging when innocent situations are under investigation.

While ACA does not question the existence of psychological suffering, we maintain this suffering is the result of the impact of the neglect of an animal and accordingly, the requirement of a compliance organisation must be on proving the level of neglect or cruelty committed to that animal.

Guidelines within the Standards & Guideline documents may be the appropriate strategy for addressing methods to reduce psychological pain. If minimum standards are being encouraged and complied with, this will go a long way in preventing pain.

ACA does not support 'psychological suffering' being included in the definition of 'harm'.

Section 14 - What is appropriate for minimum care requirements

In deciding what is appropriate for the purposes of a minimum care requirement for an animal, the matters to be taken into account include—

- (a) the animal's species, and*
- (b) the animal's environment, and*
- (c) the animal's behavioural needs, and*
- (d) the animal's particular circumstances.*

ACA does not have confidence in the current compliance organisations being able to confidently determine the above 4 criteria for ascertaining appropriate minimum care requirements. ACA has had in-person meetings and conversations, confirming the Inspectorate are not skilled in the needs for many species with the exception of dogs, cats and some livestock.

This raises great concern for ACA and accordingly we believe the implementation of a **Companion Animals Welfare Panel** will assist in ensuring decisions relating to the welfare and possible seizure of animals can be addressed with key stakeholders with species specific knowledge.

Note: The Panels MUST Be able to be initiated by EITHER the compliance organisation OR the owner of the species in question. This will also lend itself to being a step in an appeals opportunity for all parties concerned.

ACA STRONGLY recommends the implementation of ‘Companion Animal Welfare Panels’ to ensure a full understanding of the minimum care requirements is being met by animal owners.

In addition to the above:

ACA recommends the Act is adjusted to enshrine the existence and function of Companion Animal Welfare Panels in the same manner as it does Stock Welfare Panels.

Sections 15 to 18 - Providing appropriate minimum care standards:

Throughout these sections the draft consistently refers to: “... *if the regulations prescribe a period for the species, or other class, of animal— the period prescribed...*”

It would be irresponsible of ACA to support these clauses without sighting the Regulations that are being referred to.

ACA recommends the release of draft Regulations must accompany the draft Act when being proposed before this INQUIRY OR Parliament approve the Act.

Section 20 - Requirement to comply with standards

Introduce (or reintroduce) the concept of an “accepted standards and guidelines” document. Unlike a “prescribed standard”, “accepted standards and guidelines” are not enforceable and do not attract a penalty, however they can be used as a defence.

ACA recommends Section 20 (2) be amended to read:

(2) A responsible person for an animal does not commit an offence against this Act for an act or omission in relation to the animal if the act or omission is in accordance with a prescribed standard or an accepted standards and guidelines document

In order to include this amendment:

ACA recommends the addition of the following to Schedule 3 Dictionary:
***accepted standards and guidelines* means a document prepared by an industry representative organisation which has been demonstrated to specify sound animal welfare practices.**

Section 21 – Applying, adopting or incorporating standards

Standards (and Guidelines) documents are vital to ensuring better animal welfare practices and outcomes, particularly where Standards that reach beyond the minimum care standards are

necessary. Having said this, ACA is aware of circumstances where Standards documents have been implemented or altered WITHOUT stakeholder consultation such as the ‘Standards for Exhibiting Circus Animals in New South Wales February 2019’ and ‘Travelling stock statements’ where exemptions were altered on the DPI website which altered the intent and interpretation of what was exempt. Originally the website stated, ‘traveling to events like pony club were exempt’ and that was altered where now NSW Police and other bodies do not interpret that exemption and are requiring all stock transporting to require the appropriate paperwork – drastically altering how private horse owners and riders travel with their horses & ponies. It should be noted, no notice of change was provided to horse owners.

Currently Standards & Guidelines are referenced within the Regulations meaning they can be changed at any time by the Minister without consultation with stakeholders, the public or even Parliament. This should not be applicable. These documents set the clauses of which a person can be charged with animal cruelty and as such those clauses should be subject to scrutiny by all parties.

ACA recommends Section 21 (a) be added to read:

21A Preparation of prescribed standards

- (1) A list of industry representative organisations for each prescribed standard must be maintained.**
- (2) Development and maintenance of each prescribed standard to include collaboration with the list of industry representative organisations as described in the “IAP2 Spectrum of Public Participation” under “collaborate”.**

In order to include this amendment:

ACA recommends the addition of the following to Schedule 3 Dictionary:

industry representative organisation means an organisation demonstrated to represent the interests of a significant proportion of the participants in that industry.

ACA recommends the inclusion within the Act of a requirement that ALL Standards & Guidelines documents must be developed/consulted with key stakeholders and cannot be altered without public and stakeholder consultation as per above Section 20 (2) recommendation.

Section 22 – Prohibited procedures

22 (1) (e) - surgical artificial insemination on a dog.

ACA questions the inclusion of this clause. This procedure is one which only a vet is qualified to provide and accordingly the veterinary practitioners are the only stakeholders consulted to determine whether the procedure is cruel or not. Accordingly, this Act is not the appropriate location.

ACA recommends the removal of Section 22 (1) (e) from this draft Act and its consideration be included via the next review of the NSW Veterinary Practice Act 2003

Section 33 (2) (a) - the animal has access to appropriate food and drink

ACA highlights this section as an appropriate reason to ensure stakeholders are provided with the Regulations prior to commenting. Appropriate food for a dog does not include dogs being provided with a vegan diet. An action currently perpetrated and supported by many animal rights organisations. **ACA would be seeking assurances that the feeding a vegan diet to an animal that requires the inclusion of meat in its diet would constitute an animal cruelty charge under this new Act!**

Section 42 – Licensing and approvals

(4) A person must not advertise or promote a licensed activity unless the person holds a licence to carry out the licensed activity.

ACA wishes to highlight licensed native animals (such as reptiles, birds and native mammals) held under the Biodiversity Conservation Act are regularly acquired by universities and other organisations for the purposes of animal research.

This clause is vague and does not highlight whether such acquisitions are permitted or whether the person would be required to apply for or hold an animal research supply license.

Section 42 (5) indicates:

In this section—

- marine mammal has the same meaning as in the Biodiversity Conservation Act 2016, section 2.7.***
- protected animal has the same meaning as in the Biodiversity Conservation Act 2016.***
- supply of animals for animal research includes breeding, keeping, nurturing and obtaining animals for the purposes of animal research.***

ACA contacted the DPI to obtain further feedback and we request the following response be recorded and included in the drafting of the Regulations.

“Under the current framework, there are two possible ways that this situation would be managed, depending on the specific details of the study in question:

Option 1: Exempt from supply requirements

The privately-owned reptiles would be exempt from supply requirements if the animal ethics committee overseeing the study is satisfied that the study is "innocuous and non-invasive, and will not have foreseeable lasting adverse consequences for the animal" and "the animal will remain under the effective control of its owner" while the study is being carried out (under Schedule 3, Clause 3 of the Animal Research Regulation 2021).

Option 2: Supplied to licensed supplier

If the exemption criteria mentioned above are not met, the animals would need to be supplied or obtained under an animal supply licence. This would mean that either the animal research establishment or the private owner would need to obtain an animal supply licence. In practice, almost all accredited animal research establishments are also licenced animal suppliers - meaning that the private keeper would not be required to obtain a licence of their own.

In terms of the Draft Bill:

- At this stage we have not received feedback that there are issues with the current scope of the animal supply process – as outlined above.*
- Consideration will be given to any further feedback we receive to ensure that the animal research licensing framework is fit-for-purpose.*
- Exemptions from animal supply requirements (like those currently outlined in Schedule 3) can be included in the new Regulation in accordance with s42(2) of the Draft Bill.”¹*

Again, this highlights the need for the Draft Regulations to be available PRIOR to any approval of this Draft Animal Welfare Act.

Section 47 - Secretary approval of prescribed premises.

Definition - prescribed premises means premises that are—

- (a) used, or proposed to be used, for the purpose of conducting a licensed activity, and*
- (b) prescribed by the regulations for the purposes of this section*

ACA questions the inclusion of this within this draft Act.

The use, construction or alteration of premises is purely a zoning matter and is protected with appropriate local zoning laws. It should not be an element of an Animal Welfare Act.

This will constitute confusion and over regulation and does not relate to animal welfare or animal cruelty.

¹ Email response dated 25th February 2022 from Danielle Cleal | A/Director | Policy & Industry Insights - NSW Department of Primary Industries

In addition, ACA questions the capacity of an authorised officer appointed by the Secretary to have an acute understanding of the requirements for any construction and the needs of individual specific species. As stated previously, the compliance organisations do not hold this experience, and rangers within Local Councils have time and again proven they are inept at understanding the requirements, which has resulted in many conflicts during the process of DA approvals.

ACA recommends the removal of Section 47 from this draft Act

Section 62 - Powers of authorised officers to require and record answers.

62 (8) *The authorised officer must, if asked by the person, give the person who is questioned a copy of the record as soon as practicable after it is made.*

In the true spirit of transparency this clause requires re-wording. The record MUST be given to the person who is questioned unless they refuse to accept the copy. Most people do not know they are entitled to a copy and therefore it should be a requirement they receive it. ACA is also aware of circumstances where penalty infringement notices and S24Notices have been issued with 'very basic' explanation as to the offence (or potential offence) has been committed only to have a varied version provided by the authorised officer upon appeal of the notice. No such opportunity would exist for either party if both parties were in possession of the recorded interview/questioning.

ACA STRONGLY recommends Section 62 (8) be re-worded to state:

'The authorised officer must, unless refused by the person, give the person who is questioned a copy of the record as soon as practicable after it is made.'

If the government and the compliance organisations are truly committed to full transparency and accountability this recommendation should not be refused.

Section 66 - Powers of authorised officers to enter non-residential premises

(1) *An authorised officer may enter premises, or a part of premises, not used for residential purposes—*

(a) at any time, if the officer reasonably suspects an offence against this Act is about to be, is being or has been committed, on the premises or the part of the premises

This section implies and provides for an authorised officer to enter at any time regardless of the duration of time that has passed since the offence occurred. This should be re-worded to ensure entry can only be made at the time immediately following or during an incident/offence.

ACA STRONGLY recommends Section 66 (1) (a) be re-worded to state:

(a) at any time, if the officer reasonably suspects an offence against this Act is about to be, is being or immediately following the offence being committed, on the premises or the part of the premises

Section 66 - Powers of authorised officers to enter non-residential premises

(1) An authorised officer may enter premises, or a part of premises, not used for residential purposes—

(d) at any reasonable time to check compliance with a direction or order given under this Act or the regulations, for example, a disqualification order, or

Again, what is reasonable under this situation? 5am because the sun has risen?

ACA STRONGLY recommends Section 66 (1) (d) be re-worded to state:

(d) at any agreed time to check compliance with a direction or order given under this Act or the regulations, for example, a disqualification order, or

Section 67 - Entry into residential premises only in certain circumstances

(1) An authorised officer may only enter premises, or a part of premises, used for residential purposes—

(a) with the consent of the occupier of the premises, or

(b) under the authority of a search warrant, or

(c) if the authorised officer reasonably believes—

(i) an animal has experienced significant physical injury, is in imminent danger of experiencing significant physical injury or has a life-threatening condition that requires immediate veterinary treatment, and

(ii) it is necessary to exercise the power to prevent further or significant physical injury to the animal or to ensure the animal is provided with veterinary treatment.

ACA is seeking an additional requirement this section. As previously indicated the term 'reasonably believes' is extremely open to interpretation and has in the past been used to justify otherwise inappropriate entry and seizure of animals. Again, in the spirit of full transparency and accountability ACA is seeking a requirement that the authorised officer MUST provide recorded data to show cause for entry has been met.

ACA STRONGLY recommends an addition to Section 67 (c), That being:

Section 67 (c) (iii) the authorised officer must provide record of the entry, the inspection and subsequent action taken in either film or photographic format.

Section 69 - Additional provision regarding entry of premises

(1) A power to enter premises under this Act authorises entry by foot, vehicle, vessel or aircraft or by any other means.

(2) Entry may be effected under this Act with the use of reasonable force.

The use by authorised officers from a charitable organisation to carry out Section 69 (2) is inappropriate and STRONGLY OPPOSED.

Police may use reasonable force to enter premises if they have a search warrant. It is an offence to obstruct or hinder a person carrying out a search under a warrant. 'Reasonable force' in NSW depends on all of the circumstances. This means in practice is that if you resist arrest strongly, they can use a higher level of force to arrest you than if you put up a mild resistance or none at all.

This Section provides the charitable organisations' authorised officers with the same power as the NSW Police. If this is the case, then the entry onto premises and all actions taken by authorised officers MUST be able to be appealed and challenged within the NSW Police Integrity Unit and/or by the NSW Law Enforcement Conduct Commission (LECC), under the same requirements as the NSW Police.

If the charitable organisations have the power to act as police, then they must be held accountable in the same manner. This government and the compliance organisations cannot have it both ways.

The enactment of Section 69 (2) by anyone other than a NSW Police Officer is inappropriate and STRONGLY OPPOSED.

**Section 71 Powers of authorised officers generally to examine, inspect or observe animals
Subsections (b) (iii) and (iv)**

ACA is opposed to the inclusion of 'psychological condition' being assessed by an authorised officer from a charitable organization.

ACA is acutely aware of many circumstances where the psychological conditions of an animal have been incorrectly diagnosed (identified) by the Inspectors with the majority being euthanised despite rescue organisations and trained dog behaviouralists publicly stating the assessments were inconclusive, immature and unsubstantiated. Inspectorates are NOT trained animal behaviouralists.

ACA is opposed to the inclusion of ‘psychological condition’ being assessed by an authorised officer from a charitable organisation.

Additionally, animals thought to be suffering psychological condition should not be seized by the authorised officers until having been assessed by a qualified/trained behaviouralist (not the organisations veterinary practitioner) and that assessment must be carried out in the animals’ normal environment and not a shelter or environment unknown to the animal with people unknown to the animal.

Section 71 - Powers of authorised officers generally to examine, inspect or observe animal

(b) the officer reasonably suspects—

(i) an offence against this Act or the regulations is being, has been or is about to be committed in relation to the animal, or

ACA STRONGLY recommends Section 71 (b) (i) be re-worded to read:

(i) an offence against this Act or the regulations is being, has been, is about to be or immediately following the offence being committed in relation to the animal, or

Section 71 - Powers of authorised officers generally to examine, inspect or observe animal

(b) the officer reasonably suspects—

(iii) the animal is so severely injured, so diseased or in so poor a physical or psychological condition that it is necessary for the animal to be provided with veterinary treatment and the animal is not being provided with that treatment, or

There is no provision here for the owner to provide the treatment under their own fruition. This provides the authorised officer with more power to immediately seize an animal unnecessarily – especially where in MOST circumstances it is in the animal’s best interest to remain on their own property in their environment to be treated.

ACA STRONGLY recommends Section 71 (b) (iii) be re-worded to read:

(b) the officer reasonably suspects—

(iii) the animal is so severely injured, so diseased or in so poor a physical or psychological condition that it is necessary for the animal to be provided with veterinary treatment, the animal is not being provided with that treatment, and the responsible person is unwilling to immediately provide that treatment, or

Section 78 - Receipt for seized things

(4) A receipt must describe generally the seized thing and its condition.

This clause does not provide the ability for understanding why a thing was seized. The receipt MUST detail not only it's condition but why it is being seized. Therefore:

ACA STRONGLY recommends Section 78 (4) be re-worded to read:

(4) A receipt must describe generally the seized thing, its condition and a detailed description of the reason the thing was seized.

Section 79 - Return of seized things

(1) An authorised officer must return a seized thing to its owner if the authorised officer is satisfied that—

(a) it is lawful for the owner to have possession of the thing, and

(b) the continued retention of the thing in custody is not justified.

(2) A requirement to return a seized thing to its owner includes a requirement to remove or lift restrictions on an owner's access to a seized thing.

(3) This section does not apply if an authorised officer certifies under section 80 that the authorised officer is unable to return the seized thing to its owner.

The owner must be offered the option of having a deceased animal returned, with no less than 48 hours given to the owner to decide. If the owner takes up the offer to have the animal returned, this must occur within 3 working days of the death. The body is to be kept refrigerated or frozen during this period and should not be cremated under any circumstance. Contagious disease would be a reasonable exemption, but there must be third party confirmation of this – such as an examination performed by a DPI appointed vet.

This is not just empathy for the owner, but for transparency and accountability of the authorised officer, the charitable organisation, and to allow independent veterinary examination for a fair trial.

Therefore:

ACA recommends the addition to Section 79 of a fourth clause:

(4) An owner must be advised immediately of a seized animal's death in care, including by euthanasia,

(i) immediately meaning within 2 hours of the death.

(ii) The owner must be offered the option of having the deceased animal returned to the owner, with no less than 48 hours given to the owner to decide.

(iii) If the owner takes up the offer to have the animal returned, this must occur within 3 working days of the death. The body is to be kept refrigerated or frozen and not cremated.

(iv) documented proof (photographic or film) of the euthanasia along with verified evidence of the condition of the animal must be made available to the owner or their legal representative prior to commencement of legal proceedings

(v) Contagious disease is a reasonable exemption; however, this must require an independent confirmation of the cause of death prior to cremation.

Section 90 – Terms on which appointments are made

Officers are authorised and appointed under the Act, but there is no description of who the Officers are accountable to.

Authorised officers of charitable organisation are being appointed with little to no oversight, with no accountable department or office, no ombudsman and no independent complaints procedures included within this Act. This gives them more powers than NSW Police and less accountability.

Therefore:

ACA IMPLORES Section 90 to be re-worded to read:

- (1) Authorised officers are appointed by the Minister responsible for this Act and are accountable to the department answerable to that Minister.**
- (2) The Minister and/or the department must be responsible for oversight and accountability of the officers including:**
 - (a) a public service employee**
 - (b) a person employed or otherwise engaged by an approved charitable organisation.**
- (3) An appointment may be—**
 - (a) unconditional, or**
 - (b) subject to conditions or limitations.**

Section 124 – Court may order production of animal

In order for there to be full transparency and a fair trial, the same requirement must be made of the charitable organisation or authorised officer. Currently animals are not released to be independently assessed or reviewed and the bodies are not released upon euthanasia. Owners have claimed healthy animals have been seized, only to die in care, and the bodies are disposed of, with no independent review or access by the defense. This is unacceptable, and offers authorised officers more powers than NSW Police, and no requirement to provide evidence other than their word under oath.

Therefore:

ACA STRONGLY recommends the addition of a clause to Section 124. That being:

- (4) A court may issue a summons against the charitable organisation and/or the authorised officer for the animal, the animal carcass or any other part of the animal seized or held within their care to be returned to the owner or owner's representative for the purpose of:**
- (i) defending the charges brought before them, or**
 - (ii) confirming the loss of a seized animal and the cause of the loss, or**
 - (iii) any other reason deemed appropriate by the court**

Note: animal MUST NOT be cremated prior to its return.

Section 126 - Court may order destruction of animal

Part (2) (b) and Part (4)

ACA STRONGLY OPPOSES Section 126 (2) (b) and 126 (4) and recommends their removal

Instead, ACA would like to make the following recommendation:

State to be responsible for holding costs of seized animals whilst court proceedings are finalised

Section 127 - Court may order payment of care and maintenance costs by accused person

ACA STRONGLY OPPOSES Section 127 and recommend it's removal.

Instead, ACA would like to make the following recommendation:

State to be responsible for holding costs of seized animals whilst court proceedings are finalised

Further:

- a) ACA believes holding charges to be a significant reason for many guilty pleas. The holding charges routinely far exceed the penalty.
- b) In meetings with RSPCA, we are aware holding fees are often never paid. Either not awarded by the court or the person convicted does not have the means to pay. Currently it is the charitable organisations absorbing this debt. Clearly this is not fair on the charitable organisations and would no doubt shock many of their donors - such losses are a direct result of state legislation.

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- c) In all other matters those convicted are not required to compensate the state for gaol costs, looking after children or even holding items in evidence, the same should apply here.
 - d) To be clear, ACA in the pursuit of natural justice, is recommending the state pays for holding animals regardless of the outcome of court action

Section 129 - Court may order disposal of animal during proceedings

This section removes all accountability and transparency – especially as owners and their vets are prevented from viewing the animal once it has been seized. This offers greater powers than NSW Police – evidence is certainly not permitted to be destroyed by the Police or prosecution. Convenience should NOT take precedence over the best interests of the animal and the fair trial of the owner.

ACA STRONGLY recommends additional sub-clauses are required to this Section enshrining the Court's responsibility to:

- (a) independently assess the welfare of the animal – if that is the purpose of the need to dispose**
- (b) review the capacity of the animal to be held in foster care – if shelter numbers are the purpose of the need to dispose**
- (c) provide the offender and their legal representatives the opportunity to have the animal independently assessed prior to any decision of disposal**

NOTE: This is VITAL given the proven levels of corrupt behaviour by members of the inspectorate in other States. Providing the capacity for that behaviour to utilise an unsuspecting Court to remove or destroy evidence is not in the best interests of the law.

Section 132 Orders regarding costs of investigation

ACA STRONGLY OPPOSES Section 132 and recommend it's removal.

ACA does not deny additional costs of investigations MAY require reimbursement to the charitable organisations, however said investigations are carried out on behalf of the state government in the pursuit of enforcing state legislation. Therefore, ACA repeats its statement that ALL cost/expenses incurred by the charitable organisation MUST BE STATE FUNDED.

ACA recommends the State MUST be responsible for costs of investigations and other expenses incurred during the enforcement of state legislation.

Part 9 Section 140 – Membership of the Animal Welfare Advisory Committee

As per previous communications with the DPI, ACA again expresses concern with the replacement of AWAC with a solely science-based membership and continues to maintain that stance. It is beyond understanding why key animal keeping stakeholders are being relegated to small committees that ‘may’ be consulted rather than being provided with a direct point of consultation.

ACA strongly opposes the current structure of the Animal Welfare Advisory Committee

Section 149 – Membership of the Exhibited Animal Advisory Committee

ACA additionally has concerns with the current structure of the Exhibited Animal Advisory Committee relating to the limited membership of actual exhibited animal stakeholders.

Section 153 - Information required when dogs or cats are advertised for sale or for giving away

ACA questions why this clause exists within the Act? The requirement to provide a microchip number OR a breeder number when advertising or giving away a cat or a dog must be removed from this Act as it does not equate to the direct welfare or object of cruelty to an animal, in this case, dogs and cats. The provision of regulating advertising is covered within the Companion Animals Act 1998.

ACA recommends the removal of Section 153 from the draft Act

Again, alternatively, if there is an argument to be made concerning the implication of poorly bred dogs and cats being advertised, then the combining of the Companion Animals Act 1998 and the draft Welfare Act would be one method of returning full ownership and responsibility of legislation relating to the breeding of dogs and cats back under one government department (ie the Department of Primary Industries), rather than the DPI, Office of Local Government and department of Planning (zoning and planning laws).

ACA recommends the separation of legislation relating to the breeding of dogs and cats be united under one department and not split across the current three departments/Acts

Section 154 - Sale of certain animals by charitable organisations

ACA is acutely aware of multiple occasions where owners have actively contacted shelters desperately searching for their lost animals to be constantly told by reception ‘...no such animal exists’ to then later be advised that not only had the animal been in that shelter at the time of the

first contact attempt but had now been euthanised or adopted out by the shelter following the short holding period.

If a shelter including the charitable organisations does not have the capacity to maintain secure, high welfare care while protecting against biosecurity risks for animals for a minimum of 21 days then serious questions need to be asked about the continuance of that said shelter/organisation.

ACA questions how the charitable organisations can reasonably identify the owner of an animal that is not microchipped such as birds, reptiles, or other small mammals?

How is this justifiable to sell or euthanise without allowing a reasonable time for an owner to seek their lost animal?

ACA takes issue with the charitable organisations only holding an animal for at least 7 days after the approved charitable organisation has taken reasonable steps to establish the owner or responsible person but has failed to identify them. Recent events such as the pandemic would highlight the inability of people hospitalised to know whether their animal is lost, or being contacted?

ACA does not see this Section as being in the best interests of the animals, rather it is in the best interests of the shelters. The reduction of holding times is contradictory to the purpose of the shelter or rescue services.

ACA STRONGLY recommends Section 154 (3) (b) be altered to read:

(b) for animal for whom the identity of the owner is not known—has kept the animal for at least 21 days after reasonable attempts by the organisation or Commission to find the owner of the animal have ended.

Surely it is more reasonable to allow additional time where an owner cannot be easily traced considering the 14 days allowed (Section 154 (3) (b)) where the owner can be traced?

Section 159 - Compensation not payable and Section 160 – Protection from Liability

Compensation SHOULD be payable if the owner is found not guilty in the Court. Particularly if animals have been sold, re-homed or destroyed unnecessarily. Distress for the owner and the animals matters. No accountability = careless decisions without consequences.

These clauses effectively make authorised officers exempt from the Act. They should not be above it and should not be exempt in the course of their duties.

ACA STRONGLY recommends additional clauses to these Section to provide compensation where an owner is found innocent of the charges.

ACCOUNTABILITY of the actions of an authorised officer INCLUDES compensation when they are wrong. Being held LIABLE for their actions is to ensure they act in the utmost professional manner within the confines of the law.

Section 161 - Disclosure of information

This section is missing the consequences of information being disclosed (leaked) prior to any court proceedings.

In addition, this clause is currently one way. Defendants MAY NOT speak out, whilst authorised officers can.

There should be consequences (financial penalties) for charitable organisations and/or authorised officers leaking identities to the press and animal rights organisations or other third parties in advance of court proceedings.

Animal Rights Extremists harass and send death threats to the defendants, their families and their workplaces, destroying their reputation, business, and relationships, before the facts are known. The organisations have no accountability and there is currently no complaints process to prevent this. They are also protected from paying compensation or other liability for these damages incurred.

ACA STRONGLY recommends additional clauses to Section 161 to provide assurance and consequences for those who intentionally disclose information with full disregard to the financial, professional, emotional and mental-well being of those who are INNOCENT UNTIL PROVEN GUILTY!

Summary Conclusion:

ACA strongly recommends:

- **The release of draft Regulations must accompany the draft Act as it enters Parliament, to ensure and confirm the intent and direction of the Act.**
- **Prosecutorial powers of the RSPCA NSW to be removed within the Act.**
- **An additional section MUST BE inserted into the Act that includes a process for any person charged with an offence the right to:**
- **challenge the claims prior to appearing before a court – given court proceedings may be up to three years from date of being accused.**
- **get a second unbiased professional opinion prior to the finality of euthanasia or surgery on an animal seized - without requiring a court order to do so.**
- **The creation of a Companion Animals Welfare Panel – to provide professional input into how the provisions of the Act should be implemented with the goal of educating and improving the welfare outcomes for the animals.**
- **The removal of ‘psychological suffering’ from the definition of ‘harm’.**

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- **The inclusion within the Act of a requirement that ALL Standards & Guidelines documents must be developed/consulted with key stakeholders and cannot be altered without public and stakeholder consultation.**
 - **Further measures of accountability and transparency must be included in the Act, including requiring the DPI to outline and enshrine the objectives and procedure for ‘independent external complaints mechanism’ originally implied within the Animal Welfare Discussion Paper – now missing in the Act.**
 - **The State to be responsible for all costs associated with the seizure and shelter of animals and prosecution of offences to the Act.**
 - **Consultation to address inconsistencies including overlap between the Draft Animal Welfare Act and the Companion Animals Act – components included in the Welfare Act are NOT welfare specific and do not belong.**
 - **Sections relating to the powers of the Courts be reviewed to ensure the innocent receive full opportunity to defend themselves AND the courts are not used as a convenient tool by authorised officers to circumnavigate the law, destroy evidence or impede the right to a fair trial.**

On behalf of the Animal Care Australia Committee,

Michael Donnelly
President
Animal Care Australia