

### RSPCA NSW Right to enter for dog breeding audits.

- November 2020 the NSW Minister for Agriculture & Western New South Wales announced a Task Force to investigate and prosecute ‘puppy factories’. (<https://www.abc.net.au/news/2020-10-22/rspca-taskforce-to-target-puppy-farms-statewide-nsw/12801116> )
- Animal Care Australia (ACA) welcomed this announcement, but concerns immediately arose as to how the new Task Force would find the ‘puppy factories’ or would they simply turn to known and registered breeders?
- The Task Force was soon re-named the ‘Breeding Compliance Unit’ (BCU) and appears to have commenced its role in December 2020.
- Communications between ACA and the RSPCA surfaced a frightening reply:  
*“...the Code of Practice makes no reference to animal trade, rather in the preface **“designed for everyone involved in the activity of breeding dogs and cats and has been developed to protect the welfare of the animals in their care .. for the purpose of enforcing legislation, there is no difference between a “backyard breeder vs a “business”.***
- Being able to declare any person breeding dogs (or cats) to be a business allows the RSPCA Inspectorate the capacity to circumnavigate the Prevention of Cruelty to Animals Act [Section 24E](#) – Power to enter Land.
- ACA believes this to be an over-reach of power and an echo of circumstances from 2017/2018 (Pet Shop Code saga) when an attempt was made to make all animal/pet owners ‘commercial entities’ if they bred any animal that they owned. That attempt was overturned by people power and yet here we are again – deja vue!
- ACA immediately sought legal advice on the statement made by the RSPCA as well as the legitimacy of claiming the NSW Breeding of Dogs & Cats applied to ALL persons who breed dogs and cats, especially given its ‘commercial facility structure’.
- The immediate advice received was to respectfully disagree with the RSPCA’s statement and that a clearer definition was required between a hobbyist breeder and a commercial (with the intent of making a profit) breeder.
- 24th November ACA met with the Minister’s Chief of Staff raising our concerns, and followed up with further communications on the 1st December providing what we believed to be a simple resolution by redefining the definition of ‘animal trade’ such that it includes clearly commercial operators only.
- ACA repeated our concern with the DPI in writing, and via phone conversations drawing clear boundaries between Standards & Guidelines as well as the fact the vast majority of the Standards do not and could not possibly apply to a person who simply keeps dogs as a hobby or for the enjoyment of having them as pets.
- We also highlighted that the intention and target of the BCU should be on unethical breeders – those with a blatant disregard for the welfare of their dogs
- ACA does not believe ‘best animal welfare’ is achieved issuing compliance notices to those who may not have a fence height that is exactly 1.8m, or a whelping box that is a few centimetres too short, or does not have the vets phone number displayed where an inspector wants it to appear or the most deplorable ‘invasion of privacy’ of having to display their phone number on their front gate (point of entry)!
- ACA has sighted multiple posts and reports that registered breeders in suburbs across NSW have become the focus of the new BCU if they have bred any time in the last 3 years.

- This is in stark contrast and contradictory to Mr Marshall's public announcement that:  
*"a new RSCPA taskforce to investigate and dismantle illegal dog breeding facilities. The team of investigators will work with the New South Wales Police Force Rural Crime Unit to track down and prosecute the perpetrators."*
- To date ACA has called for follow-up meetings with the Minister, the DPI and RSPCA and we will continue to ensure those doing the right thing are not subjected to undue stress and humiliation simply because the BCU is misusing the terminology within POCTAA and its Regulations.

### **RSPCA NSW Inspectorate Dog Breeder Inspections – Some Facts**

1. The aim was to identify and prosecute “Puppy Factories” (Minister Marshall’s term).
2. Whatever a “Puppy Factory” is, it is certainly not a hobbyist breeding 1, 2 or 3 litters of pups per year.
3. The DPI “Animal Welfare Code of Practice--Breeding Dogs and Cats” applies solely to “Animal Trades” which in this case is, quote, an “Animal breeding establishment (that is, a business in the course of which dogs or cats are bred for fee or reward)”. [http://classic.austlii.edu.au/au/legis/nsw/consol\\_reg/poctar2012451/sch1.html](http://classic.austlii.edu.au/au/legis/nsw/consol_reg/poctar2012451/sch1.html)
4. For tax purposes hobby activities and business activities are mutually exclusive. <https://business.gov.au/planning/new-businesses/difference-between-a-business-and-a-hobby> Dictionary definitions of “hobby” concur.
5. Hobbyists, by definition are not businesses. Therefore, we believe that hobbyists are not required to comply with the DPI “Animal Welfare Code of Practice--Breeding Dogs and Cats”.
6. As hobbyists are not participating in an animal trade as defined in the regulations, Section 24G of POCTAA does not apply to them. As a result, RSPCA NSW Inspectors should not be accessing the premises of hobbyists [http://classic.austlii.edu.au/au/legis/nsw/consol\\_act/poctaa1979360/s24g.html](http://classic.austlii.edu.au/au/legis/nsw/consol_act/poctaa1979360/s24g.html)
7. RSPCA NSW Inspectors should not be entering hobbyist premises without the authorisation of owners. Legal entry requires owner’s permission, a warrant or an urgent cruelty matter as detailed in “Part 2A Division 2 – Powers of Inspectors” within POCTAA. [http://classic.austlii.edu.au/au/legis/nsw/consol\\_act/poctaa1979360/s24e.html](http://classic.austlii.edu.au/au/legis/nsw/consol_act/poctaa1979360/s24e.html)
8. Random inspections of premises where an animal trade is not being carried out is not permitted anywhere in POCTAA. There is a serious risk that some “compliance audits” which have already been carried out are unlawful.