

4th February 2021
Mr Adam Marshall MP
NSW Minister for Agriculture & Western New South Wales

Dear Minister,

RE: The Immediate cessation of RSPCA NSW compliance audits of hobbyist dog breeders

I write to request the current audits on hobbyist dog breeders in NSW cease until ALL necessary stakeholders together with your office and DPI can resolve the ambiguity within POCTAA and the associated regulations.

In November 2020, following your announcement of additional funding and the creation of a

“... RSPCA Task Force to target puppy farmers profiting off social media...”

communications between Animal Care Australia (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...”***
(Chief Inspector Scott Meyers RSPCA NSW)

ACA immediately sought legal advice as to the accuracy of Mr Meyers’ statement with the reply,

“... We note Scott Meyers’ comments that the Code of Practice is “designed for everyone involved in the activity of breeding dogs and cats.” This is a quote from the Preface of the Code of Practice, and we respectfully disagree with Mr Meyers that this in itself makes it binding on everyone involved in animal breeding. ...”

Our legal advice indicates there is a serious risk that some “compliance audits” which have already been carried out are unlawful (Appendix 1).

ACA is adamant that hobbyists’ homes should not be the subject of random inspections where there is no supporting evidence of cruelty.

Our legal advice suggests we follow up with you the matter of defining what an animal breeding establishment is within POCTAA to assist in clearly defining and distinguishing between:

- a) animal trade/business (commercial) and
- b) a hobbyist (non-commercial)

It is clear that the ambiguity that exists is currently causing a great deal of stress to a large number of people who are being informed they must abide by a Code of Practice and submit to inspections that are clearly designed for a commercial breeding facility. Our legal advice summary in Appendix 1 is clear, there is sufficient ambiguity to call in to question the legitimacy of inspections, “Notices of Compliance” as well as the right to appeal fines that have been issued for non-compliance - given the reality many are not participating in an ‘animal trade’ and hence there is no mandatory requirement to abide by the Code of Practice.

Many Notices of Compliance that have been issued are totally unnecessary as they have zero animal welfare impact and may in fact be encroaching on an invasion of privacy, such as demanding all breeders advertise their mobile numbers at their front gate (point of entry) – for supposed bio-security reasons.

We were asked by DPI to submit a more suitable checklist, which we did and to our knowledge has been ignored by the RSPCA, so why request our input if it was never intended to be used?

ACA met with your Office on the 24th November outlining our concerns with Mr Meyers' statement as well as expressing a concern that this new task force ran the risk of becoming a witch hunt rather than focusing on its intended targets. ACA 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.

Our legal advice also leads ACA to question the legitimacy of the RSPCA's intent to force a hobbyist into compliance with a 'commercial-oriented Code of Practice' which is in fact forcing the hobbyist to meet the very criteria resulting in that hobbyist being recognised as a business – Catch 22! This action is deplorable and accordingly ACA will be pursuing the requirement for the RSPCA to advise persons in advance that it considers them an 'animal breeding establishment' and thus subject to compliance inspections. This decision to be subject to appeal to the NSW Civil and Administrative Tribunal if a hobbyist does not agree they are an 'animal trade'.

This matter further reinforces ACA's resolve calling on your Office to make the necessary legislative changes such that animal welfare compliance organisations are answerable to an independent Ombudsman – a matter raised during the recent Inquiry and NOT objected to by the CEO's of the RSPCA NSW and AWL.

There is now a clear public perception that there is a witch hunt against responsible breeders. We are sure this is not what you intended.

What we are seeking is an assurance that the current audits will cease immediately until the matter can be resolved, perhaps with an urgent edit to the current legislation and in the long term as part of the current review of POCTAA.

The new Breeding Compliance Unit (re-named task force) should be instructed by your office to target those that are known or likely to be unethical puppy factories, to investigate the multitude of advertisements on Gumtree, social media and other platforms, to gather evidence, investigate, and prosecute the true "unethical breeders". This is after all what the substantial additional funding and resources was announced for and intended to pursue. Should evidence sufficient to obtain a warrant be obtained regarding a hobbyist, then inspection is supported, but not this current "witch hunt".

ACA believes ceasing 'compliance audits' forthwith to be a reasonable request and eagerly awaits your response. ACA are currently preparing to make public statements outlining our findings and position should the matter not be resolved in a timely manner.

ACA Vice President, Sam Davis and I already have meetings scheduled with MPs in Parliament House on Tuesday afternoon (9th February, 2021). We would like to meet with you to discuss resolution prior to these meetings.

I look forward to your reply.

Kind regards,



Michael Donnelly
President, Animal Care Australia.
0400 323 843

Appendix 1: Outline of our legal advice

As to who the compliance audit powers in Section 24G apply to, we have summarised all of the legislative steps:

1. [Section 4](#) of POCTAA states that an animal trade is a trade, business or profession for a purpose prescribed for the purposes of that definition.
2. [Regulation 25](#) states that all trades listed in Schedule 1 are prescribed for the purposes of the definition of animal trade in POCTAA.
3. [Schedule 1](#) includes as an animal trade “*animal breeding establishment (that is, a business in the course of which dogs or cats are bred for fee or reward)*”.
4. [Schedule 1](#) states that the code of practice which applies to animal breeding is the Animal Welfare Code of Practice – Breeding Dogs and Cats.
5. [Regulation 26\(1\)\(a\)](#) states that the proprietor of a business that conducts an animal trade must comply with the requirements of R26.
6. [Regulation 26\(3\)\(i\)](#) states that relevant code of practice must be complied with. We know from Schedule 1 that this is the Animal Welfare Code of Practice – Breeding Dogs and Cats.
7. [Section 24G](#) of POCTAA states that it applies to animal trades (see R25 above). It also states what inspectors may do when they enter your property and that the purpose of those powers are to ensure provisions of POCTAA and the regulations are complied with.
8. [Section 4](#) of POCTAA states that the “regulations” are those made under POCTAA. The POCTA Regulation states that it is “*made under the Prevention of Cruelty to Animals Act 1979*”. We know from Regulation 26 that they require compliance with the Code of Practice.

So, anyone who is legally required to comply with the Regulations (and thus the Code of Practice, as the regulations require compliance with it) be subject to an audit under Section 24G. Section 24E states that the consent of the owner is required, so if your members don’t wish the RSPCA to attend their property, they are not legally obliged to allow them entry unless presented with a warrant (or an animal is at risk of imminent danger of suffering significant physical injury or life threatening condition).

Section 24E states that the RSPCA requires the owner’s permission to enter land. If your members believe that they are hobbyists and not a business, they are within their legal right to decline entry to the RSPCA.

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.