

20th May 2021

Re: QLD Review of Animal Care & Protection Act (ACPA) 2001

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. ACA welcomes the opportunity to contribute to this review and we thank you for including us as a key stakeholder.

In relation to the survey, ACA has found some of the questions and proposed options to be ambiguous and requiring further detail or explanation. To this effect, we have opted to respond in writing to ensure our views are not lost within the statistical reporting process of a survey and in doing so providing inaccurate feedback.

We make the following responses:

1. ACA recommends the inclusion of an additional purpose: “*To improve animal welfare outcomes*”
2. ACA encourages a review of resource policy to better target resources to improve animal welfare outcomes strategically and in particular through education initiatives.
3. ACA does not support mandatory reporting. Vets must be given the discretion to identify a separation between a welfare concern and specific animal cruelty and the freedom to act accordingly.
4. ACA recommends an enhanced focus on educating and raising welfare outcomes rather than on compliance and enforcement.
5. ACA recommends the ACPA directly prohibits advocacy on any issue by RSPCA QLD and its inspectors.
6. ACA recommends the inspectorate functions of RSPCA Queensland must be subject to the same accountability as any state government department. This includes:
 - oversight by an ombudsman and/or
 - the implementation of an Independent Appeals Panel (made up of stakeholder, enforcement and legal representatives) and
 - access to information under the Queensland Right to Information Act 2009.
7. ACA does not support the implementation of PINs without the introduction of codes of practice that are suitable, easily understood and practical and have been consulted with and accepted by animal keeper organisations.
8. ACA recommends the state accept responsibility for costs to maintain seized animals during proceedings regardless of the outcome.
9. ACA recommends the specification of “requirements” used on Animal Welfare Directions are assessed as part of the review of the ACPA.

For other responses relating to the Discussion Paper/survey please refer to *Appendix A* of the attached submission.

ACA looks forward to further consultation and welcomes the opportunity to provide further clarification on this submission should you require it.

Kind regards,

A handwritten signature in black ink that reads 'M Donnelly'.

Michael Donnelly
President, Animal Care Australia.
0400 323 843



QLD Review of Animal Care & Protection Act 2001.



MAY 21 2021

**ANIMAL CARE AUSTRALIA
STAKEHOLDER SUBMISSION**

QLD Review of Animal Care & Protection Act (ACPA) 2001

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, and fish.

The large majority of Queensland residents are keeping pets. Animal welfare legislation should seek to raise animal welfare outcomes whilst encouraging animal keeping.

We agree with and amplify the words of Minister Mark Furner MP in the foreword to the Discussion paper.

“We want to make sure our laws, standards and penalties reflect contemporary community expectations while allowing animal industries to continue to operate appropriately and without unnecessary regulatory burden.”

Radical Animal Rights Extremists (ARE’s) aim to shut down captive animal breeding and keeping in all its forms. Care is needed to avoid unintended consequences which create a disincentive to keep animals.

Purposes of the Act

Question 3 in the Discussion paper implies the quoted purpose is indicative of the complete ACPA purpose, when it is not. The full purposes in ACPA Section 3 are far broader and in totality are supported by ACA.

ACPA Section 4 lists strategies to achieve the purposes. The purposes should be extended to include a focus on education above regulation based on the following realities:

- There is insufficient funding to ensure compliance with animal welfare laws, and realistically this is unlikely to change in the near future.
- Education of the general public is a more economical means of improving animal welfare outcomes given limited funding.
- The current focus on reacting to reported infractions whilst most infractions go unreported is an inefficient use of resources. Extraordinary resources are often directed at single cases.

ACA recommends the inclusion of an additional purpose:

“To improve animal welfare outcomes.”

ACA encourages a review of resource policy to better target resources to improve animal welfare outcomes strategically and in particular through education initiatives.

Reporting of animal welfare concerns by veterinary professionals

Any person currently has the ability to report concerns to the relevant authorities. Vets generally want to help and educate the community – not police it!

As stated in your discussion paper, mandatory reporting will make people scared to go to a vet. This is not in the best welfare interests of animals and will be potentially onerous on vets as well as confrontational and is a direct conflict of interest between the vet and their client.

Reporting by veterinarians must remain at their discretion based on individual circumstances to ensure the safety of vets, staff and animals. Vets should be free to decide if the situation warrants reporting to authorities, or whether they can educate the owner themselves.

ACA does not support mandatory reporting. Vets must be given the discretion to identify a separation between a welfare concern and specific animal cruelty and the freedom to act accordingly.

Code Compliance Monitoring

The discussion paper does not address Compliance Monitoring as it exists in Chapter 5 of the current ACPA.

ACA is supportive of the intention apparent in the current Chapter 5, however we believe this system has not been implemented for domestic pets/companion animals. We would welcome further investigation into such a system as a possible basis for educating animal keepers.

Some initial thoughts include.

- Extend the code compliance monitoring system to include general promotion of codes of practice to the public.
- Develop a verification system to evaluate over time improvements in animal welfare outcomes for each endorsed code of practice.
- Enrol animal keeper organisations to assist with code of practice development.
- Utilise and fund animal keeper organisations to educate the public on best practice animal husbandry and welfare practice.
- ACA encourages a separation of “Authorised Officer” role from the role of “Inspector” under the ACPA.

ACA recommends an enhanced focus on educating and raising welfare outcomes rather than on compliance and enforcement.

RSPCA Australia and State advocacy tensions

RSPCA Australia is the body that determines much of the advocacy policy that is passed to their state counterparts, including RSPCA Queensland. In ACA’s experience there is often significant

tension between the national policy and that of individual states and this tension has and continues to cause angst for ACA in a range of areas.

It is critical that the inspectorate role of RSPCA Queensland is carefully and distinctly separated from any and all RSPCA advocacy matters. This distinction must be more clearly articulated within the ACPA and to the public.

ACA recommends the ACPA directly prohibits advocacy on any issue by RSPCA QLD and its inspectors.

RSPCA Queensland accountability

RSPCA Queensland, as in most other states, are tasked with powers to enter property and to perform a range of investigative, compliance and enforcement duties usually reserved for state employed officers, primarily the police.

The RSPCA inspectorate is in a unique position in this regard and yet currently they are not subject to the same public scrutiny and accountability to which state employees and enforcement departments are subjected. This must change under the revised ACPA.

ACA is increasingly made aware of the consequences of the unaccountability of the RSPCA in several states, where the Inspectorate have continued to self-interpret legislation and regulations in a manner that is detrimental to animals' welfare, the education of and compassion towards the keepers of animals and the subsequent degradation of the intended purpose of the RSPCA – that is the prevention of cruelty to animal – and their reputation.

Heavy-handed tactics and misinterpretation of regulations, along with the blatant refusal to correspond and work with an animal's current veterinary practitioner has in some circumstances resulted in the euthanasia of otherwise healthy or treatable animals. The owners' inability to independently appeal and draw attention to these circumstances must change on a national scale.

ACA acknowledges to be appointed as an inspector under the ACPA, a person must undertake training delivered by DAF – however it is ACA's experience the general training of inspectors in all states is inadequate, particularly when dealing with pet species outside of dogs and cats.

It is our belief there is too strong an emphasis on enforcement and insufficient training on species specific welfare knowledge. It is also noted this is true during the recruitment process with a large number of inspectors coming from police and security backgrounds. ACA also acknowledges RSPCA Qld Inspectors are required to abide by the Code of Conduct for the Queensland Public Service, Public Sector Ethics Act 1994 and must conduct prosecutions under the model litigant principles. Feedback from our membership contradicts this highlighting situations and circumstances where accountability and/or legal grounds for prosecuting have not been met or applied fairly.

The ongoing increase in the number of circumstances where the actions of the RSPCA (nation-wide) are at a minimum – questionable, and at extreme – an abuse of power has resulted in ACA

re-evaluating our support. Therefore ACA's support of the RSPCA QLD and its compliance role is contingent on the recommendation below:

ACA recommends the inspectorate functions of RSPCA Queensland must be subject to the same accountability as any state government department. This includes:

- **oversight by an ombudsman and/or**
- **the implementation of an Independent Appeals Panel (made up of stakeholder, enforcement, and legal representatives) and**
- **access to information under the Queensland Right to Information Act 2009.**

Penalty Infringement Notices (PINs)

There are issues in other jurisdictions regarding inappropriate use of PINs. Such issues are often a result of poorly constructed standards upon which PINs are issued. This issue must be resolved prior to implementing PINs.

The creation and review of codes of practice upon which we presume most PINs (if implemented) would rest is not a simple task.

In ACA's experience, too often codes of practice for the areas ACA represents have been developed largely in-house by government officers with limited input from animal keeper organisations.

Often codes of practice are best prepared in the first instance by industry with guidance from government. ACA can provide assistance and contacts in this regard.

Having seen the misuse of PINS in other states and the lack of any verified animal welfare outcome improvements it is difficult for ACA to support the implementation – particularly as these fines are more often than not seen simply as 'revenue raising'.

The automatic issuing of on-the-spot fines does nothing more than contribute to financial instability potentially preventing people from improving welfare. This particularly applies where the majority of cases are not deliberate acts of cruelty and are usually ignorance/lack of education.

Those acting deliberately to cause cruelty or those who do not practice sound welfare are usually not perturbed by threats of fines. Those who significantly profit from animals are rarely financially affected by PIN's, raising the question of the validity of their implementation.

ACA does not support the implementation of PINs without the introduction of codes of practice that are suitable, easily understood, and practical and have been consulted with and accepted by animal keeper organisations.

Managing Seized Animals

The discussion paper implies an assumption that should a prosecution be successful then the owner should be liable for costs associated with caring for seized animals whilst proceedings take place.

ACA strongly objects to this implied assumption.

In all other circumstances, when a person is charged with an offence and they are held in custody, they are not required to compensate the state for the cost of their incarceration – the state bears this cost. The same must apply to the cost of maintaining seized animals.

ACA notes RSPCA Qld equally should not burden the costs of sheltering those animals seized, such costs are the responsibility of the state.

Too often ACA has encountered cases where people are reluctant or unable to defend charges due to fear, they will need to pay large fees for the maintenance of their seized animals, due to drawn out court proceedings.

This problem is skewing the system and we believe is a significant reason for many guilty pleas. ACA is aware of numerous cases in many jurisdictions, including Queensland, where legal advice to plead guilty is given on purely economic grounds.

ACA recommends the state accept responsibility for costs to maintain seized animals during proceedings regardless of the outcome.

Animal Welfare Directions

ACA supports the continuation of the Animal Welfare Directions system.

We have concerns that specification of “requirements” within an Animal Welfare Direction (ACAP S.160(1)(c)(i)) is not sufficiently rigorous. Further work is needed to clarify and strengthen this area.

Some initial thoughts include.

- Each requirement to reference a clause within a code of practice. Codes of practice will need revision and for many domestic situations will require development and implementation before this can occur.
- There are issues in other jurisdictions whereby similar notices include reference to unsuitable standards for the current situation as well as the inspectorate not clearly identifying their exact concerns, rather quoting the primary breach of code, leading to non-clarity of whether a person has complied with the initial instruction or not – eventually becoming a matter of ‘he said/she said’.

- Consideration could be given to PINs being issued after failure to comply with an Animal Welfare Direction – although ACA would only support this IF the codes of practice AND the Animal Welfare Directions were designed with clear and concise desired outcomes.

ACA recommends the specification of “requirements” used on Animal Welfare Directions are assessed as part of the review of the ACPA.

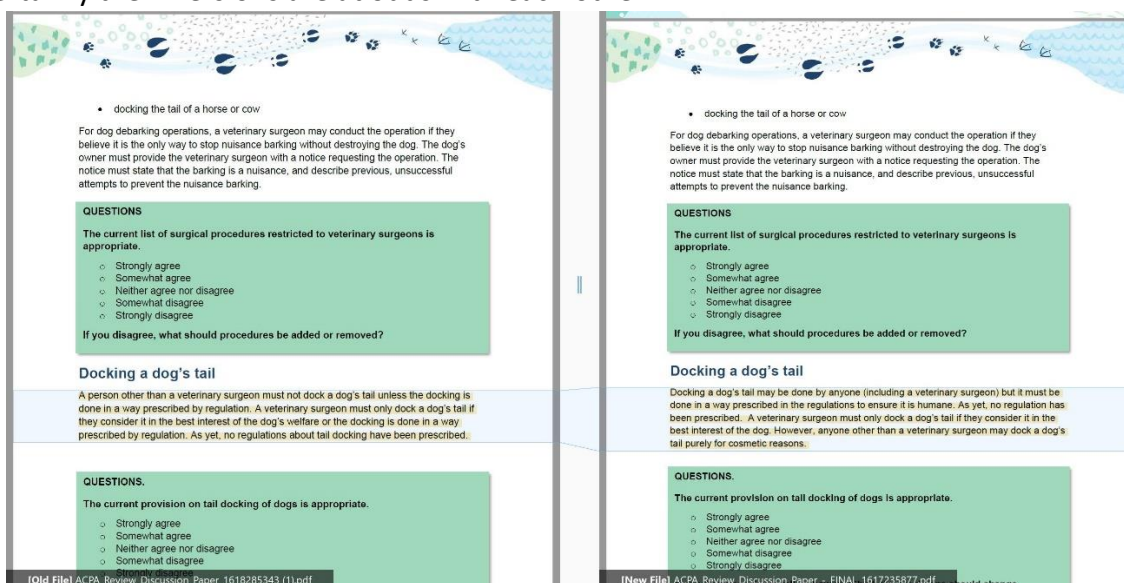
Survey questions

ACA has concerns with the use of surveys such as this for a range of reasons.

- The questions artificially focus on specific sections and even specific phrases within sections in the ACPA, when it is the entire ACPA that is under review.
- Likert style scales, such as the strongly agree to strongly disagree scale used in the survey require care.
- Likert scales are rarely linear. Often aggregate statistics such as mode, median and in particular mean of such survey questions are quoted inappropriately as evidence of “average” agreement or disagreement.
- Questions must be worded carefully to ensure they are not open to interpretation. A number of questions in the survey are ambiguous, hence responses on the given scale will be statistically questionable.

Problem questions of note on this survey include the following.

- Page 7 Purposes of the ACPA question quotes a single purpose which has an entirely different focus when read in isolation to when read in the context of the entire purposes in the ACPA in s.3.
- Page 9 question asks about “animal cruelty or neglect”. Cruelty is a defined offence (s.18) whilst neglect is not mentioned in the ACPA and is (likely) a very different matter.
- Page 10 question on tail docking has been altered in different versions of the discussion paper. The following image shows the 2 versions. The original version is misleading at best and certainly the 2 versions are at odds with each other.



-
- Page 12 question regarding confining an animal requires a clear definition of the term “closely confined” to be answered with any precision.
 - Page 13 question on unrestrained dogs is misleading. ACA believes it is already illegal to have an unsecured load, such as a dog, on public roads under Transport Operations (Road Use Management--Vehicle Standards and Safety) Regulation 2010 - Reg 13q.
http://classic.austlii.edu.au/au/legis/qld/consol_reg/toumsasr2010759/s13q.html

ACA has responded with our concerns in the submission above and provides a basic response to the survey in Appendix A attached.

ACA looks forward to further consultation and welcomes the opportunity to provide further clarification on this submission should you require it.

Kind regards,



Michael Donnelly
President, Animal Care Australia.
0400 323 843

Appendix A - Survey responses:

3. Purposes of the ACPA

Q. One of the purposes of the ACPA is to "...achieve a reasonable balance between the welfare needs of animals and the interests of people whose livelihood is dependant on the animals...". The purpose is still suitable with increased animal welfare expectations and consumer preferences.

Agree – noting there are currently missing Codes of Practice for some pets and companion animals. It should be noted that the introductory statement on the Discussion Paper is misleading as it only partly quotes the full Purpose. This partial quote implies 'peoples livelihoods should take equal consideration to animal welfare' where a vast number of people would disagree. The remaining unquoted sections of the Purpose refocus the attention on to animal welfare.

4. Prohibited events

Q. The current prohibited event provisions are appropriate.

Strongly agree

5. Reporting of animal welfare concerns by veterinary professionals

Q. Veterinary professionals should have obligations under the ACPA to report suspected incidents of animal cruelty or neglect to authorities.

Strongly Disagree – see comments in the above submission.

6. Regulated surgical procedures

Q. The current list of surgical procedures restricted to veterinary surgeons is appropriate.

Strongly agree

Q. The current provision on tail docking of dogs is appropriate.

Strongly agree

Q. The current provision for the supply of animals that have undergone regulated surgical procedure are appropriate.

Strongly agree

7. Possession or use of certain traps or spurs

Q. The current provisions for traps and spurs are appropriate.

Strongly agree

8. Dogs

Q. The current offences relating to the use of dogs to kill or injure another animal are appropriate.

Strongly agree

Q. The current offence relating to confining a dog is appropriate.

Neither agree nor disagree - requires more information and clarification.

The Act does not define 'closely confined' other than "*In deciding whether a dog is 'closely confined', the dog's age, physical condition and size is to be considered*". There is no ascertain of the actual method of confinement. There is also no definition of exercise. Enclosing a dog in a kennel/enclosure where the dog has movement (but not exercise) is vastly different than crating said dog. This current offence requires further defining – issues relating to this exact matter have recently surfaced in NSW with the interpretation of suitable space being misused/abused by Inspectors. The use of a 'common sense' approach does not appear to have been reliable in NSW.

Q. Transporting an unrestrained dog in the back of an open utility, tray of a truck or from an open window should be made a specific offence under the ACPA.

Disagree - current laws in ALL states require a dog to be tethered when being transported on the tray of a ute or vehicle. ACA has no objection to this. However working dogs whilst on a property and not being transported on public roadways SHOULD be the exception. Your discussion paper indicates: "They may fall or jump from moving vehicles or may cause an accident if the driver of the vehicle or other road users become distracted." This implies the offence is whilst travelling on a road, but it is not clear as to what should occur on one's private property.

ACA believes it is already illegal to have an unsecured load, such as a dog, on public roads under Transport Operations (Road Use Management--Vehicle Standards and Safety) Regulation 2010 - Reg 13q. http://classic.austlii.edu.au/au/legis/qld/consol_reg/toumsasr2010759/s13q.html so why is there a need to double-up and have the same offence in two very different Acts?

ACA believes there are too many ambiguities with how this Question is posed. It is our contention there are a number of differentiating variables that apply to tethering a dog, restraining a dog, having a car window open or half open that make specifying this action as an offence – a direct act of animal cruelty – to fraught with error and potential injustice to both humans and animals.

The specifics of these actions should be included within a Code of Practice for the keeping of dogs (particularly for working dogs) and should not be included in the same category as animal cruelty offences.

9. Using animals for scientific purposes.

Q. The scope of when an animal is used for scientific purposes should be aligned with the Scientific Use Code. In particular, it should be expanded to:

** accommodate advances in science such as the creation and breeding of new animals where the impact on the animal's wellbeing is unknown or uncertain.*

**add other practices that involve the use of animals for science, including diagnosis, product testing and production of biological products.*

Strongly agree

Q. Other provisions in the ACPA relating to the scientific use of animals are appropriate.

Strongly agree

10. Inspectors

Q. The powers of inspectors under the ACPA are sufficient to allow inspectors to effectively deal with animal welfare incidents and do not require strengthening.

Strongly agree

Q. It is appropriate for Queensland Government to authorise non-governing organisations, such as the RSPCA, to undertake investigations and conduct prosecutions under the ACPA.

Neither agree nor disagree – see our response in the above submission.

Q. People from non-governing organisations who are appointed as inspectors under the ACPA should be subject to the same accountability as public servants in terms of ethics and codes of conduct

Strongly agree

11. Compliance and enforcement.

Q. The current suite of compliance options (not including PINS, as discussed below) for responding to breaches of animal welfare under the ACPA is comprehensive

Strongly agree

Q. PINS should be introduced as a compliance option under the ACPA for clearly defined, low range animal welfare offences.

Neither agree or disagree – see our response in the above submission

12. Orders relating to animal welfare offences.

Q. The introduction of provision that would allow a court to make a decision to sell or rehome seized animals prior to court matters being finalised is reasonable.

Strongly Disagree – innocent until proven guilty. Your animals should still belong to you until you are found guilty.

Q. The introduction of a provision that would allow a court to impose a bond or security on the owner of seized animals for the care of their animals prior to court matters being finalised is reasonable.

Strongly Disagree – innocent until proven guilty. Parents are not charged for the costs of foster care when their children are taken by authorities. People should have their day in court and should not be prevented from participating in that due to excessive costs and pressured to surrender their animals for financial reasons.

Additionally, if ACA's recommendation is adopted that requires the State to cover all costs of sheltering and housing while court proceedings are occurring negates this question.

It is already noted in the discussion paper pg 21, paragraph 4.

“ Some of the costs associated with the caring for a seized animal can be recovered from the owner or former owner of the animal through the court. However, in most cases the owner cannot afford to pay the costs” – where do you expect those in a poor financial situation to find such bonds?

There are often cases dragged through courts unnecessarily by the RSPCA (nation-wide) where regardless of the actions being found to not be deliberate, owners have been unscrupulously crippled financially, mentally and publicly.

13. Establishing appropriate penalties.

Q. The maximum penalties for animal welfare offences under the ACPA are appropriate.

Strongly agree