



“Animal Welfare by the experts – those who keep, care for and breed animals.”

www.animalcareaustralia.org.au

28th February 2022

Legislative Council, Portfolio Committee 4

RE: 2021 Inquiry into Charitable Organisations in NSW

Animal Care Australia (ACA) would like to thank Portfolio Committee 4 for providing us with the opportunity to provide feedback for this Inquiry, and we look forward to the opportunity to provide testimony at this Inquiry.

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.

In November 2019, ACA provided a submission and testimony to the *NSW Inquiry into Animal Cruelty Laws and the Charitable Organisations* responsible for enforcing those laws, making recommendations to enhance the accountability and transparency of the Royal Society for the Prevention of Cruelty to Animals NSW (RSPCA) and the Animal Welfare League (AWL). It is extremely disappointing that those recommendations or even their intent has remained unheeded some two years later.

With the exception of this Inquiry, proposals within the draft Animal Welfare Act 2022 have only captured pre-existing modes of accountability without taking the opportunity to place the responsibility of the organisations and authorised officers who are charged with enforcing legislation on behalf of the NSW Government WITH the NSW government where it belongs!

Precedents for this in other States strongly warrants the same action and outcome here in NSW.

Therefore:

- ✓ **ACA fully supports the activities, and outcomes of the Animal Welfare League**
- ✓ **ACA supports the continuation of the RSPCA NSW and Animal Welfare League Inspectorates – BUT answerable to the Department of Primary Industries.**
- ✓ **Proposed measures of accountability and transparency within the draft Animal Welfare Act are still insufficient and require further enhancement.**
- ✓ **ACA recommends the introduction of a Companion Animals Welfare Panel.**
- ✓ **Additional outlining and structure of the proposed ‘Independent Appeals Panel’ is required.**
- ✓ **ACA supports the continuation of the shelter and rescue aspects of both the RSPCA NSW and Animal Welfare League.**
- ✓ **ACA recommends prosecutions should be conducted via the Director of Public Prosecutions (DPP).**
- ✓ **Prosecutions conducted via the DPP would negate any conflict of interest involved in both investigating and prosecuting individuals, commercial or farming ‘offenders’.**
- ✓ **If the DPP option is not possible then, ACA strongly recommends the prosecutorial powers be removed from the RSPCA NSW (as it has in other States) and subsequently the AWL.**
- ✓ **Approved organisations tasked with enforcing Government Legislation must meet the same court required burden of proof as the NSW Police Force when enforcing any government legislation.**

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.
0400 323 843

**Legislative Council,
Portfolio Committee 4 –
2021 Inquiry into the
Approved Charitable
Organisations**



FEBRUARY 28 2022

**ANIMAL CARE AUSTRALIA
STAKEHOLDER SUBMISSION**



Legislative Council, Portfolio Committee 4 – 2021

Inquiry into the Approved Charitable Organisations

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 Portfolio Committee 4 for providing us with the opportunity to provide feedback for this Inquiry, and we look forward to the opportunity to provide testimony at this Inquiry.

Term of Reference for stakeholder comment:

1. That Portfolio Committee No. 4 – Regional New South Wales, Water and Agriculture annually inquire into and report on the operation of the charitable organisations approved under s 34B of the Prevention of Cruelty to Animals Act 1979, and in particular:

- (a) the matters contained in the annual reports of the approved charitable organisations, including their financial statements,
- (b) the exercise by the approved charitable organisations of their compliance and enforcement functions under the Prevention of Cruelty to Animals Act 1979, and
- (c) any other related matter.

Animal Care Australia's Review:

Part 1 (a) Annual Reports and Financial Statements.

ACA acknowledges the Annual Reports & Financial Statements for the period 2020-2021 for the Royal Society for the Prevention of Cruelty to Animals NSW (RSPCA) and the Animal Welfare League (AWL) were likely drafted and/or completed prior to the announcement of this Inquiry and therefore may have been focused on more 'public appropriate' information.

In lieu of the fact this Inquiry is now to be held annually following the submission of Annual Reports every September, ACA believes a greater emphasis on outlining and explaining how funds (both government and charitable) are designated and utilised is required moving forward.

Both financial statements are so broad and unclear that the information is impossible to honestly review or decipher.

The public has the right to know exactly how their tax contributions are being used as well as where their charitable donations are actually designated.

Particular attention is required when recording and reporting 'salaries & wages'.

ACA notes:

AWL: \$4,833,973 is allocated (page 17 AWL AR)

RSPCA: \$30,622,000 is allocated (page 19 RSPCA FS) with \$6,485,000 on 'Funding RSPCA Inspectors' as a 'charitable purpose' (part 19 c page 25 RSPCA FS)

The AWL does not provide a breakdown on the amount used for the inspectorate.

The RSPCA has repeatedly claimed funding from the NSW Govt does not cover their inspectorate costs and yet a 'Government grant' of \$8,345,000 is recorded – without designation of what that grant was originally provided for? (Part 19 c page 25 RSPCA FS)

This could lead one to argue the RSPCA Inspectorate was more than satisfactorily funded!

ACA questions whether these are the same reports received by the NSW Minister for Agriculture?

Does he receive more complete and detailed records? If not, why were the accurate reports not provided for this review?

If this is all the Minister receives, how can he possibly consider himself informed on the functions and actions of the authorised officers under his Ministerial authority?

Both charitable organisations SHOULD be required to report on the same (comparable) statistics and the same financial categories. This should be standardised by the Minister, so that both organisations can be assessed, reviewed and, held accountable equivalently.

ACA recommends both organisations' financial statements available for public and stakeholder review should be more clearly outlined with more delineation on how funds are utilised particularly concentrating on their involvement in the enforcement of the animal welfare act under agreement with and for the NSW Government.

Looking further individually at the annual reports:

Animal Welfare League:

The AWL Annual Report was very clear. The report highlighted everything the AWL has been involved with in community programs, including working with local and regional councils in their endeavour to educate and assist with animals, their care and welfare.

The AWL also gave insight to not only what was achieved during the year, it included their future projections into projects and financial goals.

They also provided a financial report that was easier to interpret and understand.

Members and general public are well informed about all of its volunteer branches from shelters, activities, fundraisers and incentives. Members can see exactly where their contributions are being aimed, but again could outlined further in reference to salaries & wages.

AWL also provided good insight into its statistical data on animals that have come into their care and their outcomes.

RSPCA:

The RSPCA report lacks real insight into current and future projects. It does not highlight any major activities or incentives over the year in supporting local and regional communities in animal care and welfare.

RSPCA's financial report looks comprehensive but is the same number moved around onto different pages, with no details, and the major components of their operations are never separated from the insignificant aspects. RSPCA does not separate its Inspectorate expenses from that of the shelter.

When ACA first met with the CEO, Steve Coleman and Chief Inspector, Scott Myers we were informed *"the public understand that the shelter and inspectorate are clearly separate functions of RSPCA"*, and that we were being unreasonable to claim that the public confuse the two. ACA cannot see how that claim is possible when their own financial documents do not differentiate?

Note 19 (c) of the RSPCA Financial Statement declares \$6.485M on 'Funding RSPCA Inspectors' as a charitable purpose. Does this include:

- inspectorate wages?
- Legal costs?
- Veterinary hospital expenses?
- Animal keeping costs?

It is not clear at all. Animal expenses are listed, but do not differentiate between the shelter, and inspectorate. Veterinary expenses are only listed as they relate to fundraising revenue – they do not appear at all elsewhere, and do not separate the vet expenses for the clinic clients, shelter, or inspectorate.

When looking at other expenses, even FUNDRAISING EXPENSES has its own row - so where are the breakdowns of the expenses of the inspectorate or the veterinary clinic for the shelter?

The expenses for Fundraising don't differentiate where fundraising has come from.

Many people donate towards the inspectorate, others to the shelter, others have no idea what they are donating for, they just love puppies and don't like seeing sad puppies. Why are these records not accounted for separately and clearly, like any other organisation would be required to do?

This lack of transparency is unacceptable. A quick view of this financial statement could imply the RSPCA are double dipping on fundraising and applying for costs in court – but we can't tell, because the incomings are not even declared.

Are these records the same as what they submit to the ATO? The public has a right to see those 'financial records'.

The Annual Report seems more intent on telling 'short stories' about individual animals rather than focusing on the statistical data of animals that come into their care and their outcomes. The simple

inclusion of animal numbers does not clarify or give any other information pertaining to outcomes for those animals (eg; 30 horse, 929 Other animal types, 277 Livestock).

The article relating to the Puppy Farm Taskforce, (aka Breeders Compliance Unit) now called Intensive Breeding Taskforce provides a very misleading statement identifying '900 breeding facilities' that they plan to inspect.

This implies they have identified 900 'Puppy Farms'.

ACA questions: Is this 900 Puppy Farms OR 900 breeders of dogs and cats? We'll come back to this further in our submission.

The Annual Report is clearly designed to provoke further fundraising rather than reporting on actual results.

Part 1 (b) - The exercise by the approved charitable organisations of their compliance and enforcement functions under the Prevention of Cruelty to Animals Act 1979,

Firstly, without access to the Operations and Procedures Manuals pertaining to how each of the organisations' Inspectorates function within their role to carry out their duties, ACA is limited in its ability to provide a balanced and complete assessment.

We are only able to provide an assessment from the perspective of our interactions and those interactions and experiences of our individual members and member organisations.

When referring to part 1 (b) of the Terms of Reference, it is impossible to include both organisations as joint responses, as such for the purpose of the remaining submission we will be separating our responses for the approved charitable organisations.

Statement relating to the Animal Welfare League

ACA currently supports the approach taken by the Animal Welfare League (AWL) Inspectorate.

Since ACA was founded in 2018, our organisation has not received a bad report or complaint from any member, and we applaud the manner in which the AWL goes above and beyond to assist the community to achieve its goal of higher animal welfare outcomes.

The AWL continues to support owners and pets being able to stay together wherever it is practical.

From the AWL Annual Report:

"During the nominated period Animal Welfare League NSW received 976 complaints. As a result of these complaints, 1,205 attendances (including re-checks) were conducted in order to investigate the complaints effectively. The complaints received were in general, omissions (neglect) rather than commissions (abuse)... carried out 2 successful prosecutions in various local courts across NSW, and all matters were successful in proving the allegations as put before the court"

This highlights the difference in approach and attitude of the AWL. Their ability to recognise neglect or simple omissions and initiate assistance to those owners – without the need to intimidate or issue Infringements/prosecutions is applauded by ACA.

Their approach of **EDUCATION before PROSECUTION** will continue to go a long way in improving animal welfare in NSW.

ACA fully supports the ethos of the Animal Welfare League (AWL), including the Inspectorate.

Statement relating to the RSPCA NSW:

In 2019, ACA provided a submission and testimony to the NSW Inquiry into Animal Cruelty Laws and the Charitable Organisations (CO's) responsible for enforcing those laws.

At that time ACA stated:

“The need for effective and appropriate investigative and enforcement powers for criminal prosecutions is paramount regardless of the organisation tasked to carry them out. This is no different to the NSW Police Force or child abuse investigations there must be appropriate provisions within the Act to achieve this. ACA does find there has been an over-zealous use of these powers – particularly in relation to entering a property. It is our understanding that under the law of New South Wales, Police may enter a home or other premises if they have a search warrant, and may also enter premises without a warrant if they believe someone there has suffered a significant physical injury, or is in imminent danger of significant physical injury, or that entry into the premises is necessary to prevent a breach of the peace.

This does not seem to apply to the CO's Inspectorate. The mere defensive claim that a phone complaint of potential animal abuse justifies the mobilisation of several inspectors to enter a property without permission, to inspect and seize all animals found on that property without apparent illness or harm having been perpetrated seems extremely over-reaching of the intent of the laws designed to protect the animals. What is apparent in many cases is the presumption of guilt over innocence, and the irresponsible and unnecessary stress inflicted on the animals – all in the pursuit of ‘catching the offender’.

There are too many ‘stories’ of perfectly healthy animals being seized, held for weeks while being tested for everything imaginable, found to have nothing wrong and then returned to their owners in worse state – particularly in temperament & stress related phobia – than when they were taken. This has to stop. ACA acknowledges the inspectorate cannot be expected to hold a comprehensive understanding of all animal species. It is our recommendation that future employment of the inspectorate must include:

- *Training needs analysis within CO's for each role to determine what additional training is required for existing staff and any training deficiencies be rectified within a specified period of time.*

- *A skills-based training program should be reviewed at specified intervals to ensure the content remains current and appropriate for the changing needs in these roles. If a skills-based training program does not exist, one should be implemented within the next 12 months.*
- *Training should contain a mixture of theory and practical assignments and should include external courses as well as internal. It should include items such as the current POCTA standards, general animal care and animal husbandry for the species' falling within the Inspectorate remit and animal behaviour.*
- *Successful completion of an approved training program must be a mandatory requirement prior to accreditation being given to an individual to be elevated to an Inspector role.*
- *Accreditation should be subject to ongoing training and renewals within specified timeframes.*
- *In addition to the above role-based training, managers, senior managers and supervisors should be required to undertake people leadership training on a regular basis.*

ACA does not find any validity for the seizure of animals that do not appear to be abused or in imminent danger. There is no justification for animals to be taken to already over-crowded and under-staffed CO's shelters for testing. An expert (veterinarian or other) should be required to carry out blood testing etc at the premises where the animals feel secure, and their environment is known to them that is where the animals feel safe. This IS in the animals' best interest. This is the objective of POCTA and therefore that of the CO's – not the prosecution of the owner. It is our recommendation the 'experts' be independent of the CO's and be funded by the government to ensure more transparency, actual proof of guilt, and accountability. ACA strongly recommends the removal of animals where blatant abuse has occurred and where it can be proven without reasonable doubt the animal's welfare was in imminent danger"

At the time, that statement was predominantly in reference to the behaviour and procedures of the RSPCA. Despite those recommendations and testimony – **NOTHING HAS CHANGED** – if anything, the situation has intensified – particularly during the execution of the 'puppy farm taskforce'.

Continuing on from earlier in our submission and the inclusion of the 'Puppy Farm Taskforce in their Annual Report and the statement of having identified 900 breeding facilities, ACA draws your attention to:

RSPCA's definition of a puppy farm:

'An intensive dog breeding facility that is operated under inadequate conditions that fail to meet the dogs' behavioural, social and/or physiological needs.

Puppy farms are usually large-scale commercial operations, but inadequate conditions may also exist in small volume breeding establishments which may or may not be run for profit.

Puppy farming is a major animal welfare issue in Australia. The main welfare problems associated with puppy farms include but are not limited to:

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- *Extreme confinement – in some cases breeding animals may never be allowed out of their cage to exercise, play, socialise, have companionship or even to go to the toilet.*
 - *Inadequate veterinary care and general care (grooming and parasite control).*
 - *Unhygienic living conditions.*
 - *Inadequate and overcrowded housing conditions.*
 - *Frequent long-term health and/or behavioural problems in breeding dogs and puppies born in puppy farms as a result of the poor conditions they are bred in and a lack of adequate socialisation*

The Annual Report statement and the above definition either show a purposeful misdirection of the statistic (900) – perhaps in the pursuit of obtaining continued Taskforce funding - or with 900 identified puppy farms and over twelve months of Taskforce funding, an inept ability to carry out their compliance and enforcement responsibilities?

Further to this, if 900 breeders of dogs and cats have been identified – data easily obtained by accessing the NSW Pet Registry (Office of Local Government) - why was the following reported by Mr. Scott Hansen, Director General, Department of Primary Industries during the NSW Budget Estimates?¹

- The total number of animals inspected since 2020 is 4,823.
- The number of new inspections or first-time inspections was 209, with 139 revisits.
- There were 122 24Ns (written Notices of non-compliance).
- There were 47 Penalty Infringement Notices issued
- Three prosecutions were initiated.

Note: Mr. Hansen also indicated *“the anecdotal is that the PINs were largely for breaches around bedding, vaccinations, cleaning—basically, breaches of the code of practice.”*

ACA would like to highlight a significant factor in dealing with the effectiveness of managing compliance and enforcement.

In 2020, the RSPCA received a funding boost of **\$400,000** allocated to find, investigate, prosecute and shut down puppy farms in NSW. Just over **12 months** after that funding and out of over **4800 animals** inspected, only **122 warnings** were needed, **47 actual infringements** were found, and **3 prosecutions** were initiated!

- **A good use of public funds?**
- **An appropriate animal welfare outcome by a compliance organisation?**
- **Proof of the existence of actual puppy farms?**

In addition, ACA has been made aware of circumstances in NSW where:

¹ Hansard transcript – Budget Estimates – Agriculture & Western NSW – Monday 1st November 2021

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- treating veterinary practitioners of animals seized were ignored and their care instructions ignored
 - diagnoses of seized animals made by RSPCA vet investigations differed from those of the treating veterinary practitioners
 - documented proof of instructions by treating vets ignored by RSPCA inspectors
 - seized animals returned to owners in worse condition than prior to their seizure – some needing to be euthanised following being returned home
 - requests to say goodbye to animals that were about to be euthanised denied by RSPCA Inspectors – in one particular circumstance the owner offered to follow the Inspector to the animal's treating vet (5 mins drive away) and have the animal euthanised by their vet, so that the family had the opportunity to say goodbye to their family pet of 11 years.
 - refusal by RSPCA to allow the return of deceased animals remains
 - intimidation of owners threatened with additional charges if they didn't simply surrender their animals
 - RSPCA inspectors accessing properties without a warrant at alternate times to pre-arranged appointments despite having received refusal of entry to property by owners
 - RSPCA inspectors accessing a property without permission despite owner being present, proceeding to call the animals to them, enticing the animals (emu's) to poke their heads through barbed wire fence, injuring the emus, then citing the owners for not providing suitable fencing causing injury. Injuries the emus did not have prior to inspection.

While many of these circumstances have been reported to ACA our attempts to get owners to document and/or report these incidents have been refused through absolute fear of retribution and further intimidation.

Yet, we are supposed to believe that reporting these incidents to the RSPCA (the agency being complained against) will result in a fair and transparent outcome?

Part 1 (c) – any other related matter:

ACA would like to draw your attention to the Draft Animal Welfare Act 2022:

Section 101 - Approval of charitable organisations

(2) The Minister may at any time, by gazette notice, revoke an approval under subsection (1) but only if the Minister considers the revocation to be in the public interest.

ACA wishes to highlight the following:

- Recent issues with the dog audits in NSW saw audits carried out utilising a code of practice that the RSPCA NSW, DPI and key stakeholders ALL acknowledge was flawed and, in some circumstances, ambiguous – and despite this – the audits continued.
- the removal of prosecutorial powers of the RSPCA in the Australian Capital Territory and Western Australia
- the impending removal of prosecutorial powers of the RSPCA about to be implemented in Queensland and South Australia

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- Inquiries and questions raised by Ministers of both State (QLD State Member Robbie Katter² and Nick Dametto³) and Federal (Senator Malcolm Roberts⁴) levels questioning the legitimacy of the RSPCA Aust and RSPCA State Branches carrying out compliance enforcement and running a profitable business rather than a charity.
 - QLD Auditor General slamming the failure of the QLD State Government to oversee the RSPCA's operations and to be pro-active in the accountability of the charitable organisation⁵. The report was tabled in Parliament. The 33-page report details a lack of accountability, a failure to establish codes of practice for the animal types the RSPCA Queensland regulates, no structured processes for complaints about inspectors and no conflict-of-interest procedures. The report is also critical of the fact there is no transparent process in place for approval of fees for animal care paid by owners whose animals have been seized.

Draft Animal Welfare Act provides RSPCA with clauses that permit the inspectorate to NOT be held accountable or liable.

- Section 62 - Powers of authorised officers to require and record answers.
- Section 66 - Powers of authorised officers to enter non-residential premises
- Section 67 - Entry into residential premises only in certain circumstances
- Section 69 - Additional provision regarding entry of premises (STRONGLY OPPOSED by ACA)
- Section 78 - Receipt for seized things
- Section 79 - Return of seized things
- Section 90 – Terms on which appointments are made
- Section 124 – Court may order production of animal
- Section 126 - Court may order destruction of animal
- Section 129 - Court may order disposal of animal during proceedings
- Section 154 - Sale of certain animals by charitable organisations
- Section 159 - Compensation not payable
- Section 160 – Protection from Liability
- Section 161 - Disclosure of information

For an outline of why ACA is highlighting these Sections, refer to Appendix 1 of this submission.

Does the NSW Government really want to ignore the obvious 'elephant in the room' and continue to allow the constant complaints and mistrust by refusing to take the opportunity of implementing a new Animal Welfare Act to resolve these issues? Is this not in the public's best interest?

This surely provides scope for a review of the agreement between the NSW Government and the RSPCA NSW.

² <https://inqld.com.au/news/2021/11/16/dogs-42000-kennel-bill-rspca-accused-of-bullying-tactics/>

³ <https://nickdametto.com/rspca-turns-150-pets-over-profits?>

⁴ <https://www.facebook.com/watch/?v=940989466698366> and

<https://www.facebook.com/malcolmrobertsonenation/videos/1010618716410600>

⁵ <https://inqld.com.au/news/2021/11/30/auditor-general-slams-failure-to-oversee-rspca-queensland/>

ACA IMPLORES this Committee AND the newly appointed Minister to review the current arrangement (contract or memorandum of understanding?) between the NSW Government and the RSPCA NSW with the view of removing the prosecutorial powers from the RSPCA NSW.

There is a considerable precedent set for this to occur. The State Governments in the ACT, WA, and soon QLD & SA have all recognised the conflict of interest of having the enforcement officers investigating, prosecuting, appearing as witnesses while prosecuting, and as respondents to complaints against their own actions.

In addition to removing the prosecutorial powers, ACA makes the following recommendation:

All inspectors are directly answerable to and accountable to DPI. They are employed by DPI but working from RSPCA NSW and AWL facilities.

This recommendation achieves the following:

- creates consistency – currently NSW DPI officers enforce and inspect license holders under the Animal Research Act and Exhibited Animals Protection Act. There is no reason the new Animal Welfare Act could not move towards having the responsibility of all animals' welfare inspections being the responsibility of the DPI.
- maintaining the location of the Inspectors within the RSPCA & AWL facilities will continue to utilise their access to animal care infrastructure and ease of locations.
- they will still be uniquely placed to respond to animal cruelty issues

This will go a long way to improving a better outcome for improving oversight to animal welfare enforcement activities.

Summary Conclusion:

To be clear:

- ✓ **ACA fully supports the activities, and outcomes of the Animal Welfare League**
- ✓ **ACA supports the continuation of the RSPCA NSW and Animal Welfare League Inspectorates – BUT answerable to the DPI.**
- ✓ **Proposed measures of accountability and transparency within the draft Animal Welfare Act are still insufficient and require further enhancement.**
- ✓ **ACA recommends the introduction of a Companion Animals Welfare Panel**
- ✓ **Additional outlining and structure of the proposed 'Independent Appeals Panel' is required.**
- ✓ **ACA supports the continuation of the shelter and rescue aspects of both the RSPCA NSW and Animal Welfare League.**
- ✓ **ACA recommends prosecutions should be conducted via the Director of Public Prosecutions (DPP).**
- ✓ **Prosecutions conducted via the DPP would negate any conflict of interest involved in both investigating and prosecuting individuals, commercial or farming 'offenders'.**

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- ✓ **If the DPP option is not possible then, ACA recommends the prosecutorial powers be removed from the RSPCA NSW (as it has in other States)**
 - ✓ **Approved organisations tasked with enforcing Government Legislation must meet the same court required burden of proof as the NSW Police Force when enforcing any government legislation.**

On behalf of the Animal Care Australia Committee,

A handwritten signature in black ink that reads "M Donnelly". The signature is written in a cursive style with a large, looped 'M' and a trailing flourish.

Michael Donnelly
President
Animal Care Australia

APPENDIX 1 - ACA's Review of Draft Animal Welfare Act

Sections providing the inspectorate to NOT be held accountable or liable.

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 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 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 is 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 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 Courts. 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 (\$\$ 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 wellbeing of those who are INNOCENT UNTIL PROVEN GUILTY!