

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



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**ANIMAL CARE AUSTRALIA
STAKEHOLDER SUBMISSION**

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Introduction:

Animal Care Australia (ACA) provided a submission on the 28th February 2022 to this Inquiry. Since submitting, ACA has continued to seek out further evidence to support that submission along taking issue with elements of testimony provided by other witnesses. This document addresses those matters.

We would like to thank the Standing Committee on State Development for providing us with the opportunity to provide feedback for this Inquiry, and the opportunity to provide testimony at this Inquiry.

Matters of Note and Testimony:

1. Addition of a 4th 'R' in the Animals in Research industry.

Testimony and evidence was provided that suggested the current 3 'R' be extended to include the 4th R of rehoming.

In October 2019, Animal Care Australia provided feedback to the Draft Research Animal Rehoming Guidelines review supporting the rehoming of research animals (where it is appropriate).

Within that feedback ACA included the following statements and recommendations:

- We recommend researchers consider rehoming during the planning stages so that animal husbandry throughout the research project prepares animals in advance.
- When rehoming is a likely option then rehoming organisations such as animal keepers associations should be forewarned so they can prepare. Animals used for exhibition and display play a pivotal role in education and creating awareness.
- It is acknowledged that some animals cannot be rehomed as pets however these animals may be better suited to be homed in an exhibition or display environment where they can live and be cared for ethically as well as providing an ongoing educational benefit. The EAPA (Exhibited Animals Protection Act) provides the appropriate regulations to ensure their ongoing welfare needs are met.
- ACA sought requirements to be implemented to ensure the behaviour assessments are completed by individuals skilled with the understanding of and knowledge of the particular individual species of animal which are being assessed. Assurances need to be provided that the assessors have an intimate knowledge of the criteria used as part of the assessment process. This should include expert knowledge of individual species' natural behaviour in all aspects, including breed specific behavioural traits of each species.

- Ensuring appropriate mechanisms to ensure a blanket rehabilitation and behaviour assessment method for all re-homing organisations involved is introduced and assessed by the Department of Primary Industries.
- Assessment methods that do not inflict psychological harm on the animals and the animals are evaluated according to their species and breed specific behaviour traits are a necessary requirement – which is NOT currently being met by all rescue organisations. Behaviour assessments that have been left to some rescue organisations, have to date utilised unrealistic “behaviour testing” methods which in themselves may cause psychological trauma ultimately resulting in the animals requiring to be euthanased.

ACA would support the addition of the ‘4th R’ on condition all of the above recommendations were carried into the Animal Welfare Act 2022 and the regulations

2. Matter of Powers of Entry and recognition of ‘residential premises vs commercial premises’.

ACA has continued to express concerns over the deliberate interpretation by the RSPCA NSW to treat ALL dog and cat breeders as ‘commercial breeders.’

We highlight that even the RSPCA’s representative at this Inquiry contradicted her own testimony on this matter. During her opening statement Kathryn Jurd (General Counsel) stated:

*“There are few changes to the powers of an authorised officer under the bill. An authorised officer has the same powers of entry. Contrary to evidence given before this Committee last week, **an inspector can only enter a residential premises or part of a premises used for residential purposes with the consent of the occupier, under the authority of a search warrant or if the authorised officer reasonably believes that an animal is in imminent danger and requires immediate veterinary treatment ...**”*

Then when asked the following question by the Hon Emma Hurst, Ms Jurd appears to backflip on her opening statement:

The Hon. EMMA HURST: *“Under the new bill the RSPCA and the Animal Welfare League will only be able to do proactive inspections where they have a reasonable suspicion and that is specifically around agriculture, commercial and industrial activity relating to animals being carried out. In regard to enforcement, are there going to be challenging circumstances where people are operating a commercial animal business inside their homes and what is that going to mean on the ground if somebody was, for example, breeding animals inside the home?”*

KATHRYN JURD: *“... In terms of your question about proactive inspections, section 66 (1) (f) allows, as long as it is conducted at a reasonable time, entry to monitor an enforced compliance with the Act or regulations where the authorised officer reasonably suspects an agricultural, commercial or industrial activity related to animals is being carried out.*

*As long as that reasonable suspicion can be grounded, for example, in evidence that the inspector has and holds reasonably a suspicion that, for example, **a breeding facility is being conducted within a house, then to the extent that the breeding facility occupies some of the residential premises, they would be entitled to enter to inspect the breeding premises.***”

Ms Jurd’s response clearly justifies ACA’s previous concerns relating to the power of entry; the RSPCA’s intent to interpret the Act how they wish to enact it – ie in defiance of its actual intent – and this flies in contradiction of her own latter testimony that an Inspectors actions are always carried out in ‘good faith’.

ACA also notes the intent of the Act is recognised by the Animal Welfare League by Mr Goodwin’s response to Ms Hurst’s question:

MATTHEW GODWIN: *“Yes. Currently where the business is being conducted is considered a dwelling, there are restrictions under which we operate at the moment.”*

On this same matter ACA acknowledges the testimony provided by Clem Harris (DPI):

CLEM HARRIS: *“... I think the crux of the issue from the conversations we have had with Animal Care Australia, and probably conversations that you have been having as well, was about how it links to the powers of entry and whether the enforcement agencies can enter a residential premises if it is being used for a commercial purpose. I would like to take the opportunity to clarify that our intent in drafting the bill and the instructions that we gave to the Parliamentary Counsel on this issue is that the residential protections will override. It is a narrower set of powers available on a residential premises, not the broader commercial powers in that setting.”*

ACA calls upon the Standing Committee AND the Department of Primary Industries to provide the necessary clarification and definitive wording of Sections 66 & 67 so that the RSPCA cannot overreach their powers to enter.

3. Charitable organisations and the authorised officers being held liable for their actions.

ACA recognises there are circumstances where an authorised officer may perform actions that they should not be held liable for while in the course of carrying out their responsibilities, such as breaking a vehicle window to access an animal locked within.

However, ACA and the nation are greatly aware the RSPCA (in particular) have a strong reputation of overreach, abuse of power and, if they were to be held liable, what would be considered as corrupt behaviour. This is highlighted in the necessity of Inquiries by Parliaments and Attorney Generals offices across the country. Since 2015 such hearings and investigations have been held (and repeated in some States) in NSW, Victoria, Western Australia and Queensland. None of those hearings returned a favourable response in relation to the overreach of powers; with the RSPCA found to be insufficiently accountable and non-transparent; overzealous in activism (outside of their purview)

and at least 2 of them reported a level of corrupt behaviour being identified, both of which saw the dismissal/departure of inspectors soon after the final reports.

This does not bode well to the claims made by Ms Jurd:

“The way statutory exemptions work in respect of things undertaken by law enforcement officers is that as long as it is done in good faith and in accordance with the exercise of the officer's powers under the legislation, that is the twofold statutory test for the provision of the liability exemption. As long as the officer (a) was an authorised officer, (b) was acting in accordance with their powers under whatever Act you are talking about and (c) was doing it in good faith then the liability exemption would protect them, yes. But the liability exemption does not operate indefinitely into the future.”

It is ACA's strong position that the liability provisions within this Act require further review so as to incorporate the capacity for an authorised officer and/or the charitable organisation TO BE HELD LIABLE if the actions were outside the scope of their powers OR if their explicit actions resulted in the actual cruelty to or death of an animal in their care. If the NSW Police are not considered to be above the law, why should the authorised organisations and their officers be above animal cruelty laws?

ACA STRONGLY recommends a provision of liability of an authorised organisation/officer be included within the Act.

4. The Provision of Education within the Act.

During testimony provided representatives from Dogs NSW indicated a 'responsible pet ownership' program is being run by the NSW Office of Local Government¹. While that statement is correct the implication of it providing information about responsible pet ownership is not accepted by ACA.

There are three education programs targeting responsible pet ownership and safe pet interaction.

- ❖ 'We Are Family' – targeting the child and pet relationship from pregnancy to preschool years.
- ❖ 'Living Safely with Dogs' – targeting 4 – 5 year old pre-school children.
- ❖ 'Living Safely with Pets' – targeting 5 – 8 year old primary school children.

When investigating the content further, the programs aim to educate parents and children about how to interact safely with pets – and not about the facets associated with responsible pet ownership.

Additionally, these programs are attended voluntarily and have not been running for at least the last 2 years. ACA's recent meeting with Minister Tuckerman (OLG) provided an update on this program and we were advised that they do intend to re-commence it, but currently it is un-staffed and there is no set timeframe for its return.

¹ <https://www.olg.nsw.gov.au/public/dogs-cats/promoting-responsible-pet-ownership-education-program/>

ACA commends the programs however we repeat our ascertain that the most effective approach to educate our children must be within the curriculum of both primary and secondary education levels. The education should cover topics greater than how to interact with your dog or cat. Our children need to be educated about what is required and the responsibilities that go with owning that 'cute fluffy, or feathered, or scaled pet' and it should discourage the children and parents from impulse buying, ensuring the animals new home is to be their forever home.

ACA would like to thank the Hon Mark Banasiak for highlighting:

"... There is an Act that prescribes education. The Road Transport Act actually prescribes education to local councils that are doing the maintenance of roads. That might potentially be a way that you could prescribe that regular updates or regular education needs to happen with the RSPCA, the Animal Welfare League or even the breeding associations or peak bodies. That might be a way of codifying that there needs to be regular education. That is not a question but more of a comment to assist, if that might work."

Education and the funding for education initiatives must be enshrined within the Act.
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5. The inclusion of sentience within the Act.

ACA recognises that animals are sentient – the science proves this, as does our personal interactions with our animals.

ACA supports the Department of Primary Industries position that it is not necessary to be included with the Objects of the Act.

ACA would like to elaborate on a statement made regarding sentience:

ROSEMARY ELLIOTT - Sentient: *"... The true purpose of animal welfare is to protect animals, not those who benefit from their use."*

While that 'may' be true – the purpose of an animal welfare act is to provide a written measure to those who are interacting (not using) with their animals what is minimally required to maintain animal welfare; what can be done to improve animal welfare, as well as the laws and guidance for when animal welfare requirements are not met by those who interact with animals. The recognition of Sentience will have no bearing, impact or influence on the outcomes of the Act, and will not change how anyone complies or does not comply with the objects of the Act.

ACA would like to make it very clear that Sentient does not speak for the general community - contrary to their testimony - in fact they are an organisation that speaks for a minority of veterinary practitioners. That does not place them in a position to speak for 'greater society' and whether the Act meets societal expectations.

6. The potential reimbursement of 'administrative and personnel impost'.

Once again ACA is left flabbergasted by the testimony provided by the RSPCA. We thank the Hon Mark Banasiak for raising the following question:

“... It goes to proposed section 103 about annual reporting. I note, Ms Jurd, that the RSPCA stated: RSPCA NSW supports arrangements for Approved Charitable Organisations (ACO) reporting to Parliament ... But you note "additional administrative and personnel impost" in doing so. Specifically, you mention the \$500,000. Is it purely a financial thing or are there other factors when you talk about administrative and personnel impost? How may this Committee or this Parliament ease that personnel and administrative impost?”

KATHRYN JURD: *“By ‘personnel’, I mean we have one administrative officer who is responsible for compiling the statistics necessary to report on a 12-monthly basis as it is, pursuant to section 34B of POCTAA. So it is not a personal objection, it is a personnel issue.”*

It is astonishing that such a statement should come from an organisation that in 2021 reported² the following:

Total current assets \$ 30,013,000

Total assets \$ 150,357,000

Total accumulated funds and reserves \$ 126,219,000

ACA would like the Committee to be assured that as a not for profit voluntary organisation, the hours dedicated to researching; reporting via the production of submissions; responding to reviews, consultations and discussion panels; appearing before Inquiries (3 this year so far); the hours being taken from our personal employment; and the associated costs of completing all of the above, we will not be requesting the Government reimburse us for that ‘personnel and administrative impost’.

Should any such impost be deemed reimbursable, then all contributors to the Inquiries should be provided with the same recognition as such a reimbursement implies.

ACA would like to acknowledge the hard work and dedication provided by all stakeholders and witnesses to these Inquiries, in particular those completed by volunteer run organisations.

We thank you for this opportunity and trust that our Supplementary points will be taken into consideration when determining your final report.

On behalf of the Animal Care Australia Committee,



Michael Donnelly
President
Animal Care Australia

² RSPCA-2021-final-FS-27.09.21- publicly released Financial Statement