

20th July 2022

Animal Welfare Act Amendment Bill  
Biosecurity Tasmania  
Department of Natural Resources and Environment Tasmania  
Email: [AnimalWelfarePublicSubmissions@nre.tas.gov.au](mailto:AnimalWelfarePublicSubmissions@nre.tas.gov.au)

**RE: Draft Animal Welfare Act Amendment Bill 2022**

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. Our goal is to promote and encourage high standards in all interactions with the animals in our care.

ACA has concerns with this Amendment Bill. It is our view this Amendment has not been satisfactorily consulted. The Department of Natural Resources and Environment (Tasmania) states consultation occurred in conjunction with the RSPCA and key stakeholders – and yet Animal Care Australia was not consulted – despite being recognised as a key stakeholder by the Minister in 2020.

ACA does not support the inclusion of Animals Australia Incorporated as a member of the Tasmanian Animal Welfare Advisory Committee. Animals Australia is an animal rights (protection) organisation, not an animal welfare organisation.

**Animal rights and animal welfare are not the same thing.**

Currently there is no representative of captive animal welfare. As a nationally recognised Animal Welfare Organisation, ACA fills this niche in a far greater capacity.

Attempts to insert clauses such as the inclusion of banning prong collars, without proper public consultation are not supported by ACA. Therefore, ACA has provided a number of recommendations to edit the proposed Amendment Bill and additionally to the current Act.

ACA is NOT supportive of the majority of the proposed Amendments as they are clearly reflective of the infiltration of animal rights ideologies within the claimed consultation process and do NOT strive towards animal welfare improvement.

ACA strongly recommends this Government gives consideration to adopting the recommendations from the current review of the Queensland Animal Care and Protection Act relating to the powers and accountability of the RSPCA.

Animal Care Australia supports the submission from Professional Dog Trainers Australia Inc, and respect their expertise in the use of restraint devices on dogs.

Should the department wish to consult further on this submission, ACA welcomes the opportunity to provide consultation with and access to our individual companion animal species representatives, and we seek inclusion on your Animal Welfare Advisory Committee

Kind regards,



Michael Donnelly  
President, Animal Care Australia.  
0400 323 843



Animal Care Australia  
2022

# Draft Animal Welfare Act Amendment Bill - Tasmania 2022

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Approved: 19<sup>th</sup> July 2022  
Animal Care Australia Inc.

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*Animal Welfare is Animal Care*

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# Draft Animal Welfare Act Amendment Bill – Tasmania - 2022

## Animal Care Australia submission.

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.

ACA strongly recommends the focus of this Bill should be on improving and ensuring the welfare of animals.

It is our view this Amendment has not been satisfactorily consulted. The Department of Natural Resources and Environment (Tasmania) states consultation occurred in conjunction with the RSPCA and key stakeholders – and yet Animal Care Australia was not consulted – despite being recognised as a key stakeholder by the Minister in 2020

The Draft Animal Welfare Amendment Bill 2022 (Bill) is here...

[Amendment Bill](#)

The Animal Welfare Act 1993 (Act) is here...

<https://www.legislation.tas.gov.au/view/whole/html/inforce/current/act-1993-063>

Throughout this submission ACA's focus is on the following priorities:

- 1. to promote education over regulation**
- 2. to promote positive welfare of animals by prioritising the 5 freedoms within the Act and all associated Standards & Guidelines**
- 3. Animal welfare standards developed for specific species (or species groupings) should be the baseline upon which compliance is measured. Standards must be specific, understandable and known to those they seek to regulate.**

With that in mind ACA would like to submit the following:

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## Point 5.

### **Section 3A amended (Care or charge of animals)**

Section 3A of the Principal Act is amended by inserting after subsection (1) the following subsection:

*(1A) For the purposes of subsection (1)(b), an allegation contained in a complaint for an offence under this Act that states that a specified person had, or has, control, possession or custody of a specified animal is admissible as evidence in any legal proceedings as evidence of the matter stated.*

ACA is unaware of any extenuating circumstance that supports overriding the usual rules of evidence, so why is this clause required?

Whether an allegation in a complaint is admissible and the weight the court places on such evidence if admissible, should be determined by the usual rules of evidence.

***ACA is OPPOSED to the insertion of Section 3 (1A)***

## Point 7

### **7. (a) Opposed**

Section 8 of the Principal Act is amended as follows:

*(a) by inserting in subsection (2)(c) “may” after “subjects or”;*

The addition of the word “may” alters the nature of the “Cruelty to animals” offence and is opposed.

If a person “drives, conveys, carries or packs” an animal in a manner that “may” be cruel then such an act is better dealt with via education, certainly not via a Section 8 Cruelty charge.

### **7. (b) (d) Opposed**

*(b) by inserting the following paragraph after paragraph (j) in subsection (2): (ja) uses a pronged collar, or a similar collar, on an animal; or*

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(d) by inserting the following definition after the definition of pest register in subsection (3):

**pronged collar** means a collar, designed for use on animals, that consists of a series of links or segments with prongs, teeth or blunted open ends turned towards the animal's neck so that, when the collar is tightened, it pinches the skin around the animal's neck.

The absence of genuine community consultation means the impacts on the community HAVE NOT been adequately consulted. ACA's dog training member experts advise there are sound animal welfare reasons to utilise prong collars as part of legitimate training procedures. ACA also questions the validity of an amendment that is not supported by scientific evidence. In fact, the scientific evidence has been found to show such devices DO NOT cause harm or injury. Without the appropriate community and stakeholder consultation, where has the scientific evidence been provided from and why hasn't the department shared this evidence with this proposal?

Our considered advice indicates controlled use of Prong Collars by those trained in their use is of great value as a training aid and no different to many other training devices including other types of collars.

For ACA, there appears to be a very poor comprehension of animal training methods, specifically B.F. Skinner's Theory of Operant Conditioning and its 4 quadrants within companion animal associations. Operant Conditioning is the sound foundation for all modern animal training, and is well understood by any educated animal trainer. The basics are taught to vets, vet nurses and animal keepers in their animal handling training, and to animal owners through puppy schools, and animal sporting clubs (agility, pony club etc).

ACA continues to expect misleading interpretations of animal behaviour and training from animal rights/animal protection activists – particularly given the inclusion of Animals Australia or the Animal Welfare Advisory Council and the ongoing animal rights influence that RSPCA Australia maintains on its State Branches. ACA relies strongly on the advice and scientific facts provided by experienced dog trainers, and we disregard the opinions of Animals Australia and the RSPCA as irrelevant in this context,

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particularly given it is based on anthropomorphising their own ideologies, and not on proven scientific research.

The terms negative and positive do NOT equal bad and good, but simply removing something or adding something.

A reinforcement increases the behaviour re-occurring, and punishment decreases it. Reinforcement does not necessarily involve food.

So, to be absolutely clear:

- ✓ **Positive Reinforcement (R+) refers to adding something so the animal repeats the behaviour**
- ✓ **Negative Reinforcement (R-) takes something away so that the animal repeats the behaviour**
- ✓ **Positive Punishment (P+) adds something so the animal stops the behaviour**
- ✓ **Negative Punishment (P-) takes something away that the animal stops the behaviour**

Some examples:

- ✓ **R+ : when the dog sits on command, the handler gives him (adds) his favourite toy**
- ✓ **R- : the rider on a horse squeezes the horse with her legs, when the horse moves forward, the rider releases (removes) the pressure**
- ✓ **P+ : the zap of an electric fence (adds) when the cow touches it**
- ✓ **P- : the kitten bites while playing, so the owner stops playing with the kitten (removes)and ignores her**

Prong collars are a Negative Reinforcer, NOT a Positive Punishment. The prong collar is used in the same way as a bit in a horse's mouth releasing pressure when the correct behaviour is achieved, increasing the likelihood the animal will repeat the behaviour again. Neither tool is intended to cause pain as this would not help the animal understand what is being asked of them.

All 4 quadrants are important and useful in animal training, even if they are not utilised with equal frequency. Punishment, used correctly, has its place in certain situations. While we would love for all animals to respond perfectly to a food reward alone, this ideology is misguided and unrealistic.

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We all experience all 4 quadrants in our lives, intentionally or unintentionally and we learn something from all of these experiences for better or worse. Our animals experience life through similar experiences, often by our sides. We have a responsibility as animal owners to help explain our world and expectations to our pets in ways they can understand, to help them make good choices.

Punishing an animal without purpose, such as hitting a dog because the owner is angry, has no training benefit, and is simply abuse. This abuse already has enforceable provisions in the Act to address it.

No single quadrant is appropriate for all situations, and animal trainers need the tools available to ensure that all animals can be helped and retrained when needed to feel safe and comfortable in this human centric world, regardless of their past experiences.

This decision is not really about the tool (the prong collars). But it does highlight the desperate need for education over regulation. Banning prong collars will do nothing to improve animal owners' understanding of animal behaviour or training. But it will limit the tools available to the experts who are the ones resolving the issues this lack of education created in the first place.

From our perspective, where we want to see reduced euthanasia rates, higher rehoming rates, fewer surrenders, and fewer cruelty complaints, limiting the available tools, while failing to address the real issue here, the lack of education, would be a huge failing of an Animal Welfare review and amendments to the Act.

***ACA is STRONGLY OPPOSED to the amendments of Section of 8 (a), (b) and (d)***

### **Point 8 - Unnecessary**

#### ***Section 9 amended (Aggravated cruelty)***

*Section 9 of the Principal Act is amended by inserting after subsection (2) the following subsection:*

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*(3) If a person is charged with, but not found guilty of, an offence under this section, the person may be convicted of an offence under section 8 if the evidence in the proceedings on the charge under section 9 establishes that the person committed an offence under section 8*

This amendment is totally unnecessary. The Officer should charge the person under both Section 9 and Section 8 if they believe the evidence supports such charges. ACA understands this to be the usual course for officers in other jurisdictions, other acts and such situations.

**ACA Recommendation 1: Addition of exemption for captive animal traps**

*Insert as Section 12 (4) (d)  
“a device for trapping captive animals within their enclosure.”*

Within large enclosures a range of different traps including nets of various types are utilised to catch animals. ACA recommends such traps must be exempt from the “Section 12. Traps” offence.

**Point 9. Strongly opposed**

***Section 16 amended (Power to enter, search and inspect premises)***

*Section 16 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:*

*(1) An officer may, without warrant, enter, search and inspect any premises, other than premises or a part of premises being used as a dwelling, if the officer reasonably believes that there is on the premises –*

*(a) an animal in respect of which an offence under this Act has been, or is being, committed; or*

*(b) an animal that is suffering or in need of assistance*



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ACA is strongly opposed to the entirety of the current Section 16, not just this amendment.

We recommend consideration is given to rewriting Section 16 to implement the following principles.

ACA continues to consistently and adamantly recommend in all jurisdictions that officers may only enter residential premises or land used for residential purposes under the authority of a warrant; or, with express permission of the occupier; or, when there is an urgent need to prevent or halt an offence under the Act.

The occupier must be explicitly informed that they are not required to allow entry and that such refusal cannot be held against them. The occupier is also to be informed that they can withdraw entry permission at any time and the officers will depart forthwith. The reference to residential premises or land used for residential purposes overrides any other use of the land, including a commercial use. The right to privacy and the tort of trespass is a fundamental right of all citizens and should not be overridden by statute without very good reason.

ACA offers its expertise to assist drafting a suitable replacement to Section 16 which implements the above recommendation.

ACA strongly recommends reference to the sections being considered by both NSW and QLD Governments and the reviews of their Animal Welfare Acts where the powers of entry and the Inspectorate are more tightly managed, ensuring full accountability of the actions of the Inspectorate. In particular please refer to **Annexure 1** of this submission.

Additionally,

**Delete Section 16 (5) and Section 17 (3)**

Officers are appointed by the Minister under strict controls, therefore to simply give assistants the same powers as officers in such an ad-hoc manner is inappropriate.

***ACA is STRONGLY OPPOSED to Section 16 in its entirety as well as Section 17 (3)***

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## Point 10. Opposed

### **Section 17 amended (Power to take possession of animals)**

*Section 17 of the Principal Act is amended by inserting after subsection (1) the following subsection:*

*(1A) In addition to subsection (1), an officer may take possession of an animal and detain it in a safe place if the officer is satisfied that –*

*(a) an offence under section 7 or 8 has been, is being, or is likely to be committed in respect of the animal; or*

*(b) the animal requires medical treatment by a veterinary surgeon*

Proposed clause (1A) (a) introduces a pre-emptive element where animals can be removed if an offence is “likely” which is a situation better dealt with by education. This proposed clause is outside the scope of the Act. We must restrict seizure to offences under the Act and this is well covered within existing Section 17 (1).

Proposed clause (1A) (b) is imprecise and too broad. Many animals requiring medical attention do not warrant officer intervention and certainly not seizure. If an animal is assessed by an officer as needing urgent veterinary care then that needs to be taken up with the owner in the first instance and if the owner refuses then the person can be charged under Section 8. (2) (g) which then enables the animal to be seized under the existing Section 17 (1) provisions.

***ACA is OPPOSED to the amendments of Section 17***

## Point 11: Opposed

### **Section 17A inserted:**

*After section 17 of the Principal Act, the following section is inserted in Part 3:*

*17A. Court may order seizure or disposal of animals*

*(1) In any proceedings under this Act in respect of an animal or on the application of an officer, a magistrate may make an order in respect of one or more of the following:*

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*(a) that the animal be removed from the person who has care or charge of the animal;*

*(b) that the animal be placed in the care of, or returned to, another person specified in the order;*

*(c) that the animal –*

*(i) be sold, and any proceeds of the sale be distributed in accordance with section 46; or*

*(ii) be otherwise disposed of;*

*(d) any other order, or direction, in respect of the animal that the magistrate considers appropriate in the circumstance.*

*(2) A magistrate may only make an order under subsection (1) in respect of an animal if the magistrate is satisfied that, without the order, the welfare of the animal is at risk.*

### **ACA is unclear why this new proposed Section 17A is required?**

Currently animals can be seized under Section 17 (1) and held whilst court proceedings take place. In addition, existing Section 22 provides for the court to order how seized animals are to be dealt with when the owner is found guilty of an offence.

***ACA is OPPOSED to the inclusion of Section 17 A when it is already covered by other elements of the Act***

### **Section 21 and related fee concerns**

ACA has previously expressed concern over fees charged for the housing and veterinary care of seized animals. Often these charges substantially exceed the fines imposed or likely to be imposed by the court.

For this reason, many persons charged with offences are advised by their legal counsel to admit guilt to avoid the lengthy court process that increases the housing and veterinary care charges significantly.

Current Section 21 provides for animals to be sold or otherwise disposed of due to failure to pay cost and expenses for housing and veterinary care.

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ACA holds the view and recommends to all jurisdictions that housing and veterinary care charges for seized animals should be a cost to the state and whether or not this is the case that such charges should be regulated via a schedule of charges.

This is a significant issue that requires further consideration.

**ACA welcomes the opportunity to justify our position in detail, including provision of evidence that cases are being resolved unjustly due to this matter.**

**Point 12. Requires editing**

***Section 24 amended (Power to kill animals)***

*Section 24(3)(a) of the Principal Act is amended by omitting “7 days” and substituting “48 hours”.*

***ACA does not support this amendment without the inclusion of ACA Recommendation 2***

**ACA Recommendation 2:**

***ACA recommends Section 24 (3) (a) is amended to read as follows.***

***“must notify the owner that the animal is to be or has been killed as soon as is practical, and unless the owner advises otherwise must retain and make available the carcass of the animal to the owner for 48 hours from when the owner has been notified that the animal is to be or has been killed so that the owner may take possession of the carcass; or”***

It is important that the owner is notified immediately the decision to kill an animal has been made. ACA acknowledges that this is not always possible or practical, hence our recommended rewording uses the phrase “as soon as is practical”.

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In terms of the proposal to alter the length of time a carcass is to be retained, we understand the problem of retaining a carcass for 7 days and that 48 hours is a more practical time period. This must be balanced with the need to inform the owner and provide them the opportunity to take the carcass for assessment or for personal reasons. We therefore recommended the 48 hours commences from the time the owner has been informed rather than from the time the animal was killed. It should be noted that informing the owner may occur prior to the animal being killed, which under our proposal starts the 48 hour clock prior to death, and will further encourage those tasked with euthanasia to inform owners promptly.

ACA is aware of cases in other jurisdictions where seized animals have been euthanised by RSPCA without the knowledge of the owner and owners have not been informed for weeks or even months. This is unacceptable and often occurs before courts have considered matters and in some cases prior to any charges.

### **Point 13. Opposed to current Section 26 in its entirety**

#### ***Section 26 amended (Power to require information)***

*Section 26 of the Principal Act is amended by inserting after subsection (5) the following subsection:*

*(6) For the avoidance of doubt, an officer may perform a function, or exercise a power, under this section in respect of a person, regardless of whether –*

*(a) the person is in Tasmania or elsewhere; or*

*(b) compliance with a requirement under this section requires information, or documents, that are in Tasmania or elsewhere.*

***ACA does not support Section 26 in its entirety.***

### **ACA Recommendation 3:**

***ACA recommends the deletion of Section 26 in its entirety***

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The idea that people must answer questions asked by an officer appointed under this Act is inappropriate. A right to silence is regarded as an important common law right and should not be overridden lightly.

**ACA Recommendation 4:**

Current Section 26B is the only section of the Act that relates to accountability of officers and their employing organisation or organisations. Given that officers are not in the employ of the state, this Act must address such matters.

*ACA recommends addition of a new Section 26C. titled  
“Accountability of officers” as follows:  
“Officers appointed under Section 13 of this Act are  
subject to oversight by the Tasmanian Ombudsman and  
provisions within the Right to Information Act 2009 in  
regard to activities undertaken under this Act and in the  
course of any related duties.”*

Similar inclusions to improve accountability are included in related Bills in both NSW and Queensland.

ACA offers to provide further evidence to explain this important issue further based on recent experience in other jurisdictions.

**ACA Recommendation 5:**

Recommended edits to Advisory Committee membership in Section 39 (1)

ACA strongly questions the inclusion of Animals Australia Incorporated as a member of the Animal Welfare Advisory Committee. Animals Australia is an animal rights (protection) organisation, not an animal welfare organisation.

**Animal rights and animal welfare are not the same thing.**

Currently there is no representative of captive animal welfare. As a nationally recognised Animal Welfare Organisation, ACA fills this niche in a far greater capacity.

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Therefore:

*ACA recommends replacing the current Section 39 (1) (1) with the following.*  
*“a person nominated by Animal Care Australia Incorporated; and”*

**ACA Recommendation 6:**

Recommendations regarding Section 44A and 44B

To add weight to the standards and guidelines prescribed and approved under Sections 44A and 44B ACA recommends both can be used as a defence against any charge under the Act.

ACA strongly recommends deleting existing Section 44C (2). All officers and inspectors appointed under this Act must be required to produce identification prior to exercising any functions under the Act. In particular, identification must definitely be presented prior to entry to any premises, whether residential or commercial. If identification cannot be shown then the officer or inspector must vacate the premises immediately.

*ACA recommends Sections 44A and 44B be used as a defence against any charge under the Act and that, Section 44C (2) be deleted*

**Point 16. Opposed to amendment and Section 45 in its entirety**

***Section 45 amended (Costs and expenses)***

*Section 45 of the Principal Act is amended as follows:*

*(a) by inserting the following subsections after subsection (1):*

*(1A) An order made under subsection (1) may be made to recover costs and expenses in respect of an animal, whether or not proceedings under this Act, in respect of the animal, have been*

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*completed.*

*(1B) For the avoidance of doubt, more than one order may be made under subsection (1) in respect of an animal, if –*

*(a) additional costs and expenses are reasonably incurred in respect of the animal after an order under subsection (1) has already been made in respect of that animal; and*

*(b) those additional costs and expenses are not covered by an existing order under subsection (1).*

*(b) by inserting the following subsection after subsection (2):*

*(3) In this section, a reference to a person includes a reference to the Crown.*

**ACA recommends all costs for sheltering an animal whilst seized under the Act should be borne by the state.**

ACA recommends deleting Section 45 in its entirety and replacing with a section implementing the recommendations under the above section titled “Section 21 and related fee concerns.”

***ACA recommends deleting Section 45 in its entirety as costs for sheltering of seized animals should be borne by the state.***

Should you have any questions or require further clarification please do not hesitate to contact us.

We welcome further consultation as this Amendment to the Animal Welfare Act reforms progress.



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## Annexure 1: Current Amendments to Queensland Animal Care & Protection Act and ACA recommendations.

The Amendments are found here:

<https://documents.parliament.qld.gov.au/bills/2022/3094/Animal-Care-and-Protection-Amendment-Bill-2022-7252.pdf>

### Inspectorate & Compliance

Current **Section 108(1)(c)** of the Act enables authorised officers (distinct from inspectors) right of entry to a place with 48 hours' notice. "place" does not include a part of the place where a person resides.

**This section requires amendment to only permit such entry with a warrant to any and all land used for residential purposes, whether or not such land is also used for commercial purposes.**

### Clauses 24 & 25 (p35-37)

Specify new inspector cancellation or suspense provisions open to the chief executive. These provisions improve accountability and enshrine in law the powers of the department to monitor and ultimately suspend or fire inspectors who are not performing, including inspectors in the employ of RSPCA Queensland.

**ACA supports these enhanced accountability provisions and looks forward to assisting with policy recommendations for effective implementation.**

### Clause 26 (p37-38)

- a. This inserts Section 121A which requires inspectors to complete prescribed training.

**ACA looks forward to assisting with animal welfare focussed training recommendations for inspectors.**

- b. inserts Section 121B which ensures inspectors do not have pecuniary interests.

**ACA recommends an additional sentence is added, namely:**

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**“Pecuniary interests include beliefs, actions and philosophies held by an inspector that conflict with any Section of this Act.”**

### **Clauses 27 & 28 (p38-39)**

These amend Sections 122 and 123 which deal with right of entry for inspectors. The current Act restricts entry to when permission has been granted, emergency situations or when a warrant has been obtained.

**ACA reinforces its support for such restrictions, particularly with regard to any land used for residential purposes, whether or not such land is also used for commercial purposes.**

### **Clauses 29, 30 and 31 (p40-41)**

Enable animal welfare directions to be given as a result of non-compliance with a compulsory code requirement (similar to a standard in other jurisdictions). ACA is aware of circumstances where such directions in other jurisdictions have been unreasonable under the specific circumstance or unreasonable in terms of the time given to comply.

**ACA recommends an appeal process to the chief executive (or delegate) is implemented to provide oversight and a reasonableness mechanism.**

### **Clause 32**

This clause inserts new Chapter 6A which enables the chief executive to direct and make directions that a person cannot possess or must forfeit animals due to prohibition decision made in another state.

**ACA supports these additions to the Act with the proviso that appeal is available to affected persons to apply for exemption through the chief executive and then via the court system.**

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### **Clause 33 (p45)**

This clause inserts Section 178(3) which ensures prosecutors must be authorised by the chief executive.

**ACA recommends all prosecutions are under the direct control of the chief executive and performed by a government employed delegate.**

- a. **To be clear, the current RSPCA led panel is not supported by ACA - prosecutions should NOT be undertaken by RSPCA Queensland or any other charitable organisation.**
- b. **ACA recommends the following replacement to be inserted as s178(3) “A prosecution may only be started by a government officer authorised by the chief executive to bring the prosecution.”**

### **Clause 35 (p45-46)**

This clause inserts Section 215DA which requires all inspectors, including RSPCA Queensland inspectors, to provide upon request, all documents pertaining to any investigation within 14 days.

**ACA supports the addition of this section and proposes consideration is given to routine supply of copies of all investigation documentation to the chief executive department delegate as a matter of course.**