



**Syd Dart**



19 October 2011

The Honourable Paul Lucas.  
Deputy Premier and Attorney General.  
Parliament House,  
George Street  
Brisbane. 4000.

LAPCSESC  
Criminal & Other Legislation  
Submission 001

Dear Sir;

**Re; Criminal and Other Legislation Amendment Bill 2011.**

1. The writer refers to the above Amendment Bill with approval on one hand and deep concern on another, that the Queensland Government is a puppet of the commercial trading corporation known as the RSPCA.
2. Proposed insertion of a new section **181A** into the Animal Care and Protection Act 2001 is most disturbing.
3. This amendment, apparently first put forward by RSPCA Assistant Chief Inspector Tracey Ann Jackson, by way of an article published in the Courier Mail newspaper, has been adopted by your Government without consideration that it clearly ignores and overrides a most fundamental principle of Law; “**presumption of innocence until proven guilty**”.
4. It is also of deep concern that it is not proposed to amend the Act to remove police powers granted to RSPCA Inspectors by appointment under section 114 (2) (a) (ii) of the Act.
5. The ruling of Justice Weinberg of the Federal Court of Australia in Orion Pet Products Pty Ltd v Royal Society for the Prevention of Cruelty to Animals (Vic) 8 July 2002 [2002] FCA 860 (5 July 2002) confirming RSPCA as a trading corporation has previously been brought to attention of Ministers.
6. As a Minister of the Crown you would no doubt be well aware that the Federal Trade Practices Act 1974 has been repealed in favour of the Federal Competition and Consumers Act 2010 which states in part:

**4 trading corporation means a trading corporation within the meaning of paragraph 51(xx) of the Constitution.**

**46 Misuse of market power**

*(1) A corporation that has a substantial degree of power in a market shall not take advantage of that power in that or any other market for the purpose of:*

*(a) eliminating or substantially damaging a competitor of the corporation ... in that or any other market;*

*(b) preventing the entry of a person into that or any other market; or*

*(c) deterring or preventing a person from engaging in competitive conduct in that or any other market.*

(1A) For the purposes of subsections (1):

- (a) the reference in paragraphs (1)(a) to a competitor includes a reference to **competitors generally**, or to a particular class or classes of competitors; and
- (b) the reference in paragraphs (1)(b) and (c) to a person includes a reference to **persons generally**, or to a particular class or classes of persons.

4. The RSPCA Qld. Inc, is without any doubt whatsoever:
  - (i) A trading corporation within meaning and interpretation of section 4 of the Act.
  - (ii) A corporation that has a substantial degree of power in a market, in that it enjoys the proceeds of no less than twenty four (24) retail outlets throughout Queensland in the name of “Animal Shelters”; “RSPCA Thrift Stores”; “RSPCA World for Pets Superstores” and through internet trading.
5. By way of power granted to employees of the corporation, by appointment as Inspectors under section 114 (2) (a) (ii) of the Animal Care and Protection Act 2001, the corporation clearly has extreme potential to:
  - (i) Eliminate or substantially damage competitors generally who work in the pet trade market;
  - (ii) prevent the entry of competitors generally or persons generally from entry into that market; or
  - (iii) deter or prevent competitors generally or persons generally from engaging in competitive conduct in that market.
6. Having regard to the fact the neither the corporation or its employees can be investigated by the Ombudsman or Crime and Misconduct Commission; a reasonable person would be justified in concluding that a trading corporation having access to such potential to damage competitors in the market:
  - (i) Can abuse authority to acquire stock for its retail outlets by enacting at will powers to obtain warrants and powers of seizure under the Act.
  - (ii) Cannot guarantee that it will not abuse the authority;
  - (iii) Cannot provide safeguards to prevent abuse of authority;
  - (iv) Would not ignore opportunity to consolidate strength in the market place by eliminating competition;
  - (v) Is not immune from corruption by virtue of its alleged altruistic goals, or;
  - (vi) Is somehow cloaked with an exemption from compliance with established general law, by the identity of the corporation. <sup>1</sup>

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<sup>1</sup> (GLEESON CJ, GUMMOW, KIRBY, HAYNE AND CALLINAN JJ. Minister for Immigration v Jia Legeng [2001] HCA 17; 205 CLR 507; 75 ALJR 679 (29 March 2001) )

7. Queensland Government Ministers have previously been asked to justify retention of employees of this corporation as inspectors under the Animal Care and Protection Act 2001 and to comment on this anomaly of Queensland law, which is clearly inconsistent with Federal Law, creating potential for abuse of Federal Law with an apparent cloak of immunity cast upon the corporation by your government.
8. While it is accepted that animal welfare is an issue and animal cruelty is abhorrent, it is nonetheless considered highly improper to invest civilians employed by a commercial trading corporation, with unfettered authority to:
  - (i) Seek and obtain warrants to enter private property;
  - (ii) Rely on idiosyncratic opinions to seize private property;
  - (iii) Damage and destroy Queensland private business;
  - (iv) Investigate, enforce and prosecute Queensland law.
9. You are strenuously urged to delete the proposed new section **181A** from the amendment bill and to further amend the Act to revoke police powers available to employees of the RSPCA.
10. While the writer sees no impediment to the RSPCA employing persons that it might wish to entitle inspectors, powers of entry and powers to obtain warrants and seize property, have correctly been the domain of public sector employees, who can be held accountable, since time immemorial and, ought to now so be.
11. Neither does the writer see impediment to RSPCA Inspectors pursuing private complaints under the Justices Act in respect to any matter of concern that may come to their notice in the course of duties that do not require powers of entry, obtaining warrants or seizing private property or matters that they have correctly referred to Queensland Police for investigation.
12. Noting the the Bill has been referred to a committee, you are requested to place the writers concerns before that committee and provide your early response.



S. R. Dart.

Cc. Interested authorities and parties.

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