



Ministry of Agriculture and Forestry, New Zealand

Te Manatu Ahuwhenua, Ngaherehere, Aotearoa



75

Ref: W-SPC-01

28 August 2001

Mr Peter Blomkamp
Chief Executive
PO Box 15349
New Lynn
AUCKLAND

(by fax 09 827 0784)

Dear Peter

DISPOSAL OF SEIZED ANIMALS

Thank you for your letter dated 26 June 2001.

I have now received legal advice on this matter and am able to confirm that Jim is correct in his assessment of RSPCA practises. I also attach a copy of the previous legal opinion sent to Peg Loague on this matter on 22 December 1999.

In essence, where an animal is seized pursuant to section 127 of the Animal Welfare Act 1999, its disposal must be determined by the District Court under section 136 of the Animal Welfare Act 1999 and section 199 of the Summary of Proceedings Act 1957.

I would request that you pass this information on to all your member societies and branches and suggest that we also include this matter in the next RNZSPCA / MAF liaison newsletter. I hope that this clarification meets your needs.

Yours sincerely

A C David Bayvel
Director Animal Welfare

cc N E Wells
UNITEC

MAF BIOSECURITY AUTHORITY

ASB Bank House, 101-103 The Terrace, PO Box 2526, Wellington, New Zealand.

Telephone: 64-4-474 4100 Facsimile: 64-4-498 9888

MAF
Biosecurity



Ref: P99/327

22 December 1999

Peg Loague
RNZSPCA
PO Box 119

TAUPO

Dear Peg

MAF

ASB Bank House
101-103 The Terrace
PO Box 2526, Wellington
New Zealand
Telephone: 64-4-474 41
Facsimile: 64-4-474 41

ANIMAL WELFARE ACT: APPLICATION OF ACT TO UPLIFTING OF ANIMALS

I refer to your e-mail messages of 20 December 1999 asking the question relating to the application of the Animal Welfare Act where an inspector uplifts an animal.

I had sent an interim e-mail setting out the various possible ways in which an animal might come into the custody of an inspector or the SPCA and I believe we have clarified that the question relates to two main types of situation:

- an animal is given into the custody of an SPCA either by the owner or by someone else, or the SPCA picks up a stray animal;
 - an inspector goes onto private property (either under a search warrant or under section 127) and removes an animal in order to provide assistance or treatment to the animal
1. In the first situation I agree that clearly the relevant sections are sections 141 and 142 and the steps that must be taken by the SPCA are set out in those sections.
 2. In the second situation, we have had some discussions as to the application of the Act because the sections have unfortunately not been drafted as clearly as they should have been. Section 136(1)(b) provides that section 199 of the Summary Proceedings Act applies to any animal seized under the authority of a search warrant and any animal of which an inspector takes possession under section 127(5). However section 141 provides that where an approved organisation takes any animal into its custody, then the steps set out in that section have to be complied with. On the face of it, there appears to be two overlapping sections of the Act.
 3. I note that the intention behind the reference in section 141 to the taking of animals into custody was to cover the taking of stray animals. It was not intended to apply to

animals uplifted under section 127(5) or under section 131(4). I am satisfied, having considered the wording of the various relevant sections, that you and Frank Sheehan are correct, and that section 136 should apply to the uplifting of animals in these situations, rather than section 141. Section 136 does specifically refer to the seizure of animals under the authority of a search warrant and to the inspector taking possession of an animal under section 127(5). I therefore agree that section 136 should prevail over section 141 and that it is not necessary to comply with the steps set out in section 141 in this case.

4. I assume that you will be informing the SPCA inspectors of this issue. We did have a written question on this point from Lesley Butler of Fielding and I sent an interim response to say that the issue was under consideration and that an answer would be provided in due course from the RNZSPCA.

3
Yours faithfully



Lin Da Teoh
Solicitor

2
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UNITEC
AUCKLAND · NEW ZEALAND
Te Whare Wananga o Wairaka

Carrington Road, Private Bag 92025
Auckland, New Zealand
Phone (649) 849 4180, Fax (649) 815 8154373

Fax Message from

FACULTY OF HEALTH AND ENVIRONMENTAL SCIENCES

Attention

David Bayuel

To Ministry of Agriculture & Forestry

Date 27.8.01

City/Country Wellington

Fax Number 04 498 9888

From Neil Wells

Number of Pages (including this page)

attached letter for meeting on Friday 31st August.

Original posted today.

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OFFICIAL INFORMATION



UNITEC

Te Whare Wananga o Wairaka

27 August 2001

ACD Bayvel
Group Director Animal Welfare
Ministry of Agriculture and Forestry
P O Box 2526
WELLINGTON

Dear David

TEACHING INSPECTOR'S POWERS

Part of the requirements of the Certificate in Animal Welfare Investigations are the unit standards 14234 and 4223, which both deal with inspector's powers.

It is emphasised to students being taught those units that when an inspector takes possession of an animal under section 127 (5) or seizes an animal under a search warrant issued under section 133 (2), the inspector may keep the animal at a place chosen by the inspector until the animal is forfeited under section 172, or a District Court Judge orders that animal to be returned to the owner or person charged (sections 127 (6) and 133 (3)).

The obligation of an inspector to hold that animal until a Court makes an order can only be circumvented by an application to the Court under section 136 for disposal of a thing seized. Students are also taught that approved organisations have duties under section 141 in relation to animals that come into the custody of an approved organisation. However, section 141 cannot be used to circumvent sections 127, 133 and 136. If an inspector did try to circumvent the court order process by giving custody of a seized animal to an approved organisation and an owner was subsequently granted a court order under section 127 (6) (b) or section 133 (3) (b), there would be a real problem if the approved organisation had already disposed of that animal under section 141 (2). In my opinion the Crown is exposed to risk. If the owner were to seek civil remedies it could be the Crown's liability (see section 158 (2)), and the inspector (including his or her employer) could be at personal risk, as I don't believe the action could be justified as one of good faith.

Page 2
ACD Bayvel

I am concerned to learn from students that SPCA inspectors are being advised to use section 141 to dispose of seized animals rather than using a section 136 application.

I will concede that the sections discussed could have been worded a little more tightly. For instance, section 141 (1) should have the words added "(other than an animal taken into possession under section 127 (2) (b) or seized under section 133 (6) (b))" However, I do not consider that the intention of the Act is so obscure that an amendment is required. In my opinion the clear intention of Parliament is that animals that come into the possession of an inspector must be dealt with by Court order, and that section 141 was not intended to circumvent the powers of the Court.

Rather, it was to give approved organisations the means to lawfully dispose of animals that come into their possession other than from inspectors. This view is reinforced by the wording of section 136 (2) "any ...inspector who is required by that section to retain custody may place it in the care of another person until it is required to be used in evidence ..."

The word "require" goes beyond a mere discretion. And even if the inspector does place the animal in the care of another person (who could be an approved organisation) there is still an obligation to hold it until it is required. The Director General can remedy this by issuing a direction under section 126 to the effect that all animals taken into possession or seized must be dealt with under the provisions of sections 127, 133 or 136. I would be interested in the opinion of MAF Legal.

We are not prepared to change the way students are taught this particular point of law as to do so may expose UNITEC to liability should a civil case be taken against an inspector who was wrongly taught and disposed of an animal unlawfully.

Yours sincerely



Neil Wells
PROGRAMME LEADER ANIMAL WELFARE

cc
Peter Blomkamp
RNZSPCA