

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates 2012

18 October 2012

Question: SBT 35-36

Topic: Animals without owners – definition (ATO)

Hansard Page: 104

Senator SIEWERT asked:

Senator SIEWERT: I want to quickly move onto tax deductibility status. I am following up the Sea Shepherd issue. I do not particularly want to ask about that case but I want to ask about something related to that—that is, whether it covers the definition of animals without owners; is that correct?

Mr Jacobs: As you know, there was a decision in relation to Sea Shepherd, which I have read. I am not best placed to go through and answer questions about the interpretation of the existing law.

Senator SIEWERT: Could I perhaps ask some questions on notice—can anybody address that issue?

Mr Quigley: We can take that on notice and see what we are able to provide to you. I am not familiar with the particular case.

Senator SIEWERT: What I would like to know is what the definition of animal without owners is. It covers a whole lot of wildlife, and it seems there is some concern in the community about what 'animals without owners' means and whether that covers how that now applies to other wildlife organisations. What I would like to know, if possible, is: has there been a new understanding of what that definition is now? If there is, is that publicly available?

Mr Quigley: We will take that on notice

Answer:

There is no legislative definition of the phrase 'animals without owners'. Therefore, the ATO applies the ordinary meaning of those words in the context of the deductible gift recipient category described under item 4.1.6 of section 30-45 of the *Income Tax Assessment Act 1997*. That category, generally referred to as an 'animal welfare charity', allows deductible gift recipient status to a charity whose principal activity is one or both of the following:

- providing short-term direct care to animals (but not only native wildlife) that have been lost, mistreated or are without owners
- rehabilitating orphaned, sick or injured animals (but not only native wildlife) that have been lost, mistreated or are without owners.

The ATO view, expressed on page 43 of its GiftPack guide (which is available on the ATO website), is that 'animals' has its ordinary meaning and that 'animals without owners' may be domesticated or wild, but does not include pets that have owners.

The issue was touched upon in *Sea Shepherd Australia Limited v Commissioner of Taxation* [2012] AATA 520 (*Sea Shepherd Australia*). Although the decision in *Sea Shepherd Australia* focused upon the meaning of the words 'short term direct care to animals', the Administrative Appeals Tribunal (AAT) opined that 'animals without owners' means:

"animals which would ordinarily be expected to have an owner, not merely animals that literally do not have one. They are animals that have been deprived of owners at some time prior to the provision of care and are therefore unable to fend for themselves in some respect (at paragraph 44)."

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Sea Shepherd Australia Limited has appealed to the Federal Court. As the matter is on appeal, the Commissioner has not issued a Decision Impact Statement on the AAT findings and their implications. Once the matter is heard in the Federal Court, relevant publications will be updated to reflect the Court's decision.