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19 June 2017

The Secretary
Standing Committee on Economy and Infrastructure
Parliament House, Spring Street
East Melbourne, VIC 3002

By email: rspcavicinquiry@parliament.vic.gov.au

Dear Secretary,

Response to questions on notice - Inquiry into the RSPCA Victoria

Thank you to the Committee on Economy and Infrastructure for inviting the Law Institute of Victoria (LIV) to appear at the Committee's hearing on 31 May 2017 as part of the Inquiry into the RSPCA Victoria.

This is a response to several questions taken on notice by the LIV at the hearing, as well as a clarification of the LIV's position with regards to the 'New York' style model and role of the LIV's Animal Welfare Working Group.

1. Entry powers of the RSPCA onto farm land

At the hearing the Committee asked the LIV to clarify the RSPCA's powers to enter farm land (that is not a person's dwelling) without a warrant.

RSPCA inspectors have powers of entry under the *Prevention of Cruelty to Animals Act 1986* (Vic) (POCTA). In particular, RSPCA inspectors (as POCTA inspectors under s 18 or 18A of the POCTA) have emergency powers of entry under s 23 POCTA where they suspect on reasonable grounds that:

- (1) baiting, trap-shooting or the use of animals as lures is occurring; or
- (2)(a),(b) an animal has been confined without food or water for a particular period of time; or
- (3) an animal is in an entanglement etc. that is showing signs of pain or suffering as a result of injury or disease; or
- (4) an animal is behaving in such a manner that it is likely that they will cause death or serious injury to another person or animal

POCTA inspectors also have emergency powers to enter and seize animals under where they reasonably suspect that an animal is abandoned, distressed or disabled (s 24) or where an animal is being used as for baiting or as a lure (s 24AA).

Specialist POCTA inspectors (appointed under s 18A) have additional powers to enter on to premises after the Minister has issued a notice of intent to seize under ss 24F or 24FA or have general powers to enter premises where animal are kept for any purpose (relevant to Part 2,2A or regulations of POCTA) with the prior written authority of the Minister.

2. What are the RSPCA's powers in relation to referring complaints of animal cruelty on to other agencies?

The second question taken on notice related to the powers that the RSPCA has to refer animal cruelty reports on to other agencies for investigation and potential prosecution.

It is unclear from the POCTA what the referral powers of the RSPCA are. The RSPCA may be constrained by privacy considerations from referring animal cruelty reports on to other agencies. It is clear, however, that the RSPCA Inspectorate is the most appropriate place to receive and investigate reports of animal cruelty, and there is no other organisation that has the appropriate specialisation where reports can be referred to.

The Independent Review of the RSPCA Victoria Inspectorate notes that up to 50% of the reports received by the Inspectorate on a daily basis may relate to *Domestic Animals Act 1994* issues, which fall more properly under the responsibility of local government, or are issues which do not involve animal cruelty.¹ The Independent Reviewer recommends that the Inspectorate adopt a new operating model that involves a triage stage where these reports are identified at an early stage to allow for them to be referred to the appropriate authorities.² This recommendation has been accepted in full by the RSPCA and should ensure that the Inspectorate only deals with the more serious reports of animal cruelty.

In addition, the RSPCA's plan to create a specialist POCTA prosecutor in the Prosecutions Unit of Victoria Police to manage POCTA cases on behalf of the RSPCA (as recommended by the Independent Reviewer) demonstrates that the RSPCA is currently taking steps to deal effectively and efficiently with the prosecution of animal cruelty reports.

3. Clarification of LIV's position on the 'New York' style model

During the hearing and in our submission the LIV referred to the New York style model which involves a partnership between the New York City Police Department and the American Society for the Prevention of Cruelty to Animals ('ASPCA'), which involves police officers taking a more active role in responding to animal cruelty complaints.

The LIV suggests that this model is one which the Committee may consider in order to increase the resources available for investigating and prosecuting animal cruelty reports, which is our main concern. It is the LIV's view that any potential concerns over any potential 'activist' activities of the RSPCA are being addressed through the RSPCA's instigation of the Independent Review and its acceptance and implementation of the Review's recommendations. The LIV considers that there is no reason why the RSPCA should not continue its enforcement activities, provided that it is adequately funded by the Government.

¹ Neil Comrie AO, APM, Independent Review of the RSPCA Victoria Inspectorate: Transformation of the RSPCA Victoria Inspectorate (Final Report, 1 September 2016) 40.

² Ibid 45.

We note that in New York this model has resulted in the transfer of enforcement powers from the ASPCA to the New York City Police Department. This model was only introduced in 2014 and so its effectiveness has not yet been thoroughly tested. While this model would ideally involve an increase in resources being dedicated to investigating and prosecuting animal welfare cases, there are several potential issues that would need to be considered.

One issue is the unique expertise of the RSPCA Inspectorate and the potential loss of this expertise if enforcement duties were transferred to Victoria Police. As noted by the Independent Reviewer, '[n]o other organisation in Victoria is as well-equipped in terms of experience and capability as the RSPCA to deal with animal cruelty reports.'³ Another concern would be to ensure that, if Victoria Police did take on greater enforcement powers for animal cruelty reports, that investigations of these matters would not lose precedence to crimes against humans.

Such concerns could be addressed through a partnership model where enforcement powers are shared between the RSPCA and Victoria Police, and the expansion of current initiatives such as the location of a Victoria Police intelligence analyst at the Inspectorate, and the creation of a specialist POCTA prosecutor in the Prosecutions Unit of Victoria Police. Alternatively, if Parliament does decide to transfer enforcement powers to Victoria Police, a specialist team should be created within Victoria Police to take on these cases (with adequate funding), and steps should be taken not to lose the expertise of RSPCA Inspectors.

4. LIV's Animal Welfare Working Group

Finally, the LIV wishes to clarify the role of the LIV's Animal Welfare Working Group (AWWG). The AWWG began as a Young Lawyers Reference Group in 2014 and in 2016 it joined the LIV's Administrative Law and Human Rights Section and expanded its membership to include more experienced lawyers.

The AWWG is the first committee focused on animal welfare issues to be established at the LIV. Its purpose is to create a forum for legal professionals to participate in discussion of animal welfare issues, provide informed legal comment to inquiries and Bills, to influence policy and legislative change, hold events, and produce educative material for the profession and the community on animal welfare laws.

The Group currently has 40 members and has made submissions regarding the Government's proposed Animal Action Plan, the Parliamentary Inquiry into the Control of Invasive Animals on Crown Land, the RSPCA Inquiry, and has been engaged in consultation on the reform of the *Prevention of Cruelty to Animals Act 1986 (Vic)*.

³ Ibid 9.

Animal law is a rapidly growing area of law, with an increasing number of Law Schools offering animal law subjects.⁴ There are a number of legally focused animal welfare organisations in Victoria and Australia, including Lawyers for Animals (who run an Animal Law Clinic at Fitzroy Legal Service), the Animal Law Institute, the Barristers Animal Welfare Panel and Voiceless. The Law Society of South Australia and the Law Society of New South Wales have well-established Animal Law Committees.

The AWWG is just one of around 84 committees and working groups run by the LIV, which involve around 1350 LIV members.⁵ In 2015-16 the LIV made 127 submissions on a wide range of law reform issues, including commercial, criminal, family, litigation, government, property, administrative, human rights and workplace relations law. This advocacy work is an important part of the LIV's engagement with its members and its core purpose of advocating for justice for all.

If the Committee have any further questions to ask of the LIV relating to this Inquiry, please contact Kate Browne [REDACTED]

Yours sincerely,

[REDACTED]

Belinda Wilson

President

Law Institute of Victoria

⁴ For a useful explanation of animal law see: Voiceless, *The Animal Law Toolkit* (2nd ed. 2015), available online: <<https://www.voiceless.org.au/voiceless-animal-law-toolkit-second-edition>>.

⁵ See Law Institute of Victoria, *Annual Report 2015/16*, available online <<https://www.liv.asn.au/About/Council-Governance/LIV-Annual-Reports>>.