



# INQUIRY INTO THE RSPCA VICTORIA

STANDING COMMITTEE ON ECONOMY AND INFRASTRUCTURE

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## BACKGROUND

Since forming in 1958, Field & Game Australia (FGA) has been active in wetland conservation; ethical, humane hunting; and clay target shooting sports, and are active in every state and territory of Australia.

Historically, hunters in Victoria have led a number of conservation initiatives, developing great knowledge of the flora and fauna that is found in our natural habitat. Hunters funded the purchase and protection of wetland habitats through hunting licence fees in a unique private/public partnership with the government at the time. This created the State Game Reserve system which provides critical breeding sanctuary for native waterbirds, offsetting the loss of habitat from draining, for agricultural and other purposes, and habitat for all wildlife. This network of sanctuaries in Victoria totals 75,000 hectares, with a further 25,000 hectares in South Australia.

The Australian Deer Association (ADA) was formed in 1969 to promote the sound management of Australia's free-ranging wild deer herds. Today ADA has active branches in each State and Territory of Australia.

ADA members participate in the active management of wild deer on public and private land throughout Australia, participating in hunting and culling operations, as well as habitat restoration and protection, and wild deer monitoring initiatives.

FGA and ADA combined represent the second-largest group of hunters and recreational shooters in Australia.

Animal welfare is an important consideration for hunters.

Licensed game hunters are aware of, and bound by, the *Code of Practice for the Welfare of Animals in Hunting* and the *Prevention of Cruelty to Animals Act*.

The Victorian Hunting Guide, which has been issued annually to all licensed hunters, clearly outlines hunters' obligations. Further to legal obligations, hunters take pride in effecting a swift and humane death for their quarry with a 'one shot kill' being the desired conclusion of a hunt. Game hunters regularly practise their marksmanship and have a deep understanding of their quarry's anatomy and the best shot placement to affect a humane death.

The ADA and FGA have partnered with other organisations, industry and government agencies such as the Game Management Authority and Parks Victoria in developing and promoting the 'RESPECT' campaign which aims to reinforce and strengthen messages about responsible hunting to the broader hunting community.

FGA and the ADA seek policy based on facts, evidence and data; not ideology or prejudice.

## TERMS OF REFERENCE

On 17 August 2016 the Legislative Council agreed to the following motion:

That, pursuant to Sessional Order 6, this House requires the Economy and Infrastructure Committee to inquire into, consider and report on, no later than 22 August 2017, the Royal Society for the Prevention of Cruelty to Animals Victoria (Inc) in relation to —

- (1) the appropriateness and use of its powers pursuant to the *Prevention of Cruelty to Animals Act 1986*, including in the context of its other objectives and activities;

- (2) the appropriateness and use of funding provided by the Victorian Government, including in the context of its other objectives and activities; and
- (3) any other consequential matters the Committee may deem appropriate.

## 1. THE APPROPRIATENESS AND USE OF ITS POWERS PURSUANT TO THE PREVENTION OF CRUELTY TO ANIMALS ACT 1986, INCLUDING IN THE CONTEXT OF ITS OTHER OBJECTIVES AND ACTIVITIES

FGA and ADA have observed that the RSPCA is transforming from an animal welfare organisation to an animal rights organisation, and have been highlighting this transformation with sitting members of parliament across Australia over the past 3 years.

The competition with animal rights organisations for support and resources and the gradual change in culture of the RSPCA from an animal welfare organisation to an animal rights organisation has created a conflict of interest for the RSPCA, and caused it to become irresponsible in the exercise of these powers and exploit its power and privilege.

We believe that this transformation is attributable primarily to two developments. One is the emergence of radical animal liberation organisations such as PETA, Animals Australia, Animal Liberation Victoria, and Humane Society International. As the RSPCA has competed with these organisations for support and resources, it has become more radical.

By embracing this radicalisation, there is a clear resulting change in the focus, aspirations and objectives of the RSPCA's leaders compared with those of the organisation's leaders when its Royal charter and privileged legal position was bestowed on it.

The implications of this transformation are profound. The RSPCA's new, ideologically-driven animal rights culture is pervasive and systemic. It is not limited to one region or even Australia. It has penetrated the home of the RSPCA – the United Kingdom – where the consequences for both animals and their owners, and the taxpayer, are better publicised and more widely understood as evidenced by the decline in public support for the RSPCA in recent times; the belief of the Police in the UK that the RSPCA should not be involved in prosecutions<sup>1</sup>, and the admission of the recently-appointed CEO of RSPCA UK that the organisation had become too political<sup>2</sup>.

This transformation raises the issue of whether it is appropriate for the RSPCA to retain its privileges, given that its practical position is that of an animal rights organisation, rather an animal welfare organisation as it was initially chartered.

RSPCA in Australia enjoys a privileged position unmatched by other non-profit organisations, where it is government sanctioned, and possesses prosecutor powers beyond any other non-government organisation. Australia is one of only two countries where the RSPCA is given prosecutor powers.

The conflicts that the RSPCA has between its law enforcement role, its commercial activities and its role as an animal rights organisation are such that it should not retain the unique and privileged position conferred on it by the State, and that responsibility for the enforcement of the *Animal Welfare Act 2002* should be limited solely to relevant government authorities.

<sup>1</sup> 'RSPCA should be stripped of right to pursue hunts or pet owners through courts, say police chiefs', Christopher Hope, *The Telegraph*, 9 April, 2016.

<sup>2</sup> 'RSPCA boss says sorry for blunders and admits charity was too political', Robert Mendick, *The Telegraph*, 13 May 2016.

Currently, the RSPCA has two types of powers: statutory powers, and the powers granted by its social license. Governments and the general public place a great deal of trust in the advice and opinions of the RSPCA due to its status as a public institution; however, the RSPCA has a demonstrated history of negligent, fraudulent and frivolous court cases against individuals, including appealing decisions made against them. Yet the Society appears to be selective in pursuing authentic cases of animal cruelty. For example, the recent RSPCA raid on a puppy farm in Longwood, Victoria was well-publicised; however, reports of appalling conditions for the animals at this property were first made in 2010. Similarly, the dead and dying horses seized at Bulla last year were reported at least a month prior to RSPCA's taking action.

In 2014 the RSPCA pushed for mandatory reporting of animal cruelty, yet when presented with reports and even video evidence, no action is taken.

#### CASE STUDY 1: JAMES HOLDSWORTH AND HEATHER ELLISON – WARRNAMBOOL

In 2015 following a David and Goliath battle, two Victorian cattle breeders James Holdsworth and Heather Ellison were awarded \$1.45 million damages against the RSPCA. Presumably the breeders also were awarded legal costs. While, unlike the RSPCA, Mr Holdsworth and Mrs Ellison could not afford a Senior Counsel or a national legal firm, the costs would be substantial given the case dragged on for 11 years and, to quote the judge, was 'extremely vexed and relentlessly contested'.<sup>3</sup>

The judge said that 'at times, some issues were contested almost to the point of the absurd.'<sup>4</sup>

One issue that the judge may have had in mind when making this statement was the attempt by the RSPCA, after all the witnesses had given evidence and at what the judge described as the '59th minute of the 11th hour'<sup>5</sup> to argue that it was not responsible for the actions of its inspectors. The judge gave this manoeuvre short shrift. Nevertheless, the RSPCA's position is disturbing.

The RSPCA has a privileged position. It is a private organisation exercising legal powers conferred by parliaments, including the Victorian parliament.

The idea that it is not responsible for the consequences of its employees' exercising these powers is one which ought to be of great concern to governments and the community generally.

The breeders' story began in February 2003 during the latest drought when they moved about 480 cattle from Corowa in NSW to agist them at Framlingham in western Victoria.

Three months later, without consulting the breeders or informing the owners of Framlingham Forest, the Kirrae-Whurrong Aboriginal Corporation, of their intentions, two RSPCA inspectors oversaw the killing of 131 pure-bred Murray Grey cattle including four bulls and breeding cows.

The senior inspector, Jason Nicholls, claimed that the cattle were emaciated and that, because he did not know who owned them, he had to kill them all, even though he had arranged to meet Mr Holdsworth the day after he oversaw this slaughter and had spoken to him at length days before.

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<sup>3</sup> *Holdsworth and Ellison v RSPCA* [2015] VCC 653 (22 May, 2015).

<sup>4</sup> *ibid.*

<sup>5</sup> *ibid.*

Various witnesses, including workers at the abattoir to which the slaughtered animals were taken, said that the condition of the cattle did not warrant their destruction and the judge did not accept that Mr Nicholls did not know who the owner was.

He said that the ‘whole operation conducted by Nicholls on behalf of (the RSPCA) ... seems to have been conducted with what could be described as indecent haste’.<sup>6</sup>

In 2005 the RSPCA prosecuted the breeders for breaches of the *Prevention of Cruelty to Animals Act* in the Ballarat Magistrates Court. The magistrate dismissed the charges. This did not prevent the RSPCA from appealing the decision to compensate Holdsworth and Ellison, with RSPCA CEO Dr Liz Walker claiming a ‘substantial injustice will be caused’ if the decision by judge John Bowman was not ‘corrected’.<sup>7</sup> The Court of Appeal rejected the RSPCA’s appeal, stating ‘[it] does not have a real prospect of success. Accordingly, leave to appeal must be refused.’<sup>8</sup>

This may be the first time that the RSPCA will be forced to pay for its abuse of its privileged position

## CASE STUDY 2: ANDREW DUFF – WARRNAMBOOL

RSPCA Victoria charged Andrew Duff, a barrier stall worker at Warrnambool, with animal cruelty for removing a horse injured in the first lap of a jumps race in 2010, to prevent the risk of further accidents when the remaining horses raced around the track for the second lap.

If found guilty, Mr Duff faced the possibility of up to 12 months’ jail or a \$14,000 fine and banishment from working with animals for 10 years. It should be noted that the RSPCA did not charge Racing Victoria or the Warrnambool Racing Club.

The opinion of Professor Paul McGreevy, a veterinary ethologist at the University of Sydney and well-known anti-racing campaigner upon which the RSPCA relied, was dismissed by three leading equine veterinarians.

According to journalist Patrick Barley, who won a media award for a story about this affair, ‘they blasted the RSPCA’s prosecution brief as curious, obsessive, lacking serious first-hand experience of handling injured or distressed horses, and a philosophical or political intrusion.’<sup>9</sup>

Two years later the RSPCA dropped the case, thereby avoiding the possibility of being required to pay Mr Duff’s legal costs, including the cost of the senior barrister he had to engage.

The RSPCA did not apologise for the pain and suffering it inflicted on Mr Duff, or for his face being plastered over hundreds of anti-jumps posters that lined the entry gates to major Spring Carnival race meetings.

Journalists Patrick Barley and Jared Lynch describe the RSPCA as ‘a long time anti-jumps crusader’.<sup>10</sup> It is this ideological comment and the observation of the three vets about ‘philosophical or political intrusion’ which provides an example of why the use of a conflict of interest within the RSPCA is not an academic matter.

<sup>6</sup> *ibid.*

<sup>7</sup> ‘RSPCA seeks to appeal \$1.1 million damages payout for negligently shooting cattle’, *The Age*, 23 June 2015.

<sup>8</sup> *RSPCA v Holdsworth & Anor* [2015] VSCA 243 (10 September 2015).

<sup>9</sup> ‘Relief at last for horseman at centre of jumps storm’, *Sydney Morning Herald*, 1 March 2012.

<sup>10</sup> ‘May races RSPCA cruelty case collapses’, *The Standard (Warrnambool)*, 29 February 2012.

### CASE STUDY 3: WATERWAYS WILDLIFE PARK – GUNNEDAH

In 2010, the RSPCA raided the Waterways Wildlife Park in Gunnedah and removed several koalas.

The raid, which led to an inquiry by the NSW Legislative Council, was accompanied by a Channel 7 television crew. While Channel 7 knew about the raid, neither the owner nor the local vet did.

The RSPCA did not show anyone the koalas they removed for weeks, and did not prosecute the owners of the Wildlife Park, despite euthanising one of the animals.

The raid prompted a parliamentary inquiry in the NSW Upper House<sup>11</sup>, and also led to a call for the NSW Government to remove these powers from the RSPCA.

### CASE STUDY 4: GREYHOUND RACING

In prosecuting greyhound trainers for live baiting, the RSPCA accepted illegal assistance from Animals Australia. In July 2016, as part of the proceedings against four Victorian greyhound trainers, Lyn White, Campaign Director of Animals Australia, told Frankston Magistrates Court that ‘she and her contractors did not get permission to enter either the track or be on ... adjoining property,’ and that she believed the RSPCA needed the footage to prosecute the case.<sup>12</sup>

The acceptance of illegally-acquired evidence infers that the RSPCA directly promotes and encourages illegal activity, which is a clear overreach of the appropriate use of its prosecutory powers.

Any organisation that promotes and encourages illegal activity has abandoned any moral claim to be considered legitimate stakeholders or to be consulted (either formally or informally) on government policies and decisions.

After the decision to reverse the NSW greyhound racing ban, a reform panel was formed to determine the new standards under which greyhound racing would continue in NSW. RSPCA NSW was invited to join, but this invitation was met with reluctance. RSPCA NSW chief executive Steve Coleman said the organisation would carefully consider its position,<sup>13</sup> but then went on to state, just a day later, that ‘RSPCA NSW’s members, supporters and the community expect us to be at the table advocating for the welfare of greyhounds in the industry.’<sup>14</sup>

The conflict that arises from the RSPCA’s commitment to ideology over engagement result in the organisation holding a contradictory and hypocritical position, and impedes the organisation’s ability to deliver its stated outcomes.

### CASE STUDY 4: RICHARD AND SAMANTHA BYRNES – UNITED KINGDOM

The evidence indicating the inappropriate use of the RSPCA’s prosecutorial powers is not limited to Australia.

Richard Byrnes and his wife Samantha suffered two years of trauma after RSPCA inspector seized Richard and Samantha Byrnes’ 16-year-old cat in May 2013, stating that he was too thin and had matted fur. They

<sup>11</sup> *Inquiry into the RSPCA raid on the Waterways Wildlife Park*, NSW Legislative Council, 9 September 2010.

<sup>12</sup> ‘Live baiting scandal: Top greyhound trainers to plead guilty on animal cruelty charges’, Adam Cooper, *The Age*, July 11 2016.

<sup>13</sup> ‘Iemma urges RSPCA to engage with greyhounds reform’, Sean Nicholls, *Sydney Morning Herald*, October 12 2016.

<sup>14</sup> ‘RSPCA joins NSW greyhounds panel’, SBS News, October 13 2016.

were given no chance to appeal the forced euthanasia, despite the fact that the cat was in good health for his age.

In one conversation the inspector said ‘If you two don’t authorise that the vet can euthanise Claude then there is the option of overriding that decision where I can go to the police, who will authorise it for me. You can also end up with a fine or potential imprisonment. Imprisonment is very rare but because it’s being dealt with by magistrates’ court that is an option.’

Following a last minute request by the RSPCA in April this year that a necropsy be carried out, it revealed that, despite being underweight, the cat was in relatively good health at the time of death.

Last August, the Crown Prosecutor Service ruled that there was not enough evidence to proceed and the case was dismissed<sup>15</sup>.

#### CASE STUDY 5: THE WOOLER REVIEW – UNITED KINGDOM

In January 2013 a debate erupted in the UK House of Commons with the revelation that the RSPCA spent £326,000 prosecuting the Prime Minister’s local hunt. Hunts have been banned in the UK since 2004, but neither the Police nor the Crown Prosecution Service have prosecuted a hunt.

A former solicitor general, Sir Edward Garnier, said the prosecution costs were a ‘misjudgement’ and that there is a danger of the RSPCA’s ‘using the weapon of the state prosecution for political campaigns.’ He said the RSPCA should investigate animal welfare issues but that it should hand the evidence over to the ‘dispassionate’ Crown Prosecution Service.<sup>16</sup>

A few months later the current Archbishop of Canterbury declined an invitation to be a vice patron of the RSPCA.

Following the furore and amid a substantial decline in the level of financial support for the RSPCA, the organisation commissioned Stephen Wooler, a former Crown Prosecution Service investigator, to review the manner in which it discharges its prosecution role, a review which the Attorney General had suggested might be a good idea. The review assumed that the prosecution of animal welfare offences is an integral component of the RSPCA’s strategy for fulfilling its role.

Mr Wooler delivered his report in September 2014. He said that while the RSPCA had the power to prosecute hunts, the organisation should leave that role to the Police and the Crown Prosecution Service.<sup>17</sup>

Days after Mr Wooler provided his advice, the RSPCA initiated legal proceedings against the Cattistock ‘trail’ hunt, which is a hunt to find fox trails – not foxes. The RSPCA’s case depended upon a video of a fox crossing a road and running across a field in a similar direction to that taken by the dogs. The video was filmed by the International Fund for Animal Welfare, which knows the Cattistock hunt is a ‘trail’ hunt because it monitors the hunt. Eight months later, the RSPCA dropped the case.

This fiasco is an example of why the RSPCA should leave prosecutions to the Police and the Crown Prosecution Service. The International Fund for Animal Welfare did not take the video to either of them.

<sup>15</sup> ‘RSPCA put down our cat for having long hair: Family was threatened with prison if they didn’t sign consent form after inspector accused them of animal cruelty’, Francesca Infante, *The Daily Mail*, 11 August 2014.

<sup>16</sup> ‘RSPCA anti-hunting lawsuits driven by ‘animal rights ideology’’, Rowena Mason, *The Telegraph*, 30 January 2013.

<sup>17</sup> *The independent review of the prosecution activity of the Royal Society for the Prevention of Cruelty to Animals*, Stephen Wooler CB, 24 September 2014.

Instead it chanced its arm with the RSPCA, which left itself open to the allegation, to use Sir Edward Garnier's words, that it was 'using the weapon of the state prosecution for political campaigns.'

Mr Wooler's review also echoed Sir Edward's observation when it observed that 'the Society's campaigning, commercial and de facto regulatory roles do not always sit comfortably with the role of prosecutor.'<sup>18</sup>

Mr Wooler also concluded that 'the proportion of cases where the consideration of the public interest test was flawed was too high'.<sup>19</sup> He had more than the aggressive pursuit of hunts in mind when he made this statement.

As part of the review, the British Bird Council made a submission, stating:

'In the past we had regular contact with the RSPCA, however since the time when the RSPCA announced they were totally opposed to the captive keeping and breeding of British birds, and they become increasingly concerned with bringing private prosecutions against aviculturists, the relationship has been strained and almost non-existent....

'In précis the RSPCA are pursuing, for their own political agenda, the persecution of law abiding aviculturists, gaining confidential information from the Police that would not be available to any other organisation or member of the public, using their considerable financial backing to pursue private prosecutions and abusing their status as a charity. They have somehow gained influence in the corridors of powers, probably because of the limited resources of the Police in pursuing such low priority crime which they are quite happy to see the RSPCA pursuing as it saves their resources for other crime. They have stepped over the threshold with regards to their charitable status and if they wish to continue in this vein then they should set out their agenda clearly to their donors, be stripped of their charitable status and also be treated as any other member of the public by the Police and other government bodies.'<sup>20</sup>

The tactics adopted by the RSPCA in the UK bear an eerie resemblance to the approach adopted by the RSPCA in Australia.

Since the debate in the House of Commons about the prosecution of the Prime Minister's hunt, there have emerged extraordinary stories about abuses of the RSPCA's powers, and a public apology from the head of the RSPCA UK, Jeremy Cooper.

In May, 2016 a headline read 'RSPCA boss says sorry for blunders and admits charity was too political'.<sup>21</sup> Jeremy Cooper, the new head of the RSPCA UK has made a dramatic, public apology for the charity's past mistakes and vowed to be less political and bring fewer prosecutions in the future.

In his first interview since assuming the role, Mr Cooper admitted the RSPCA had become 'too adversarial' and dragged too many people through the courts under its previous leadership.

In a damning admission, Mr Cooper conceded that the organisation had moved beyond its original purpose, becoming political in its transformation to an animal rights organisation, stating 'we (RSPCA) are going to be a lot less political. It doesn't mean we won't stand up for animals. But we are not a political organisation.'

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<sup>18</sup> *ibid*, p.10.

<sup>19</sup> *ibid*, p.81.

<sup>20</sup> British Bird Council website: <http://www.britishbirdcouncil.com/news-page>

<sup>21</sup> 'RSPCA boss says sorry for blunders and admits charity was too political', Robert Mendick, *The Telegraph*, 13 May 2016.



It appears RSPCA in Australia are following the same trajectory as the RSPCA UK, surely with the lessons now learned in the UK, the RSPCA in Australia can avoid the same mistakes.

## 2. THE APPROPRIATENESS AND USE OF FUNDING PROVIDED BY THE VICTORIAN GOVERNMENT, INCLUDING IN THE CONTEXT OF ITS OTHER OBJECTIVES AND ACTIVITIES

FGA and the ADA believe that the evolution of the RSPCA from an animal welfare organisation into an animal rights organisation has generated a conflict of interest, a manifestation of which is its injudicious and irresponsible exploitation of its privileged position.

There should be an expectation tied to any funding that the RSPCA will focus on delivering messages and programs to further improve the standards of animal welfare and to use its prosecutorial powers as an instrument of last resort.

Taxpayer funding of the RSPCA through government grants has increased in the last 10 years. In 2006, government funding to the RSPCA was reported as being \$355,554.<sup>22</sup> In 2010, this had grown to \$1 million<sup>23</sup>, and in 2016, \$3 million<sup>24</sup>.

There is a clear conflict of interest for RSPCA Victoria, as it receives government funding but continues to campaign against the investment by the Victorian state government in the legislated annual duck hunting season. Hunting was worth \$439 million to the Victorian economy in 2013<sup>25</sup>, and has cultural, environmental and social benefits beyond the economic impact.

The advertisement run in Victoria in conjunction with Animals Australia, prior to the 2014 Victorian state elections, was an inappropriate use of funding for an organisation which has a stated objective 'to engage with relevant stakeholders to improve animal welfare.' The most blatant example of the inappropriateness of RSPCA's continued government funding as an animal rights organisation occurred in 2016.

The opening day of the prescribed 2016 duck hunting season in Victoria saw widespread distribution of an image of RSPCA allegedly rescuing a swan at Lake Burrumbeet, near Ballarat, with an accompanying statement that the bird had been killed and a call to ban duck shooting.



<sup>22</sup> RSPCA Victoria Annual Report, 2006.

<sup>23</sup> RSPCA Victoria Annual Report, 2010.

<sup>24</sup> RSPCA Victoria Annual Report, 2016.

<sup>25</sup> *Estimating the economic impact of hunting in Victoria in 2013*, Department of Primary Industries, 2014.



The photo opportunity included Animals Australia and politicians. Inside a week, RSPCA Victoria was forced into defending this apparent rescue, eventually clarifying the swan had not been shot, despite this misinformation being repeated by Animals Australia and Coalition Against Duck Shooting campaigner Laurie Levy.



Through their inability to provide facts and evidence about what happened to the swan, the RSPCA were then forced into a humbling retreat. The lack of regard by the RSPCA for facts when promoting their message is not isolated to this case, as evidenced by the WA Inquiry findings, the statements made by former RSPCA WA President Eric Ball, and the 2016 RSPCA Victoria Independent Internal Review, which states 'The consequences of this conflict of interest arising from RSPCA Victoria's direct involvement in

activism against lawful activities has, on the evidence considered by the Review, been harmful to the organisation, both in reputational and operational terms.’<sup>26</sup>

## EDUCATION, ENGAGEMENT, AND ACTIVISM

Two of RSPCA Victoria’s stated Objectives are:

‘To educate the community with regard to the humane treatment of animals.’

‘To engage with relevant stakeholders to improve animal welfare.’<sup>27</sup>

FGA and ADA submit that the RSPCA fails to deliver these objectives through its refusal to engage with the hunting community as key stakeholders. By acting antagonistically towards the hunting community, the RSPCA denies a large section of the community the opportunity to engage with it on key animal welfare issues and, potentially, sacrifices the opportunity to improve the welfare of animals in hunting. Similarly, the reluctance to participate in the NSW Greyhound Racing Reform Panel indicated that the RSPCA placed ideology over stakeholder engagement.

This situation has developed over a period of years as the RSPCA has taken a more activist role and blurred the lines between animal welfare and animal rights. FGA and ADA view it as untenable that the Victorian government can continue to effectively outsource the practical responsibility for animal welfare in Victoria to an activist lobby group with policies which are increasingly at odds with the policies of the Victorian government, and view it as inappropriate for the government to continue funding an organisation which is failing to deliver its stated objectives due to a difference of opinion.

The RSPCA is clearly not opposed to the consumption of meat, as illustrated by its approval and standards scheme for chicken meat producers, yet it is opposed to the humane and ethical harvest of meat from wild birds. This is another ideological conflict thanks to the RSPCA’s increasingly divergent roles as a responsible animal welfare body with extraordinary statutory powers, and its political role as an ideologically-driven animal rights organisation.

RSPCA’s annual reports in recent years have contained summaries of their campaigns against government policies around hunting. In 2010, their Annual Report stated ‘Another aspect of our campaign to protect the welfare of ducks was a strategic political approach to influence key decision makers. Following an in-depth analysis to identify marginal seats in key areas across the State, politicians were contacted in an attempt to influence their party policy on duck shooting.’<sup>28</sup>

Again in 2013, their Annual Report criticised government regarding the 2012 Game Regulations, ‘No animal welfare groups were included in these consultations and the draft regulations did nothing to improve animal welfare outcomes.’<sup>29</sup> In contrast, the RSPCA is regularly included in consultation around the legislated Victorian Duck Season, even though it maintains overt opposition to sustainable hunting and continues to ignore the opportunities for engagement with hunters to improve animal welfare outcomes in hunting.

Efforts to educate hunters about the current best practice in animal welfare are mostly conducted by recreational hunting organisations. The RSPCA has effectively abdicated any responsibility for education

<sup>26</sup> *Independent Review of the RSPCA Victoria Inspectorate*, Final Report, Neil Comrie, AO, APM; 1 September 2016.

<sup>27</sup> RSPCA Victoria Website: <http://www.rspcavic.org>

<sup>28</sup> RSPCA Victoria Annual Report 2010, p. 22.

<sup>29</sup> RSPCA Victoria Annual Report 2013, p. 37.

around welfare standards in recreational hunting owing to their ideologically-based opposition and refusal to engage with hunters and the organisations which represent them.

The recent report from the RSPCA's independent internal review agreed that 'a great deal more can be achieved by the RSPCA in promoting the interests of animal welfare by working in a cooperative partnership with government and its agencies rather than by engaging in opportunistic activism against lawful activities.'

The independent internal review, in fact, had an entire chapter discussing the increased activist role of the RSPCA Victoria. The main recommendation from this chapter was '[t]hat RSPCA Victoria, while continuing its legitimate advocacy role, discontinue its public activist campaigning against the existing laws of this State.'<sup>30</sup>

RSPCA Victoria's response was to accept all of the recommendations from the review, but failed to clearly articulate how it would implement this recommendation, or how success (or otherwise) would be measured in this regard. The RSPCA opted instead for the ambiguous action of 'focus[ing] on achieving improvements in animal welfare by using trust-based advocacy approaches.'<sup>31</sup> However, as of February 28, 2017, the RSPCA Victoria website states 'We believe that recreational hunting, or the act of stalking or pursuing an animal and then killing it for sport, is hard to justify.'<sup>32</sup>

This is hardly engaging with relevant stakeholders, and neither does it meet the independent review recommendation to discontinue public activist campaigning against existing laws of the State, nor does it use 'trust based advocacy'.

In 2016, RSPCA SA CEO Tim Vasudeva was reported in the media to say duck hunters were 'sadistic' people who 'should be in a hospital somewhere having a psychiatric evaluation'.<sup>33</sup>

'There might be a bag limit but you could go and shoot 100 protected ducks and no one would know,' he said.'

These statements are extreme, highly offensive and grossly inaccurate, and demonstrate the systemic culture of the RSPCA. If Mr Vasudeva is the custodian of government funding for the operation of RSPCA SA, then he has a conflict with the investment by government in sustainable duck hunting. That conflict is easily addressed by stepping down.

What is worse is the link Mr Vasudeva created to mental health, a serious issue for families and communities. His statement alienates those members of our community who deserve respect and support.

RSPCA Victoria's independent internal review report indicated that 'it is clear that the RSPCA has been active in campaigning (sometimes in conjunction with other animal activist organisations) against a number of lawful activities such as jumps racing, duck shooting and live exporting.'<sup>34</sup>

A number of other inquiries and reports have revealed similar inappropriate use of government funding, far removed from the core business of education and engagement to improve the welfare of animals. While RSPCA Victoria has performed an independent internal review, and other inquiries have taken place across

<sup>30</sup> *Independent Review of the RSPCA Victoria Inspectorate*, Final Report, Neil Comrie, AO, APM; 1 September 2016, p. 60.

<sup>31</sup> RSPCA Victoria, *Response to the Independent Review of RSPCA Victoria's Inspectorate Final Report*, 2016.

<sup>32</sup> <http://www.rspcavic.org/issues>, last viewed February 28, 2017.

<sup>33</sup> 'Duck hunt controls take a blast', Tim Williams, *Sunday Mail Adelaide*, 20 March 2016.

<sup>34</sup> *Independent Review of the RSPCA Victoria Inspectorate*, Final Report, Neil Comrie, AO, APM; 1 September 2016.

Australia, the issues identified with RSPCA Victoria substitute just one state-based part of the national organisation.

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## TASMANIA

In Tasmania, a Parliamentary committee has found that RSPCA Tasmania, which has received \$2 million from the Tasmanian State Government since 2011, used its funds for legal action against the State Government, its own employees, individual members and RSPCA Australia.

The Committee said that ‘in doing so, the board has spent a significant amount of its budget on legal expenses rather than on its core business of animal welfare’.<sup>35</sup>

The Committee recommended that no further funding be provided until the organisation was restructured.

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## WESTERN AUSTRALIA

The report by the Select Committee into the operations of The Royal Society for The Prevention of Cruelty to Animals Western Australia (Inc)<sup>36</sup> was handed down in May 2016. This took twelve months and was initiated by concerns into apparent lack of oversight into the RSPCA’s use of government funding and unique legislative powers that give it the capability to prosecute people over animal welfare complaints.

Prior to the enquiry, the concerns of the Agriculture Minister Mr Ken Baston were reported: ‘In a sense they’ve behaved like a political lobby group over [the RSPCA’s opposition to the live export trade] and some other issues.’

‘They’ve taken a philosophical and political position that is at odds with both the state and federal governments.

‘Where a body has such an important role to play, specifically where they’re appointed as inspectors with duties around compliance and enforcement, they should be guided by science and firm policy - not ideological leanings.

‘I have received feedback from members of the public that would appear to indicate there’s been some issues around the RSPCA’s prosecution of their powers.’

‘The absence of [enough checks and balances] does not ensure the best outcomes will be achieved, either for the state or the RSPCA,’ he said.

‘Where the Government funds a body to undertake the responsibilities, there must be careful scrutiny - there must be checks and balances.’<sup>37</sup>

The inquiry reports 56 findings, a significant investment of tax payer funds to ensure appropriate processes and systems are in place for the RSPCA WA to perform its stated objectives, and no more.

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<sup>35</sup> *Royal Society for the Prevention of Cruelty to Animals (RSPCA) Inquiry*, Parliamentary Standing Committee of Public Accounts, Parliament of Tasmania, 14 November, 2013.

<sup>36</sup> *Report: Select Committee into the Operations of the Royal Society for the Prevention of Cruelty to Animals Western Australia (Inc)*, May 2016.

<sup>37</sup> ‘Inquiry into RSPCA set to be launched in WA over accountability concerns’, Jacob Kagi, ABC News, 6 May 2015.

The findings of the Inquiry are reinforced by the report from May 2016<sup>38</sup> by former President of the RSPCA WA, Eric Ball. In the report Mr Ball described the RSPCA as ‘lost’ and raised serious concerns about the use of the RSPCA’s extraordinary position in society by its leaders, stating ‘It is my suspicion that the present management of the RSPCA does not understand that all inspectors are appointees of the State and the State is ultimately accountable for their action’.

Mr Ball also wrote of the RSPCA’s seemingly routine use of deception: ‘A mail promotion to hundreds of potential donors uses untrue information and statements about an alleged local prosecution designed to appeal to the heartstrings of WA recipients, but a prosecution which RSPCA WA has never undertaken’.

Mr Ball’s insight reinforces the view that the RSPCA should not continue to have the privileged position conferred on it by the State.

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## UNITED KINGDOM

The Wooler Review also drew attention to the significant difference in the fees the RSPCA paid barristers and solicitors compared with the fees the Crown Prosecution Service pays barristers for comparable cases.<sup>39</sup>

This RSPCA ‘honey pot’ for selected barristers and solicitors raises a number of issues. One is the financial incentive for the lawyers to recommend prosecutions. A second is the RSPCA’s breach of the trust of its supporters.

The third is equally serious. The Wooler Review noted that ‘the level of claims for costs by the RSPCA has attracted comment from the senior judiciary as well as legal practitioners who described the resultant pressure on defendants to plead guilty – especially those who do not qualify for legal aid and, if acquitted, may only recover costs on a legal aid basis, thus being heavily out of pocket’.<sup>40</sup>

In Australia, it could be speculated that the RSPCA engages in a similar abuse of its financial position. For example, in the prosecution of Mr Holdsworth and Mrs Ellison, the RSPCA engaged an upmarket legal firm and a Senior Counsel. Holdsworth and Ellison hired a two-partner legal firm and were represented by a junior barrister in a case which dragged on for 11 years (please refer to Case Study 1).

## 3. ANY OTHER CONSEQUENTIAL MATTERS THE COMMITTEE MAY DEEM APPROPRIATE.

### COMMERCIAL INVOLVEMENT

Australian supermarket giant Coles is relying on the standing of the RSPCA, for which it’s not clear what financial or other remuneration is afforded the RSPCA to underpin its marketing strategy to sell only free range chickens and free range eggs.

Yet the RSPCA would know that increasing free range chicken and egg production increases the risk of bird flu. Dr Peter Scott, a poultry veterinarian and senior research fellow at the University of Melbourne, says that ‘there’s no way to commercially vaccinate against this when it happens. It’s like vaccinating against all the strains of the common cold - too tricky and too expensive.’<sup>41</sup> There is already evidence of the risk and

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<sup>38</sup> ‘Former boss attacks ‘lost’ RSPCA,’ *Perth Now*, 10 May 2015.

<sup>39</sup> *The independent review of the prosecution activity of the Royal Society for the Prevention of Cruelty to Animals*, Stephen Wooler CB, 24 September 2014, p. 106.

<sup>40</sup> *ibid*, p. 107.

<sup>41</sup> ‘Barnaby Joyce correct on bird flu risk in free-range chicken farms’, *ABC Fact Check*, 8 November 2013.

price of free-range chicken farms: in October 2013 an egg farmer at Young in NSW had to destroy 400,000 birds after an outbreak of avian influenza. The taxpayer bore 80 per cent of the cost of dealing with the situation.<sup>42</sup>

Ten days later the Department of Primary Industries announced a nearby farm had become infected. It is thought the infection spread from free-range chickens on the first farm.

However, the RSPCA has not told Coles' customers or taxpayers the risk they bear for the promotion of farming practices it endorses for commercial or ideological reasons, or both.

Woolworths has also shifted over to 'RSPCA approved' chicken meat, with the popular supermarket duopoly effectively giving Australian consumers little choice in bearing the risks from consuming free-range chickens.

## HUNTING

In a written submission<sup>43</sup> to the WA Parliament's Inquiry into the potential environmental contribution of recreational hunting systems the RSPCA made a number of assertions about hunting and deer hunting which were unreferenced, unquantified and which are demonstrably false. For example, the RSPCA said that 'opening public lands up to recreational hunters will cause unnecessary suffering to many animals, impair the effectiveness of coordinated and planned pest management programs, and jeopardise the safety and enjoyment of these places for the rest of the community'.<sup>44</sup>

The truth is that hunters (either recreational or otherwise) are governed by strict animal welfare regulations: specifically in WA, the *Animal Welfare Act 2002*, and in Victoria, the *Prevention of Cruelty to Animals Act 1986*, and the *Code of Practice for the Welfare of Animals in Hunting (revision no. 1)*. Other states and territories have similar legislation.

However, statements such as these raise more fundamental issues than accuracy and dealing with facts. Arguments about the effectiveness of pest management programs, public safety and public amenity extend well beyond torture, mutilation, malicious beating or wounding, abuse, torment, or ill-treatment of animals.<sup>45</sup>

These assertions provide another example of the transformation of the RSPCA from an organisation driven by a commitment to animal welfare to an ideologically-motivated organisation. They also reflect the conflict of interest the RSPCA has between its ideologically-driven agenda, which sees it overtly opposed to hunting, and its obligation to prevent cruelty, through engagement and education which the RSPCA has failed to perform with the hunting community.

The RSPCA's holding itself out as an expert on community safety on public land is an example of the extent to which the organisation finds itself out of its depth as it moves further down an ideologically-driven path. In 2010 the Victorian Institute of Forensic Medicine prepared a report<sup>46</sup> on hunting-related fatalities which contextualises the safety of hunting with that of other active sports. The report found that people were

<sup>42</sup> 'Free range encourages bird flu: Barnaby Joyce', Lisa Herbert, *ABC Rural*, 24 October 2013.

<sup>43</sup> RSPCA WA Submission – Inquiry into the potential environmental contribution of recreational hunting systems

<sup>44</sup> *ibid.*

<sup>45</sup> Section 19 of the *Animal Welfare Act 2002*.

<sup>46</sup> 'Australian External Cause Deaths while Engaged in Hunting Activities,' Victorian Institute of Forensic Medicine, 1 July 2000- 1 August 2010.

almost fifty times more likely to become the victim of a fatality as a result of water sports such as fishing and snorkelling than due to hunting.

In 2014, Animals Australia and the RSPCA funded a campaign attacking Labor Party candidates because of the Labor Party's commitment to continuing duck seasons. The campaign included a full page advertisement in a *Saturday Age*. This partisan intrusion in the election campaign on an issue unrelated to animal welfare primarily benefited the Greens.

The Victorian Farmers Federation said that this alliance signals a new era in animal activism. VFF animal welfare spokesman Brian Ahmed said that he believes 'it is part of a bigger strategy to wear the ... industry down'.

Mr Ahmed said the policy was driven by funding needs and Animals Australia's success in attracting public donations. 'It is big business now and they are all competing for the same dollar.'<sup>47</sup> It provides a major example of the extent to which the RSPCA has lost its way and why it should be stripped of the privileged legal position it holds.

## PEST ANIMAL MANAGEMENT

In a submission to the Western Australian Inquiry into the potential environmental contribution of recreational hunting systems, the RSPCA stated 'Hunters often do not want to reduce pest numbers, as they want to ensure they have animals to shoot in the future. Pest animal management programs target all animals (including females and young) whereas hunters will often target large trophy males and leave behind females and/or young to maintain a sustainable harvest for the future.'<sup>48</sup>

It is not surprising that the RSPCA is ignorant about the need for hunters as part of comprehensive game and pest management programs, despite the abundance of parliamentary and government inquiry reports and findings.

A Federal parliament inquiry into the impact on agriculture of pest animals reported that 'despite the widespread use of baiting and fencing, shooting is still an important part of many programs for dealing with pest animals, particularly large animals such as dogs, pigs, donkeys, camels and goats, and native species such as possums and kangaroos'<sup>49</sup> and that 'Hunting organisations have also made important contributions to pest animal control efforts in particular regions. For example, Victorian hunters from FGA participated in a fox bounty trial that destroyed more than 198,000 foxes in just over twelve months'.<sup>50</sup>

Victoria's state government introduced a fox bounty in 2011, which has resulted in over 400,000 of these introduced predators removed via targeted and humane dispatch thanks to recreational hunters demonstrating practical, hands-on conservation through pest animal management.

The NSW parliamentary committee into the management of public land in that state found that 'in addition to baiting programs for wild dogs, pigs and other land-based feral animals, shooting, either ground based or aerial, can be part of feral animal control strategies,<sup>51</sup> and that 'the NSW Government informed the

<sup>47</sup> 'Farmers fear new era of extremist animal welfare allies' Chris McLennan, *The Weekly Times*, 26 November 2014.

<sup>48</sup> RSPCA WA Submission – Inquiry into the potential environmental contribution of recreational hunting systems.

<sup>49</sup> *Taking Control: a national approach to pest animals*, Inquiry into the impact on agriculture of pest animals, House of Representatives Standing Committee on Agriculture, Fisheries and Forestry, November 2005.

<sup>50</sup> *ibid.*

<sup>51</sup> NSW Parliament General Purpose Standing Committee No 5 (GPSC5) inquiry into the management of public land in New South Wales, including State Forests and National Park estate, 2012.



Committee that ... licence holders are allowed to remove game and feral animals from declared State forests. The NSW Government put forward the view that, in State forests, this helps to 'exert downward pressure on feral animal populations'.<sup>52</sup>

The RSPCA also purported to divine the mindset of hunters. Hunters do accept the need for game and pest management. What they do not support are invariably fruitless attempts at game extermination, a consequence of classifying an animal as a pest. One would have thought that an animal welfare organisation would support that view. However, in June 2013 the RSPCA's ACT CEO told a Legislative Assembly estimates hearing that rabbit eradication at the site would occur in the most humane way possible: 'we would cover rabbit warrens with traps, we would get rabbits out of their warrens and into the traps and we would humanely euthanise them.'<sup>53</sup>

Instead, on August 28, 2013 the RSPCA filled twelve rabbit holes with concrete slurry. The RSPCA denied that they would use this as a method to eradicate rabbits and denied that there was a chance of rabbits' starving or suffocating on a large scale. However, Assistant Professor Arnold from the University of Canberra said that where 'burrows are blocked, if there are rabbits inside, they will starve to death'<sup>54</sup> and United Voice, which represents employees at the RSPCA, raised the issue of slurring, citing concerns about animal welfare.

A question which this incident invites is whether an organisation should enjoy the privileged, legal position the RSPCA enjoys if it invites the suggestion that it does not apply the standards to itself that it seeks to enforce on everybody else.

## CLOSING REMARKS

The ADA and FGA have been seeking the return of the RSPCA to its core values for several years, but continue to be disappointed that the RSPCA refuses to engage with stakeholders and the community due to ideological differences. There should be an expectation tied to any funding that the RSPCA will focus on delivering messages and programs with all stakeholders to further improve the standards of animal welfare and to use its prosecutorial powers as an instrument of last resort.

FGA and ADA view it as untenable that the Victorian government can continue to effectively outsource the practical responsibility for animal welfare in Victoria to an activist lobby group with policies which are increasingly at odds with the policies of the Victorian government. This outsourcing does not discharge the Victorian government's accountability for the actions taken by the RSPCA's inspectors, as appointees of the State; and it does not discharge the responsibility held by the government in the continued funding of an organisation which is failing to deliver its stated objectives due to a difference of opinion.

By accepting the independent internal review's recommendations, RSPCA Victoria and the Victorian state government have an opportunity to take the lead for the national organisation in improving relations and outcomes by addressing the issues identified in this submission.

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<sup>52</sup> *ibid.*

<sup>53</sup> 'RSPCA denies using concrete to kill rabbits', Matthew Raggatt, *Canberra Times*, 10 September 2013.

<sup>54</sup> *ibid.*