A Review of RSPCA (Victoria):
“A slow motion train wreck”

Overview

In 2010 the RSPCA (Vic) was “on top of the world”!
It had tens of millions in the bank, plans to build a new state of the art corporate HQ and was well respected. In comparison to the Lost Dog’s Home, it outperformed it on every measure. Now it looks like “a train wreck in slow motion”.

In spite of its new multi-million dollar facilities the number of animals admitted to shelters at the RSPCA is in steady decline, reduced by over a third! It’s accumulated over $15M losses in recent years and its 2015 financial accounts contain commentary as to whether or not it is a going concern.

While the number of animals in care has plummeted, income is trending upwards (especially grants and donations), but the board of directors, in spite of increasing incomes, have overseen:

- reduced numbers of animals in care;
- greater (record) expenses; and
- A turnaround from profits to losses, accumulating losses exceeding $15M.

In 2010 when the RSPCA was caring for the greatest number of animals it generated a modest profit. With a third less animals in their care, the RSPCA is incurring losses over $3M per annum, accumulating over $15M in losses in the past 4 years.

The reduction in the number of animals in shelters may indicate a change in the RSPCA. It has been reported that they are becoming less and less an animal welfare organisation and more an animal rights or political organisation (see the Weekly Times 27 May 2015 “RSPCA Has Lost Its Way” http://www.weeklytimesnow.com.au/news/national/farm-groups-mps-believe-rspca-has-lost-its-way/story-fnkfnspy-1227369734124)

The RSPCA is losing respect, with calls for it to lose the “Royal” in its name.
Finances

In 2010 the RSPCA (Vic) had over $35M in investments, generating $3M pa investment income. Now in 2016 the RSPCA has no investments and may have fully drawn its debt facilities. The 2015 Accounts show a deficiency in working capital of over $2.1M and the question of whether the RSPCA (Vic) is a going concern is discussed in its audited financial statements.

Using the emotional issue of “puppy farms” the RSPCA (Vic) gained an additional $2.25M in State government grants in 2015. It must be queried whether any of that money was used to stop “puppy farms”. This additional cash has probably only delayed the time where the RSPCA (Vic) cannot pay its creditors. Note the steady deterioration in Working Capital, now in deficit by over $2M.

<table>
<thead>
<tr>
<th>$000's</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Income</td>
<td>30,766</td>
<td>31,541</td>
<td>28,484</td>
<td>28,633</td>
<td>29,341</td>
<td>33,226</td>
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<tr>
<td>Net Profit/(Loss)</td>
<td>275</td>
<td>151</td>
<td>-5,094</td>
<td>-3,616</td>
<td>-3,400</td>
<td>-3,250</td>
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<tr>
<td>Cash</td>
<td>3,189</td>
<td>2,022</td>
<td>6,498</td>
<td>713</td>
<td>1,464</td>
<td>2,203</td>
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<tr>
<td>Receivables</td>
<td>437</td>
<td>457</td>
<td>701</td>
<td>568</td>
<td>231</td>
<td>404</td>
</tr>
<tr>
<td>Other</td>
<td>33,521</td>
<td>32,906</td>
<td>15,813</td>
<td>7,935</td>
<td>2,807</td>
<td>1,689</td>
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<tr>
<td>Total Current Assets</td>
<td>37,147</td>
<td>35,385</td>
<td>23,012</td>
<td>9,216</td>
<td>4,502</td>
<td>4,296</td>
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<tr>
<td>Total Current Liabilities</td>
<td>5,200</td>
<td>4,427</td>
<td>4,399</td>
<td>5,028</td>
<td>4,235</td>
<td>6,439</td>
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<tr>
<td>Working Capital</td>
<td>31,947</td>
<td>30,958</td>
<td>18,613</td>
<td>4,188</td>
<td>267</td>
<td>-2,143</td>
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<tr>
<td>Fixed Assets</td>
<td>27,983</td>
<td>28,803</td>
<td>35,824</td>
<td>46,885</td>
<td>50,238</td>
<td>48,617</td>
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<tr>
<td>Long Term Liabilities</td>
<td>970</td>
<td>650</td>
<td>420</td>
<td>672</td>
<td>3,504</td>
<td>2,723</td>
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<tr>
<td>Net Assets</td>
<td>58,960</td>
<td>59,111</td>
<td>54,017</td>
<td>50,401</td>
<td>47,001</td>
<td>43,751</td>
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Questions of Management Competence

The dramatic deterioration in finances over a relatively short period suggests there may be some serious management issues to be addressed. Some issues have been publicly reported.

Sub-Standard Shelters

In July 2013 (while the multi-million dollar office was under construction in Burwood) the RSPCA lost its contract with the City of Ballarat to operate the Ballarat Animal Shelter. The RSPCA had operated the shelter for 45 years. Animal Aid won the tender but “walked away” after finding the Shelter was substandard, operating outside the Code of Conduct and failed to meet minimum OH&S standards for staff and volunteers.1 Having operated the shelter for 45 years, the RSPCA must accept the

responsibility for the operating conditions. This must raise questions about conditions at other shelters and related OH&S risks and liabilities, and of management and directors.

Waste

With increasing revenues, falling numbers of animals in care and persistently large losses, a large amount of waste is indicated.

In an earlier annual report, the RSPCA documented a rescue case study indicative of waste. In rescuing 1 cockatoo (a species that can be a pest in some parts of Victoria and for which the Department of Primary Industries issues permits for destruction) the RSPCA spent 7 hours, used 20 people including CFA and demolished a fence in order to rescue just one pest bird.
Even though wildlife is outside the RSPCA’s area of authority, the RSPCA nevertheless must have spent several thousand dollars to rescue this one cockatoo, while the DEPI was issuing permits for the destruction of hundreds, if not thousands.

**Negligence**

Most magistrates’ court cases are not publicly reported and the RSPCA don’t publicise their failures. However it’s been reported that the RSPCA (Victoria) has been sued for negligence (and lost) and wasted millions of dollars in lost court cases:


The Duff case appears to be motivated by the RSPCA’s campaign to end jumps racing and doesn’t appear justified on animal cruelty grounds.

It should be noted in the recent Holdsworth/Framlingham Cattle case, the judge criticised the RSPCA for attempting to shift its liability for negligence to its employee. This may be analogous to a large construction company trying to shift liability for a building failure to one of its junior staff.
**Enforcement of the Prevention of Cruelty to Animals Act (POCTA)**

There are many arguments that the RSPCA should not have enforcement and prosecution powers. A number of commentators say it’s not appropriate for non-government organisations to have these powers. There are additional arguments on cost and efficiency grounds.

Councils, Shires and Police all have the enforcement powers under POCTA and they can take over this role. The advantage to Council and Shire bylaws officers taking this responsibility is that they have the ability to issue infringement notices, whereas the RSPCA does not. Infringement notices could be an effective punishment and deterrent to people treating animals with cruelty, but would also be a source of revenue to councils to offset any additional cost of enforcement.

The RSPCA should not have enforcement & prosecution powers.

- Australia and New Zealand are the only countries in the world where the RSPCA has enforcement and prosecution powers granted to it by government.
- Some prosecutions appear politically motivated or else may be motivated to boost donations income, e.g. the Duff case in Warrnambool.
- RSPCA cannot have the power to issue infringement notices as an alternative to going to court;
- Council and Shire bylaws officers and Police all have powers under POCTA and they can:
  - Prosecute in court or issue infringement notices;
  - revenue from infringement notices would offset enforcement costs; and
  - avoid the waste of using court resources where infringement notices are adequate.

It may be an irony that while some have argued against the RSPCA being given power to prosecute, these powers may not in fact exist.

**Is History Repeating?**

In 1967 the RSPCA had no power to prosecute and no legal standing

In 1968 the Victorian government enacted legislation backdating the RSPCA’s legal status as a body corporate. Does the government need to “bail out” the RSPCA (Vic) again?

**Bienvenu v RSPCA [1967]** This case outlines a history of mismanagement of the RSPCA from its establishment as an unincorporated association in 1871 up to 1967. Justice Starke found that the RSPCA was not properly established or registered as a corporation and therefore had no legal standing. In his judgement, Justice Starke said:

> “It is trite to say that a corporation can only perform acts through its servants or agents. If there are no office-bearers there is no one with authority on behalf of the corporation to appoint servants or agents. …. If I am right in holding that the defendant [RSPCA] has no servants or agents, then it must follow that no one has authority ….

In response to this case, the Victorian Parliament legislated to backdate incorporation the RSPCA.

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Royal Society for the Prevention of Cruelty to Animals Act 1968.³

This Act established the RSPCA in Victoria as a body corporate in Victoria with legal status, objects and bylaws. Its name given by legislation is the “Royal Society for the Prevention of Cruelty to Animals”, (the “1968 Body”). However this company either no longer exists, or in the words of Justice Starke, “no one has authority”

Is the RSPCA (Vic) in a similar position to 1967, with no power to prosecute?

Prevention of Cruelty to Animals Act 1986 (“POCTA”) ⁴

POCTA recognises the 1968 body established by the 1968 Act and gives authority and certain privileges to its officers and full time employees.

The RSPCA has had a number of “re-incarnations”:

1. 1871 – 1967  An unincorporated body with no legal status
2. 1968 – 1991  A body incorporated by statute (by virtue of the RSPCA Act, 1968)
3. 1992 – 2008  A new and separate body under the Associations Incorporation Act, with new (different) objects and bylaws to that given by parliament in 1968.
4. From 2008  A public company administered by ASIC

It is the 1968 body corporate that was given powers under POCTA. That company ceased operating in 1992 and the entirely new and different company (established with a different constitution) commenced. Being a different entity to that named in POCTA, it is questioned whether the current incarnation of RSPCA has any legitimate enforcement and prosecution powers under POCTA.

The words of Justice Starke from 1967 may still be relevant:

... there is no one with authority on behalf of the [1968] corporation[referred to by POCTA] to appoint servants or agents ...., then it must follow that no one has authority ....

It may be the case that all the RSPCA prosecutions since 1991 are invalid.

Conclusion

Over the past 6 years, the RSPCA has incurred large losses in spite of millions in government (taxpayer) funding. It has gone from a position of profits and holding over $35M in cash and investments to a position where its ability to pay its creditors is questioned.

As it is in part funded by the Victorian government, a review of its spending and waste should be conducted by the Auditor General. The purpose of its public funding is to assist in the cost of its enforcement and prosecutions and the appropriateness of that funding and those activities ought to be questioned.

³ The RSPCA 1968 Act

⁴ The Prevention of Cruelty to Animals Act