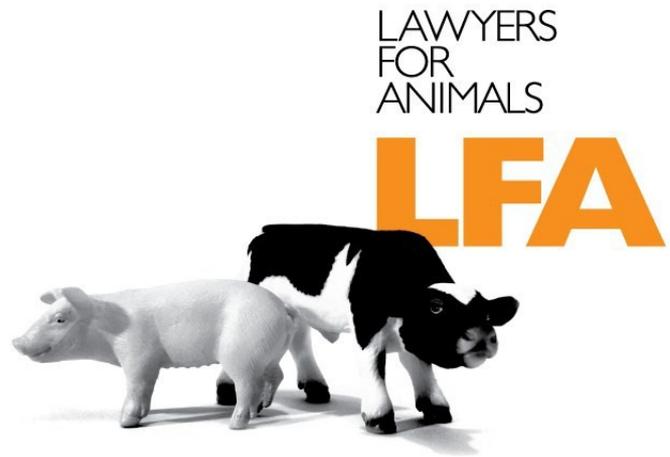


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The Secretary
Economy and Infrastructure Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002

6 March 2017

Dear Secretary and Committee Members,

Inquiry into the RSPCA Victoria

Thank you for this opportunity to make a written submission to the Committee's Inquiry.

Who we are

Founded in 2005, Lawyers for Animals Inc. ("LFA") is a (not-for-profit) animal law think tank based in Melbourne. We are committed to alleviating animal suffering through education and law. Since mid-2013, LFA has partnered with Fitzroy Legal Service to provide Australia's first Animal Law Clinic: a free legal advice service assisting clients whose interests are likely to coincide with those of the animal(s) legally concerned. During 11 years of operation, LFA has accreted knowledge and practical experience of the animal welfare system, including the role and practice of RSPCA Victoria ("RSPCA").

The appropriateness and use of RSPCA Inspectorate powers and Government funding

LFA recognises the enormous and unenviable burden borne by RSPCA – a charity – in attempting to fulfil a government function: law enforcement. LFA submits that as a non-government, charitable body, RSPCA is fundamentally incapable of ongoing animal cruelty law enforcement, whereas Victoria Police is. There are three main reasons for this:

1. Perpetual resource deficiencies

RSPCA receives about one third of its annual Inspectorate budget from government. Their total Inspectorate budget allows employment of ten full-time inspectors on average – with only one rostered on weekends. Based on there having been 10,740 cruelty reports received in 2014-15, this means there were an average of four cruelty reports per day for each Inspector to thoroughly investigate, prosecute or otherwise resolve, as well as to organise care of vulnerable animals. That is simply impossible. As a result, large numbers of cruelty reports are necessarily ignored or not properly investigated or prosecuted. Little wonder that despite 10,740 cruelty reports, only 69 cruelty prosecutions were finalised by RSPCA in 2014-15 (0.64%).

RSPCA relies on charitable donations and bequests to cover the two-thirds shortfall in what is already a totally inadequate Inspectorate budget. To attract donations/bequests and ongoing government funding, RSPCA attempts to maintain public confidence by projecting strength and stability. Underneath, the stresses of financial deficit and being inherently unsuited to law enforcement erodes its integrity and morale. Staff and animals suffer the consequences. Governments are not directly blamed for the failures to enforce animal cruelty laws, so they do not feel the full force of public fury when animals suffer unnecessarily over prolonged periods – such as under Bruce Akers¹ and Heather Healey's² care. Without such public pressure, the Government is less inclined to prioritise resources appropriately.

The city of New York faced a very similar situation before the American Society for the Protection of Animals ("ASPCA") and the New York City Police Department devised a joint-solution from which both the public and animals have benefited, see:

- <http://www.aspca.org/about-us/press-releases/nypd-aspca-partnership-reports-record-breaking-number-animal-cruelty-arrests>
- <http://www.aspca.org/animal-protection/nypd-partnership>
- <https://www.policeone.com/police-jobs-and-careers/articles/6719145-NYPD-takes-over-after-ASPCA-closes-enforcement-unit/>

In 2016, LFA contacted the Animal Legal Defense Fund USA ("ALDF") to ascertain their independent view of the New York model of animal cruelty law enforcement. The ALDF lent its positive endorsement to the model and strongly recommended its adoption in Australia and elsewhere.

1 See, for example: <http://www.heraldsun.com.au/news/victoria/starving-bulla-horses-highlight-rspca-failure-writes-justin-smith/news-story/e28a40a866601098b8c51517367c1940>

2 See, for example: <http://vetpracticemag.com.au/dogs-rescued-puppy-farm/>

2. Lack of power and public attitudinal change

Animal cruelty reporting is expanding commensurate with increased public awareness of animals' right not to suffer and society's growing intolerance of animal cruelty. Animal cruelty is regarded by offenders and (to a decreasing extent) the general public, as child abuse and domestic violence once were: private matters between a person and their 'property'. Unless responsibility for animal cruelty law enforcement is transferred to a dedicated, adequately resourced squad within Victoria Police, examples of failure to protect animals will increase.

Further, in contrast to Victoria Police, RSPCA Inspectors have extremely limited powers of entry to residences and/or arrest; no weapons or other training to equip them to deal with situations of violence. The RSPCA also lacks the public imprimatur for strong law enforcement afforded to Victoria Police.

3. Lack of financial indemnity

No law enforcement agency – police or otherwise – can operate effectively when it is not indemnified for debts resulting from civil proceedings, occasioned by its enforcement work. On 10 September 2015, RSPCA was refused leave to appeal against a judgment ordering it pay \$1.167m compensation for what His Honour Judge Bowman of the County Court had determined was a negligent destruction of cattle undertaken in May 2003 [RSPCA v Holdsworth [2015] VSCA 243]. This one case has substantially impacted on RSPCA's budget – which was already in deficit, requiring it to obtain a bank loan which must now be repaid. It is likely to have undermined RSPCA's confidence in enforcing animal cruelty laws, especially following its unsuccessful prosecution of the parties in the Ballarat Magistrates' Court in 2005. The financial risks are simply too great and (apparently) uninsurable, at least by RSPCA.

All law enforcement agencies should be indemnified by the governments to which they are responsible.

Key reform proposals

LFA outlines the following constructive alternative model of animal cruelty law enforcement for the Inquiry's consideration:

- creation of a dedicated Animal Cruelty Investigation Squad (or similar) within Victoria Police;
- creation of an Office of Animal Welfare within the Department of Justice to oversee the Animal Cruelty Investigation Squad and fulfil many functions of the former Bureau of Animal Welfare, keeping it independent from the Department of Agriculture; and
- removal of RSPCA's Inspectorate powers and funding, permitting it to refocus on animal care and to engage in public advocacy for animal welfare without any perception of conflict of interest.

Victorians don't expect human welfare charities to enforce our criminal laws, so it's high time we stopped expecting the RSPCA to enforce our animal cruelty laws.

Thank you for considering this submission. Should there be any queries concerning its content, please contact Lawyers for Animals via email: enquiries@lawyersforanimals.org.au

Yours faithfully,

Nichola Donovan

President

Per: LAWYERS FOR ANIMALS INC.

www.lawyersforanimals.org.au