

T 03 9607 311
president@liv.asn.au
5 April 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,

The Law Institute of Victoria (LIV) is Victoria's peak body for lawyers and represents more than 19,500 people working and studying in the law in Victoria, interstate and overseas. This submission has been drafted in consultation with members of the LIV's Animal Welfare Working Group and the Human Rights/Charter of Rights Committee.

The LIV welcomes the Standing Committee on Economy and Infrastructure's Inquiry into the RSPCA Victoria. We note that this inquiry is taking place at the same time as the Victorian Government is developing an Animal Action Plan, which has compliance and enforcement of animal welfare laws as a main action area. The LIV made a submission to the draft Animal Action Plan that included discussion of the role of the RSPCA, which we expand on below.¹

In particular, the LIV wishes to highlight its support for the development of an independent regulatory body for animal welfare at the State level (as well as at the Commonwealth level, as noted in our previous submission). The Productivity Commission recommends that such a body would be the best way to address the three main concerns with the way in which animal welfare is currently regulated at the national level: the need to clarify the objectives of national standards and guidelines; the need for such standards to be evidence-based; and the importance of ensuring independence in the development of standards.² Similar concerns, particularly regarding conflicts of interest and the current inconsistency in regulating across different industries, exist at the State level.

1. Increase funding for the RSPCA's Inspectorate powers

The LIV wishes to highlight the importance of adequately funding a body which carries responsibility for enforcing Victoria's animal welfare laws. The issue of limited resources for animal welfare enforcement is present across Australia, and undermines the effectiveness of animal welfare laws. As recently noted by the Productivity Commission, 'sufficient resources should be devoted to ensuring compliance that is proportionate with regulatory objectives'.³

¹ Law Institute of Victoria, *Submission to the Minister for Agriculture: Improving the Welfare of Animals in Victoria* (2 December 2016) <https://www.liv.asn.au/getattachment/29cf0096-05b2-4642-8fce-7294642b18c2/20161202_LP_AnimalActionPlan_LIV.pdf.aspx>.

² Productivity Commission, *Regulation of Australian Agriculture*, Inquiry Report No 79 (2016) 231-2.

³ *Ibid* 242.

The LIV recognises the important role and expertise that the RSPCA has in enforcing animal welfare laws and acknowledges that this work has taken place without sufficient public funding for such significant work.

As noted in the recent Independent Review of the RSPCA Victoria Inspectorate, the RSPCA receives around 10,000 reports of animal cruelty a year, yet only has around 17 staff and only has resources to prosecute around 60 cases annually, less than 1 per cent of the cruelty reports received.⁴

The RSPCA received around \$1 million per annum from the Victorian Government to undertake its regular inspectorate activities, and, as noted by the recent Independent Review, this only contributes to part of the costs of operating the Inspectorate, with the large majority of funding coming from fundraising, donations and bequests to the RSPCA.⁵

The Independent Review of the RSPCA highlights the growing number of complaints of animal welfare being made, and the fact that Government funding for the RSPCA has not increased in recent years to meet this increase in demand. The growing public awareness and concern about animal cruelty should lead to the Government increasing the resources to address this issue, rather than relying on a charitable institution to fund basic enforcement activities.

The LIV therefore supports recommendation 1 of the Independent Review that the RSPCA 'develop a budget submission to the Victorian Government for an incremental increase to their recurrent budget allocation' and encourage the Government to consider and support such a request.

2. Consider ways of increasing the resources provided towards enforcing animal welfare laws

The recent Independent Review provides a number of examples of ways in which to maximise the resources of the RSPCA through working more closely with other enforcement agencies.

As noted by the Independent Review, the RSPCA Inspectorate staff are highly qualified experts in their area, and, as a result, 'No other organisation in Victoria is as well equipped to deal with animal cruelty reports.'⁶ Therefore, focus should be placed on expanding the resources of the Inspectorate, both through increases in funding (discussed above), and through expanding on links with other enforcement agencies, such as Victoria Police.

LIV welcomes the steps taken by the RSPCA to build greater links with Victoria Police through locating a Victoria Police intelligence analyst at the Inspectorate and the creation of a specialist *Prevention of Cruelty to Animals Act 1986* (Vic) ('POCTAA') prosecutor in the Prosecutions Unit of the Legal Services Department of Victoria Police.

⁴ Neil Comrie, *Independent Review of the RSPCA Victoria Inspectorate*, Final Report (1 September 2016), 54.

⁵ Ibid 36.

⁶ Ibid 9.

We suggest that such linkages could be expanded on and that models from other jurisdictions could be considered, such as the partnership between the New York City Police Department and the American Society for the Prevention of Cruelty to Animals ('ASPCA') which was launched in 2014 and which involves police officers taking more of an active role in responding to animal cruelty complaints, in close partnership with the ASPCA.⁷

3. Protection from civil liability

The RSPCA Victoria's submission to this inquiry notes that the organisation is vulnerable to civil claims brought against its officers and suggests that protection for the organisation from civil liability could be extended by the Government in a manner similar to s 74 of the *Victoria Police Act 2013* (Vic).

We note that there was a very different policy context that underpinned the police legislation. Prior to the *Victoria Police Act* police officers were regarded as autonomous agents under common law and were therefore personally liable for their actions, unless they acted 'in good faith'.⁸ Section 74 of the *Victoria Police Act* clarified that the State is liable for the actions of individual police except where the 'conduct giving rise to the police tort was serious or wilful misconduct by the police officer' (s 74(2)). We assume, however, that, unlike police officers, that the ordinary principles of vicarious liability would apply to RSPCA officers. The new provisions in the *Victoria Police Act* were therefore aimed at a different issue to that facing the RSPCA.

Other state organisations bear their own liability. We also note that if liability is transferred from the RSPCA to the State there could arguably be a disincentive on the part of the organisation to improve policies, training etc. to prevent incidents that could lead to civil litigation. It is an important legal principle that aggrieved people can legitimately test powers they think have been wrongfully applied (even in good faith) against the organisation/organisation's employee wielding them. If the RSPCA believes that their inspector is liable, then they could join them to the proceeding or potentially rely upon defences to vicarious liability.

However, we do acknowledge that the RSPCA are enforcing these powers on behalf of the State, in a situation where State funding is not adequately covering their inspectorate functions. If greater funding were to be provided to the RSPCA for their inspectorate functions (as suggested above), perhaps this could provide the RSPCA with more options for purchasing insurance or creating a litigation fund to protect against cases brought successfully against them.

⁷ See, e.g. American Society for the Prevention of Cruelty to Animals, *ASPCA and NYPD: Partners Against Crime* (2017) <<http://www.asPCA.org/animal-protection/nypd-partnership>>.

⁸ See *Police Regulation Act 1958* (Vic) s 123 and Jeremy King and Merys Williams, 'In Search of Certainty' (2014) 88 (12) *Law Institute Journal* 12.

3. Infringement notices

The Independent Report into the RSPCA Victoria recommends that the RSPCA advocate to the State Government for the authority to issue infringement notices:

- for lower level offences that are not to the requisite level of seriousness to warrant criminal prosecution; and
- for failing to meet the requirements of Notice to Comply issued under Section 36G of POCTAA.

The LIV supports the use of infringement notices for lower level offences, and notes that they can play an important role in keeping cases out of the court system. However, we do note that infringement notices should only be utilised for strict liability offences, consistent with the common law principle and the presumption of innocence under art 14.2 of the *International Covenant on Civil and Political Rights*⁹ and s 25(1) of the Victorian *Charter of Human Rights and Responsibilities*.

4. Clarification of options for sheltering seized animals

The LIV recognises the issues raised in the Independent Review's Report of the RSPCA in relation to long-term care for seized animals. The suggestions put forward by the Review would require further analysis by the LIV, however, we generally support options for ensuring the welfare of animals seized which recognise their sentience and the importance of allowing them to exhibit natural behaviours, including potentially fostering out of domestic animals

If the Committee has any questions about this submission please contact Kate Browne on (03) 9607 9489 or kbrowne@liv.asn.au.

Yours sincerely,



Belinda Wilson

President

Law Institute of Victoria

⁹ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).