

**Memorandum of Understanding
between
The Royal Society for the Prevention of Cruelty
to Animals (Victoria) ('RSPCA')
and the
Victorian Department of Economic
Development, Jobs, Transport and Resources
(‘DEDJTR’)**

This memorandum covers enforcement of the Prevention of Cruelty to Animals Act
1986 by the RSPCA Inspectorate

Version: 1 July 2016

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1. INTRODUCTION

- 1.1. The Memorandum of Understanding (MoU) is between the Royal Society for the Prevention of Cruelty to Animals (Victoria) (RSPCA) and the Victorian Department of Economic Development, Jobs, Transport and Resources (DEDJTR). It defines the conditions for the appointment of the RSPCA inspectors for the enforcement of the provisions of Part 2 of the *Prevention of Cruelty to Animals Act 1986* (the Act) and the provision of a grant to the RSPCA to support the activities of the inspectorate.
- 1.2. DEDJTR, under Government administrative arrangements in Victoria, has portfolio responsibility for the administration of the Act.
- 1.3. RSPCA agrees to enforce the Act as an agent for the Government. Both DEDJTR and RSPCA are committed to reducing the risks this poses for Government and addressing these risks through this MoU.
- 1.4. The Act provides the Minister for Agriculture with the power to appoint officers from the RSPCA to exercise powers under the Act as inspectors. Such inspectors are accountable to the Minister for the proper exercising of these powers.
- 1.5. There needs to be equivalence of accountability in enforcing Part 2 of the Act for DEDJTR and RSPCA inspectors.
- 1.6. It is acknowledged that the RSPCA, as a charity, needs to raise funds from the community to continue this work. A purpose of this MoU is to minimise the risks from any potential conflicts of interest that may arise as a result of this.
- 1.7. DEDJTR and RSPCA agree to liaise with regard to training, communications and process development to improve administration and enforcement of Part 2 of the Act.

2. DEFINITIONS

“**Act**” means the *Victorian Prevention of Cruelty to Animals Act 1986*.

“**Agency**” means either DEDJTR or the RSPCA .

“**Approved training program**” means a training program developed and approved by the Minister for Agriculture.

“**Animal Welfare Policy Unit (AWPU)**” means the DEDJTR unit responsible for the development of animal welfare policy in Victoria for the Minister for Agriculture.

“**Commercial animals**” means more than 10 livestock animals of the one species or more than 50 poultry and where the keeping of such livestock is a significant or primary business of the person or organisation, but does not include wildlife, or animals kept in zoos, riding schools, horses used in standard bred or thoroughbred racing or for rodeos, pet shops and greyhound racing.

“**Inspector**” means a person who holds an approved authority of the appointment under section 18 of the Act for the purposes of enforcing Part 2 of the Act.

“**Minister**” means the Minister for Agriculture or the legally appointed delegate of the Minister.

“**Secretary**” means the Secretary of the Department of Economic Development, Jobs, Transport and Resources.

3. ROLE OF THE MINISTER

- 3.1. The Director, Animal Health and Welfare DEDJTR is responsible to the Minister for DEDJTR compliance activities under Part 2 of the Act.
- 3.2. The Director Biosecurity Assurance DEDJTR is responsible to the Minister for the development of animal welfare policy and administration of Parts 2 and 3 of the Act.
- 3.3. The Minister may appoint full-time or part time officers of the RSPCA to be inspectors under the Act for the purposes of enforcing the provisions of Part 2 of the Act.
- 3.4. The Minister may cancel the approval of an inspector for enforcing the provisions of Part 2 of the Act.

4. ROLE AND RESPONSIBILITIES OF THE RSPCA

- 4.1. The RSPCA enforces the Act as an agent for the Government and is accountable to the Minister for that enforcement.
- 4.2. The RSPCA will take all reasonable action to ensure that its inspectors comply with their responsibilities under the Act and this MoU, and will not contravene the spirit of the Act or this MoU.
- 4.3. The RSPCA and its inspectors as agents for the Government will comply with relevant standards and statutory procedures that are binding on government officers.

5. INSPECTORS

5.1. Appointment

- 5.1.1. The RSPCA will nominate in writing to the Minister those persons within the employ of the RSPCA it wishes to be appointed as inspectors under part 2 of the Act.
- 5.1.2. The RSPCA will notify DEDJTR if potential appointees have previously been convicted of a criminal offence. Persons who have been convicted of a criminal offence may not be appointed as inspectors.

- 5.1.3. No person will be appointed as an inspector under the act unless an Approved training program has been undertaken. In nominating a person for appointment as an inspector, the RSPCA will advise the Minister that the person has successfully completed an Approved RSPCA training program and has the competencies required of an inspector.
- 5.1.4. An inspector will hold office subject to the conditions stated on the instrument of the appointment and compliance with the Conditions of Appointment under clause 5.3.

5.2. Identification Cards

- 5.2.1. The Minister will issue an identification card to each inspector appointed under the Act.
- 5.2.2. All inspectors will hold an identification card as an authorised officer until it is revoked, surrendered or expired.
- 5.2.3. The RSPCA is responsible for ensuring that all inspectors within its employ hold a current identification card as an authorised officer at all times in the course of performing compliance and enforcement activities under Part 2 of the Act.

5.3. Conditions of Appointment

In order to provide accountability equivalent to government inspectors, it will be a condition for appointment of all RSPCA inspectors that they comply with:

- 5.3.1. Procedures, guidelines, circulars and instructions developed for adoption under Section 6.1.
- 5.3.2. The Code of Conduct for the Victorian Public Sector issued under the *Public Sector Management and Employment Act 1998*.
- 5.3.3. The *Privacy and Data Protection Act 2014 (Vic)*.
- 5.3.4. Review, recommendations and decisions of the Ombudsman.
- 5.3.5. Compliance with the conditions of this MoU.
- 5.3.6. The Act and any related or relevant legislation.

5.4. Procedures for the referral of complaints against RSPCA inspectors

- 5.4.1. The RSPCA will develop, in conjunction with the Ombudsman's Office, internal procedures to deal with complaints against its inspectors.
- 5.4.2. The RSPCA will immediately advise the Minister of any complaints of a serious nature against the RSPCA inspectors in their enforcement of Part 2 of the Act.
- 5.4.3. The Director Biosecurity Assurance will advise the Chief Executive Officer, RSPCA of any complaints against the RSPCA inspectors received by DEDJTR in regard to their enforcement of the Act.
- 5.4.4. The RSPCA will investigate such complaints and advise the Minister on the outcomes (findings and actions) of an investigation of an inspector. If the Minister requires further investigation the Director Biosecurity Assurance will oversee the conduct of any investigation.
- 5.4.5. During an official Ombudsman investigation against an RSPCA inspector, DEDJTR will suspend any investigations it has initiated until the Ombudsman's report is finalised.

5.4.6. Notwithstanding the above, the RSPCA will immediately advise the Minister on the performance of any inspector who has behaved in a manner prejudicial to the proper enforcement of the Act.

5.5. Surrender of Identification Cards as an Authorised Officer

5.5.1. An inspector ceases to have authority under the Act –

- a) At the end of the term of appointment for the authority;
- b) If an inspector resigns or is dismissed;
- c) If the Minister revokes the authority; or
- d) If an authority has been suspended pending an investigation.

5.5.2. The RSPCA will be responsible for taking reasonable action to recover the identification card of an authorised officer from its inspectors and returning it to the DEDJTR within 30 days from when the inspector ceases to hold office.

6. QUALITY SYSTEMS

6.1. Procedural guidelines for the administration of Part 2 of the Act (the Guidelines) will be developed by both Agencies to establish clear operational guidelines and an accountability framework for the appropriate and effective administration and enforcement of the Act.

6.2. Copies of the current procedural guidelines must be provided to the Minister.

6.3. DEDJTR will monitor the RSPCA's compliance with the Guidelines.

7. REPORTING

7.1. The RSPCA will furnish the Minister with an Annual report for the previous 12 month period, 1 July to 30 June, by 30 September each year which will provide information relevant to –

7.1.1. Number of complaints received and the number investigated (by species); and

7.1.2. Number of prosecutions including the number that were successful; and

7.1.3. Number of search warrants applied for; and

7.1.4. Number of Infringement Notices issued; and

7.1.5. Number of Notices to Comply issued; and

7.1.6. Any other significant issues thought appropriate by the RSPCA.

7.2. The Minister may request, at any time, other information as is reasonable for the proper and accountable administration of the Act, including about the performance of an inspector or concerning the exercise of an inspector's powers.

8. RSPCA/DEDJTR LIAISON

- 8.1. Formal discussions initiated by the Director Biosecurity Assurance between DEDJTR and the RSPCA will be held on policy and operational issues of strategic importance, as and when required but not less than on a quarterly basis. A report of procedural and operational guidelines regarding the administration of the Act will be presented by each Agency annually.
- 8.2. The RSPCA and DEDJTR will provide copies of their organisation's current business senior management contact list to each other, via the Director Biosecurity Assurance and Principal Animal Health Officer whenever they are updated

9. RSPCA/DEDJTR LIAISON (LOCAL)

- 9.1. Meetings between the regional RSPCA and DEDJTR officers should take place as and when required.
- 9.2. Where applicable joint training sessions involving both RSPCA and DEDJTR inspectors should be conducted in relation to inspectors duties in enforcing Part 2 of the Act.
- 9.3. Any issues between agencies, in the first instances, are resolved at the local level. If issues remain unresolved they should be passed without delay to a senior level of the respective organisations i.e. Chief Executive Officer for the RSPCA and Director Biosecurity Assurance, DEDJTR. See section 17 – Resolution of Disputes.

10. AREAS OF JURISDICTION

- 10.1. DEDJTR will generally refer non-commercial animal cases to the RSPCA who will have primary responsibility for companion and recreational animal cases. RSPCA inspectors will have primary responsibility for enforcing the Act in relation to non-commercial animals.
- 10.2. The RSPCA will generally refer commercial animal cases to DEDJTR who will have primary responsibility for animals in primary production enterprises. Where the RSPCA investigates commercial animal cases, the RSPCA inspector will advise DEDJTR using the agreed business contacts list to avoid duplication.
- 10.3. The organisation undertaking the initial investigation of a case will complete it unless exceptional circumstances occur which require collaboration with or transfer to the other Agency. See section 12 – Transfer of Cases.

RSPCA – DEDJTR MoU

“Initial investigation” refers to an investigation of some substance that has taken place. It is not intended to mean the preliminary inquiries made by either organization. For example, the RSPCA may receive a complaint regarding three cattle in poor condition. On attending the property, they locate 300 cattle in poor condition. An investigation had not taken place, merely preliminary inquiries, and further investigation is appropriately handed to DEDJTR.

- 10.4. DEDJTR acknowledges and agrees that in some instances, RSPCA may refer commercial cases, if DEDJTR is unable to handle them, and non-commercial cases to other agencies authorized under the Act.
- 10.5. In emergency management situations affecting animals, a DEDJTR State Animal Welfare Commander has the prime responsibility under the Emergency Management Act to provide animal welfare assessment, relief and destruction. The RSPCA is listed as a secondary support agency. RSPCA officers may be involved, subject to the approval of the DEDJTR State Animal Welfare Commander. This is important in terms of safety and control for all organisations.
 - 10.5.1. Pursuant to clause 10.4, DEDJTR shall provide RSPCA inspectors with an appropriate level of Emergency Management Training including roles and responsibilities within the Victorian Emergency Animal Welfare Plan. Such training shall provide assistance with the preparation and presentation of training materials from time to time. The objective of such training will be to ensure that emergency preparations are clearly communicated and to ensure cooperation is maximized. Nothing in clause 10.4 will affect the autonomy of the RSPCA in any capacity.
- 10.6. For commercial animal activities in emergencies, RSPCA officers will be under the direction of the DEDJTR State Animal Welfare Commander.
- 10.7. For companion animals in emergencies, The RSPCA will be delegated the responsibility by DEDJTR to coordinate appropriate companion animal welfare agency responses and to report on those activities to the DEDJTR Animal Welfare Commander.
- 10.8. For wildlife in emergency incidents the Department of Environment, Land, Water and Planning’s (DELWP) Wildlife Welfare Commander will arrange coordination activities. The controller will usually request the assistance of DELWP Parks, Flora and Fauna Division staff, veterinarians and organisations authorised under the Wildlife Act e.g. wildlife shelter networks.
- 10.9. Regardless of the above, all inspectors appointed under the Act may be required to respond to animal welfare incidents outside of their primary areas of responsibility if the welfare of the animals is severely compromised and there is an immediate need to alleviate pain and suffering.

11. ASSISTANCE POLICY

- 11.1. There will be instances where one Agency will need the assistance of the other. Where the assistance is of a minor nature (that is, low time and resource commitment) this should be requested at the local level. Where the RSPCA request assistance from the DEDJTR, the Senior Officer - Animal Welfare is the first point of contact.
- 11.2. Where more substantial assistance is required, assistance should be requested through a senior level of the respective organisations i.e. Chief Executive Officer of the RSPCA (or delegate) or Director Biosecurity Assurance, DEDJTR. Such request should be given proper consideration, taking into account the urgency of the matter and the resourcing implications.
- 11.3. The requesting Agency will retain full responsibility for any investigation in which it has requested assistance.
- 11.4. Unless negotiated otherwise, where assistance is sought, agencies will be responsible for their own costs.
- 11.5. DEDJTR acknowledges and agrees that RSPCA may, in some instances, request the assistance of other agencies authorized under the Act.

12. TRANSFER OF CASES

- 12.1. Transfer of cases that have not proceeded to an investigation but merely preliminary enquiries can be transferred from the RSPCA to the Principal Animal Health Officer, DEDJTR, via the email:
[REDACTED]

Transfer of cases from DEDJTR to the RSPCA should be referred to the Complaints Coordinator, RSPCA Burwood, [REDACTED]

- 12.2. There may be instances when it will be appropriate to transfer a major case (in progress) from one Agency to the other (for example for resourcing reasons) or to another agency authorized under the Act. This will be done through the respective operations at a senior level i.e. Chief Executive Officer of the RSPCA or the Director Biosecurity Assurance, DEDJTR or their appropriate delegates. A transfer will only occur if the Agency accepting the transfer is in a position to act on the matter in a timely way. If not the matter will remain with the existing Agency.
- 12.3. The Agency accepting the transfer will confirm acceptance of the transfer and will assume responsibility for the investigation after the formal transfer has taken place. The transferring Agency will accept the decision made on any action taken in the investigation subsequent to the

transfer. All relevant information and evidence must be transferred to the Agency accepting the case.

- 12.4. Where requested, feedback is to be provided from the Agency accepting the transfer to the Agency initiating the transfer on the outcome and/or progress of any subsequent investigation.

13. MEDIA POLICY FOR PUBLIC COMMENT ON INVESTIGATIONS PERTAINING TO BREACHES OF THE ACT

- 13.1. Inspectors will not make any public comment on any matters under investigation where such comments may jeopardise legal proceedings, pending or current, or may compromise a person's rights under law.
- 13.2. Where appropriate, inspectors may make public comment on an ongoing investigation through an official spokesperson designated by the involved agencies. Public comments should not be made about an investigation being carried out by another Agency without approval from the investigating Agency. In circumstances or investigations involving multiple agencies, public comments should not be made without approval from the lead investigating Agency. Comments on the ongoing investigations should be restricted to a statement of fact regarding the nature of the investigation. Names or private details should not be provided.
- 13.3. Inspectors may make comments on the results of prosecutions in the interests of educating animal owners and raising awareness regarding the Act. All such comments should only be made with prior approval from the inspector's senior management.
- 13.4. It is not acceptable for an inspector to permit or facilitate entry of the media onto a private property under investigation.
- 13.5. Where a matter under investigation has a high level of public interest, the Chief Executive Officer of the RSPCA (or designated representative) and the Director Biosecurity Assurance will brief the Minister (or delegated representative) to obtain agreement on the official spokesperson regarding the particular investigation and whether public comment is appropriate, or alternative actions are necessary. Any such comments will be worded so as not to jeopardise legal proceedings, pending or current, or compromise a person's rights under law.
- 13.6. Inspectors must not make public comments or criticisms of the enforcement actions of the other Agency, or the decisions of the Minister or Ombudsman in relation to any matter involving enforcement actions of an inspector under the Act.

14. PROSECUTIONS

- 14.1. Each Agency will conduct and fund its own prosecutions and DEDJTR acknowledges and agrees that RSPCA may transfer the conduct of any prosecutions to other agencies authorized under the Act.

15. INFORMATION PRIVACY

- 15.1. In the administration of the Act, both parties will abide by the State and Commonwealth privacy legislation and its principles in relation to the collection, storage, use and disclosure of personal information e.g. Privacy and Data Protection Act 2014 (Vic), Privacy Act 1988 (Cth).

16. RSPCA POLICY Vs. ENFORCEMENT ROLES

- 16.1. DEDJTR acknowledges that the RSPCA may have policies that are not in accord with Government and DEDJTR policy. The RSPCA will clearly separate its enforcement role and enforcement policies from its other policies, so that the proper enforcement of the Act is not compromised or brought into disrepute.
- 16.2. Statement or public comment on behalf of the RSPCA, limited to its non-enforcement policies, will not amount to a breach of Section 13.

17. RESOLUTION OF DISPUTES

- 17.1. The resolution of any disputes between agencies should be attempted at the regional level. If this is not possible, the CEO of the RSPCA and the Director Biosecurity Assurance, will attempt to resolve the dispute. If this is unsuccessful, the Agency should write to the Minister who will make a determination on the matter taking into account all relevant factors and the need for the proper administration of the Act.

18. DEDJTR GRANT TO THE RSPCA

- 18.1. DEDJTR will administer any Ministerial grant provided to the RSPCA to support the RSPCA in the enforcement of Part 2 of the Act.
- 18.2. The grant will be used as a contribution to RSPCA inspectorial expenses for the investigation of non-commercial animal cases.
- 18.3. The grant will not be used for purposes other than those specified in paragraph 18.2 unless approved in writing by the Minister.
- 18.4. The RSPCA will keep proper accounts and records in relation to its use of the grant and will ensure that all payments out of the grant are correctly made and properly authorized.

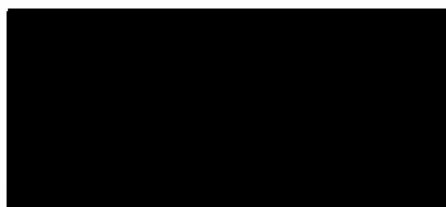
- 18.5. The RSPCA will provide DEDJTR with a copy of the RSPCA Annual Report that includes an audited financial statement showing details of expenditure of the grant during the previous financial year by 30 September.
- 18.6. Compliance with this MoU is a condition of the grant and ongoing payments are subject to approval by the Minister.
- 18.7. The amount of the grant will be reviewed annually

19. DURATION AND AMENDMENT OF MoU

- 19.1. This MoU commences on the date the parties sign the MoU and if the parties sign on different dates, the date that the last party signs this MoU.
- 19.2. This MoU may be signed in any number of counterparts and those counterparts together make one document.
- 19.3. This MoU is to remain in force until 30 June 2017 or as such time prior as either party chooses to terminate the MoU in which case three (3) months' notice in writing of intent to terminate this MoU must be given.
- 19.4. This MoU will not be amended without the agreement in writing of both Agencies. It may be reviewed at the request of either Agency and will be reviewed prior to 30 June 2017.

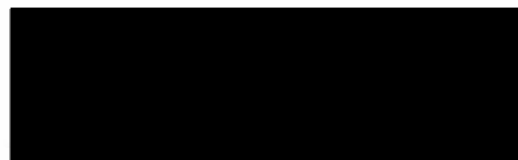
EXECUTED by the parties

Signed by Lead Deputy Secretary
- Agriculture and Resources,
Department of Economic
Development, Jobs, Transport and
Resources
in the presence of



Date: 16-9-16

Signed by Chief Executive Officer,
The Royal Society for the
Prevention of Cruelty to Animals
(Victoria)
in the presence of



Date: 17 Sept. 2016

RSPCA – DEDJTR MoU

Date: _____