



Ms Samantha Parsons

Committee Clerk

Select Committee into the Operations of RSPCAWA (INC)

Legislative Council

Parliament House Perth W.A. 6837

Dear Ms Parsons

Please place my attached submission before the Committee for their consideration. I would also appreciate the opportunity to appear before the Committee at a hearing.

Regards

Adele Culverwell

01/07/2015

FUNDING FROM THE GOVERNMENT

The 2012 Grant Agreement is a contract between The State of Western Australia through the Department of Agriculture and Food Western Australia (DAFWA)(A Department of the Public Service) and The Royal Society for the Prevention of Cruelty to Animals, Western Australia Incorporated (RSPCA)(An incorporated body registered as a charity, an association).

The Grant Agreement is a badly drafted and legally inept document, based on a false premise as to the legal standing of each of the parties as defined in the Animal Welfare Act 2002.

RSPCAWA (Inc) is not a legal entity under the AWA and has no legislated powers to undertake compliance and enforcement activities whether it be in regard to non-commercial (domestic) or commercial animals. The Grant Agreement therefore provided funding for a purpose which the association could not legitimately perform.

With regard to the 24 hour complaint receipt and assessment service, that service is based in Queensland, leading to the question as to why the West Australian tax payer is obliged to support an Australia wide charity when the individual may not be inclined to do so. RSPCAWA (Inc) publicises statistics from that service with the implication that they are W.A. figures.

RSPCAWA (Inc) would have the public believe, through the Media, that there is an increasing epidemic of animal cruelty, when there is no research or confirmed figures to support that view. If that is indeed the case then it is proof that the public education programs for which RSPCAWA (Inc) are receiving a financial contribution, have failed.

Referring again to the Grant Agreement 2012, 3.7 General Undertaking of Organisation. At para (d) comply with all State and Commonwealth laws, rules, regulations and by-laws. RSPCAWA (Inc) continues to breach this undertaking particularly in regard to the Criminal Procedure Act s20(5). Throughout 2012/2013/2014 the association, a non-government body, instigated, conducted and financed private prosecutions in the name RSPCAWA (Inc).

There is a Default and Termination Clause in the Agreement at s.8. It would appear that, for political purposes, this clause was never exercised.

OBJECTIVES OF RSPCAWA (INC)

Regardless of any and all objectives of the association, those objectives can only be achieved by lawful means.

The association has no powers lawfully conferred by the Animal Welfare Act 2002 or any other Legislation with regard to enforcement of laws with regard to prevention of cruelty.

There is a substantive difference between the association and an employee/ officer of that association when the employee /officer is appointed as a General Inspector under the Animal Welfare Act. Given that that appointment creates an Agency and a Public Office it in fact becomes unlawful for a private association to use the Statutory Authority of that Public Officer for the private purposes of the association.

General Inspectors are not the private animal police of an association but their authority has been unlawfully used for that purpose.

Titles given by the association to these General Inspectors, within the association, such as Chief Inspector, Senior Inspector, Prosecutions Officer, are not recognised in the Legislation and are non Statutory titles and have no place in investigations or enforcement actions under the Animal Welfare Act. General Inspectors appointed under the AWA have equal standing under the Legislation and no Inspector has a superior position over another Inspector.

In July 2014, RSPCAWA (INC) was issued a license by DAFWA to use animals for Scientific Purposes. What objectives of the charity are served by either using animals for scientific purposes or supplying animals for scientific purposes?

The Royal Society for the Prevention of Cruelty to Animals Western Australian Incorporated is an association with a dwindling membership. The last verified membership numbers were less than 1800. The policies and ideology of the association are only binding on a person who has voluntarily made a decision to become a member of the association. While the association may be a lobby group for its opinions and views on many animal issues, it is not the "voice for animals" as it proclaims.

The "Charity" has become a corporation with an insatiable need for money, a bottomless black hole. The corporation uses every means available, lawful or not, to keep the brand RSPCA before the public for the purpose of soliciting donations.

The Animal Welfare Act is an Act to provide for the welfare, safety and health of animals. It is not the RSPCA Welfare Act, to be used for the financial welfare of a Charity.

USE OF ITS POWERS (RSPCAWA(INC))

Before any assessment of the use of power, it is necessary to consider what lawful power the association has .

RSPCAWA (Inc) is a not-for-profit incorporated body registered as a charity. As a private body it has the same powers and obligations, with regard to the Law as any other private person in the State of Western Australia.

Under the Animal Welfare Act 2002 there are no Statutory powers or responsibilities conferred upon the association.

Section 33(1)(a) of the AWA allows RSPCA the ability to nominate members of the staff of RSPCA to be appointed as General Inspectors by the C.E.O. of the Department of the Public Service gazetted to administer the Animal Welfare Act . Since July 2011, that Department has been DAFWA and the responsibility to supervise, oversee, educate and hold accountable every General Inspector appointed as a public officer was the legislated responsibility of the C.E.O. of DAFWA.

The General Inspector so appointed is then acting in all aspects under the AWA as a Public Officer on behalf of the State. Every function that he performs under the Act is on behalf of the State, not on behalf of his formal employer, RSPCA. He is employed by DAFWA for the purposes of DAFWA and that is a position which has been confirmed by the decision of the Western Australian Information Commissioner ref; 'I' and Department of Agriculture and Food, Re(2014) WAICmr 22 (8 December 2014).

The Statutory Authority does not transfer from the General Inspector to his formal employer RSPCA. RSPCAWA (INC) therefore has no "inspectorate". A General Inspector assigned to an animal cruelty complaint is dealing with that complaint as a public officer on behalf of the State.

At best RSPCAWA (Inc) is only a clearing house for animal cruelty complaints. Some go to Police, some to Local Government Rangers and some to General Inspectors appointed under the AWA.

Under the Criminal Procedure Act, in Western Australia, there is no association or organisation, including RSPCAWA (Inc), which is able to prosecute criminal charges on the community. Criminal prosecution is the prerogative of the State. The commencement of proceedings is governed by the statutory requirements of the Criminal Procedure Act, DPP Prosecution Act (incorporating DPP Prosecution Policy and guidelines) and in the case of the Animal Welfare Act, DAFWA Enforcement and Prosecution Policy.

On the website of RSPCAWA (Inc) appears a curious document headed RSPCA Compliance, Enforcement and Prosecution Policy. Given that this document has already been ruled in

the Magistrates Court as having no legal legitimacy, its only purpose appears to be to mislead the public.

RSPCAWA (Inc) is not an employing agency for the purposes of the AWA. They are not an agency, they are an association, a "community based charity".

RSPCAWA (Inc) are not a Prosecuting Authority and this is another misinformation which has been corrected by the Magistrates Courts.