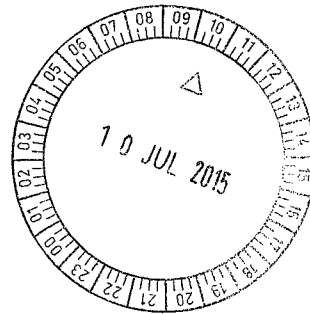




Government of **Western Australia**  
Department of **Agriculture and Food**



Our Ref: DGC151239  
Enquiries: K Chennell  
9 July 2015

Ms Samantha Parsons  
Select Committee into the Operations of The Royal Society for the Prevention of  
Cruelty to Animals Western Australia  
GPO: Box A11  
PERTH WA 6000

E-mail: [selra@parliament.wa.gov.au](mailto:selra@parliament.wa.gov.au)

Dear Ms Parsons

Please find attached a copy of the Department of Agriculture and Food's (DAFWA) submission to the Select Committee into the Operations of The Royal Society for the Prevention of Cruelty to Animals Western Australia.

The submission provides background to the *Animal Welfare Act 2002*, the relationship between the Act and the RSPCA and RSPCA employed general inspectors and a summary of the funding arrangements between the State of WA through DAFWA and the RSPCA.

I trust this information is of assistance to the Committee. For further information please contact Kevin Chennell Executive Director Biosecurity and Regulation.

Yours sincerely

Rob Delane  
DIRECTOR GENERAL



## Department of Agriculture and Food Western Australia

### Submission to Select Committee into the Operations of the Royal Society for the Prevention of Cruelty to Animals Western Australia (Inc)

Humans interact with animals in a variety of ways, including as companions, in recreation and sport, in exhibitions (zoos and wildlife displays), in the environment (wildlife and feral animals), in teaching and scientific work and in the production of food and fibre.

The importance that society places on the welfare of animals is reflected in the *Animal Welfare Act 2002* (AW Act). The AW Act replaced the *Prevention of Cruelty to Animals Act 1920* (POCTA Act).

#### The Animal Welfare Act 2002

The AW Act provides for the protection of animals by regulating the people who may use animals for scientific purposes and the manner in which they may be used and prohibits cruelty to, and other inhumane or improper treatment of, animals. It is stronger and more comprehensive than the previous POCTA Act, reflecting the increasing importance the community places on the welfare and protection of animals.

The intention of the AW Act is to promote and protect the welfare, safety and health of animals and to ensure the proper and humane care and management of all animals in accordance with generally accepted standards. It reflects the community's expectation that people who are in charge of animals will properly treat and care for them by providing a monetary penalty range for animal cruelty offences between \$2,000 and \$50,000 and a period of imprisonment for up to 5 years. A body corporate that is found guilty of an offence is liable to both minimum and maximum penalties of 5 times the respective fines to that offence.

There are four sets of regulations under the AW Act:

1. Animal Welfare (General) Regulations 2003
2. Animal Welfare (Scientific Purposes) Regulations 2003
3. Animal Welfare (Commercial Poultry) Regulations 2008
4. Animal Welfare (Pig Industry) Regulations 2010

The AW Act has not been reviewed since it was proclaimed.

#### Cruelty Provisions

The cruelty offences in the AW Act are primarily set out in section 19. Examples of cruelty offences in the AW Act include torturing an animal; transporting an animal in a way that causes, or is likely to cause, the animal unnecessary harm; failing to provide proper and sufficient food or water for an animal; intentionally or recklessly poisoning an animal, etc.

It is an offence to release captive animals for the sport of hunting, chasing or killing them. Those persons who organise, take part in, spectate at, promote or keep animals for fighting, will commit an

offence of cruelty under the AW Act. Regulations have been enacted to provide for additional offences. These include the docking of dogs' tails for cosmetic purposes.

The AW Act sets out a range of defences to a charge of cruelty including for example, compliance with a prescribed Code of Practice and veterinary care.

The AW Act is enforced by inspectors appointed under section 33 of the Act.

## **Inspectors**

### Appointment

Section 33 of the AW Act requires the CEO of the Department of Agriculture and Food (DAFWA) to appoint as general inspectors:

- Those members of the staff of the Royal Society for the Prevention of Cruelty to Animals Western Australia (RSPCA) nominated by the RSPCA; and
- As many other people whom the CEO considers to be suitably qualified or experienced as the CEO considers necessary for the purposes of the Act.

The CEO has no discretionary power over the appointment of any member of staff of the RSPCA nominated by the RSPCA. The RSPCA nomination is itself sufficient to require the appointment to be made.

In relation to the appointment of suitably qualified or experienced persons, the CEO may appoint a member of staff of the following departments or local government nominated by the relevant CEO:

- DAFWA;
- Department of Parks and Wildlife;
- Department of Fisheries WA;
- A local government; or
- any other person the CEO considers appropriate to appoint

An appointment of a general inspector from a department listed above, the RSPCA or a local government remains in force for 5 years unless:

- the person ceases to be a member of staff of the organisation that nominated them;
- the inspector resigns by written notice to the CEO; or
- the CEO revokes the appointment.

The terms of appointment of an inspector are to be determined by the CEO and set out in the instrument of appointment.

The CEO may by written notice, restrict the authority of an inspector, other than police officers, by limiting all or any of the following:

- a) the functions that may be performed by an inspector
  - b) the —
    - i. places where;
    - ii. times when;
    - iii. circumstances in which,
- the inspector may perform the inspector's functions.

A restriction of the authority of an inspector may be imposed when the inspector is appointed or at a later time and may be varied or cancelled by the CEO by written notice to the inspector.

The AW Act also calls for the appointment of scientific inspectors pursuant to section 34 of the Act. Scientific Inspectors enforce Part 2 of the AW Act (use of animals for scientific purposes). All appointed scientific inspectors in Western Australia are members of staff of DAFWA.

#### Functions and powers of general inspectors

A general inspector has four key functions under the AW Act:

1. Enforce Part 3 of the Animal Welfare Act 2002.
2. Assistance to scientific inspectors.
3. Provide information and assistance to the CEO of DAFWA in relation to matters arising under the Act.
4. Enforce Part 2 of the AW Act in relation to Schools (Note: no general inspector has been appointed for this function).

The principal function of a general inspector is to enforce Part 3 of the AW Act (offences against animals).

General inspectors can exercise a range of powers under the AW Act including entering a place or vehicle (section 38 and 39), caring for animals (section 40), humanely destroying animals (section 41), seizing animals and property (section 42 and 43) and a range of other powers such as searching a place or vehicle (section 47).

All general inspectors, regardless of their employer, have power to commence proceedings for offences pursuant to section 82 of the AW Act.

#### Obligations of general inspectors

There are a number of obligations on inspectors when exercising powers. Some examples include:

- Production of their identification card if requested to do so by a person in respect of whom the inspector is about to or is exercising any of their powers.
- Explaining to a person, who is or will be affected by the exercising of a power, why the inspector is exercising or proposing to exercise that power.
- Notification when destroying animals - there is a statutory obligation on the inspector who makes the decision to destroy an animal to notify the appropriate person in the required time, of the destruction of the animal and the reason for destroying it.
- Care of seized animals and other property - inspectors must ensure that a seized animal is properly treated and cared for until it is no longer subject to seizure.
- Care of seized property - inspectors must ensure that seized property is kept in safe custody and maintain it in the condition it was in when it was seized, to the extent that it is practicable to do so until it is no longer subject to seizure.

#### **Reviewable Decisions**

It should be noted that a number of decisions of an inspector to exercise powers under the AW Act are reviewable decisions (see section 71). It is not just the decision to exercise the power that is reviewable by the Minister or the State Administrative Tribunal (SAT) but also the manner in which the power was exercised.

Where a person objects to a reviewable decision outside of the statutory period (28 days) the Minister and the SAT have discretionary power to allow the objection or review. An application for an objection or review against a reviewable decision may adversely affect further actions and procedures as the decision is suspended unless the Minister or the SAT directs otherwise.

Not all decisions of an inspector to exercise their powers are reviewable. For example, when an inspector utilises a warrant to seize an animal, that decision is not reviewable.

### **Administration and Enforcement of the AW Act - Roles and Responsibilities**

There are a number of agencies and organisations that have roles and responsibilities in administering and enforcing the AW Act. These include DAFWA, the Department of Parks and Wildlife (DPaW), the RSPCA, local government rangers and the WA Police.

General inspectors employed by DPaW enforce the AW Act in relation to fauna (native animals). Employees of a local government can be appointed as general inspectors but are restricted in exercising their powers as an inspector within their district. All Western Australian police officers have the powers of a general inspector under the AW Act and can enforce the Act.

#### DAFWA

DAFWA is the department of the Public Service assisting the Minister for Agriculture and Food in the administration of the AW Act including undertaking a range of compliance and enforcement activities under the Act. DAFWA also undertakes other animal welfare activities including the development of animal welfare policy and extension in relation to livestock. In assuming responsibility for administration of the AW Act, DAFWA has deliberately separated its animal welfare compliance responsibilities from all its other animal research, development, production and education roles.

The administration of the AW Act was transferred to DAFWA on 1 July 2011. The 2011/12 budget included the announcement of the transfer of responsibility for the administration of the AW Act to DAFWA and increased funding to DAFWA and the RSPCA.

#### RSPCA

The RSPCA receives complaints of animal cruelty and takes the lead in the area of companion animal welfare. RSPCA is the single point for receiving all animal cruelty complaints from the public. The RSPCA receives 3-4,000 complaints annually. The vast majority relate to issues outside of the commercial livestock sector.

The RSPCA has inspectors appointed to enforce the general cruelty provisions of the AW Act (Part 3).

### **Government Funding of the RSPCA (WA)**

The Government doubled its funding to the RSPCA (WA) in 2011 to \$500,000 per year as a contribution to the RSPCA's activities in responsible pet ownership education and enforcement activities associated with companion animals.

The Department of Local Government (DLG) had a 4 year (July 2009 – June 2013) Financial Assistance Agreement with the RSPCA. Under this agreement the RSPCA was paid \$250,000/year for education, promotion and inspectorate activities. The existing agreement did not restrict the RSPCA allocation of these moneys to activities in defined sectors.

Following the transfer to DAFWA, the DLG Financial Assistance Agreement was terminated and replaced with a new agreement between the State of WA (through DAFWA) and the RSPCA for \$500,000/year for a two year period.

The Approved Purpose of the Grant is to make a financial contribution to RSPCA activities and programs relating to:

- public education and promotion of responsible companion animal ownership;
- training of RSPCA general inspectors;
- enforcement of the Act in relation to companion animals;
- a 24 hour complaint receipt, assessment and response service for public reports of cruelty, with the aim of improving animal welfare outcomes in Western Australia.

Within forty (40) Business Days of the end of each reporting period the RSPCA must provide DAFWA with a completed and signed annual report on the project (Project Annual Report) which is to include:

- (a) A final statement of income and expenditure consisting of an expenditure statement detailing budgeted expenditure in accordance with the Approved Purpose of Grant and actual expenditure on the project described in the request Approved Purpose of the Grant; and
- (b) A detailed report outlining:
  - an overview of organisational activity and any significant steps taken to improve process in the regulatory area;
  - details of inspector training undertaken, including the names' of inspectors and the specific training undertaken;
  - evidence of public education and promotion of responsible companion animal ownership such as press releases, news articles, publications etc;
  - relevant stakeholder engagement activities undertaken.

Financial statements are to be certified by the CEO of the RSPCA and an auditor.

Over the period of the previous two Grant Agreements the Project Annual Report has not been tabled in parliament or made public.

The Government does not fund the RSPCA to undertake compliance and enforcement activity in the commercial livestock sector. However, the Grant Agreement does not limit general inspectors employed by the RSPCA in their enforcement activities and they can operate in all sectors, including commercial livestock and feral and pest animals. These activities however are not financially supported (through the grant) by the Government. Moneys used for this purpose need to be raised from non-government sources and are not part of the DAFWA/RSPCA agreement.

The Grant Agreement also recognises that the RSPCA may have or advocate policies or may have an animal welfare reform agenda which is different from those of the Western Australian Government and that these activities will be separated from the enforcement activities of Inspectors under the Act.

The 2012/13 to 2013/14 Grant Agreement requires the RSPCA to:

- Advise DAFWA in writing that all persons employed by the RSPCA engaged in delivering services under the agreement (including those employed on a casual or voluntary basis) will be working with children have the necessary assessment notices required under section 12(1)(a) of the *Working with Children (Criminal Record Checking) Act 2004*.
- Provide certain information to the Director General of DAFWA on request about matters pertaining to reviewable decisions.
- To allow the Director General of DAFWA to report to the Minister and to Parliament, provide certain information to the Director General set out in schedule 3 of the Grant Agreement;
- Provide to the Director General of DAFWA the details of any proposed changes to the constitution of the RSPCA prior to the changes being lodged with the Department of Commerce; and

- Provide any other information requested by the Director General of DAFWA for the proper and accountable administration of the AW Act.

DAFWA and the RSPCA work under a Memorandum of Understanding (MOU) which describes the exchange of cases, process for assistance etc. between the agencies. The MOU is not legally binding. Under the existing MOU the RSPCA is the principal recipient of and respondent to reports of cruelty to animals received from the public, including those related to commercial agricultural activities. The MOU requires the RSPCA to clearly separate its enforcement role from other policies so that the proper enforcement of the AW Act by the RSPCA is not compromised or brought into disrepute.

Under the MOU the RSPCA may refer public complaints related to commercial livestock to the Livestock Compliance Unit (LCU) of DAFWA.

#### Jurisdiction Funding Comparison

In all other jurisdictions, the state RSPCA provides some or all of the regulatory activity relating to animal welfare. All jurisdictional RSPCA's receive some level of Government financial support; however, the extent of the support varies significantly. The table below provides an example of government funding provided to the RSPCA in Australian jurisdictions in 2012.

ANNUAL STATE FUNDING TO RSPCA (2012)				
	Population @ Dec 2011	Funding provided	Funding/ population	Comments
NSW	7,247,700	Animal Welfare League \$75,000	1 cent	
		RSPCA \$424,000	6 cents	
NT	232,400	200,000	86 cents	Must apply and compete for grants annually from the Animal Welfare Fund grants program.
Qld	4,513,000	\$220,700	5 cents	In December 2006 the Government also agreed to provide up to \$14 million to allow the RSPCA to build a new facility in south east Queensland.
SA	1,645,000	\$789,450.20	48 cents	The arrangements for enforcing the Act in SA are currently under review.
Tas	511,700	\$580,000	\$1.13	Represents 100% of the cost of providing Inspectorate services, including the cost of salaries and travel expenses for the 7 inspectors. Funding arrangements are currently under review.
Vic	5,574,500	\$1,000,000	18 cents	
WA	2,387,200	\$500,000	21 cents	