

Memorandum of Understanding

between

the Royal Society for the Prevention of Cruelty to
Animals (Victoria)

and

the Department of Jobs, Precincts and Regions

Version: 1 July 2019

Parties

This Memorandum of Understanding is made between:

Department of Jobs, Precincts and Regions of 1 Spring Street, Melbourne in the State of Victoria 3000 (**DJPR**);

and

Royal Society for the Prevention of Cruelty to Animals (Victoria) of 3 Burwood Highway, East Burwood in the State of Victoria 3151 (**RSPCA Victoria**).

1. Definitions

1.1. In this document:

- (a) **DAA** means the *Domestic Animals Act 1994* (Vic), as amended from time to time;
- (b) **DJPR Animals** means primary production animals, excluding those referred to in Item 1(b) of **Schedule 1** to the MoU;
- (c) **Minister** means the Minister for Agriculture for the State of Victoria;
- (d) **MoU** means this document;
- (e) **POCTA Act** means the *Prevention of Cruelty to Animals Act 1986* (Vic), as amended from time to time;
- (f) **RSPCA Animals** means the animals specified in **Schedule 1** to this MoU;
- (g) **RSPCA Victoria Inspectors** means officers of RSPCA Victoria appointed as:
 - (i) general inspectors under s 18 of the POCTA Act; and
 - (ii) specialist inspectors under s 18A of the POCTA Act; and
 - (iii) restricted authorised officers under s 71A of the DAA, as the case may be and operating within the RSPCA Victoria Inspectorate; and
- (h) **RSPCA Victoria Inspectorate** means the operational unit within RSPCA Victoria referred to and known as the Inspectorate and comprised of RSPCA Victoria Inspectors authorised to investigate and prosecute offences under the POCTA Act and Part 4 of the DAA, as relevant.

2. Introduction – RSPCA Victoria Inspectorate and Purpose of this MoU

- 2.1. The Minister has portfolio responsibility for the administration of the POCTA Act and the DAA and under Victorian Government administrative arrangements.
- 2.2. The Minister may appoint RSPCA Victoria Inspectors from time to time and generally in accordance with relevant appointment policies approved and published by DJPR from time to time.

- 2.3. The Minister may consider any nomination from RSPCA Victoria when appointing RSPCA Victoria Inspectors. RSPCA Victoria will, to the best of its abilities:
- (a) nominate a potential appointee only if that person:
 - (i) is an employee of RSPCA Victoria and has satisfied the relevant probity checks under the RSPCA Victoria recruitment process (including a National Police Check and conflict of interest declaration);
 - (ii) has not been found guilty of a criminal offence that would affect, or be likely to affect, their role as an inspector or authorised officer (as the case may be); and
 - (iii) has skills, knowledge, training and experience relevant to enforcing DAA and POCTA Act provisions related to the roles and responsibilities set out in this MoU;
 - (b) promptly advise the Minister if an RSPCA Victoria Inspector's employment situation changes such that cancellation of their appointment would be warranted.
- 2.4. The State of Victoria (through DJPR) provides funding to RSPCA Victoria, as a contribution towards the operational costs of the RSPCA Victoria Inspectorate. The terms and conditions of that funding are set out in a Common Funding Agreement.
- 2.5. This MoU sets out the parties' agreement on:
- (a) the type of animal welfare cases the RSPCA Victoria Inspectorate is responsible for;
 - (b) the circumstances in which a party may ask for assistance on an animal welfare case for which that party is responsible for, under this MoU;
 - (c) the circumstances in which a party may ask that responsibility for an animal welfare case be transferred from that party to the other party.
- 2.6. This MoU also sets out:
- (a) the State of Victoria's minimum expectations and requirements for the proper and effective governance of RSPCA Victoria Inspectorate by RSPCA Victoria;
 - (b) RSPCA Victoria's reporting and liaison commitments;
 - (c) the parties' agreement on media policy for public comment on animal welfare cases.
- 2.7. DJPR further acknowledges, through this MoU, the role and contribution of RSPCA Victoria as a community-based charity in providing for and promoting animal welfare, through enforcement activities under the POCTA Act and the DAA, as well as through its education and animal care activities. This MoU reflects the spirit of partnership and

collaboration between the State of Victoria and RSPCA Victoria in enforcing and promoting animal welfare in Victoria.

- 2.8. Nothing in this MoU should be taken to limit the appointment of persons other than RSPCA Victoria officers as general inspectors and specialist inspectors under the POCTA Act and as restricted authorised officers under the DAA.

3. Division of responsibility for animal welfare cases

- 3.1. The parties agree to the following division of responsibility for responding to animal welfare and cruelty complaints.

- (a) For the purposes of this MoU, the RSPCA Victoria Inspectorate is responsible for responding to animal welfare and cruelty complaints (including the conduct of investigation and any prosecution under the POCTA Act and the DAA, as relevant) in all cases involving RSPCA Animals, subject to clauses 3.2 and 3.3 of this MoU.
- (b) For the purposes of this MoU, DJPR is responsible for responding to animal welfare and cruelty reports (including the conduct of investigation and any prosecution under the POCTA Act) in all cases involving DJPR Animals.

- 3.2. Despite anything in clause 3.1 of this MoU and for the avoidance of doubt, the RSPCA Victoria Inspectorate is not responsible for:

- (a) responding to animal welfare and cruelty complaints in connection with:
 - (i) hunting activity and wildlife (including in relation to enforcement of any licensing requirements or conditions) or
 - (ii) abattoirs; or
- (b) administration or enforcement of Division 2, Part 2 of the POCTA Act (licence and permit scheme for rodeos).

- 3.3. Despite anything in clause 3.1 of this MoU, in emergency management situations, the *Victorian Emergency Animal Welfare Plan* (Revision 1) sets out the framework for responding to animal welfare needs in an emergency.

- (a) Under the plan, in emergencies, DJPR is the primary state agency for the provision of welfare support for all animals, other than wildlife, which is the responsibility of the Department of Environment, Land, Water and Planning.
- (b) In each of the above cases, RSPCA Victoria may provide emergency response support as a secondary support agency under the control and direction of the primary state agency and generally in accordance with the *RSPCA Victoria Emergency Response Plan*.

- 3.4. The parties acknowledge and agree that the division of responsibility for animal welfare cases is implemented and managed through the triaging of animal welfare reports received by the parties from the public and other relevant sources so that the parties attend to reports in respect of animal welfare cases for which they are responsible under this MoU. The parties each agree that they will ensure that they have in place, appropriate processes, procedures and protocols to enable effective triaging of animal welfare complaints and reports.
- 3.5. Despite clauses 3.1 and 3.4 the parties acknowledge that from time to time, despite best efforts of the parties to triage animal welfare reports, there may be instances where DJPR or RSPCA Victoria Inspectors attend to an animal welfare report for which they are responsible under this MoU, but there is present an animal welfare situation which would otherwise be the responsibility of the other party under this MoU. In such circumstances, nothing in this MoU should be taken to limit or prevent the attending officers from exercising powers vested in them as RSPCA Victoria Inspectors to address or alleviate the immediate animal welfare needs presented by the animal welfare situation. In such circumstances, if considered necessary or desirable by the attending party/officer(s), the attending party/officer(s) may consult with the other party as to the appropriateness and scope of the immediate animal welfare measures needed.

4. Assistance policy

- 4.1. The parties acknowledge that there may be circumstances where one party (**requesting party**) reasonably requires assistance from the other party on an animal welfare case for which the requesting party is responsible for, as specified in clause 3.1.
- 4.2. For the purposes of clause 4.1, a reasonable request may include (but is not limited to) the following circumstances:
 - (a) the particular urgency of the circumstances;
 - (b) resource constraints and/or considerations;
 - (c) the particular sensitivities of the circumstances; and
 - (d) particular knowledge or expertise of the other party.
- 4.3. Where the request for assistance is of a minor nature (that is, involving a low time and resource commitment) this should be requested at the officer level, that is:
 - (a) where RSPCA Victoria is the requesting party, the request for assistance should be directed to a Senior Animal Health and Welfare Officer, Biosecurity and Agriculture Services; and
 - (b) where DJPR is the requesting party, the request for assistance should be directed to RSPCA Victoria Inspector Administration.

- 4.4. Where the request for assistance is of a more substantial nature, this should be requested at a senior executive level, that is:
- (a) where RSPCA Victoria is the requesting party, the request for assistance should be directed to the Director, Animal Health and Welfare, Biosecurity and Agriculture Services; and
 - (b) where DJPR is the requesting party, the request for assistance should be directed to the Chief Executive Officer of RSPCA Victoria.
- 4.5. A request for assistance made under this clause must be made in writing, setting out in sufficient detail, the basis for the request for assistance.
- 4.6. The parties agree that they will give any request for assistance made under this clause 4 proper consideration, taking into account all relevant circumstances, but this MoU does not oblige either party to agree to provide such assistance.
- 4.7. Where a party has agreed to provide assistance under this clause, unless otherwise agreed:
- (a) the requesting party retains full responsibility for the animal welfare case for which it has sought assistance; and
 - (b) each party will be responsible for its own costs incurred.

5. Transfer of animal welfare cases

- 5.1. The parties acknowledge that there may be circumstances where it is reasonable and appropriate to transfer an investigation of an animal welfare case from one party (**transferring party**) to the other.
- 5.2. For the purposes of clause 5.1, reasonable and appropriate circumstances may include (but are not limited to) the following circumstances:
- (a) resource constraints and/or considerations;
 - (b) timely provision of animal welfare measures;
 - (c) particular knowledge and expertise of the other party; and
 - (d) where circumstances contemplated under clause 3.5 have arisen.
- 5.3. A request for transfer under this clause 5 should be requested at a senior executive level, that is:

- (a) where RSPCA Victoria is the proposed transferring party, the request for assistance should be directed to the Director, Animal Health and Welfare, Biosecurity and Agriculture Services; and
 - (b) where DJPR is the proposed transferring party, the request for assistance should be directed to the Chief Executive Officer of RSPCA Victoria.
- 5.4. The parties agree that they will give any request for transfer made under this clause 5 proper consideration, taking into account all relevant circumstances, but this MoU does not oblige either party to agree to a transfer.
- 5.5. Where a party has agreed to take a transfer under this clause 5:
- (a) the party taking the transfer will assume responsibility for and all costs of the investigation from the date that the transfer is agreed to; and
 - (b) the transferring party will take all reasonable actions to assist in the effective transfer of the investigation, including timely and orderly transfer of any information and documents relevant to the investigation.

6. RSPCA Victoria's governance responsibilities

- 6.1. RSPCA Victoria is responsible for ensuring that all RSPCA Victoria Inspectors:
- (a) act within the scope and terms of their appointment as an RSPCA Victoria Inspector;
 - (b) that all RSPCA Victoria Inspectors comply with their duties and obligations as an inspector under the POCTA Act or restricted authorised officer under the DAA, as the case may be (and any applicable regulations made under those Acts);
 - (c) comply with relevant standards that are binding on Victorian public sector employees in exercising their powers as RSPCA Victoria Inspectors, including:
 - (i) the Victorian Public Sector Code of Conduct for Employees made under s 61 of the *Public Administration Act 2004*; and
 - (ii) the Victorian Charter of Human Rights and Responsibilities; and
 - (d) undertake continuous training and development that is relevant, necessary and appropriate to their discharge of powers and functions as RSPCA Victoria Inspectors.
- 6.2. Without limiting anything in clause 6.1, RSPCA Victoria must have in place reasonable and current policies, procedures, processes, guidelines, systems and practices to ensure that its fulfils its responsibilities under clause 6.1.

- 6.3. Without limiting anything in this clause 6, for the purposes of clause 3.3, DJPR shall provide suitable RSPCA Victoria Inspectors with an appropriate level of emergency management training including roles and responsibilities within the Victorian Emergency Animal Welfare Plan.
- 6.4. Without limiting anything in clause 6.1(d) and clause 6.2, where appropriate, RSPCA Victoria and DJPR will provide joint training sessions involving both RSPCA Victoria Inspectors and officers of DJPR relevant to the exercise of inspector and restricted authorised officer POCTA Act and DAA.
- 6.5. DJPR acknowledges that RSPCA Victoria may have animal welfare advocacy policies that are not in accordance with Victorian Government and DJPR animal welfare policy. RSPCA Victoria will clearly separate the law enforcement role undertaken by the RSPCA Victoria Inspectorate from activities and campaigns undertaken pursuant to its animal welfare advocacy policies.
- 6.6. Statements or public comment on behalf of RSPCA Victoria, limited to its non-enforcement policies, will not amount to a breach of any of the circumstances contemplated in clause 10 of this MoU.
- 6.7. Without limiting anything in clause 6.5, RSPCA Victoria agrees to put in place, maintain and adhere to a conflict of interest policy that reflects RSPCA Victoria's approach to ensuring that its role and functions as a charity do not conflict with the role and functions of RSPCA Victoria Inspectors.

7. Complaints procedures

- 7.1. RSPCA Victoria will develop appropriate internal procedures to deal with complaints against RSPCA Victoria Inspectors and the RSPCA Victoria Inspectorate.
- 7.2. RSPCA Victoria will immediately advise DJPR of any complaints of a serious nature against RSPCA Victoria Inspectors and/or the RSPCA Victoria Inspectorate in relation to the exercise of powers under the POCTA Act or DAA, as the case may be, being complaints including misconduct, conflict of interest, failure to properly exercise legislative powers conferred and conduct that might bring RSPCA Victoria and/or the RSPCA Victoria Inspectorate into disrepute.
- 7.3. The Director, Animal Health and Welfare, Biosecurity and Agriculture Services, will advise the Chief Executive Officer of RSPCA Victoria of any complaints against RSPCA Victoria Inspectors or the RSPCA Victoria Inspectorate where permitted by State and Commonwealth privacy legislation and policy.
- 7.4. RSPCA Victoria will investigate such complaints and advise DJPR on the outcomes (findings and actions) of any investigation.
- 7.5. RSPCA Victoria will advise DJPR as soon as possible if an RSPCA Victoria Inspector has behaved in a manner considered prejudicial to the proper exercise of legislative powers conferred on them by the Minister or contrary to this MoU.

8. Reporting requirements

- 8.1. RSPCA Victoria will provide to DJPR a report for the previous 6 month period setting out the following information:
- (a) number of reports received and the number investigated (by species); and
 - (b) number of premises investigated (by type); and
 - (c) number of prosecutions including the number that were successful; and
 - (d) number of search warrants applied for and executed; and
 - (e) number of Infringement Notices issued; and
 - (f) number of Notices to Comply issued; and
 - (g) any other significant strategic issues.
- 8.2. The Minister or DJPR may request, at any time, other reasonable information relevant to or concerning the exercise of powers by RSPCA Victoria Inspectors.

9. Liaison between RSPCA Victoria and DJPR

- 9.1. Formal discussions between DJPR and RSPCA Victoria will be held on policy and operational issues of strategic importance, as and when required but not less than on a quarterly basis.
- 9.2. Meetings between the regional RSPCA Victoria and DJPR officers should take place as and when required.

10. Media policy for public comment on animal welfare investigations

- 10.1. RSPCA Victoria must have in place, an appropriate media policy at all times, which ensures that:
- (a) RSPCA Victoria Inspectors do 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 under any circumstances;
 - (b) RSPCA Victoria Inspectors refer comments on any ongoing investigation to an authorised spokesperson of RSPCA Victoria;
 - (c) no public comments are made by or on behalf of RSPCA Victoria regarding an investigation being carried out by a government agency without the prior approval of that agency; and
 - (d) where an animal welfare case under investigation has a high level of public interest, the Chief Executive Officer of RSPCA Victoria (or designated representative) and the Executive Director, Biosecurity (or Executive Director, Animal Welfare Victoria in cases relating to domestic animal breeding and rearing

establishments) will brief the Minister (or delegated representative) to agree on a media strategy and protocol for that investigation.

11. Resolution of disputes

11.1. If any disputes arise between DJPR and RSPCA Victoria, these should be referred without delay to the Chief Executive Officer for RSPCA Victoria and Director, Pets and Animal Welfare, DJPR, as relevant for resolution at the senior level.

12. Duration and amendment of MoU

12.1. This MoU commences on **1 July 2019** and expires on **30 June 2024**.

12.2. Either party may elect to terminate this MoU by giving the other party no less than 6 months' written notice.

12.3. This MoU may only be amended or varied by agreement in writing of both parties.

12.4. Without limiting clause 12.3, this MoU may be reviewed at the request of either party, but in any event, will be reviewed on the expiry of 24 months after the commencement date.

Signed by the parties

**Chief Executive, Agriculture Victoria,
Department of Jobs, Precincts and Regions**

**Chief Executive Officer, Royal Society for
the Prevention of Cruelty to Animals
(Victoria)**

Schedule 1 – RSPCA Animals

1. For the purpose of clause 3.1 of this MoU, ‘RSPCA Animals’ means:
 - (a) companion and recreational animals;
 - (b) primary production animals where less than ten (10), which includes cattle, sheep, pigs, goats, deer and fifty (50) in the case of poultry;
 - (c) equids, including horses used in riding schools and in standardbred or thoroughbred racing; and
 - (d) greyhounds used for greyhound racing.

2. For the avoidance of doubt, ‘recreational animals’ in Item 1(a) of this Schedule includes:
 - (a) animals kept in zoological parks within the meaning of the *Zoological Parks and Gardens Act 1995*;
 - (b) animals in petting and mobile zoos;
 - (c) animals in circuses;
 - (d) animals in rodeos; and
 - (e) non-native animals kept in wildlife parks.