



STATE DEVELOPMENT AND REGIONAL INDUSTRIES COMMITTEE

Members present:

Mr CG Whiting MP—Chair
Mr MJ Hart MP
Mr RI Katter MP
Mr JE Madden MP
Mr JJ McDonald MP
Mr TJ Smith MP

Staff present:

Ms S Galbraith—Committee Secretary
Mr B Smith—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE AUDITOR-GENERAL'S REPORT NO. 6 OF 2021, REGULATING ANIMAL WELFARE SERVICES

TRANSCRIPT OF PROCEEDINGS

MONDAY, 20 JUNE 2022

Brisbane

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The committee met at 10.01 am.

CHAIR: My name is Chris Whiting; I am the member for Bancroft and chair of the committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past, present and emerging. We are fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples, whose lands, winds and waters we all share. With me today are: Mr Jim McDonald, deputy chair and member for Lockyer; Mr Jim Madden, the member for Ipswich West; Mr Michael Hart, the member for Burleigh; Mr Tom Smith, the member for Bundaberg; and Mr Robbie Katter, the member for Traeger, who will be here soon.

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Thank you for appearing before the committee today. I invite you to give an opening statement on Auditor-General report No. 6 of 2021, *Regulating animal welfare services*, and then we will have some questions for you.

BRAHMAN, Mr P, Assistant Auditor-General, Client Services, Queensland Audit Office

BROWN, Mr Darren, Senior Director, Queensland Audit Office

NARASIMHAN, Mr Sri, Senior Director, Queensland Audit Office

WORRALL, Mr Brendan, Auditor-General, Queensland Audit Office

Mr Worrall: Thank you and good morning. Thank you for the opportunity to brief the committee on the report, which was tabled in November 2021. Over time a variety of our audits have involved examining regulatory functions ranging from regulating firearms, food safety, pharmacy ownership, mining, coal seam gas and dam safety, and this one on animal welfare services. Despite regulation being a key function of government, in these audits we have found that good regulatory performance remains elusive, with most audits sharing common root cause failings.

In July 2020 the former Natural Resources, Agricultural Industry Development and Environment Committee requested that I conduct an audit on the delivery of animal welfare services and the enforcement of the Animal Care and Protection Act 2001 and the Animal Care and Protection Regulation 2012. I agreed to examine how effectively the Department of Agriculture and Fisheries is engaging with RSPCA Queensland to deliver animal welfare services and exercise powers under the relevant legislation. We focused on the department, as it is responsible for administering the regulation of animal welfare services under the regulation. The scope of the audit did not include RSPCA Queensland's processes and governance arrangements.

We found that the department has not been proactive and is not as effective as it needs to be in overseeing and supporting RSPCA Queensland in exercising its powers to enforce the act. The department's engagement framework with the RSPCA includes the act, regulations and agreement and procedures and guidelines but lacks key accountability and oversight elements. The department has not been using many of the mechanisms currently provided within the framework. This has led to RSPCA Queensland having greater autonomy in enforcing the act without appropriate oversight and support by the department. Since 21 April the department has started addressing the findings of the audit. We made four recommendations for the department to improve its engagement framework and oversight of the RSPCA's inspection and enforcement activities.

This report and other QAO reports that cover regulatory practices go beyond the individual organisations involved in the audits or specific projects. Many of the issues we are seeing are systemic across government. In chapter 4 of this report we share a principles based good practice model for all regulators and regulated entities. Our guidance is drawn from this audit on regulating animal welfare services and other previous audit topics that I mentioned. Good regulatory practices that minimise failures and enable opportunities for improvement and compliance should be fundamental to the operations of government. In addition to the four recommendations we made to the department, we also made a recommendation in this report that all public sector entities with regulatory compliance and enforcement assess themselves against the insights and wider learnings we have in this report. To assist them we have provide fact and information sheets.

In line with our vision of promoting better public services, on 10 May 2022 we also held an information session for all public sector entities on our good practice model and principles for public sector entities. This was attended by 166 representatives from many regulators across the public sector, being both state and local government. The committee may benefit from hearing from the department on the progress of the recommendations. We note that on 12 May the Animal Care and Protection Amendment Bill 2022 was introduced to parliament. We are now happy to take questions.

Mr MADDEN: Mr Worrall, is the issue of having a private or non-governmental agency enforcing an act that can have criminal penalties where people can be sent to jail unique to Queensland, or do other jurisdictions follow the same model?

Mr Worrall: I think you will find it is not unique to Queensland and that other jurisdictions may have a similar model. The issue we are highlighting in the report is: if there was appropriate oversight of some of those enforcement and prosecution activities by the department then that would be okay. This is probably the main flaw in terms of the relationship. The relationship was not really working as it probably should have. Ultimately, the prosecutor is really the state. The approach we took in the audit is that, no matter where you live in Queensland, you should be subject to the same regulatory environment. Whether it is the department prosecuting in its own right or the RSPCA doing it as an agent of the state, it should be the same environment. Because of the way the relationship was structured, there was insufficient line of sight by the department in relation to the RSPCA's activities around enforcement and ultimately prosecution. What we called out is that that should not be the case. There should be line of sight, because ultimately the state is the one prosecuting.

Mr MADDEN: You make a wide range of recommendations in your report. You have just given testimony that the RSPCA is doing its best to follow your recommendations. Are you satisfied with that progress?

Mr Worrall: This report was at a point in time. We tabled that in November. We have not been back to see how things are going. At the time of finishing the audit there were indications from both the department and the RSPCA that they were going to work through the recommendations and strengthen the governance of the oversight which we thought was not there.

Mr MADDEN: With the witnesses, particularly the RSPCA and the department, one thing I sought to clarify was the jurisdiction of departmental officers in enforcing the act and the RSPCA officers in enforcing the act. I got various responses. Is it of concern to you that there is no clear division between what the RSPCA seems to take care of and what the department takes care of? I will give you an example you would be aware of: horses at Charlton. There seemed to be some confusion as to who should look after those horses and whether they had the power to enter and give feed to those horses. Is that something of concern to the Audit Office?

Mr Worrall: In appendix C of the report we have a map of Queensland. The jurisdictional responsibilities between the RSPCA and the state are on that map. If you have a look at it, the RSPCA's domain, for want of a better word, is pretty much the coastal communities, with the rest of the state being overseen by the department. I would say that ultimately it is the state that is the regulator here. Those sorts of territorial disputes, or whatever they are, should not exist. There should be clear guidance to both of those operators about who does what. What the report is really saying is that that was not necessarily the case. Because some of those oversights were not there, ultimately the department did not really have a proper line of sight about some of the activities of the RSPCA. I am not familiar with that incident per se, but it is probably symptomatic of not having a decent framework in place in the first place and following that framework about what is going to govern the relationship between the two bodies.

Mr MADDEN: I think part of the confusion is stock versus domestic animals. There seems to be a bit of an overlay with regard to the RSPCA and the department.

Mr Worrall: I think the inspectors of the RSPCA have the same powers as the inspectors of the department. I do not think there is any discrimination in the act around that.

Mr MADDEN: Thank you for your report. It is incredibly enlightening about what is happening with the RSPCA, and it mirrors some of the concerns of some of our witnesses with regard to the inquiry.

Mr McDONALD: Thanks for being here and for the work that you do in holding the government to account. With regard to this particular report, I could not find the terms of reference for the scope of the audit. Were you restricted by the government just to the department, or was it from your function as auditing government departments that you did not go into the RSPCA?

Mr Worrall: We were not restricted by the scope. Ultimately, the scope was at my discretion. In terms of doing planning, we decided to focus on the department's relationship because anecdotally we thought that is where the problem was and that is probably where—as part of our process—we could add more value. If that framework was not right and functioning properly, then things not happening as maybe they should be in either of those entities is probably symptomatic of that relationship not happening up-front. As we said in the report, our focus was really on the relationship between the department and the RSPCA and how the department overlooks the regulatory function that the RSPCA is doing on its behalf, basically.

Mr McDONALD: I have a note here that says, 'Where do you start?' I guess starting with the department was the sensible thing to do. The member for Ipswich West asked my next question, which was how you think the progress is going. To extend that one step further, through our inquiry we have had a number of complaints with regard to prosecution matters. I notice your recommendation about the controls and processes within the RSPCA. Are you confident that your review of the department and that structure will cover those prosecution areas and those conflicts of interest, perceived or real?

Mr Worrall: There were some recommendations to strengthen some of the legislative provisions around that and legislation has been introduced, as I said. At the moment I do not think that bill covers all of the issues we had raised. Maybe Darren can talk more about that, but not everything is on the table at the moment with regard to the legislation.

Mr Brown: The prosecution was an area where we essentially found an absence of the department's involvement in terms of RSPCA decisions around prosecuting, decisions to continue with prosecutions and so forth and the conduct of prosecutions. We had considerable discussion with both the department and the RSPCA as to that. We were concerned that, although a committee had been established by the RSPCA to make determinations about what to prosecute and not prosecute, the department was not represented on that committee in any way. The department indicated to us that they were changing that and would be represented. We have not been able to assess whether or not that has occurred yet.

The other element of that is: in undertaking prosecutions on behalf of the state, the state has committed to certain principles around prosecution. We refer to them in the report. They are the model litigant principles. We found that, in trying to understand the extent to which the department was able to identify whether or not RSPCA was complying with those principles, the department were not able to satisfy us that they had any visibility of the extent to which the model litigant principles were applied. They were certainly an element of complaints that were coming through around RSPCA and the department in terms of prosecution being a big sticking point for people, particularly in cases where significant costs had been incurred by people subject to prosecution.

Mr McDONALD: We heard from people who had animals seized and about the—my word—duress caused by the cost of keeping those animals on top of the whole prosecution issue. Do you believe the recommendations you have made will satisfy those conflicts of interest?

Mr Brown: There are a couple of recommendations that address that point. In the last dot point of the first recommendation we recommend a fee schedule be established, because there was a lack of clarity from the department, and to some extent within RSPCA, as to how those costs were developed. There was certainly a lack of clarity on behalf of people subject to investigation and having animals seized as to how they were being charged those costs of retaining the animals and so forth. We recommended that the legislation be changed to make it a requirement that a scheduled fee be agreed on, published and made public. That would allow for an element of transparency.

The other aspect was again in recommendation 1 where we talk about oversight of prosecutions, which is the second dot point in that recommendation. We also talk about plea negotiations. That is really to ensure that, where substantial costs had been incurred for holding animals, that was not being used as a bargaining point for prosecutions.

Mr McDONALD: The other aspect that we have not touched on is the choice right at the start for the owner of the animal to relinquish the animal to the state for sale. That is obviously another bearing. I do not recall that area being touched on. I know it was indirectly in terms of conflict of interest issues or potential—

Mr Brown: We do cover that in the recommendations. Specifically in terms of where we talk about the department being involved in prosecutions, we talk about them having access to all information that leads to decisions around whether or not to prosecute and being involved in that decision as to whether or not to prosecute. Then that follows on right through the prosecution process to decide: do we continue with this prosecution? Is it in the interests of the state to continue with the prosecution or not?

Mr McDONALD: I think it is worthwhile mentioning that we are talking about situations where there are animals being pretty well cared for. In some of the cases I am talking about it is not an issue that these animals are very badly cared for. If they are badly cared for I understand the state should seize them, but when it is a business relying on the sale and it might not be ticking all of the boxes—

Mr Brown: That really comes back to that decision-making process and the department's involvement and oversight around that. Certainly the model litigant principles would dictate that if there is no need to impose costs on someone by seizing the animals that should not occur.

Mr McDONALD: That is a good point. During the inquiry was the first time we had heard about the prosecutions committee. You mentioned that again, Mr Brown. There is no position on that committee for the department at the moment but it is certainly something we asked about. Do you think it would be a good process to see a closer alignment there?

Mr Worrall: I think our report is pretty consistent about saying the department needs line of sight. If it is trying to get consistent outcomes across the state, whether it is the department leading a matter or RSPCA leading the matter, they need to be involved to get that consistency and moderation. That is what we would say.

CHAIR: On that, Deputy Chair, I think they said there is a steering committee and a prosecutions panel. I think DAF has someone on the panel but they had not met since December.

Mr HART: They are monitoring it.

Mr SMITH: I note that this was a review into the department and not into the RSPCA themselves; however, in preparation for the audit, did you do a review into what are the expectations and requirements of individuals wanting to be inspectors within the RSPCA? Was there a quick look at what the RSPCA expect of their inspectors?

Mr Worrall: These guys might jump in, but I think the legislation talks about inspectors. What we found in relation to inspectors is: once they were made an inspector—and I think this is whether it is the RSPCA or the department—there was no ongoing education, requirements or ongoing reappointment as an inspector; you sort of got it forever without any sort of continuing assessment about whether you are fulfilling your role correctly or whether you have the right education at that point in time. I think that was the case.

Mr Brown: In terms of the initial appointment of inspectors, they gain accreditation as an inspector through the director-general of the department. What we looked at was not so much the RSPCA employment processes; it was the decision-making process within the department to give a person accreditation as an inspector. In that respect we found some gaps in terms of how the department was going about that, certainly in terms of trying to assess the extent to which there might be conflicts of interest in appointing that person at the outset. We also found gaps in terms of the department assessing the performance of inspectors as they go along and visibility of the department in terms of complaints against inspectors, visibility of their performance over time and so forth.

Mr SMITH: That probably leads to my next question. I asked the RSPCA about internal reviews and so forth—so if an inspector breached a standard, what would happen there? The RSPCA mentioned they would do an internal review and put any outcomes or consequences through the RSPCA. Is there much evidence to suggest that the department is having oversight and having that information fed back from the RSPCA about internal reviews of their inspectors, or was it quite lacking?

Mr Worrall: As Darren said, the director-general appoints the inspector for an indefinite period, but the department did not require the RSPCA to provide regulatory reports on inspector performance, training or independence declarations. The department had no line of sight in terms of the RSPCA's inspectors.

Mr SMITH: That would pertain to if an inspector was suspended by the RSPCA as well? Did the department have any expectation that that would be—

Mr Worrall: I do not think so. I do not think there were any reporting mechanisms back from the RSPCA to the department in relation to inspector performance.

Mr SMITH: Just briefly, changing tack a little bit, we heard about how RSPCA will take evidence that could be possessions—so iPads, mobile phones, computers and so forth. My question relates more to the oversight of that evidence—so when it is stored, making sure it is actually being inspected by the proper people, that it is being managed and that people's possessions are safe and secure. Is there anything in the review that touched on how the department ensures the safety and security of people's possessions when stored in evidence with the RSPCA?

Mr Brown: The short answer is that the department has no visibility over that. We identified a lack of training and understanding across the inspectors within RSPCA and the department as to what authority there was to seize certain equipment and so forth. There was a lack of guidance and training around that. Certainly the department does not have visibility over what is being seized as part of an investigation.

Mr Worrall: We dealt with that on pages 10 and 11 of the report. There are some departmental guidelines that describe the course of action depending on the category of the incident. However, the guidelines do not include anything in relation to the use of body worn cameras and the seizure of technology devices. Also, the department has not conducted any reviews to gain assurance that the processes the RSPCA uses have the appropriate controls in place to actually comply with the guidelines.

Mr SMITH: I imagine, therefore, there is no evidence of the department review in the logbooks to see who has accessed that private property?

Mr Worrall: That would be highly unlikely given that they do not really have line of sight. We probably did not get into that detail, but I would say that is probably highly unlikely.

Mr HART: Brendan, has your office been watching what has been happening with the committee's investigation into the changes to legislation around this?

Mr Worrall: We have through *Hansard*, yes.

Mr HART: Are you in a position to give us any feedback on what has been happening?

Mr Worrall: Probably not substantive feedback. I think I would come back to what I said—that I think what is in the bill will go some way to dealing with some of the recommendations but probably not all of them. I think there are still some things that have not been brought forward.

Mr HART: On the member for Ipswich West's question about private companies enforcing on behalf of the government in other jurisdictions, is that only in the animal welfare sector? Are you aware of other sectors where this happens?

Mr Worrall: That is a good question. I will probably have to think about that. There probably are other sectors where it may happen.

Mr HART: I cannot think of any off the top of my head. I am wondering whether you could. Is that something that is appropriate for you to take on notice or is it outside of your jurisdiction? We can find out ourselves.

CHAIR: I do not think it would be an exhaustive question. Air regulations, for example, is a federal one, but it could be anything. Anything you can do to help would be appreciated.

Mr HART: I am keeping in mind that your original investigation triggered the changes in the legislation that are now before the committee, so maybe we are a step ahead of where you guys were when you did your investigation. It would be nice to catch up with that. On your discussion about the wider ranging recommendations, you said the committee might benefit from having the department brief us more on whether other people have taken notice of those recommendations. Which department should we be talking to about that?

Mr Worrall: In relation to animal welfare?

Mr HART: No, about the wider scoping recommendations.

Mr Worrall: I have made those recommendations to all regulators, whether they be state or local government, because, if you think about it, pretty much all of them would have some sort of regulatory functions within their responsibilities, and how we will know whether that is happening or not will be through our annual report on the follow-up of previous recommendations. That report I tabled in November last year—that was the first time I tabled that report, but that will be an annual

report. Each year it will give a three-year grace to entities and then they will have to start self-assessing and reporting where they are at in those recommendations. In 2½ years time, all those entities will have to say where they are at in relation to regulation. I will not be giving any assurance over that.

Mr HART: If the committee was of a mind to ask somebody how they were going, who should we ask?

Mr Worrall: It is an interesting question. In the state, you will probably need to start with the Premier's department, being the lead department. In relation to local government, you will probably need to start maybe with the local government department. They are essentially the two lead entities for both those sectors, so I think that is probably a good place to start anyway. You are quite right: there are activities happening in most of these entities that would have a regulatory element. For example, with respect to local government, we did that audit on food safety a number of years ago. They all have a role to play in food safety. That is an element there, but they would have other regulatory functions.

Mr KATTER: My apologies, I missed some of the earlier contributions. It has become apparent to me over the course of the hearing that the lack of compliance coming from the likes of RSPCA would force you to redirect that enforcement to the likes of DAF or something more formal that has a bit more control over matters. Do you agree with that statement? How does that work in with your recommendations?

Mr Worrall: The issue we found is that the department was not managing the relationship with the RSPCA appropriately in that it did not really have a proper line of sight of the activities of the RSPCA, particularly in relation to enforcement and prosecution. The approach we took was that wherever you are in Queensland you should be subject to the same regulatory environment. That may not have been the case; it might have been a different environment given the department as a regulator and then the RSPCA. Ultimately, the RSPCA is an agent of the state so it should be the one regulatory environment. The recommendations we made were really about strengthening the department's hand around having proper oversight of all of regulatory activities, whether they are doing it themselves or whether the RSPCA is doing it on their behalf. That is really how we see it.

CHAIR: Returning to the costs we were talking about before, the vet and boarding fees part of the costs incurred by people who were prosecuted by the RSPCA is what we are talking about in terms of a documented fee schedule that we need to see; is that correct?

Mr Worrall: It is, indeed. We really are saying that there needs to be a lot more transparency around those activities and the prescribed fees in those circumstances. Again, the department needs to have a line of sight of these activities as well so that they are applied consistently across the state, not just by the RSPCA, because otherwise there is the potential for conflicts in terms of RSPCA activities.

CHAIR: In terms of transparency, those fees, if incurred by the department, should not actually mirror what the RSPCA would charge?

Mr Worrall: I think there should be prescribed fees. If you happen to find yourself in that circumstance, you have a reference point about what those fees actually will be.

CHAIR: Prescribed by regulation?

Mr Worrall: I do not know if we went that far but certainly prescribed ultimately by the department—that the department needs to be on board with those fees and they should be published so they are readily accessible. There should be a line of sight as to what those fees are.

CHAIR: From what we looked at last week, some fees were \$20,000, \$30,000 or \$40,000 and there were some historic ones that were up from six-figure ones we had seen previously. That is something we might pursue in terms of that fee schedule.

We will follow up on the implementation of the recommendations. We have asked the department for a response as to how they are implementing the recommendations. They have been very clear and fairly detailed in what has come back. Some of it has been reflected in legislation; other things will be internal. I will flag with you now that we will be writing to you again to see how, in terms of an internal process, the department has implemented those recommendations as they have set out to us that they are doing.

One of the things we talked about was the joint prosecutions committee or panel—and that goes to recommendation 2D, E and F in your report. How important is a joint prosecution committee with DAF on it? How important is that in overseeing the prosecutor's role?

Mr Worrall: I think that is important, because if both parties are not involved how do you moderate that to get similar outcomes in different parts of the state? That is what I would say. It is the state ultimately prosecuting and they are just an agent. I would say that the state cannot abrogate its responsibility around this aspect of regulation. I think there were probably elements of that when we did the audit. The RSPCA was doing activities that there was no line of sight of by the department. I do not think that is really the right outcome if ultimately the state is the prosecutor and the regulator, as it is.

CHAIR: In terms of line of sight and obviously good audit practice, how important would it be to have the document that sets out the relationship between the two entities? How important is it to have that viewable, publicly discoverable and transparent, even if it does include corporate financial outlays?

Mr Worrall: I think the document that sets out the relationship and performance expectations being in the public domain would be a good thing, because it would be line of sight for everybody involved in the process. That would be a good thing. I would expect that the monitoring mechanisms in that document are also performance mechanisms in that document. If there is anything commercial-in-confidence in relation to RSPCA commercial activities, that may not need to be there, but there should be other mechanisms that the department would have in place to still provide oversight of that.

Mr MADDEN: I will ask this as a question on notice because I think you will need time to answer it. It is a follow-up to my original question about other jurisdictions following this model. Would it be possible for the Audit Office to provide the committee with a table or a comparison of the other territories and states in Australia as to what model they follow, whether they deal with the government department or whether they use an agency or a combination of both?

Mr Worrall: We could do that. We might have some of that information already. It would be somewhat high-level because, again, we would probably be drawing on what the legislated framework is.

Mr MADDEN: As best you can.

Mr Worrall: We can do that. Picking up on that question that I think came from the member for Burleigh around regulation and what other private sector entities do on behalf of the state, I am struggling with that. However, if you think about professional bodies that are pretty much private, there is a lot of regulation done by professional bodies where governments got out of regulation. The one I am thinking of is: there used to be a public accountants registration board, if you went back some decades, and I think the state got out of that and handed that over to CPA type bodies. There are probably lots of examples of that around where they are the regulator now as opposed to the state, but, as I said, I am still trying to think of where an NGO type entity is doing regulation.

Mr HART: Can they refer you to some prosecution that can send you to jail, though?

Mr Worrall: No, they would have to be referred to the police or things like that. They can bar you. They can take away your practising certificate and things like that, but they could not prosecute in their own right.

CHAIR: Under Professional Standards Australia we have a range of people, whether it be engineers, auditors or valuers, who can bar people, but they cannot send them to jail if they are found guilty of negligence. That will need addressing—which private organisations can prosecute with the end result perhaps ending in imprisonment.

Mr HART: On the chair's question about the MOU, did the Auditor-General look at the MOU to see whether some of those things were in fact in place?

Mr Worrall: We did have a look at the MOU. I might let one of these people talk specifically about that.

Mr Brown: Yes, we certainly did. As we stated, where we talk about the framework in the report, that includes the legislation, the regulation, the agreement or the MOU between DAF and RSPCA, as well as the principles, policies and guidelines that were included. We did look at that in quite a bit of detail and that formed the basis of some of the criteria around how we were assessing what the department was doing or not doing.

Mr HART: Did you give any advice as to whether the government should legislate or whether regulation would be okay for some of these things you recommended?

Mr Brown: Certainly recommendation 1 details the areas where we think legislation is required. Recommendations 2 and 3 really talk about areas where we think the MOU should be strengthened, as well as policies, procedures and other aspects. If I may, just in relation to the Brisbane

question around other jurisdictions, in our initial research for the report we did identify that similar reviews had been done of the arrangements in other jurisdictions. A parliamentary committee—I think it was in WA—had looked at the arrangement in that state, and I believe there had also been one in Victoria, but we can provide what we had gathered as part of that research.

Mr MADDEN: That would be an interesting addition to the information that I am seeking.

Mr McDONALD: With regard to the prosecution issue—and I look at the summary of good regulatory practice that you talked about in the report, particularly around 'act'—at the moment the RSPCA and the department use a complaint and summons process. With the concerns we were talking about before with conflict of interests and the costs, was there any consideration around that complaints and summons process or perhaps using a penalty infringement notice, or did you not go into that detail?

Mr Worrall: I will start talking generally and then one of these guys can jump in. In relation to that better practice model, one of the common recourse issues out of those regulatory audits we have done is that pretty much the regulator has powers to act. It has the necessary powers to take whatever action it needs to. Their escalation processes is along a continuum, and that is pretty much a common failing about when enough is enough and when they will prosecute and things like that.

That is definitely a common issue. They have the power, but generally they have been reluctant to act and use that power. If I think about the food safety audit I referred to, I can remember that one of those local governments had a history of failed inspections of retail food outlets in their local government area. Six or seven times they would go in and there would be all of these common failings—you know, cockroaches, mice and so on. They would issue them with some sort of notice but they would not do anything. When we asked them about this they said, 'Our approach to regulation is to educate these people so they can lift their behaviour and their standards.' When we went to look for what they were doing in the education space, they were not actually doing anything.

What we are saying is that you really need to have that all sorted—what are your tolerances; when are you going to escalate—and have that coupled with some education process. Ultimately, you want to encourage voluntary compliance. I think voluntary compliance works best because there is less angst in the system. It is probably ultimately less expensive if people want to do things voluntarily and you probably get better outcomes, but that was not working in that case. This escalation process is not very well defined when we look at regulators. Then because it is not well defined it is quite often left to individuals within the regulator to make these calls and you can get inconsistent outcomes, whether that is based on geography or personalities and things like that. That is what I would say overall.

Mr Brown: Brendan is spot-on. In the report in chapter 4, figure 4B, we provide an example of a continuum model. We are not necessarily saying that is the only model. There are a range of models, but that provides a good example of how agencies can progress through an escalation approach if they are not getting outcomes at a certain level and not jumping straight in with complaint, summons and prosecution. There will always be some instances where there might be aggravating circumstances and you need to go to a higher level within that continuum, but certainly having that range of options and the model litigant principles would dictate that you start at the appropriate level rather than jump straight in to crack a nut with a sledgehammer.

Mr SMITH: My apologies if this is a better question for the department, but the RSPCA either have their own prosecutors or they engage a solicitor to prosecute in court. Is the department in charge of covering the cost of those prosecutors, are we aware?

Mr Brown: I am not 100 per cent certain. I believe the RSPCA covers that, but that would be a question best addressed to the department. I am not 100 per cent certain on that.

CHAIR: In due course I would like to get the department back to brief us on how they have implemented these. They have already given us some good information, and down the track I think we can ask how that is going. As we have signalled, we will be writing to ask if they can provide another report on exactly what they have been doing as well.

We have some questions on notice. What are other jurisdictions doing in terms of their animal welfare regulation? Can you provide any information you may have on which other private or corporate organisations can prosecute state breaches that may result in imprisonment? I think that is it.

Mr HART: If that is something you can find out.

Mr Worrall: That might take a little bit of time because we might have to do a bit of research on that.

CHAIR: We can ask the library. Are you happy if we just get the library? In that case, we will not worry about that.

Mr MADDEN: In saying that, when we do the comparison with other jurisdictions, if there is a report prepared by another jurisdiction could you just give us the link?

Mr Brown: Yes.

CHAIR: That concludes that part of the briefing. If we could have the answer to that question on notice by Monday, 27 June.

The committee adjourned at 10.49 am.