

15 April 2016

Hon. Rick Mazza MLC
Chairman, Select Committee into the Operations of RSPCA WA
Parliament House
GPO Box A11
PERTH WA 6837

By email: selra@parliament.wa.gov.au

Dear Mr Mazza

**Select Committee into the Operations of the RSPCA WA (Select Committee) -
Responses to Questions on Notice dated 24 September 2015, Question 5**

I refer to the email of 12 April 2016 from the Select Committee's Advisory Officer seeking further information in relation to RSPCA WA's Responses to Questions on Notice provided on 24 September 2015. I understand the Committee wishes to have this information by 15 April 2016.

Please find below responses to those further queries:

1. [In the table, in the column labelled 'Sentence' where you refer to fines]
Does the payment of the fines listed here go to RSPCA WA? Please explain the fines process.

Where a successful prosecution is brought under section 19(1) of the *Animal Welfare Act 2002* (the Act), a fine may be imposed. Fines ordered as a result of successful prosecutions are not received by RSPCA WA. They are to be paid to the State Government's Consolidated Account, pursuant to section 86 of the Act, as follows:

86. Application of fines

A fine imposed as a penalty for an offence against this Act is to be paid or credited to, if the offence was prosecuted by -

- (a) *an inspector who is a member of the staff of a local government, that local government; or*
- (b) *any other person, the Consolidated Account.*

It is also worth noting that where animals are forfeited to the Crown and sold, section 87 requires the funds to be directed:

- firstly, to the payment of any fines (which go to the Consolidated Account);
- secondly, to pay any unpaid costs orders made to reimburse a person under section 55(2)(f) or section 56;

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- thirdly, to pay any unpaid costs orders under section 58; and
- finally, any proceeds remaining are to be paid to the Consolidated Account.

2. [In the table, in the column labelled 'Sentence' where you refer to 'global fine']
Please explain what a 'global fine' is.

The phrase 'global fine' appears in the table in relation to the matter of Christopher Hansen, who was charged and found guilty of two separate offences under section 19(1) of the Act. The Magistrates Court allocated a global fine relating to both offences, rather than a separate fine for each offence.

3. [In the table, in the column labelled 'Sentence' where you refer to 'legal costs', 'other costs' and 'costs']
Please explain the differences between the different categories of costs.

The Act provides for the following types of costs orders to be made:

Section 55(2)(f) or section 56 - reimbursement of costs

An order may be made under either of these sections where it is sought to reimburse an Inspector who incurred costs in taking steps under:

- section 40(1) - provision of food, water, shelter, care or treatment to an animal;
- section 41 - humane destruction of an animal; or
- section 42 - seizure of an animal.

RSPCA WA may seek the reimbursement of these costs from the offender following a successful criminal prosecution (section 55(2)(f)) or otherwise from a person in charge of the animal prior to the Inspector taking these steps under the Act (section 56).

When these reimbursement costs are sought by RSPCA WA, they usually relate to veterinary treatment expenses that Inspectors have incurred for animals in their care. These expenses arise because, following an Inspector's seizure of an animal under section 42(1) of the Act, the Inspector is required to ensure it is properly treated and cared for pending the outcome of the proceedings (section 42(2)).

The resolution of proceedings may take months and sometimes years. During this time, the RSPCA WA Inspector remains responsible for all the costs incurred in caring for the animal. Currently, RSPCA WA seeks reimbursement for veterinary treatment expenses, but does not claim a daily boarding fee relating to food, water, shelter and other needs such as exercise. These other costs are borne by RSPCA WA.

Section 58 costs

A costs order may also be sought under section 58 of the Act following a successful prosecution or other application under the Act. Section 58 provides the basis for seeking legal costs and disbursements.

Legal costs incorporate time spent by a lawyer attending to all aspects of a case, including drafting court documents, advising and attendance at court. There are also legal disbursements that arise, such as court filing fees, fees for process servers, copying, witness fees and expenses, including flights and accommodation where required. Costs orders do not usually cover all the time spent by a lawyer on a case.

Pro-bono lawyers may, if agreed, invoice RSPCA WA for their legal disbursements or for part of the 'time' costs incurred by them. For example, in the Kathryn King case, RSPCA WA paid \$15,000 to the pro-bono lawyers.

With respect to the table provided to the Select Committee for the 2013/2014 prosecutions, the Committee has asked about the terms 'legal costs', 'other costs' and 'costs'. The term 'legal costs' relates to costs orders under section 58, as outlined above.

The term 'other costs' appears once in the table relating to the prosecution against Nicole Easter. Those costs were an order for 'legal costs' made under section 58.

A number of the prosecutions in the table that refer to 'costs' were 'legal costs' under section 58. In particular, the costs orders in the prosecutions of Deborah Hayes, William Warmdean, Christopher Hansen, Emily Elks, Clayton Lawrence, Kelly Munut and Janine Giblin were section 58 legal costs.

Other references to 'costs' in that table may relate to section 55(2)(f) and section 56 reimbursement costs or section 58 legal costs. Orders from the Magistrates Court may not always delineate between the different types of costs sought.

4. [In the table, in the column labelled 'Sentence' where you refer to 'vet costs'] Please explain if the vet costs listed here are determined through the court.

As indicated above, the term 'vet costs' relates to a reimbursement costs claim under section 55(2)(f) or section 56.

To seek these costs, RSPCA WA prepares a schedule of costs which attaches copies of relevant invoices. This is submitted to the Magistrates Court as part of the application and the accused has an opportunity to make submissions in relation to the amount claimed. The Magistrate then determines if the amount of reimbursement is appropriate and will make orders accordingly.

5. In the response provided to the Committee, RSPCA WA advised that the amount received was \$30,656.90 (as at 31 August 2015) which equates to a recovery rate of 18.96 per cent. Please explain what is involved in the recovery of costs - especially in cases where only part-payment is made (ie is there a cost to RSPCA WA to recoup these outstanding fines/legal/vet costs other?).

As indicated, a fine imposed under a section 19 prosecution is to be paid to the State Government's Consolidated Account, pursuant to section 86 of the Act. These fines are not due to or recoverable by RSPCA WA, but are enforceable by the State Government through the Fines Enforcement Registry.

A section 55(2)(f) order for reimbursement of costs following a successful prosecution is payable to RSPCA WA and is enforceable through the Fines Enforcement Registry.

An order for costs under section 56 or section 58 becomes a debt due and owing to the person to whom it is to be paid. These costs orders, if not paid, can be sought through debt recovery proceedings brought in the Civil Magistrates Court.

If RSPCA WA wishes to recover these amounts it is necessary to bring separate civil proceedings through in-house legal counsel or a pro-bono lawyer. A consideration in debt recovery proceedings is the likelihood of the defendant being able to pay the relevant sum.

RSPCA WA submits that it would be preferable if section 56 and section 58 were amended to make these costs orders directly enforceable, without having to separately bring civil proceedings to sue for a debt.

6. How you derived the figure of \$161,664.91? Please specify the methodology used.

The figure of \$161,664.91 relates to all the costs awarded to RSPCA WA by the courts in the 27 successful prosecution cases in financial year 2013/14.

For ease of reference, we have provided a simplified table below, showing the total costs orders in each case. However, it is noted that on a re-calculation the figure is actually **\$167,185.11** and not \$161,664.91 as originally indicated.

In considering this table it is emphasised that:


- A proportion of these costs are reimbursement costs for veterinary expenses incurred by Inspectors when caring for seized animals. These reimbursement costs do not usually cover other costs, such as the ongoing daily costs of food, shelter and care for animals. These other costs are borne by RSPCA WA.
- Legal costs orders do not usually cover all the legal time spent on a matter.
- RSPCA WA is very unlikely to recover all these costs and may have to bring separate debt recovery proceedings to obtain section 56 (reimbursement costs) or section 58 (legal costs) orders.

Name	Total costs
Giovanni Bassi	\$83.15
Maria Bassi	\$83.15
Julie Bassi	\$83.15
Denise Hancock	\$6,790.54
Sharyn Payne	\$674.05
Rosemary Donovan	\$2,780.75
Nicole Easter	\$7,393.07
Yvonne Hammill	\$125.25
Kristina Gulin	\$11,203.15
Arlene Hunt	\$13,147.80
Trevor Hunt	\$750.00

Bevan Martin	\$1,294.05
Denise Vespescu	\$1,882.50
Jason Young	\$1,371.45
Angie Kukich	\$1,882.50
Tennessee Knapp	\$4,831.35
Roberta Walton	\$1,015.00
Sharon Richardson	\$4,379.50
Deborah Hayes	\$1,076.90
William John Warmdean	\$1,076.90
Christopher Paul Hansen	\$1,021.90
Emily Elks	\$1,054.90
Clayton Richard Lawrence	\$1,057.80
Adele Culverwell	\$30,000.00
Kelly Munut	\$1,076.90
Janine Helen Giblin	\$1,049.40
Phillip Carter/The House of Relocators Pty Ltd	\$50,000.00
Kathryn Lisa King	\$20,000.00
Total	\$167,185.11

I trust this answers the Committee's queries, but should the Committee require further information, please let me know.

Yours sincerely



David van Ooran
Chief Executive Officer