



**Queensland  
Government**

**THE STATE OF QUEENSLAND THROUGH THE DEPARTMENT OF PRIMARY INDUSTRIES  
AND FISHERIES**

**AND**

**THE ROYAL SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS,  
QUEENSLAND INCORPORATED**

Dept of Primary Industries  
FOI Release  
Fisheries

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## AGREEMENT BETWEEN

The State of Queensland acting through the Department of Primary Industries and Fisheries  
ABN 78 342 684 030  
("DPI&F")

and the

The Royal Society for the Prevention of Cruelty to Animals, Queensland, Incorporated  
ABN 74 851 544 037  
("RSPCA")

### RECITALS

- A DPI&F under government administrative arrangements is the lead agency for animal welfare in Queensland which includes portfolio responsibility for administration of the *Animal Care and Protection Act 2001* ("Act").
- B The Act provides the Director-General of DPI&F with the power to appoint officers from the RSPCA to exercise powers under the Act as inspectors. Such inspectors are accountable to the Director-General for the proper exercise of those powers.
- C RSPCA wishes to continue its tradition of enforcing the animal welfare legislation as an agent for government. Both DPI&F and RSPCA are committed to reducing the risks this poses for government and of addressing the risks through this agreement.
- D It is acknowledged that the RSPCA, as a charity, needs to raise funds from the community to continue its work and DPI&F and RSPCA wish to minimise the risks from any potential conflicts of interest that may arise from this in relation to its role of enforcement.
- E This agreement defines the requirements of the RSPCA and DPI&F in the area of enforcement of the provisions of the Act, and replaces the Memorandum of Understanding between the RSPCA and DPI&F dated 29 August 2004.
- F This agreement incorporates DPI&F funding to RSPCA for the financial year 1 July 2007 to 30 June 2008.

### OPERATIVE PROVISIONS

#### 1. DEFINITIONS AND INTERPRETATION

"Agency" means either the DPI&F or the RSPCA;

"Agreement" means this document and any schedules attached to this document or added from time to time;

"Animal Welfare Unit" means the DPI&F unit responsible for the administration of animal welfare in Queensland;

"Asset" means an item of physical property, plant or equipment which has a useful life of more than one year and has a market value of \$5,000 or more at the time it was acquired;

"Auditing Program" has the meaning given to that term in clause 10.1;

**"Authorised Person"** means a person who holds appointment as an authorised officer under the Act;

**"Code of Conduct"** means the code of conduct applicable to DPI&F employees, a copy of which is attached as Schedule 3;

**"Commencement Date"** means 1 July 2007.

**"Commercial Livestock"** means more than ten livestock animals of the one species or more than 500 poultry and where the keeping of such livestock is a significant or primary business of the person or organisation but does not include wildlife, or animals kept in zoos, riding schools, pet shops or for greyhound racing or rodeos;

**"Completion Date"** means 30 June 2012.

**"Compliance Guidelines"** has the meaning given to that term in clause 9.1;

**"Compliance Report"** means a report prepared by an independent auditor appointed as a Consultant;

**"Confidential Information"** means information that is by its nature confidential and:

- (a) is designated by a Party as confidential; or
- (b) the recipient knows or ought to know is confidential,

but does not include information which:

- (c) is or becomes public knowledge other than by breach of this Agreement;
- (d) is in the possession of the recipient without restriction in relation to disclosure before the date of receipt from the discloser;
- (e) has been independently developed or acquired by a Party; or
- (f) is required by law to be disclosed;

**"Constitution Document"** includes the Constitution, Articles of Association, Rules or Trust Deed governing the operation of the RSHOA;

**"Consultant"** means any professional or technical advisor including an independent auditor or external evaluator appointed in writing by DPI&F.

**"Director-General"** means the Director-General of the Department of Primary Industries and Fisheries;

**"Execute"** means, when used in relation to an Agreement, sign;

**"Feral Livestock"** means domesticated livestock that have returned to the wild or are in an undomesticated state;

**"Financial Report"** means a report specified in Schedule 1;

**"Funding" or "Funds"** means the monies paid or payable to RSPCA under this Agreement and, where applicable, extends to include monies paid or payable to RSPCA by DPI&F under previous arrangements to meet the purposes, or substantially the same purposes, as specified in this Agreement;

**"GST"** means the goods and services tax payable pursuant to the GST legislation;

**"GST legislation"** means any goods and services tax implemented in Australia pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* introduced by the Federal Government and includes all Acts relating to that Act, together with all amendments made to it, and any subsequent Acts of Parliament enacting such Acts, whether or not subject to any amendment;

**"Inspector"** means a person who holds appointment as an inspector under the Act including an "Authorised Officer";

**"Material"** includes documents, computer software, and data stored by any means which is created by or on behalf of RSPCA, wholly or in part for the purpose of developing, coordinating or providing the Services;

**"Operations Co-ordinator"** means the person nominated by the respective agency who is responsible for the day to day operational activities of inspectors in that Agency;

**"Performance Report"** means a report specified in clause 11;

**"Personal Information"** means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion;

**"Principal Office Holder"** means a person who is responsible for the management of RSPCA's activities or is responsible for the finances of RSPCA, whatever the person's position is called;

**"Procedures & Guidelines"** mean "The Procedures and Guidelines for the Administration of the Animal Care and Protection Act 2001" developed by DPI&F in consultation with the RSPCA. The document establishes the operating standards and procedural guidelines and an accountability framework for the appropriate and effective administration and enforcement of the Act. It differentiates between mandatory procedures which must be followed and procedural guidelines which allow for some flexibility in application. It is attached as Schedule 2;

**"Qualified Accountant"** means a Chartered Accountant of the Institute of Chartered Accountants or a Certified Practising Accountant of the Australian Society of Certified Practising Accountants, or a Professional National Accountant of the National Institute of Accountants, and who is not an officer, employee or member of the RSPCA;

**"Quality Assurance Officer"** has the meaning given to that term in clause 10.4;

**"Reporting Period"** means 1 July to 30 June of each year (the "Reporting Period");

**"Services"** mean the Services to be provided by the RSPCA as set out in this Agreement.

- 1.2 (a) The singular includes the plural and the plural includes the singular;
- (b) Words imputing one gender include each other gender;
- (c) A reference to a statute includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (d) A reference to DPI&F includes a reference to DPI&F successors, assigns or substitutes.

## 2. TERM OF AGREEMENT

- 2.1 This Agreement commences with effect on the Commencement Date and terminates on the Completion Date.

## 3. ROLE OF THE DIRECTOR-GENERAL

- 3.1 RSPCA acknowledges that:

- (a) The Act is administered by the Department of Primary Industries and Fisheries for the Minister for Primary Industries and Fisheries;
- (b) The Director-General is accountable to the Minister for Primary Industries and Fisheries for the effective delivery of all animal welfare enforcement services;
- (c) The Director-General may appoint suitable persons to be inspectors under the Act for the purposes of enforcing the provisions of the Act; and
- (d) The Director-General may terminate the instrument of appointment of an inspector.

- 3.2 RSPCA will at all times act in such a way to enable DPI&F and the Director-General to fulfill their obligations under the Act.

## 4. ROLE AND RESPONSIBILITIES OF THE RSPCA

- 4.1 DPI&F appoints RSPCA as its agent to enforce the Act in accordance with this Agreement.
- 4.2 RSPCA will enforce the Act for the Director-General and will be accountable to the Director-General for that enforcement.
- 4.3 RSPCA will ensure that its inspectors comply with their responsibilities under the Act and this Agreement, and will not contravene the spirit of the Act or Agreement.
- 4.4 RSPCA accepts the appointment of it and its inspectors as agents for DPI&F and will comply with relevant standards and statutory procedures that are binding on DPI&F officers, that is they will comply with the Act and lawful decisions made under the Act, Queensland Government Information Privacy Standard No 42; the "ethics obligations" for public officials set out in part 3 division 2 of the *Public Sector Ethics Act 1994*; the Code of Conduct and any other relevant legislation.
- 4.5 RSPCA will ensure that the Services provided comply with all applicable Commonwealth, State and Local Government laws, ordinances and regulations including but not confined to those relating to publication of Materials, privacy, taxation, equity and merit, health and safety, building and construction, zoning, industrial instruments and agreements and fire

regulations. RSPCA must complete all forms and returns, give any notices, remit any accounts when due, and pay all fees necessary to comply with these laws.

## 5. MEDIA POLICY

- 5.1 RSPCA will not, and will ensure that its Inspectors do not, make any public comment on any investigations that they are involved in, other than to say the matter is "under investigation". RSPCA acknowledges that to make comment may jeopardise any legal proceedings, pending or current and may compromise a person's rights under law.
- 5.2 Where an investigation has a high level of public interest, the Chief Executive Officer of the RSPCA or designated representative and the General Manager, Animal Welfare Unit will liaise to provide a consistent message and approach.
- 5.3 RSPCA will, and ensure its Inspectors will, at all times, use best endeavours to ensure that a person's rights under natural justice and common law are not compromised and that due process of law associated with the complaint is not compromised.
- 5.4 RSPCA will not and will ensure that its officers do not, permit or invite or facilitate entry of the media onto a property under investigation.
- 5.5 RSPCA will not, and will ensure its Inspectors do not, make public comment on decisions made by the Director-General under the Act and will ensure that its officers will not comment on the administration or interpretation of the Act without DPI&F approval.

## 6. APPOINTMENT OF INSPECTORS

- 6.1 The RSPCA will nominate those persons within the employ of the RSPCA it wishes to be appointed as Inspectors under the Act.
- 6.2 Persons who have been convicted of an indictable offence will not be considered for appointment. However, this is subject to the *Criminal Law (Rehabilitation of Offenders) Act 1986* which sets criteria on how long an offence may be considered.
- 6.3 Except for the condition of 6.4, no person may be appointed as an Inspector until the training specified by the Director-General has been undertaken and the requirements for appointment have been met.
- 6.4 An Inspector will hold office subject to the conditions stated on the instrument of appointment, or fixed by notice of the Director-General, or as prescribed under a regulation.

## 7. INSTRUMENT OF APPOINTMENT

- 7.1 DPI&F will provide an instrument of appointment to each Inspector.
- 7.2 Each Agency must issue identity cards to its Inspectors in accordance with agreed protocols.
- 7.3 All Inspectors will hold an instrument of appointment and an identity card until revoked or surrendered.
- 7.4 RSPCA will ensure that all Inspectors within its employ hold a current instrument of appointment and identity card at all times in the course of performing enforcement activities under the Act.

7.5 The RSPCA will ensure it recovers the instrument of appointment and the identity card from its Inspectors and return them to DPI&F within 30 days from when the Inspector ceases to hold office.

## 8. CONDITIONS OF APPOINTMENT

8.1 In order to provide accountability equivalent to DPI&F employed Inspectors, RSPCA must ensure that its Inspectors comply with:

- (a) the Procedures & Guidelines, as amended from time to time by DPI&F by means of an Inspector's Circular;
- (b) Queensland Government Information Privacy Standard No 42;
- (c) the "ethics obligations" for public officials set out in Part 3 Division 2 of the *Public Sector Ethics Act 1994*, as if the inspector were a public official;
- (d) the Code of Conduct;
- (e) the Act and any other relevant legislation;
- (f) any circulars/instructions issued to inspectors by DPI&F relating to the enforcement of the Act; and
- (g) forfeiture, review and similar decisions made by the Director General under the Act.

## 9. PROCEDURES FOR REFERRAL OF COMPLAINTS AGAINST INSPECTORS

9.1 DPI&F will, in conjunction with RSPCA, develop procedures for dealing with complaints against Inspectors from both Agencies ("Complaint Guidelines"). Each Agency will deal with complaints against its Inspectors in accordance with the Complaint Guidelines.

## 10. QUALITY SYSTEMS

10.1 DPI&F, in consultation with the RSPCA, will develop and implement a quality assurance program to ensure the appropriate and uniform application of the Act across Agencies ("Auditing Program").

10.2 The Auditing Program must cover all aspects of enforcement in relation to the Act, including training, compliance with the Procedures & Guidelines, and compliance with the Agreement.

10.3 Each Agency must comply with the Auditing Program.

10.4 The RSPCA must appoint a dedicated officer to oversee the Auditing Program within the RSPCA and work with DPI&F to ensure the appropriate enforcement of the Act by RSPCA Inspectors ("Quality Assurance Officer").

## 11. REPORTING - OPERATIONAL

- 11.1 The RSPCA will ensure that its Inspectors provide to the Director-General, within 7 days of being so requested, the following information in relation to matters with which they have been involved:
- (a) any information necessary to enable the Director-General to decide whether to forfeit an animal or a thing to DPI&F;
  - (b) all relevant information where a complaint has been made against an RSPCA Inspector;
  - (c) all relevant information (including a signed statement) in relation to a matter that is being investigated by DPI&F or that may be the subject of court proceedings;
  - (d) any information necessary to enable the Director-General to make a review decision in accordance with documented review procedures for the Act; and
  - (e) any other information requested which relates to proper enforcement of the Act.
- 11.2 To meet DPI&F accountability requirements, the RSPCA will ensure its Inspectors provide their Quality Assurance Officer with the following information in the case of each animal or other thing seized by the RSPCA:
- (a) within 7 days after the seizure, a copy of the receipt for the thing seized and a copy of the information notice given about the decision to make the seizure;
  - (b) within 35 days after the seizure, advice as to whether the seized animal was returned to its owner within 28 days after the seizure, and, if not, the reasons why; and
  - (c) where there has been voluntary consent to seizure and transfer of ownership, a copy of the Written Consent to Seizure form (FDU1171) within 21 days.
- 11.3 The RSPCA will ensure that its Quality Assurance Officer will provide the Director-General with a monthly report of all seizures undertaken during the period. The report will be in an agreed format and will identify all things seized during the relevant month, the basis for each seizure, and all dealings during the relevant month with seized things (whenever seized), and any areas of non-compliance with the Act in relation to seizure. The reports must be supplied within seven (7) days of the end of each month.
- 11.4 To meet DPI&F reporting requirements, the RSPCA will provide the General Manager, Animal Welfare Unit with quarterly and annual reports on:
- (a) the number of complaints received and number investigated by the RSPCA by species and whether the complaints involved no breach; minor breach or a major breach of the Act or Regulation. Where breaches occurred, the action taken should be given;
  - (b) the number of animal welfare directions issued;
  - (c) the number of prosecutions including the number of successful prosecutions; details of prosecution results and disposal and prohibition orders; and
  - (d) any other significant issues thought appropriate by the RSPCA.

Reports under this clause must be supplied as follows:

- Quarterly reports must be supplied within one (1) month of the end of the September, December, March and June quarters; and
- Annual reports must be supplied within three (3) months of the end of the Reporting Period.

11.5 The Director-General may request at any time other information for the proper and accountable administration of the Act, including about the performance of an Inspector or concerning the exercise of an Inspector's powers.

## 12. RSPCA/DPI&F LIAISON

12.1 Formal discussions between the RSPCA and DPI&F will be held on policy and operational issues of strategic importance, as and when required but not less than once per Reporting Period.

12.2 Both Agencies will consult in developing appropriate communication channels for routine matters relating to the administration and enforcement of the Act, and both will comply with these.

## 13. AREAS OF JURISDICTION

13.1 RSPCA Inspectors will have primary responsibility for enforcing the Act in relation to animals within urban, semi rural and rural areas. The agreed geographical boundaries are shown in Schedule 4. Within this jurisdiction the RSPCA will cover all animal welfare complaints (except as provided for in 13.2) including wildlife, zoos, greyhound racing, riding schools, pet shops and rodeos, but not feral nor commercial livestock.

13.2 Within this jurisdiction DPI&F Inspectors will have primary responsibility for enforcing the Act in relation to animals used in commercial livestock production ie where the keeping of such livestock is a significant or primary business of the person or organisation involved, and for feral livestock animals. DPI&F will also manage matters dealing with animals involved in standard bred and thoroughbred racing in consultation with the Office of Racing Regulation.

13.3 Where the RSPCA is not represented then DPI&F and/or Police will be responsible for enforcing the Act in accordance with the MOU with the Queensland Police Service.

13.4 The DPI&F will have primary jurisdiction for the handling of complaints involving the use of animals for scientific purposes, and feral livestock animals.

13.5 The DPI&F will be the agency which investigates all animal welfare complaints made against veterinarians.

13.6 If the RSPCA requires assistance from DPI&F in providing service in an RSPCA area (eg due to an officer being sick or on leave) then the RSPCA will request assistance through the DPI&F Operations Co-ordinator. The Operations Co-ordinator will contact DPI&F regional management to check on the availability of staff and confirm interim arrangements with the RSPCA. RSPCA requests for extended relief of more than three days should be made to the General Manager, Animal Welfare Unit, if possible with 14 days notice.

13.7 On agreement with such requests DPI&F will assume responsibility for and action the Critical and Major incidents (as defined in the Procedures & Guidelines) in that area.

13.8 All cases should be transferred through the Operations Co-ordinators. It is not appropriate for an RSPCA officer to leave an office vacant with a message to contact DPI&F without prior consultation and agreement by DPI&F.

#### 14. ASSISTANCE POLICY

14.1 There may be instances where one Agency will need the assistance of the other Agency in the day to day discharge of duties. Where the assistance is of a minor nature (that is, low time and resource commitment and it is not controversial) this should be requested at the local level. Where more substantial assistance is required, help should be requested through the Operations Co-ordinators. Such requests should be given proper consideration, taking into account the urgency of the matter and the resourcing implications.

14.2 The requesting Agency will retain full responsibility for any investigation in which it has requested assistance.

14.3 Unless negotiated otherwise, where assistance is sought each Agency will be responsible for its own costs.

#### 15. TRANSFER OF CASES

15.1 There may be instances when it will be appropriate to transfer a case in progress from one Agency to the other (for example for resourcing reasons). This must be done through the respective Operations Co-ordinators as detailed in the Procedures & Guidelines.

15.2 The Agency accepting the transfer will assume full responsibility for the investigation after the formal transfer has taken place. The transferring Agency will accept the decision made on any action taken in an investigation subsequent to the transfer.

15.3 Feedback must be provided from the Agency accepting the transfer to the Agency initiating the transfer on the outcome and/or progress of a complaint.

#### 16. PROSECUTION POLICY

16.1 A prosecution policy as outlined in the DPI&F Prosecution Policy attached in schedule 2 must be adopted as the standard by both the RSPCA and DPI&F.

16.2 Each Agency will conduct its own prosecutions.

#### 17. RSPCA POLICY VS ENFORCEMENT ROLES

17.1 DPI&F acknowledges that the RSPCA may have or advocate policies that are not in accord with DPI&F policies. However RSPCA will clearly separate its enforcement role and enforcement policies from such other policies so that the proper enforcement of the Act by either Agency is not compromised or brought into disrepute.

#### 18. RESOLUTION OF DISPUTES

18.1 The resolution of any disputes between Agencies should be attempted at the local level. If this is not possible then the Chief Executive Officer of the RSPCA and the General Manager, Animal Welfare Unit will attempt to resolve the issue. If this is not successful then the Agency with the dispute should put the case in writing to the Director-General who, as the accountable officer under the Act, will have the final say on the matter taking into account all the factors and the need for the proper administration of the Act.

**19. DPI&F FUNDING TO RSPCA**

- 19.1 DPI&F will provide the RSPCA with Funding in accordance with the Schedule, to support RSPCA in the enforcement of the Act. The Funding period is from 1 July 2007 to 30 June 2008.
- 19.2 The Funds are payable on execution of this Agreement, and receipt of a properly rendered tax invoice, and receipt of all quarterly reports, accounting procedures and reports required by RSPCA under this Agreement.
- 19.3 The Funding must only be used for the purpose contained in the Schedule, and in relation to performing the Services.
- 19.4 The Funding will not be used for purposes other than those specified in paragraph 19.3 unless approved in writing by DPI&F.
- 19.5 RSPCA must start the Services on or before the Commencement Date.

**20. QUARTERLY REPORTS AND EVALUATION**

- 20.1 RSPCA will provide quarterly Financial Reports to DPI&F. All quarterly reports must be certified as prescribed in Schedule 1.
- 20.2 RSPCA will ensure that its information management systems are consistent with its reporting requirements under this Agreement.
- 20.3 The Services will be evaluated on the basis of the Performance Reports and Financial Reports.
- 20.4 At any time before or after the Completion Date, DPI&F or a Consultant nominated by DPI&F, will be entitled to evaluate the Services, including performance standards, content of Services and their delivery.
- 20.5 For the purposes of any evaluation, RSPCA will provide, upon request, all records and documents to DPI&F and/or Consultant, necessary to enable DPI&F and/or Consultant to evaluate the performance of RSPCA as required by this Agreement.

**21. ACCOUNTING PROCEDURES AND AUDITED STATEMENTS**

- 21.1 RSPCA warrants that at the date of this Agreement no proceedings against RSPCA for bankruptcy or insolvency have been commenced or threatened.
- 21.2 RSPCA will implement financial management systems consistent with the terms of this Agreement.
- 21.3 RSPCA must organise its accounting system so that the income, expenditure, assets and liabilities relating directly or indirectly to the Funding can be accurately identified.
- 21.4 RSPCA must keep its accounting records up-to-date and in good order with all appropriate Financial Reports prepared according to Australian Accounting Standards (unless otherwise specified and disclosed) and must ensure appropriate internal controls are in place to identify and prevent misuse or misappropriation of Funds.

- 21.5 RSPCA will do all things necessary to ensure that all payments out of Funds are correctly made and properly authorised and adequate control is maintained over the incurring of liabilities.
- 21.6 RSPCA's records and books of account related directly or indirectly to receipt and expenditure of the Funds are to be kept by RSPCA for a minimum period of five years.
- 21.7 RSPCA must provide to DPI&F a Financial Report (prepared by a Qualified Accountant at the expense of the RSPCA) in the manner prescribed in Schedule 1 of this Agreement no later than three months from the end of 30 June 2008.
- 21.8 RSPCA will ensure that the audited Financial Report is accompanied by a certified statement in the form prescribed in Schedule 1.
- 21.9 The Queensland Government may take action under clause 28 if a Financial Report required by this Agreement, or any other current audit report of the accounts of RSPCA contains qualifications by a Qualified Accountant, or if the report expresses any other concerns or is not provided when due or is incomplete.

## 22. UNSPENT FUNDS

- 22.1 Where DPI&F determines that the RSPCA has an operating surplus of Funds over expenditure on the Services, DPI&F may, at its discretion:
- (a) offset the surplus against future Funding;
  - (b) reallocate the use of the surplus for an alternative purpose approved by DPI&F;
  - (c) permit RSPCA to "roll-over" the unspent Funds into the total Funding available under future funding agreements; or
  - (d) require RSPCA to repay the surplus (including any interest earned on the Funds) to the DPI&F within twenty-one (21) days. Such a debt will be a debt due to the DPI&F and recoverable as such.

## 23. AGM REPORTS

- 23.1 RSPCA must, if requested, provide DPI&F with a copy of the minutes of its annual general meeting.
- 23.2 Where RSPCA prepares an annual report or annual financial report (other than in accordance with the requirements of this Agreement), RSPCA must, if requested, provide DPI&F with a copy of such report.

## 24. ACCESS RIGHTS

- 24.1 RSPCA will, upon request, permit a representative of DPI&F to visit any service/activity offered by RSPCA to inspect any matters concerned with, or arising out of, this Agreement. RSPCA must ensure that a representative of DPI&F is permitted access to the service/activity within fourteen (14) days of DPI&F making such a request.
- 24.2 RSPCA will give DPI&F and its Consultants reasonable access to RSPCA's offices or premises during normal business hours. Except where DPI&F has reasonable grounds to suspect fraud or mismanagement by RSPCA, DPI&F will give at least two (2) days notice to

RSPCA before exercising these access rights and will name any persons requested to be available for interview.

## 25. CONFIDENTIALITY AND CLIENT RECORDS

- 25.1 DPI&F may disclose publicly the fact that it has provided Funding to RSPCA, the amount and purpose of the Funding, and general details of this Agreement.
- 25.2 RSPCA will take all necessary steps to ensure the security of and minimise the risk of loss, misuse and unauthorised access, use, modification, destruction or disclosure of records and Material generated with the Funds.
- 25.3 RSPCA acknowledges that DPI&F is subject to Freedom of Information legislation which may compel disclosure in certain circumstances. Compliance Reports and other written information provided to DPI&F will be treated in confidence. However, documents held by DPI&F are subject to the *Freedom of Information Act 1992*. In the event that an application is made under the *Freedom of Information Act 1992*, DPI&F will consult with RSPCA prior to the release of documents held by DPI&F.
- 25.4 Subject to clause 25.3, neither Agency will disclose any Confidential Information belonging to the other Agency relating to the Agreement or the Material without prior approval in writing from the other Agency which can be conditionally given.
- 25.5 Notwithstanding this duty of confidentiality, the Agencies may disclose details of this Agreement to their solicitors, auditors, insurers or accountants for the purposes of obtaining advice.

## 26. INCORPORATION STATUS AND CONSTITUTION DOCUMENTS

- 26.1 If requested, RSPCA will supply evidence of incorporation status and a copy of its Constitution Document to DPI&F.
- 26.2 RSPCA will notify DPI&F within one (1) month of any change to its structure, name, postal or street address, Principal Office Holders or Constitution Document.

## 27. INDEMNITY AND INSURANCE

- 27.1 RSPCA agrees to indemnify DPI&F from and against any and all:
- (a) liability incurred by DPI&F;
  - (b) loss of or damage to property of DPI&F; or
  - (c) loss or expense incurred by DPI&F in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by DPI&F,

arising from:

- (d) any act or omission by RSPCA, its officers, employees, agents or subcontractors in connection with this Agreement where there was fault on the part of the person whose conduct gave rise to that liability, loss or damage, or loss or expense; or
- (e) any breach by RSPCA of its obligations or warranties under this Agreement;

In this clause "fault" includes any negligent or unlawful act or omission or wilful conduct.

27.2 The right of DPI&F to be indemnified under this clause 27 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but DPI&F is not entitled to be compensated in excess of the amount of the relevant liability, loss or damage or loss or expense.

27.3 RSPCA must take out, or have in place, effective insurance cover for the term of this Agreement with an insurance company authorised to conduct insurance business under the *Insurance Act 1973*. This must include the following Insurances:

- (a) workers' compensation,
- (b) comprehensive insurance for vehicles,
- (c) insurance for buildings and the contents thereof, and
- (d) public liability insurance to a minimum amount of \$10 million.

27.4 RSPCA will, if requested by DPI&F, supply evidence of insurance cover to DPI&F within twenty-one (21) days of Executing this Agreement.

## 28. DEFAULT OF RSPCA

28.1 Where an act of default under clause 28 occurs, DPI&F may (in addition to exercising any other right or remedy available to it under this Agreement or otherwise) serve on RSPCA a Notice to Remedy. The Notice to Remedy will demand that the breach be made good and specify:

- (a) what the breach is;
- (b) what facts DPI&F relies on to establish the breach;
- (c) what RSPCA must do to make good the breach;
- (d) how long RSPCA has to make good the breach, being a period of not less than fourteen (14) days.

28.2 RSPCA commits an act of default by:

- (a) applying any part of the Funds to a purpose other than as provided for in this Agreement;
- (b) failing to commence the Services, provide any part of the Services or complete the Services;
- (c) not submitting Financial Reports or Performance Reports within twenty-eight (28) days of the agreed date;
- (d) not maintaining books of account in accordance with the specifications outlined in Clause 21;
- (e) submitting Performance Reports or Financial Reports which raise concerns about the RSPCA's viability;
- (f) submitting information that is incomplete or is not credible; and

- (g) submitting a Financial Report which contains a qualification by a Qualified Auditor or if a report expresses any other concerns or is not provided when due or is not complete.

28.3 Upon issuing a notice to remedy, DPI&F may take any of the following steps:

- (a) increase the frequency of Financial Reports and/or Performance Reports to be provided by RSPCA;
- (b) arrange a review of service delivery and/or financial records;
- (c) appoint a Consultant including an independent auditor to assist DPI&F and to provide a Compliance Report to assess whether or not the RSPCA has carried out its accountability requirements for public monies and the conditions of this Agreement. The RSPCA will assist DPI&F with any requirements needed for the preparation of a Compliance Report;
- (d) appoint a grants controller;
- (e) appoint an administrator to operate and administer Funds provided by DPI&F;
- (f) require the repayment of the whole or such part of the Funds as may be determined by the DPI&F.

28.4 DPI&F may terminate this Agreement immediately by a written Notice if RSPCA:

- (a) does not make good any breach within the time that is allowed to it as set out in a Notice to Remedy;
- (b) ceases to carry on business;
- (c) is unable or fails to provide part or all of the Services;
- (d) commits an act of bankruptcy or insolvency or is unable to pay its debts when due or admits in writing its inability to pay its debts;
- (e) enters into any arrangement or composition with its creditors generally, or has a receiver, receiver and manager or administrator appointed;
- (f) goes into liquidation or passes a resolution to go into liquidation, otherwise than for the purposes of reconstruction;
- (g) suffers any distress or execution levied against any Assets of RSPCA which would, in the reasonable opinion of the DPI&F, has a material adverse effect upon the ability of RSPCA to deliver the Services;
- (h) is delivering the Services in circumstances which DPI&F considers represents a risk to the health and safety of the public; or
- (i) breaches a condition of this Agreement that cannot be made good, whether or not the DPI&F has given a Notice to Remedy.

## 29. TERMINATION FOR CONVENIENCE

29.1 DPI&F may, at any time, by reasonable notice, terminate this Agreement or reduce the

scope of the Services or the Term, including for a machinery of government change.

29.2 On receipt of a notice of termination or notice of reduction, the RSPCA must stop work as specified in the notice and take all available steps to minimise loss resulting from that termination or reduction of services.

29.3 If the Agreement is terminated or reduced under clause 29.1 the DPI&F may require the repayment of the whole or such part of the funds as may be determined by the DPI&F.

### 30. REPAYMENT OF THE FUNDS

30.1 Where RSPCA becomes liable to repay some or all of the Funds to DPI&F pursuant to clause 28.3(f) or 29.2 of this Agreement the RSPCA must repay that amount within thirty (30) days of receiving a notice from DPI&F requiring its repayment.

30.2 Where RSPCA has not repaid an amount which it is liable to repay to DPI&F under this agreement, DPI&F may recover that amount from RSPCA as a debt.

### 31. CRIMINAL BREACH

31.1 If either Party becomes aware of any criminal breach in respect of the Funds, it will immediately notify both the Police and the other Party, and in such event DPI&F may immediately suspend the payment of any Funding not yet paid until the matter is investigated to the satisfaction of DPI&F. At such time DPI&F will either reinstate the Funding or act under clause 28.

### 32. RIGHTS ON TERMINATION

32.1 Termination of this Agreement will not affect any claim or action either Agency may have against the other by reason of any breach of this Agreement and will not relieve either Agency of any obligation under this Agreement which is expressed to continue after termination.

32.2 The following clauses will survive termination or expiration of this Agreement-

- (a) Reporting - Operational (Clause 11), Quarterly Reports and Evaluation (Clause 20) and Accounting Procedures and Audited Statements (clause 21);
- (b) Indemnity and Insurance (clause 27); and
- (c) Confidentiality and Client Records (clause 25).

### 33. PRIVACY OBLIGATIONS

33.1 Where the RSPCA has access to Personal Information in order to fulfil its obligations under this agreement, it must:

- (a) comply with the National Privacy Principles established under the *Privacy Act 1988* (Cth);
- (b) where the RSPCA is responsible for holding Personal Information, ensure that Personal Information is protected against loss and against unauthorised access, use, modification or disclosure and against other misuse;

- (c) where the RSPCA has access to Personal Information held by DPI&F, ensure that Personal Information is protected against loss and against unauthorised access, use, modification or disclosure and other misuse;
- (d) ensure that only authorised personnel have access to Personal Information;
- (e) immediately notify DPI&F if it becomes aware that a disclosure of Personal Information is, or may be required or authorised by law;
- (f) make its employees, agents and subcontractors aware of the RSPCA's obligations under this clause including, when requested by DPI&F, requiring those employees, agents and subcontractors to promptly sign a Privacy Deed, substantially in the form appearing in the Schedule, relating to Personal Information;
- (g) indemnify DPI&F for any liability arising directly or indirectly from a breach by the RSPCA, its employees, agents and subcontractors, of this clause notwithstanding any other provision in this agreement;
- (h) comply with such other privacy and security measures as DPI&F reasonably advises the RSPCA in writing from time to time.

33.2 The RSPCA must immediately notify DPI&F upon becoming aware of any breach of clause 33.1.

#### **34. WAIVER**

34.1 No provision of this Agreement will be deemed to be waived unless that waiver is in writing and signed by a person authorised to act on behalf of the waiving Agency.

34.2 The failure of DPI&F to enforce at any time any clause of this Agreement will in no way be interpreted as a waiver of the clause.

#### **35. ASSIGNMENT**

35.1 RSPCA must not transfer, assign or subcontract the whole or any part of this Agreement or the Funds to any other organisation or person without the written approval of DPI&F.

#### **36. AMENDMENTS**

36.1 This Agreement may only be varied by a document signed by or on behalf of each Agency.

#### **37. NO PROPRIETARY INTERESTS**

37.1 All liabilities incurred by RSPCA in undertaking the Services, whether utilising the Funds provided under this Agreement or not, will remain liabilities of RSPCA and no such liabilities shall attach to DPI&F.

#### **38. GOVERNING LAW**

38.1 This Agreement will be governed and construed in accordance with the laws of Queensland and the Agencies submit to the jurisdiction of the Courts of Queensland and all courts competent to hear appeals therefrom.

**IN WITNESS WHEREOF** the Parties have Executed this Agreement on the dates below.

**SIGNED** for and on behalf of the **STATE OF QUEENSLAND** by

this 13<sup>th</sup> day of November 2007

in the presence of

Debbie Rainbird  
Witness: Name (Print)

[Signature]  
(signature)

[Signature]  
(signature)

**SIGNED** for and on behalf of **THE ROYAL SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS QUEENSLAND INCORPORATED**

M TOWNEND  
Name (Print)

CHIEF EXECUTIVE OFFICE  
Title: (Title)

this 21 day of NOVEMBER 2007

in the presence of

NL JANETZKI  
Witness: Name (Print)

[Signature]  
(signature)

[Signature]  
(signature)

Dept of Primary Industries & Fisheries  
FOI Release

FUNDING

SCHEDULE 1

2007/2008 financial year

The Funding must be used for the following purposes:

(i)	Contribution to Inspectorial salaries	\$158,730.00
(ii)	Contribution to inspectorial motor vehicle expenses	\$ 20,000.00
	Total (GST exclusive)	\$178,730.00

Dept of Primary  
Industries & Fisheries  
FOI Release

Certification of Annual Financial Reports

RSPCA

End of Reporting Period .....	
ORGANISATION: PROJECT:	
CERTIFICATION:	
I hereby certify that:	
<ul style="list-style-type: none"><li>Funds have been used for salaries and vehicle expenses as set out in the Agreement and that all terms and conditions of Funding have been complied with;</li><li>adequate internal control procedures exist in the recording, authorising payments and bank reconciliations;</li><li>audited financial statements <del>are</del> <b>are not</b> subject to approval of an annual general meeting of RSPCA. If so, the audited financial statements <del>have</del> <b>have not</b> been approved by the Annual General Meeting as at the date of the signing of this certificate. Formal confirmation is to be sent to the DPI&amp;F when audited Financial Statements are approved by the Annual General Meeting and in any event within seven (7) days of such approval taking place.</li></ul>	
Signed Qualified Accountant; Principal Office Holder:	Date: Date:

Dept of Primary Industries & Fisheries  
FOI Release

**Certification of Quarterly Reports**

**Recurrent Grant Funding**

Acquittal for the quarter ending *(Insert period)*

Grantee: RSPCA Queensland

	\$'000
<b>Surplus/(Deficit) Carried forward</b>	0
<b>Revenue to <i>(Insert period)</i></b>	
DPI&F grant payment for RSPCA Inspectorial Services –	
<b>Total Revenue</b>	
<b>Expenses to <i>(Insert period)</i></b>	
Employee Expenses relating to the RSPCA Inspectorate	
Vehicle Expenses relating to the RSPCA Inspectorate	
<b>Total Expenses</b>	
<b>Surplus/(Deficit)</b>	0

**Certification:** *(By RSPCA Queensland Accountant)*

In my opinion, the amounts shown on this statement were spent in accordance with the terms and conditions of the agreement between DPI & F and RSPCA Queensland

Dept of Primary Industries & Fisheries  
FOR RELEASE

**AUDITED FINANCIAL STATEMENTS**

The annual report to be provided by the Qualified Accountant will include the following statement:

**Report to the Director-General:**

I/We.....(name).....  
of.....(company).....  
at.....(address).....

have audited the financial statements of RSPCA in relation to salaries and vehicle expenses for enforcing animal welfare legislation as an agent for the Department of Primary Industries and Fisheries in accordance with the Australian Accounting Standards.

I have reviewed the expenditure in relation to staff salaries and motor vehicles and in my opinion confirm that Funding provided by DPI&F has been expended in accordance with the agreement with DPI&F dated 2007.

Signature \_\_\_\_\_

Date \_\_\_\_\_

Dept of Primary Industries & Fisheries  
FOI Release