



AUDIT INSIGHTS

30 November 2021

Regulating animal welfare services

Report 6: 2021–22

As the independent auditor of the Queensland public sector, including local governments, the Queensland Audit Office:

- provides professional audit services, which include our audit opinions on the accuracy and reliability of the financial statements of public sector entities
- provides entities with insights on their financial performance, risk, and internal controls; and on the efficiency, effectiveness, and economy of public service delivery
- produces reports to parliament on the results of our audit work, our insights and advice, and recommendations for improvement
- supports our reports with graphics, tables, and other visualisations, which connect our insights to regions and communities
- conducts investigations into claims of financial waste and mismanagement raised by elected members, state and local government employees, and the public
- shares wider learnings and best practice from our work with state and local government entities, our professional networks, industry, and peers.

We conduct all our audits and reports to parliament under the *Auditor-General Act 2009* (the Act). Our work complies with the *Auditor-General Auditing Standards* and the Australian standards relevant to assurance engagements.

- Financial audit reports summarise the results of our audits of over 400 state and local government entities.
- Performance audit reports cover our evaluation of some, or all, of the entities' efficiency, effectiveness, and economy in providing public services.

Learn more about our publications on our website at www.qao.qld.gov.au/reports-resources/fact-sheets.

The Honourable C Pitt MP
Speaker of the Legislative Assembly
Parliament House
BRISBANE QLD 4000

30 November 2021

This report is prepared under Part 3 Division 3 of the *Auditor-General Act 2009*.



Brendan Worrall
Auditor-General



© The State of Queensland (Queensland Audit Office) 2021.

The Queensland Government supports and encourages the dissemination of its information. The copyright in this publication is licensed under a Creative Commons Attribution-Non-Commercial-No Derivatives (CC BY-NC-ND) 4.0 International licence.



To view this licence visit <https://creativecommons.org/licenses/by-nc-nd/4.0/>

Under this licence you are free, without having to seek permission from QAO, to use this publication in accordance with the licence terms. For permissions beyond the scope of this licence contact copyright@qao.qld.gov.au

Content from this work should be attributed as: The State of Queensland (Queensland Audit Office) Report 6: 2021–22 *Regulating animal welfare services*, available under [CC BY-NC-ND 4.0 International](https://creativecommons.org/licenses/by-nc-nd/4.0/)

Cover image is a stock image purchased by QAO.

ISSN 1834-1128

Contents

Auditor-General's foreword	1
Report on a page	2
1. Summary of audit findings	3
2. Recommendations	6
3. Detailed audit findings	7
4. Improving regulator performance	15
Appendices	22
A. Entity responses	23
B. The engagement framework	29
C. Good regulatory practices	30
D. References used for audit insights	31
E. Areas for animal welfare services	32
F. How we prepared the audit	33

Auditor-General's foreword

All Queenslanders may not generally be aware of the role or occurrence of regulation in their day-to-day lives, however it impacts the standard of services they receive in many, if not all, industries. More often than not, regulators are responsible for ensuring appropriate standards are met to ensure community safety and to protect the environment and the rights of Queenslanders.

Over time, a variety of Queensland Audit Office (QAO) audits have involved examining entities that perform or oversee regulatory functions, ranging from regulating firearms, food safety, pharmacy ownership, and mining and coal seam gas. Despite regulation being a core function of government, we have repeatedly found that good regulatory performance in enforcing minimum prescribed standards is often absent.

On 15 July 2020, the then 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 conduct an audit per the *Auditor-General Act 2009* and the *Auditor-General Auditing Standards*.

This report (and other QAO reports that cover regulatory practices) go beyond the individual organisations involved in the audits. It is not just about their specific challenges or performance—many of the issues we are seeing are systemic across government. Thus, we must focus our attention on the insights and wider learnings we have for all regulators and those entities responsible for overseeing the performance of regulators.

In Chapter 4 of this report, I share a principles-based, good practice model for all entities to self-assess against. Our guidance is drawn from this audit on regulating animal welfare services and our other previous audits that focus on or reference regulation.

Regulation can take different forms and exists for different purposes. Regardless, good regulatory practices that minimise failures and harness opportunities for improvement are fundamental and indispensable to the operations of government. The insights and guidance we provide can assist entities in improving their practices and lead to better outcomes and services for Queenslanders.



Brendan Worrall
Auditor-General



Report on a page

The Department of Agriculture and Fisheries (the department) and RSPCA Queensland deliver animal welfare services under the *Animal Care and Protection Act 2001* (the Act). RSPCA Queensland provides valuable animal welfare services. The Act gives it authority and powers to perform animal welfare investigations on behalf of the state. The department has engaged RSPCA Queensland to provide animal welfare services predominantly in the coastal areas of Queensland from the Gold Coast to Cairns—a map showing these areas of responsibility is in [Appendix E](#).

We assessed the effectiveness of the department's engagement with RSPCA Queensland. We have not audited each party's processes for delivering animal welfare services.

This report also includes insights that all regulators can use to improve their practices. The scope of this report does not include RSPCA Queensland's processes and governance arrangements.

The department's engagement with RSPCA Queensland needs improvement

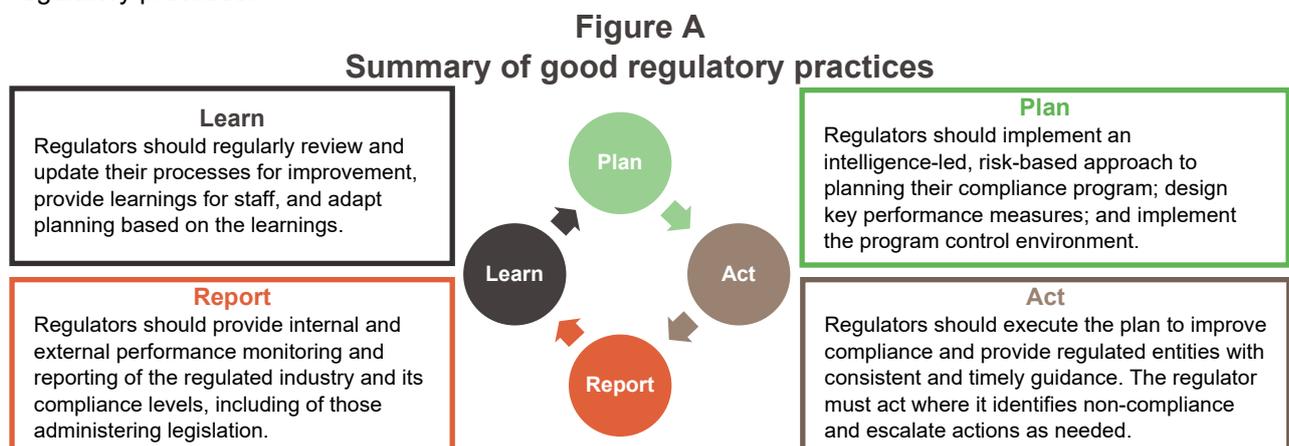
The department has not been proactive and is not as effective as it needs to be in overseeing and supporting RSPCA Queensland in exercising its powers to enforce the Act. These powers include obtaining search warrants and seizing property where there is suspected contravention of the Act.

The department's engagement framework with RSPCA Queensland—which includes the Act, regulations, an agreement, and procedures and guidelines—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. While RSPCA Queensland may have processes and controls in place, the department has no visibility of those processes and therefore cannot assure itself of their suitability or effectiveness.

Since April 2021, the department has commenced addressing findings from this audit. We have made four recommendations for the department to improve its engagement framework and oversight of RSPCA Queensland's inspection and enforcement activities.

Improving regulator performance

Effectively implementing processes for enforcing legislation has been a common failing in most regulatory audits we have undertaken. In Chapter 4, we draw on findings from our audits to provide insights and assist regulators in assessing their regulatory performance. We recommend that all regulators assess their activities and performance against these good practices. Figure A shows a summary of the good regulatory practices.



Source: Queensland Audit Office and various regulatory better practice guides (see Appendix D).

1. Summary of audit findings

The Department of Agriculture and Fisheries (the department) and RSPCA Queensland provide animal welfare services under the *Animal Care and Protection Act 2001* (the Act). The framework through which the department provides animal welfare services includes the Act, regulations, an activity agreement with RSPCA Queensland, and procedures and guidelines. In order to provide a consistent enforcement approach across the state, the framework requires the department and RSPCA Queensland to use the same procedures and guidelines in enforcing the Act.

We assessed the effectiveness of the department's engagement with RSPCA Queensland and whether the department is using the mechanisms it currently has available within the framework to oversee RSPCA Queensland's enforcement of the Act. We did not audit their enforcement activities.

The framework should be strengthened to provide the department with better means for overseeing RSPCA Queensland inspectors and ensure consistency in enforcement approaches across the state. We also found the department has not been using all the means it has under the current framework to oversee, guide, and support RSPCA Queensland in enforcing the Act. The department is currently reviewing the Act, and in April 2021 it commenced actions to address some of these gaps.



Appointing and training inspectors

The Act has provisions for the director-general to appoint RSPCA Queensland employees as inspectors. However, the Act does not explicitly state that RSPCA Queensland inspectors are accountable to the department. As the inspectors are employees of RSPCA Queensland, their accountability is left open to interpretation of their employment contracts and other employment-related legislation.

The department's processes for appointing inspectors do not include confirmation of declaration of any conflicts of interest related to their enforcement activities. These checks are important when appointing individuals with significant law-enforcement powers.

The director-general appoints RSPCA Queensland inspectors without conditions, for an indefinite term. The department does not require RSPCA Queensland to provide regular reports on inspector performance, training and/or independence declarations. This information is necessary to ensure quality, transparency, and performance of inspector functions and to ensure appointed inspectors remain suitable for their role over time. The framework is not clear on the circumstances in which an inspector's appointment may be revoked and the department does not have appropriate processes in place for when an inspector leaves the role.



Investigating and prosecuting

The department has responsibility for overseeing that RSPCA Queensland and its inspectors are exercising their powers lawfully, equitably, and according to the principles of natural justice. It has procedures and guidelines to assess and categorise complaints of non-compliance and take timely and appropriate responses, including conducting investigations and prosecutions. These procedures and guidelines apply to both the department and RSPCA Queensland. However, the department does not have oversight mechanisms to ensure RSPCA Queensland has implemented the procedures and guidelines. It does not monitor that RSPCA Queensland's prioritisation processes for animal welfare complaints align with the procedures and guidelines.

The department has not established compulsory and/or voluntary codes of practice for most of the animal types that RSPCA Queensland regulates—this introduces subjectivity in interpreting compliance requirements. Also, it does not have visibility of checks RSPCA Queensland has in place to balance its investigative powers and demonstrate a fair and just process—including applying for and executing warrants, using body-worn cameras, and seizing personal technology devices.



The department has no involvement in, or oversight of, RSPCA Queensland's decisions to prosecute people for alleged breaches of the Act, or of charge and plea negotiations between the defence and the prosecutor. As the inspectors are appointed by the director-general, these prosecutions are undertaken on behalf of the state. The department therefore has a role in ensuring all prosecutions adhere to the model litigant principles and are in the public interest. The legislation does not include provisions for the department to receive information that inspectors collect and present for prosecution.



Managing complaints about inspectors

Information on complaints is important as it can indicate whether isolated or systemic issues may be occurring that may require the department and RSPCA Queensland to act.

The department's activity agreement states that RSPCA Queensland will manage complaints about its inspectors. The department does not have a structured process to regularly share information on complaints about RSPCA Queensland inspectors, including outcomes of these complaints. As a result, the department does not have a holistic view of complaints about inspectors. This limits the department's ability to increase confidence in the system, consider areas for learning and development, and assess whether inspectors continue to be suitable for their role.



Managing conflicts of interest

The Act provides significant enforcement powers to RSPCA Queensland inspectors. However, it does not include provisions for RSPCA Queensland to implement controls to manage conflicts of interest and align with the government's good practice guides for regulators. This may give rise to potential and perceived conflicts of interest in the enforcement activities of RSPCA Queensland. While RSPCA Queensland may have controls and processes for managing conflicts of interest and aligning with regulatory good practice, the department has no visibility of them and therefore cannot provide independent assurance of their suitability or effectiveness.

RSPCA Queensland relies on donations and sponsors to fund most of its investigation and prosecution activities. Its reported inspectorate expense for the year ending 30 June 2020 was approximately \$4.6 million, of which the department contributed \$500,000. The department has not required RSPCA Queensland to report on how it is managing its conflicts of interest in light of its reliance on funding sources outside of the department's contribution. As stated previously in this report, we have not audited the conflict management systems at RSPCA Queensland.



Setting a fee schedule of reasonable costs

It is not our role nor intent to examine or comment on judicial decisions and we did not assess or consider court decisions as part of this audit. Our assessment and comments in this report regarding recovery of costs relates only to the department's role in overseeing the setting and calculation of reasonable and necessary costs related to the seizure, compliance, and destruction of animals.

The legislation allows for, but does not define, necessary and reasonable recovery costs. While costs for caring for animals are not payable until the courts award them to be paid, escalating costs is a factor for defendants to consider when negotiating outcomes with the prosecutor. There is no requirement in the regulations for the department to approve a schedule of reasonable fees or to make these publicly available. The department has not ensured a transparent process is in place for approving a schedule of recovery costs, their escalation rates, or oversee their use as part of negotiated outcomes.



Monitoring and managing performance

The department publishes reports on performance of its own activities relating to animal welfare in its annual reports, service delivery statements, and regulator performance framework self-assessment reports (the performance framework reports). Only the performance framework reports mention RSPCA Queensland's activities, but this is minimal, high-level information.

There was a lack of transparency and accountability within the department for overseeing, supporting, and managing the performance of RSPCA Queensland in exercising its powers under the Act. The department is not obtaining assurance that RSPCA Queensland is applying the procedures and guidelines to ensure a consistent regulatory approach to animal welfare across the state. Recently, the department has appointed a manager and a director to oversee the engagement with RSPCA Queensland.

To effectively administer the Act, the department needs to ensure it has regular performance reporting from RSPCA Queensland and processes for evaluating RSPCA Queensland's performance. The department has not developed a financial model to determine the amount of funding needed for the services it requires RSPCA Queensland to provide.



2. Recommendations

Strengthening the legislative framework

1. In reviewing the *Animal Care and Protection Act 2001* (the Act) and associated regulations, we recommend the Department of Agriculture and Fisheries (the department) amends the legislation to:
 - clarify the accountabilities and accreditation of inspectors
 - have oversight of recommendations from inspectors for prosecutions and any related proposals for charge and plea negotiations between the defendants and prosecutors before presenting the case in the court
 - provide it with access to all information that inspectors collect as part of their investigations and prosecutions
 - include requirements for managing conflicts of interest
 - require it to approve a fee schedule of reasonable cost recovery and make it publicly available.

Clarifying and strengthening the department's role

2. We recommend the department:
 - establishes minimum performance and re-accreditation requirements for inspectors, and oversees inspectors' performance against the requirements
 - maintains a register of current inspectors and implements controls over identity cards
 - establishes minimum standards for the welfare of the majority of animal types RSPCA Queensland regulates
 - increases its oversight and support of RSPCA Queensland investigations by regularly reviewing the investigations and providing feedback for improvement
 - increases its oversight, and participates with RSPCA Queensland in decisions to prosecute
 - actively monitors the outcomes of complaints about RSPCA Queensland investigations and inspectors
 - oversees how RSPCA Queensland is managing conflicts of interest relating to its enforcement function.

Managing performance

3. We recommend the department assigns responsibility and accountability for overseeing the engagement with RSPCA Queensland to a person with appropriate authority.
4. We recommend the department partners with RSPCA Queensland to:
 - develop effectiveness measures and use them to assess the enforcement activities against intended outcomes
 - develop and use financial reports to ensure accountability for funds the department provides.

Good practices for all regulators

5. We recommend that all public sector regulators and oversight bodies self-assess against better practices in Appendix C and, where necessary, implement changes to enhance their regulatory performance.

Reference to comments

In accordance with s. 64 of the *Auditor-General Act 2009*, we provided a copy of this report to the department. We provided a copy of this report to RSPCA Queensland as a party with a special interest under s. 54 (4)(b) of the *Auditor-General Act 2009*. We considered their views and represented them to the extent we deemed relevant and warranted. Any formal responses from the entities are at [Appendix A](#).

3. Detailed audit findings

The Department of Agriculture and Fisheries' (the department) engagement framework (the framework) is made up of four key enablers: the *Animal Care and Protection Act 2001* (the Act), the Animal Care and Protection Regulation 2012, the department's activity agreement with RSPCA Queensland, and procedures and guidelines (as shown in Figure 3A). Details about each enabler is in [Appendix B](#).

We found the framework does not have sufficient mechanisms for the department to provide effective oversight of RSPCA Queensland's enforcement activities.

The department has started addressing some of these limitations since April 2021. It has advised that it will partner with RSPCA Queensland to improve transparency and accountability.

Figure 3A
Key enablers of the engagement framework



Source: Queensland Audit Office.

Key aspects of the engagement that need strengthening include:

- appointing and training inspectors
- investigating and prosecuting
- managing complaints about inspectors
- managing conflicts of interest
- setting a fee schedule of reasonable costs
- monitoring and managing performance.



Appointing and training inspectors

The Act gives the department powers to appoint inspectors and, as necessary, limit their powers. We found that the department needs to improve the requirements and processes for appointing inspectors, setting conditions of appointment, and keeping records of current appointments.



Who can be appointed?

The Act provides for the department to appoint a person as an inspector if the person has the necessary experience or expertise and has satisfactorily completed the approved training. The Act also includes a general provision that the department can consider any other factors in appointing an inspector.

However, the department does not have processes in place to use the general provision and has not updated any of the documents within the framework to include mandatory independence assessments, such as declaring conflicts of interest, prior to being appointed. These considerations are particularly relevant as the Act provides inspectors with the ability to exercise significant authority.

Conditions of appointment for inspectors

The department appoints RSPCA Queensland inspectors without conditions, for an indefinite term. The Act details conditions under which inspectors cease to hold office. These include:

- expiry term as a condition of appointment
- resignation
- any other conditions.

The Act does not explicitly state that inspectors are accountable to the department and the appointments do not include requirements to assess continued suitability.

Accountability

The accountability of RSPCA Queensland inspectors to the department is left open to interpretation of their employment conditions and various laws and regulations.

This situation casts doubt about the extent of the department's authority to oversee and act to hold the inspectors accountable for their actions.

Ongoing suitability

The department does not oversee whether RSPCA Queensland inspectors remain suitable for the period of their appointment. It does not receive and review their performance reports. It is not always informed about and does not monitor complaints about the behaviour or conduct of inspectors, individually or collectively.

There is no departmental requirement for inspectors to provide annual declarations about their independence. Such requirements are not uncommon in industries where people exert considerable authority over others.

The activity agreement states that inspectors can hold an instrument of appointment until it is revoked by the department or surrendered. However, there is no information about circumstances in which an inspector's appointment may be revoked. The department has not established clear processes for revoking an inspector's appointment.

The department does not have ongoing training requirements for inspectors. The department advised us that it would implement an annual re-accreditation process for inspectors.

The department is enhancing its learning and development program and intends to provide inspectors with ongoing training.

However, annual re-accreditation is not stated in the Act as a condition of appointment. Neither is it stated in the Act that appointments will be revoked if inspectors are not re-accredited. This increases the risk that the department may not be able to enforce this requirement based on legislative interpretations.

The department's annual re-accreditation process could include:

- re-assessing character and criminal history for changes since appointment
- assessing performance of the inspector for suitability to continue in the role
- determining independence/conflicts of interest
- assessing any other factors that may be relevant to the person's suitability.

Recommendations

In reviewing the *Animal Care and Protection Act 2001* (the Act) and associated regulations, we recommend the department amends the legislation to clarify the accountabilities and accreditation of inspectors.

We recommend the department establishes minimum performance and re-accreditation requirements for inspectors and oversees inspectors' performance against the requirements.

Records of appointment

The department does not have accurate information on current inspector appointments. The list of inspectors the department provided to us was not up to date and included people who were no longer employed by RSPCA Queensland.

The department does not have controls to ensure identity cards are returned and appropriately stored in its record management system when an RSPCA Queensland inspector no longer performs the role.

Recommendation

We recommend the department maintains a register of current inspectors and implements controls over identity cards.



Investigating and prosecuting

The department has developed procedures and guidelines for inspectors to follow when responding to and investigating complaints, and when preparing a brief to submit for prosecution. The activity agreement requires RSPCA Queensland's prosecution procedures to align with the department's prosecution policy and model litigant principles.

DEFINITION

Queensland's **model litigant principles** were issued at the direction of Cabinet. According to these principles, 'the power of the State is to be used for the public good and in the public interest, and not as a means of oppression, even in litigation'. The principles recognise that 'the community also expects the State to properly use taxpayers' money and, in particular, not to spend it without due cause and due process'.

All agencies are required to conduct themselves as model litigants by adhering to the principles of fairness, firmness, and consideration of alternative options.

Source: Queensland Government Model Litigant Principles (4 October 2010), Department of Justice and Attorney-General.

The department is responsible for overseeing that RSPCA Queensland and appointed inspectors exercise their authority and responsibilities in accordance with the Act and the model litigant principles. This includes ensuring RSPCA Queensland inspectors interpret and apply their legislative authority lawfully, equitably, and according to the principles of natural justice.

However, the department does not partner with RSPCA Queensland to provide the oversight that is needed to assure itself that RSPCA Queensland undertakes its investigations and prosecutions objectively and consistently.

Overseeing investigations

RSPCA Queensland, through its inspectors, has considerable autonomy and authority to conduct animal welfare investigations.

The department has not established minimum acceptable standards for the animal types that RSPCA Queensland investigates. It does not have mechanisms to ensure RSPCA Queensland is using the procedures and guidelines to determine what to investigate and does not have processes for overseeing how RSPCA Queensland conducts its investigations.

Minimum acceptable standards

The department has not established compulsory and/or voluntary codes of practice for most of the animal types that RSPCA Queensland regulates. The lack of established codes of practice creates uncertainty and increases the level of subjectivity. Establishing codes of practice would enable the department and RSPCA Queensland to develop a shared understanding with regulated entities about what is required to achieve legislative outcomes. It would help regulated entities understand and comply with the animal welfare directions they receive from regulators.

DEFINITION

For the purposes of this report, **regulated entities** are individuals or organisations that are subject to the behavioural expectations, obligations, and/or requirements of the *Animal Care and Protection Act (2001)*.

Recommendation

We recommend the department establishes minimum standards for the welfare of the majority of animal types RSPCA Queensland regulates.

Determining what to investigate

Determining when to (and when not to) investigate is important for regulators. Establishing effective decision-making processes to screen and assess incoming complaints helps to ensure the best use of limited resources and determine if an investigation is in the public interest.

The department and RSPCA Queensland have detailed procedures and guidelines for assessing a complaint or information about an animal welfare incident. They outline processes to categorise it and set priorities that enable a timely and appropriate response. However, the department has not established mechanisms for ensuring RSPCA Queensland follows these procedures and guidelines.

Conducting investigations

The department's procedures and guidelines describe the course of action to take depending on the category of the incident. The aim is to achieve the most appropriate outcome for all parties and for the welfare of the animals.

Procedures and guidelines describe all elements of the investigation process, including receiving and recording information about animal welfare incidents, preparing an appropriate response, collecting evidence, and preparing and submitting case materials.

Procedures and guidelines require inspectors to maintain the highest professional standards and comply with the department's framework for making regulatory decisions.

However, they do not include the:

- use of a body-worn camera, which has the potential to provide real-time information about an investigation, improve transparency and accountability, and provide better documentation to support accounts of interactions
- seizure of personal technology devices (for example, mobile phones and computers) and obtainment of passwords to access devices with consent or under a warrant. These are intrusive activities, and the legality, limitations and reasonableness of their use needs to be clearly defined and inspectors trained accordingly.

In addition, the department has not conducted reviews to gain assurance that RSPCA Queensland has appropriate controls in place to apply the procedures and guidelines.

The Act provides for regulated entities to apply to the department for internal reviews of investigation decisions. The department reviews the decisions and either upholds the RSPCA Queensland decision or overturns it. Where it overturns an RSPCA Queensland decision, the department notifies RSPCA Queensland, but it does not have processes in place to ensure the cause has been adequately addressed to avoid reoccurrence.

Recommendation

We recommend the department increases its oversight and support of RSPCA Queensland investigations by regularly reviewing the investigations and providing feedback for improvement.

Overseeing prosecutions

The department has no input into, involvement in, or oversight of RSPCA Queensland's decisions to prosecute people for alleged breaches of the Act. RSPCA Queensland's prosecutions are determined by a prosecutions committee made up of RSPCA Queensland staff, including inspectors and prosecution officers. The committee does not include departmental representation.

The activity agreement states that procedures for prosecution should align with the department's most current prosecution policy (November 2018) and model litigant principles. The department's policy includes details on processes for evaluating evidence and key considerations in deciding whether the investigation should progress to prosecution.

The policy states that public interest is key in deciding whether prosecutions are initiated and that public funds should not be wasted on inappropriate matters at the expense of matters that require vigorous prosecution. It lists 20 factors to consider when deciding if a prosecution will be in the public interest. The policy also covers negotiations between the defence and the prosecutor.

While the department has developed this policy, and RSPCA Queensland has committed to it and the model litigant principles, the department has not obtained assurance that RSPCA Queensland has implemented it. The department does not require RSPCA Queensland to report against compliance with policies and procedures and does not have visibility of RSPCA Queensland's processes for prosecutions.

The legislation does not provide for the department to have access to the information inspectors collect and present for prosecution. RSPCA Queensland provides information, on request, at its own discretion.

Recommendations

In reviewing the *Animal Care and Protection Act 2001* (the Act) and associated regulations, we recommend the department amends the legislation to:

- have oversight of recommendations from inspectors for prosecutions and any related proposals for charge and plea negotiations between the defendants and prosecutors before presenting the case in the court
- provide it with access to all information that inspectors collect as part of their investigations and prosecutions.

We recommend the department increases its oversight and participates with RSPCA Queensland in decisions to prosecute.



Managing complaints about inspectors

Information on complaints may identify opportunities to improve processes, guidance, procedures, or training. In some cases, it may identify issues that require disciplinary action or assessment by the department of a person's suitability to continue performing the inspector role.

Analysing information on complaints can indicate whether isolated or systemic issues are occurring.

The activity agreement and guidelines state RSPCA Queensland will manage complaints about inspectors. The guidelines require RSPCA Queensland to notify the department of serious complaints it receives about its inspectors. It does not indicate what constitutes a 'serious complaint' and does not require RSPCA Queensland to detail how it will respond to the complaint or report on its outcome.

Where the department receives a complaint about an RSPCA Queensland investigation or inspector directly from a member of the public, it refers the complaint to RSPCA Queensland, unless the complainant requests otherwise.

The activity agreement does not require RSPCA Queensland to provide annual reports to the department about complaints or serious complaints about investigations or inspectors, the actions it has taken, or the actions' outcomes.

As a result, the department does not have a holistic view of complaints about all investigations or about inspectors. This limits the department's ability to identify systemic issues, consider areas for learning and development, and assess whether inspectors continue to be suitable for their role.

Recommendation

We recommend the department actively monitors the outcomes of complaints about RSPCA Queensland investigations and inspectors.



Managing conflicts of interest

While RSPCA Queensland may have controls and processes for managing conflicts of interest and aligning with regulatory good practice, the department has no visibility of them and therefore cannot assure itself of their suitability or effectiveness.

The department provides RSPCA Queensland with \$500,000 annually under the activity agreement to contribute to inspector salaries and vehicle costs. However, RSPCA Queensland relies on other funding—donations, sponsorships, and fundraising—for much of its investigation and prosecution activities. Its reported inspectorate expense for the year ending 30 June 2020 was approximately \$4.6 million.

The activity agreement requires RSPCA Queensland to keep its enforcement functions separate from its other business and advocacy activities. Some of RSPCA Queensland's other activities that conflict with enforcement activities are:

- advocating for the welfare of animals
- owning pet shops, which it is expected to regulate
- receiving donations from pet shop owners it regulates and from other major national and corporate partners/sponsors, including media outlets.

Neither the legislation nor the agreement has provisions requiring:

- RSPCA Queensland to declare to the department any real or perceived conflicts of interest and report on how it is managing them
- the department to oversee RSPCA Queensland's management of conflicts of interest to ensure it is performing enforcement roles fairly, without the influence of its animal welfare advocacy function or its major national, corporate, and supporting partners.

Recommendations

In reviewing the *Animal Care and Protection Act 2001* (the Act) and associated regulations, we recommend the department amends the legislation to include requirements for managing conflicts of interest.

We recommend the department oversees how RSPCA Queensland is managing conflicts of interest relating to its enforcement function.



Setting a fee schedule of reasonable costs

Upon application, the courts can, and at times do, award the department or RSPCA Queensland the costs of seizure, compliance, and destruction of animals. These are decisions of the courts. It is not our role nor intent to examine or comment on judicial decisions and we did not assess or consider court decisions as part of this audit.

Our assessment and comment in this report regarding recovery of costs relates only to the department's role in overseeing the setting and calculation of reasonable and necessary costs related to the seizure, compliance, and destruction of animals.

The Act states that entities can recover reasonable and necessary costs incurred in enforcing the Act. Neither the Act nor the regulation defines what are 'necessary and reasonable' costs and how they are to be calculated or determined. These costs can escalate to considerable sums, in some cases up to tens of thousands of dollars.

The department has not ensured a transparent process is in place for approving a schedule of recovery costs and their escalation rates or overseeing their use as part of negotiated outcomes. The department does not monitor how RSPCA Queensland is charging and using recovery costs during investigation and prosecution processes.

This means the department does not know what costs RSPCA Queensland is recovering and whether they are reasonable, necessary, and were actually incurred.

Recommendation

In reviewing the *Animal Care and Protection Act 2001* (the Act) and associated regulations, we recommend the department amends the legislation to require it to approve a fee schedule of reasonable cost recovery and make it publicly available.



Monitoring and managing performance

The department publishes reports on the performance of its own activities relating to animal welfare in its annual reports, service delivery statements, and regulator performance framework self-assessment reports (the performance framework reports). The first two of these reports do not include information on RSPCA Queensland's inspectorate activity performance.

In the performance framework reports, the department does include minimal information about some aspects of RSPCA Queensland's performance. The information it provides, however, is insufficient to provide a reasonable indication of how well RSPCA Queensland performs against the regulator performance framework.



There is a lack of accountability within the department for overseeing, supporting, and managing the performance of RSPCA Queensland in exercising its powers under the Act. While the agreement has a nominated contact officer, no one in the department has been responsible for overseeing the day-to-day operations of the engagement. Recently, the department appointed a manager and a director, whose roles include overseeing the activity agreement.

Recommendation

We recommend the department assigns responsibility and accountability for overseeing the engagement with RSPCA Queensland to a person with appropriate authority.

To effectively administer the Act, the department needs to ensure it has regular operational and financial performance reporting from RSPCA Queensland and processes for evaluating RSPCA Queensland's performance.

Operational reports

The activity agreement provides for RSPCA Queensland to submit operational reports within specified time frames and to the satisfaction of the department. These are key reports for the department to evaluate RSPCA Queensland's operational performance.

Some of these reports are to be provided annually and some can be provided at the department's request. These reports are to include information about RSPCA Queensland's operational performance, such as:

- complaints against inspectors, performance of an inspector, or concerns about the exercise of an inspector's powers
- numbers of seizures, welfare directions and forfeitures; numbers and details of prosecution outcomes; and areas of non-compliance with the Act.

Apart from information necessary for the department to make decisions on forfeitures and internal reviews, the department did not request any of the reports outlined in the activity agreement. The department has not designed and implemented performance measures and reporting.

Recommendation

We recommend the department partners with RSPCA Queensland to develop effectiveness measures and use them to assess the enforcement activities against intended outcomes.

Financial reports

The department provides \$500,000 of funding annually to RSPCA Queensland. The funding is a financial contribution to RSPCA Queensland's inspector salaries and vehicle expenses. However, the department has not partnered with RSPCA Queensland to develop a compliance program for achieving regulatory outcomes and compliance. It does not have documentation on how it arrived at the annual funding amount and what level of compliance it expects RSPCA Queensland to achieve for the funding.

The department has not developed and implemented key performance indicators for operational financial reporting. It does not have mechanisms to provide oversight of:

- whether the funds it provides are sufficient for the enforcement activities it requires RSPCA Queensland to undertake
- how RSPCA Queensland currently funds its enforcement activities and, if funded through donations, whether the enforcement is free from the influence of donors.

Recommendation

We recommend the department partners with RSPCA Queensland to develop and use financial reports to ensure accountability for funds the department provides.

4. Improving regulator performance

We have previously audited public sector entities that perform or oversee regulatory functions, resulting in numerous recommendations to improve their effectiveness.

In this chapter, we draw on the findings of this audit, our previous audits, and better practice guides to provide relevant insights. We present these insights under four themes: plan, act, report, and learn.

In [Appendix C](#), we list a summary of key messages from this chapter as good regulatory practices. These practices align with and are complementary to the Queensland Government’s regulator performance framework in chapter 5 of the *Queensland Government Guide to Better Regulation*.

In [Appendix D](#), we provide references to a selection of our reports and other material that regulators and oversight bodies may find useful.

Recommendation

We recommend that all public sector regulators and oversight bodies self-assess against better practices in Appendix C and, where necessary, implement changes to enhance their regulatory performance.



Plan to be intelligence-led

Many Australian and state government regulators are turning to data, information, and operational intelligence as a central element of their regulatory approach. This is often referred to as an intelligence-led regulatory approach.

DEFINITION

Intelligence-led regulation refers to the effective use of data and information to inform decision-making for effective, efficient, and economical regulatory outcomes and compliance.

An intelligence-led regulatory approach enhances planning and enables entities to make the best use of their resources to target the behaviours and conduct that pose the highest risk. This approach needs to be underpinned by:

- a clear understanding of the entity’s regulatory role, functions, and objectives
- fit-for-purpose systems and plans that support effective data collection and use, and enable a good understanding of the regulated population and industry
- a risk framework and compliance prioritisation framework or model.

These underpinnings are applicable to regulators and entities responsible for overseeing the performance of regulators, such as the Department of Agriculture and Fisheries’ oversight of animal welfare services.

Through our previous audits of Queensland Government regulators, we have found that regulators and entities responsible for overseeing the performance of regulators lack some of these key elements or do not do them well.

Understand the regulator’s role, functions, and objectives

We have found that regulators and oversight bodies at times fail to clearly document how their operations align with their regulatory roles, functions, and objectives. These are important steps for regulators and oversight bodies in ensuring the objectives and intended outcomes of legislation are achieved. If not done, it can lead to them failing to fulfil some of their legislated functions.



In one of our previous audits, we found that the entity responsible for overseeing a regulatory function had not reviewed its strategic plan, operational plan, structure, resources, systems, and processes to ensure it delivered on its organisational purpose and functions. In many ways, this finding was similar to our finding in this report that the Department of Agriculture and Fisheries is not fulfilling its function of overseeing the performance of RSPCA Queensland and its inspectors.



Insight

Check that what is being done aligns with what should be done.

Periodically, regulators need to map and check strategies, operations, activities, processes, and systems to ensure they align and contribute to achieving the legislated and organisational purposes and objectives.

Implement systems and plans that support effective data collection and use

Complete, accurate, reliable, relevant, and timely access to information is fundamental to regulatory effectiveness. It enables an understanding of the size and nature of the population and industry being regulated. Entities can obtain this information and understanding through engaging with the regulated entities and other regulators. Well-coordinated stakeholder input has the potential to contribute to learning and improving effectiveness of the regulatory framework.

Having fully understood their role, functions, objectives, and regulated population, regulators and oversight bodies can only then determine what data and information they may need to deliver their services. Developing a data collection and use plan can enable the regulator to clearly articulate how data can support its planning and decision-making. Key factors for regulators to consider include:

- the questions the regulator needs to answer
- what data and information the regulator needs to answer those questions
- what data is available (and its quality and reliability) and how the regulator can access it
- how the regulator will use the data, including benefits for regulated entities
- data security, confidentiality, and privacy requirements
- what systems the regulator needs to obtain, store, and analyse the data.

In many cases, regulators fail to integrate data-driven thinking into their planning, thereby unnecessarily limiting the usefulness of the data. In our previous audits, we found that work units within and across regulators used different systems and inconsistent data. This inhibited the production and sharing of intelligence. We made recommendations to the regulators aimed at better coordinating their planning, systems, information, and data sharing to enhance their regulatory planning and practices.

Systems and tools should allow for effective and efficient collection, collation, and use of data to provide regulators with timely, accurate, and usable analysis. This should promote sound and timely decision-making and support organisational reporting.

In one of our previous audits, we found that key information about the regulated items was not accurate or up to date and was no longer fit for purpose. The entity relied on inefficient manual data entry and could not provide the real-time information necessary to support a modern risk and intelligence-based regulatory function.

Risks need to be managed

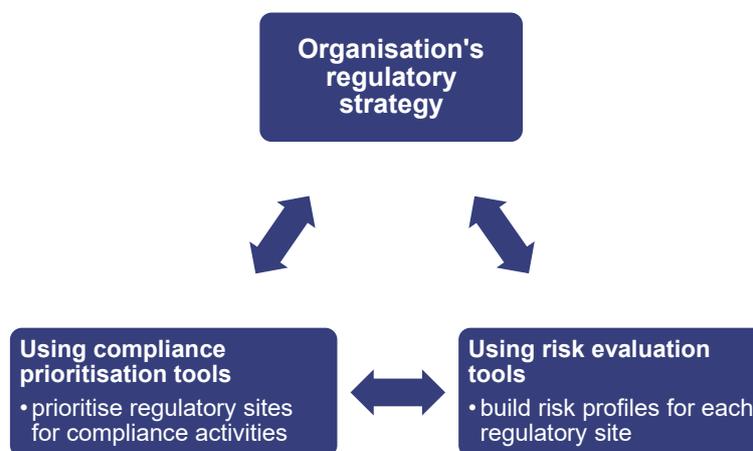
Increasingly, regulators are expected to deliver better outcomes and minimise any unnecessary burden of compliance. Developing a risk framework and a compliance prioritisation framework or model can support regulators to prioritise, focus, and deploy their resources in proportion to the risk of the regulatory outcomes being achieved.

Identifying risk is a necessary variable for regulators and oversight entities to determine their proactive inspection and enforcement priorities.

Risks can be considered in terms of the compliance and safety risks present and emerging within the regulated population and industry. It is also important for the regulator to consider its own organisational (regulator) risk, how these two risk profiles overlap, and the regulator's risk appetite/threshold. The overlap is where a regulator may consider prioritising its efforts and resources.

This does not suggest that other risks should be ignored. Figure 4A shows an example of how one of the regulators responded to findings in our audit to enhance its risk framework. It developed a risk evaluation tool that enabled it to build risk profiles for each regulated site. It also developed a compliance prioritisation model, based on a range of variables including environmental and location factors and compliance history to prioritise sites for compliance activities.

Figure 4A
Example of prioritising regulated sites for compliance



Source: Queensland Audit Office.

Tools such as those in Figure 4A can assist compliance officers in proactively addressing priority compliance issues, including high-risk activities and poor performers. Regulators can also use these types of tools where they are unable to inspect all high-risk sites and need to further prioritise them based on other factors, such as compliance history, available resources, and seasonal conditions.

Establishing a consistent risk framework is also important where many public sector entities contribute to enforcing the regulatory environment. We have recommended in our previous reports that entities responsible for overseeing regulators should establish a consistent risk-based framework across the regulated environment. Those responsible for overseeing regulators should have mechanisms in place to ensure regulators have implemented the risk-based framework consistently across the regulated environment.



Insight

Regulators should establish risk and compliance prioritisation frameworks to enable them to focus and deploy resources proportionate to the risk to the regulatory outcomes being sought. Where more than one public sector entity contributes to enforcing the regulatory environment, regulators should develop and implement consistent and complementary risk management frameworks across the regulated environment.



Develop a compliance monitoring and enforcement plan

The planning described in this section should culminate in the regulator (including entities providing regulatory functions on behalf of the government) developing a sound and defensible compliance monitoring and enforcement plan to inform its ongoing and forward activities. The plan should enable flexibility for the regulator to respond to complaints about the regulated industry or individual regulated entities.

One regulator has published on its website that it is moving away from annual compliance planning and reporting, towards a dynamic framework. This approach, if the regulator implements it, will enable a rapid and timely response to emerging trends or changes in risk and greater flexibility for response.

This approach does require a higher commitment to real-time, accurate, and reliable access to information and data, and the ability to quickly process and analyse it. The principles of accountability and transparency still need to be applied.



Insight

Regulators' risk and prioritisation frameworks should inform the development of a sound and defensible compliance monitoring and enforcement plan (regardless of whether it is an annual plan or a dynamic plan).

This plan will inform proactive monitoring and enforcement activities and provide a basis for assessing performance.

Communicating compliance monitoring and enforcement plans to the regulated population/industry and to the public helps the regulator promote:

- public trust and confidence in the regulator
- goodwill with those being regulated (a no-surprises approach)
- self-regulation and compliance assurance among those being regulated
- deterrence of non-compliance.



Act to ensure compliance

Regardless of how well regulators conduct their compliance monitoring and planning, this will provide little value if the regulators do not implement the plans.

To be effective, regulators need to ensure they act to implement their compliance monitoring and enforcement plans (proactive) and act on complaints (reactive).

In addition, regulators need to provide timely decisions, clearly articulate expectations, and explain the underlying reasons for decisions. This will help regulated entities to understand what is expected of them and how to achieve the compliance outcomes.



Insight

Establishing and communicating a clear enforcement framework can assist regulators and guide staff in how to act on identified non-compliance appropriately and proportionately. It provides regulated entities with an understanding of how their regulator will address non-compliance.

Figure 4B provides an example of an enforcement continuum approach. Depending on the type and nature of non-compliance identified, the regulator may act by trying to educate or warn the non-compliant client and progress to higher levels of enforcement if the non-compliance is not addressed. In other situations, the circumstances or nature may warrant the regulator moving directly to enforcement orders or prosecutions.

Figure 4B
An enforcement continuum approach



Source: Queensland Audit Office from *Managing coal seam gas activities (Report 12: 2019–20)*.

After taking action to address non-compliance, it is important for the regulator to follow through and make sure the regulated person or organisation has become compliant. This does not always occur.

In one of our previous audits, we found the regulator often failed to perform the necessary follow-up to ensure regulated entities rectified the non-compliance.



Insight

Regulators should establish processes to ensure staff not only act when they identify non-compliance but follow through to ensure the non-compliance issue is subsequently rectified.

The regulator’s primary outcome being sought should be to bring the regulated entity to compliance.

Some industries are subject to multiple regulatory frameworks, often enforced by more than one regulator. All too often where this occurs, we find that individual regulatory bodies plan and conduct their activities in isolation, resulting in limited information sharing, duplication, inefficiency, and client frustration. To ensure equitable services, regulators need to be consistent in their interpretations and application of the legislation.

In previous reports we have recommended regulators implement consistent processes, clear communication, and collaboration when more than one entity delivers a regulatory service. To address these recommendations, one of the regulators established a dedicated office to provide oversight and coordination across multiple regulators. This led to consistent and documented processes for compiling and sharing information, making decisions, and managing the compliance program.





Insight

Where more than one public sector entity contributes to enforcing the regulatory environment, regulators should collectively work towards developing consistent and complementary approaches to legislative compliance and enforcement.



Report transparently for accountability

Having implemented the risk-based plans to achieve legislative outcomes, regulators need to report against the achievement of those plans and evaluate their efficacy and efficiency.

In our regulatory audit reports, we have recommended that regulators regularly report against key performance measures with a focus on outcomes to increase transparency and accountability of their activities. All too often we see regulators reporting on their activities and failing to assess and report the outcomes of their activities. Our recommendations on performance measures for regulators include:

- a cost allocation framework that is cost-effective and defensible
- clear service outcomes and measures to track the status and effectiveness of those goals, and management-level efficiency indicators to monitor and report on their operations and services
- accuracy of evidence gathered for escalating non-compliance cases, efficiency of the regulator and timeliness of decision-making
- trends in compliance or reduction in non-compliance.

When regulators develop performance reporting, they should incorporate the measures into their existing monitoring and reporting frameworks and ensure they have evidence to support the performance reports.



Insight

Regulators need to publicly report on indicators of their performance in meeting regulatory objectives. The performance reporting should include efficiency, economic, and quality measures against expectations, and the impact (or outcomes) of regulatory activities (for example, compliance trends).



Learn through continuous improvement

It is important for regulators to identify where their regulatory activities are working and what needs to be improved. By analysing and reviewing their activities, regulators can identify issues, gaps, and where they need better education and resourcing. Regulators can plan future activities and continuously improve approaches to ensure they remain consistent with legislation and community expectations.

We have made recommendations in our audit reports about regulators reviewing the relevance, appropriateness, effectiveness, and efficiency of their processes and programs. Regular review, learning, and improving processes can help regulators to proactively identify improvement opportunities.

Through regular review, regulators can ensure legislation remains relevant over time. Continuous improvement processes aim to ensure regulatory activities:

- are prioritised with reference to impact on stakeholders and the community
- are risk-based
- leverage technological innovation.

In many of our audits, we have recommended regulators implement fit-for-purpose systems to collect and analyse data for insights on improving their planning, conduct, and monitoring functions. These systems should enable analysis of compliance trends and intelligence from stakeholders' input. An analysis of complaints can highlight areas that work well and any systemic issues the regulator needs to address.

Through continuous improvement, regulators can work towards ensuring they have the best approach to achieve regulatory outcomes effectively and efficiently. An integral part of continuous improvement is to ensure that staff have the necessary training and support to perform their duties effectively, efficiently, and consistently.



Insight

Regulators need to implement processes for reviewing and continually improving the efficiency, effectiveness, and quality of their services. Their review can include input from internal and external stakeholders and from analysis of their complaints management systems. The review also needs to assess whether staff have necessary training and support to perform their role effectively and consistently.



Appendices

A. Entity responses	23
Comments received from Director-General, Department of Agriculture and Fisheries	24
Comments received from Chief Executive Officer, RSPCA Queensland	28
B. The engagement framework	29
Legislation	29
Activity agreement	29
Operational procedures and guidelines	29
C. Good regulatory practices	30
D. References used for audit insights	31
Queensland Audit Office reports	31
E. Areas for animal welfare services	32
F. How we prepared the audit	33
Objective and scope	33
Entities subject to this audit	33
Audit scope and methods	33



A. Entity responses

We gave a copy of this report with a request for comments to the Department of Agriculture and Fisheries and the Minister for Agricultural Industry Development and Fisheries and Minister for Rural Communities.

We also provided a copy of this report with an invitation to respond to the:

- Premier and Minister for the Olympics
- Director-General, Department of the Premier and Cabinet
- Chief Executive Officer, RSPCA Queensland.

This appendix contains the detailed responses we received.

The heads of these entities are responsible for the accuracy, fairness, and balance of their comments.



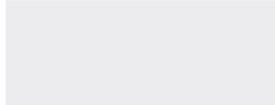
Comments received from Director-General, Department of Agriculture and Fisheries



Department of
Agriculture and Fisheries

Our ref: CTS 22852/21

16 NOV 2021



Dear Mr Brown *Darren*

Thank you for your email of 28 October 2021 containing the Queensland Audit Office (QAO) Report to Parliament – Regulating Animal Welfare Services (the Report) and the opportunity for the Department of Agriculture and Fisheries to respond to the recommendations contained in the Report.

The department's response to the recommendations made by the QAO in the Report are contained in the attached QAO template response.

If you require any further information, please contact 

Yours sincerely


Robert Gee
Director-General
Department of Agriculture and Fisheries

Attachment 1 – Department of Agriculture and Fisheries response to QAO Report to Parliament – Regulating Animal Welfare Services recommendations

1 William Street Brisbane
GPO Box 46 Brisbane
Queensland 4001 Australia
Business Centre 13 25 23
Website www.daf.qld.gov.au
ABN 66 934 348 189

Responses to recommendations



Department of Agriculture and Fisheries

Regulating animal welfare services

Response to recommendations provided by Mr Robert Gee, Director-General, Department of Agriculture and Fisheries

Recommendation	Agree/ Disagree	Timeframe for implementation (Quarter and financial year)	Additional comments
1. In reviewing the <i>Animal Care and Protection Act 2001</i> (the Act) and associated regulations, we recommend the department amends the legislation to: <ul style="list-style-type: none"> clarify the accountabilities and accreditation of inspectors have oversight of recommendations from inspectors for prosecutions and any related proposals for charge and plea negotiations between the defendants and prosecutors before presenting the case in the court provide it with access to all information that inspectors collect as part of their investigations and prosecutions include requirements for managing conflicts of interest require it to approve a fee schedule of reasonable cost recovery and make it publicly available 	Agree	Q4 2022	The department has taken steps to progress possible amendments to the Act for consideration by Government in relation to appointment of inspectors, oversight of prosecutions, access to information held by the RSPCA and managing conflicts of interest as part of the review of the Act. A schedule of fees will be developed in consultation with the RSPCA.



Recommendation	Agree/ Disagree	Timeframe for implementation (Quarter and financial year)	Additional comments
<p>2. We recommend the department:</p> <ul style="list-style-type: none"> establishes minimum performance and re-accreditation requirements for inspectors, and oversees inspectors' performance against the requirements maintains a register of current inspectors and implements controls over identity cards establishes minimum standards for the welfare of the majority of animal types RSPCA Queensland regulates increases its oversight and support of RSPCA Queensland investigations by regularly reviewing the investigations and providing feedback for improvement increases its oversight, and participates with RSPCA Queensland in decisions to prosecute actively monitors the outcomes of complaints about RSPCA Queensland investigations and inspectors oversees how RSPCA Queensland is managing conflicts of interest relating to its enforcement function. 	Agree	<p>Q4 2022 (re-accreditation programs, register of appointment and increase in oversight of RSPCA inspectors)</p> <p>Q4 2025 for establishing minimum standards for the welfare of animal types</p>	<p>The department has already taken steps to address the recommendations relating to the appointment of inspectors, oversight of RSPCA investigations, managing conflicts of interest, and monitoring complaints about RSPCA inspectors.</p> <p>The department has commenced working with the RSPCA to improve the response to animal welfare complaints, review investigations and provide feedback for improvement.</p> <p>The department is now participating with the RSPCA in the decision to prosecute.</p> <p>Developing minimum standards for all animals that are regulated under the Act is a significant body of work which will also require consideration by Government for possible amendments to the Animal Care and Protection Regulation 2012.</p>
<p>3. We recommend the department assigns responsibility and accountability for overseeing the engagement with RSPCA Queensland to a person with appropriate authority.</p>	Agree	Q3 2021	<p>This has been completed with the appointment of an acting Director, Animal Welfare Program and acting Manager, Inspectorate to oversee engagement with the RSPCA.</p>

Recommendation	Agree/ Disagree	Timeframe for implementation (Quarter and financial year)	Additional comments
<p>4. We recommend the department partners with RSPCA Queensland to:</p> <ul style="list-style-type: none"> • develop effectiveness measures and uses them to assess the enforcement activities against intended outcomes • develop and use financial reports to ensure accountability for funds the department provides. 	Agree	Q2 2022	<p>The department has measures in place against which to assess the effectiveness of the response to animal welfare complaints by departmental inspectors. These measures are being introduced to the RSPCA inspectorate and a review of enforcement activities has commenced.</p> <p>The department is well progressed in replacing the current procedures and guidelines for undertaking animal welfare complaint investigations, delivering a new learning and development program and reviewing and assessing effectiveness of response to animal welfare complaints.</p>
<p>5. We recommend that all public sector regulators and oversight bodies self-assess against better practices in Appendix C and, where necessary, implement changes to enhance their regulatory performance.</p>	Agree	Q2 2022	<p>The department is well progressed in delivering a new learning and development program (L&D program) and reviewing and assessing the effectiveness of responses to animal welfare complaints.</p> <p>The new L&D program and Procedures and Guidelines have adopted best practice guidelines for regulatory performance.</p> <p>The department has developed key criteria for assessing the effectiveness of the response by inspectors to animal welfare complaints focusing on regulatory excellence based on integrity, engagement and competence.</p>



Comments received from Chief Executive Officer, RSPCA Queensland



17 November 2021

Mr Brendan Worrall
Auditor General, Queensland Audit Office
PO Box 15396
City East QLD 4002

Dear Mr Worrall,

Thank you for the opportunity to provide a formal response to your *Regulating Animal Welfare Services* report.

RSPCA Qld has appreciated a positive partnership with the Department of Agriculture and Fisheries (DAF) for the benefit of animal welfare since the inception of the Animal Care and Protection Act 2001 (the Act). During that time we have improved the provision of training and educational resources for Inspectors and developed a framework of best practice policies and procedures for our prosecutions, including adoption of the Director of Public Prosecutions Guidelines and Model Litigant Principles.

The review of the Act will be important as we believe the submissions that both RSPCA Queensland and others have made will help to modernise the Act and bring it in line with community expectations. This will be beneficial in providing the animals the best possible care and protection they need and deserve.

We welcome the audit findings and support the recommendations outlined in the *Regulating Animal Welfare Services* report. Some of these recommendations have already been implemented and are working well. Our Inspectorate looks forward to further engaging with DAF to continue developing a collaborative and productive relationship in accordance with the recommendations, and particularly in relation to ongoing training and development, formalised reporting and establishing consistent governance structures.

This progressive evolution will require a substantial funding increase to sustain performance and achieve desired outcomes for animals consistent with community expectations. We are confident that Government, the community they represent and the animals that rely on them, would benefit from this investment in the future of animal welfare.

Yours sincerely

Darren Maier
CEO

The Royal Society
for the Prevention of
Cruelty to Animals
Queensland Inc.

ABN 74 851 544 037

Animal Care Campus

139 Wacol Station Road
Wacol QLD 4076

Locked Bag 3000
Archerfield BH QLD 4108

P 07 34 26 99 99
F 07 32 58 56 10
E admin@rspcaqld.org.au
W rspcaqld.org.au

Animal Care Centres

Bundaberg
Doblo Street
West Bundaberg QLD 4670
P 07 41 55 17 49

Cairns
Arnold Street
East Stratford QLD 4870
P 07 40 55 14 87

Dakabin
Goodwin Road
Dakabin QLD 4503
P 07 34 80 64 50

Gympie
Laurenceson Road
Gympie QLD 4570
P 07 54 82 94 07

Ipswich
Hooper Street
West Ipswich QLD 4305
P 07 32 58 56 80

Kingaroy
Warren Truss Drive
Kingaroy QLD 4610
P 07 41 62 55 01

Mackay
Cnr of Strickland Rd / Mount
Bassett Cemetery Rd
Mackay Harbour, QLD 4740
P 07 49 44 17 26

Noosa
Holleth Road
Noosaville QLD 4666
P 07 54 49 13 71

Toowoomba
Airport Drive, Wellcamp
Toowoomba QLD 4350
P 07 46 34 13 04

HELPING ANIMALS • ENLIGHTENING PEOPLE • CHANGING LIVES



B. The engagement framework

The framework of the Department of Agriculture and Fisheries' engagement with RSPCA Queensland is made up of the legislation (*Animal Care and Protection Act 2001* (the Act) and the Animal Care and Protection Regulation 2012), the department's activity agreement with RSPCA Queensland, and the Animal Care and Protection Act operational procedures and guidelines.

Legislation

The legislative component of the framework is the cornerstone of the engagement between the Department of Agriculture and Fisheries (the department) and RSPCA Queensland.

The department is responsible for administering the Act and the director-general is accountable for the effective delivery of animal welfare enforcement.

The Act has provisions for the director-general to appoint RSPCA Queensland employees as inspectors if satisfied the person has the necessary expertise or experience to be an inspector and has satisfactorily finished training (s. 115). The director-general can limit an inspector's functions or powers and require the inspector to provide information or a report about the performance of their functions or the exercise of their powers (s. 116).

Once appointed by the director-general, an RSPCA Queensland inspector can investigate and enforce animal welfare legislation. This includes using powers relating to entry, warrants, animal seizure and forfeiture, issuing animal welfare directions, and animal destruction.

The Animal Care and Protection Regulation 2012 is the subordinate legislation to the Act. It guides how the Act is to be applied, includes codes on managing the welfare of animals, and identifies people approved for appointment as an inspector.

Activity agreement

The department has had an activity agreement (the agreement) with RSPCA Queensland since 2001. The department's current three-year agreement is due to expire in June 2022.

The agreement details areas of responsibility, obligations, and reporting requirements. It includes clauses relating to conflicts of interest, management of complaints about inspectors, media policy, and prosecution requirements.

Operational procedures and guidelines

The department and RSPCA Queensland have jointly developed and use the Animal Care and Protection Act operational procedures and guidelines (the guidelines), which outline the procedures for inspectors to follow when enforcing the Act. The guidelines include steps for inspectors to follow when receiving and responding to animal welfare complaints, investigating complaints, and preparing investigations to proceed to prosecution.



C. Good regulatory practices

The practices described in this section are principles-based and are not intended to be applied rigidly. They do not override any legislative requirement or authority concerning regulatory functions nor the need to ensure effective regulatory outcomes are achieved. Entities can self-assess against these practices and other better practices listed in [Appendix D](#).

Figure C1
Good regulatory practices

Plan to be intelligence-led
<p>Understand the regulator's role, functions, and objectives</p> <ul style="list-style-type: none"> Do the operations (what is being done) align with what should be done under the legislation? Do systems and processes contribute to achieving the legislative and organisational purposes and objectives? <p>Implement systems and plans that support effective data collection and use</p> <ul style="list-style-type: none"> Do systems allow for effective and efficient collection and use of data for timely decision-making and planning? <p>Develop and implement a risk management framework</p> <ul style="list-style-type: none"> Are there risk and compliance prioritisation frameworks in place? Do these enable focus and deployment of resources proportionate with the risks to the regulatory outcomes being sought? Have regulators collectively worked towards developing consistent and complementary approaches to risk-based compliance and enforcement planning? <p>Develop a compliance and monitoring plan</p> <ul style="list-style-type: none"> Does a defensible monitoring and enforcement plan exist, based on risks and proportionate actions in response to non-compliance? Are compliance monitoring and enforcement plans communicated to the regulated entities and to the public to help promote public trust and confidence in the regulator, goodwill with those being regulated, and self-regulation and compliance among those being regulated?
Act to ensure compliance
<p>Implement a compliance monitoring and enforcement plan</p> <ul style="list-style-type: none"> Does the compliance monitoring and enforcement plan include both pro-active monitoring and enforcement (based on the regulator's own risk assessments) and re-active monitoring and enforcement (acting on complaints)? Is the enforcement framework clear? Does it assist regulators and guide staff in how to act on non-compliance? Is it clear to the regulated entities how their regulator will address non-compliance? Do processes ensure staff not only act when they identify non-compliance but follow through to ensure the non-compliance issue is subsequently rectified?
Report transparently for accountability
<p>Implement systems and processes for internal and external reporting</p> <ul style="list-style-type: none"> Are there clear efficiency, economic, and quality measures in place? Are these reported publicly and internally to monitor regulator performance, including the impact of regulatory activities (for example, compliance trends)? Do performance measures include the efficiency with which services are delivered, timeliness of decision-making, and accuracy/quality of evidence gathered for escalating non-compliance cases?
Learn through continuous improvement
<p>Implement processes for reviewing and continually improving the efficiency, effectiveness, and quality of services</p> <ul style="list-style-type: none"> Is input from internal and external stakeholders sought for addressing what is working well and what is not working well? Are there adequate resources and training to support staff to perform their roles effectively?

Source: Queensland Audit Office.

D. References used for audit insights

Queensland Audit Office reports

We used a selection of our reports to draw insights for regulators and their administrators in Chapter 4 of this report. These are:

- *Environmental regulation of the resources and waste industries* (Report 15: 2013–14)
- *Follow-up of Report 15: 2013–14 Environmental regulation of the resources and waste industries* (Report 1: 2017–18)
- *Follow-up of Managing water quality in Great Barrier Reef catchments* (Report 16: 2017–18)
- *Access to the National Disability Insurance Scheme for people with impaired decision-making capacity* (Report 2: 2018–19)
- *Managing transfers in pharmacy ownership* (Report 4: 2018–19)
- *Managing consumer food safety in Queensland* (Report 17: 2018–19)
- *Managing coal seam gas activities* (Report 12: 2019–20)
- *Licensing builders and building trades* (Report 16: 2019–20)
- *Regulating firearms* (Report 8: 2020–21).

Better practice guides

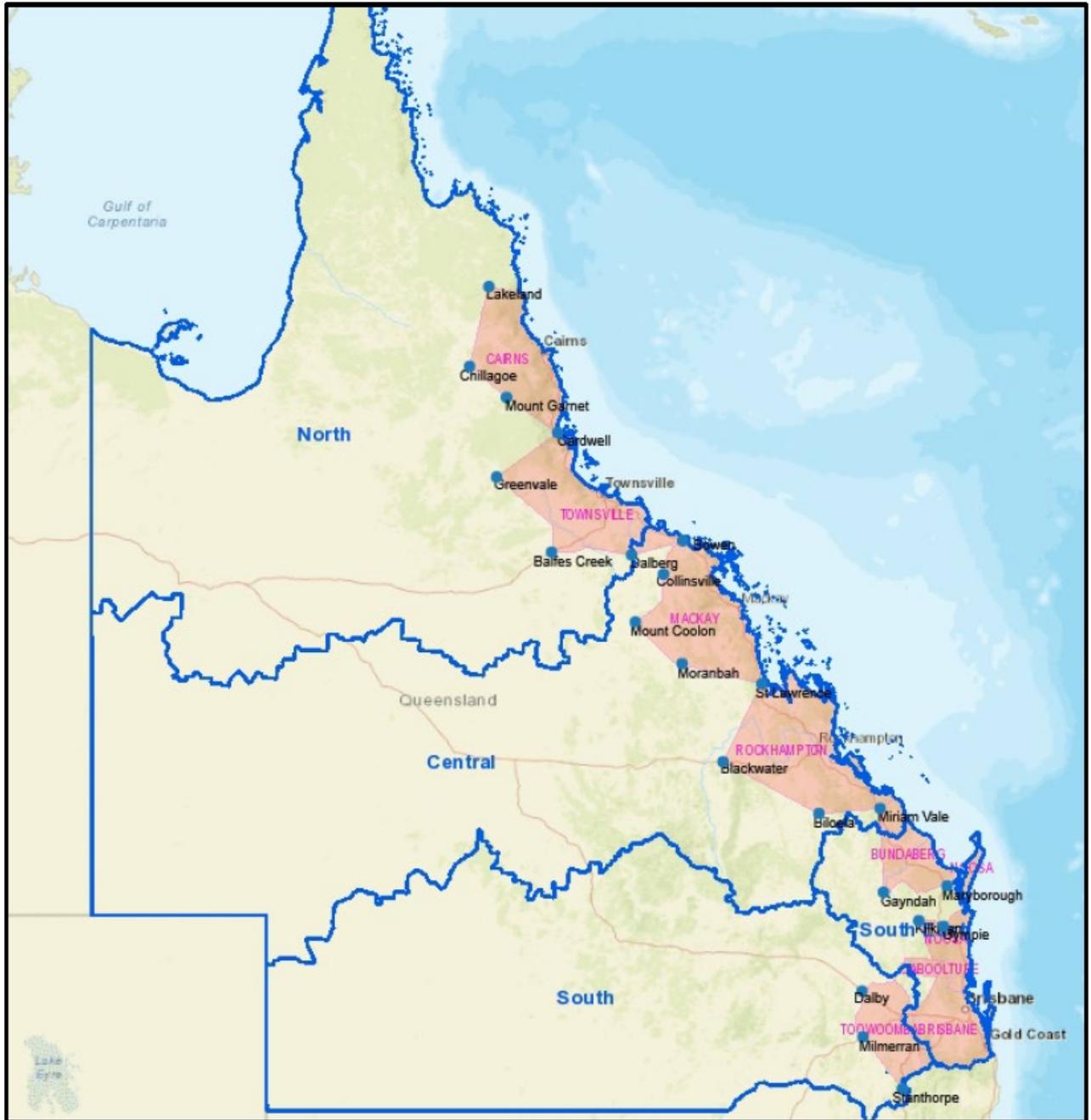
Better practice guides are available and can assist public sector entities to deliver regulator services that are efficient, effective, and/or economical.

Four better practice guides for regulatory activities available to public sector entities are:

- Queensland Productivity Commission's *Improving regulation* (March 2021)
- Queensland Treasury's *Queensland Government Guide to Better Regulation* (May 2019)
- Australian Government Productivity Commission's *Regulator Audit Framework* (March 2014)
- Canadian Audit and Accountability Foundation's *Characteristics of a Regulatory Inspection and Enforcement Function* (2013).



E. Areas for animal welfare services



LEGEND

- DAF Regions
- RSPCA MoU

Notes: DAF—Department of Agriculture and Fisheries; MoU—Memorandum of Understanding.

Source: Department of Agriculture and Fisheries.



F. How we prepared the audit

Objective and scope

The objective of this audit was to assess:

- the effectiveness of the department's engagement with RSPCA Queensland to deliver animal welfare services and exercise powers under the Act
- how well the department manages that engagement.

We audited the Department of Agriculture and Fisheries' engagement with RSPCA Queensland in accordance with Standard on Assurance Engagements ASAE 3500 *Performance Engagements* issued by the Auditing and Assurance Standards Board.

We also developed key messages and audit insights from our previous audits in Chapter 4 of this report. For the audit insights, we also considered better practice guides to assist public sector regulators in assessing and enhancing their regulatory performance.

Entities subject to this audit

- Department of Agriculture and Fisheries.

RSPCA Queensland is not subject to this audit. However, we engaged with RSPCA Queensland as a stakeholder with special interest under the *Auditor-General Act 2009* (Qld).

Departmental and RSPCA Queensland staff provided full cooperation during this audit.

We received public submissions during the course of the audit and considered this information in the context of the overall evidence gathered during the audit.

Audit scope and methods

This audit has been performed in accordance with the *Auditor-General Auditing Standards*, incorporating, where relevant, the standards on assurance engagements issued by the Auditing and Assurance Standards Board.

The work we carried out to complete this audit included:

- review of documents and data provided by the department
- interviews with staff from the department
- review of jurisdictional inquiries on RSPCA's delivery of animal welfare services in other states and territories
- review of other audits on outsourcing of government services
- consultation with relevant stakeholders, such as RSPCA Queensland.





qao.qld.gov.au/reports-resources/reports-parliament

qao.qld.gov.au/contact-us

T: (07) 3149 6000
E: qao@qao.qld.gov.au
W: qao.qld.gov.au
53 Albert Street, Brisbane Qld 4000
PO Box 15396, City East Qld 4002