

General Purpose Standing Committee No. 5

# **Inquiry into the RSPCA raid on the Waterways Wildlife Park**

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## Terms of reference

1. That General Purpose Standing Committee No 5 inquire into and report on matters associated with the RSPCA raid on the Waterways Wildlife Park, Gunnedah, on 3 February 2010 and in particular:
  - a) the actions and investigations undertaken by the RSPCA prior to the investigation to assess the welfare of the animals at the Waterways Wildlife Park,
  - b) protocols adopted by the RSPCA with respect to investigations and prosecutions and whether those protocols were adhered to,
  - c) the criteria used by the RSPCA to determine that the removal of the animals should be undertaken,
  - d) the actions of the Department of Industry and Investment with respect to the licensing of the Waterways Wildlife Park, and
  - e) the involvement of the television program “Animal Rescue” at the Waterways Wildlife Park.
2. That the committee report by 9 September 2010.

These terms of reference were referred to the Committee by the Legislative Council.<sup>1</sup>

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<sup>1</sup> *LC Minutes* (12/05/2010) 1788, Item 4

## Committee membership

<b>Mr Ian Cohen MLC</b>	The Greens	<i>(Chair)</i>
<b>Hon Rick Colless MLC</b>	The Nationals	<i>(Deputy Chair)</i>
<b>Hon Robert Brown MLC</b>	The Shooters and Fishers Party	
<b>Hon Tony Catanzariti MLC</b>	Australian Labor Party	
<b>Hon Marie Ficarra MLC*</b>	Liberal Party	
<b>Hon Luke Foley MLC**</b>	Australian Labor Party	
<b>Hon Helen Westwood MLC</b>	Australian Labor Party	

\* The Hon Marie Ficarra MLC substituted for the Hon Charlie Lynn MLC for the duration of this inquiry.

\*\* The Hon Luke Foley MLC replaced the Hon Lynda Voltz MLC, as per the resolution of the House (*LC Minutes No. 160, 24/06/2010, Item 21, p 1972*).

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## Chair's foreword

This Inquiry was referred to the Committee by the Legislative Council following criticism of the removal by the RSPCA of eight koalas and two shingleback lizards from the Waterways Wildlife Park in Gunnedah on 3 February 2010.

The RSPCA inspection of the Waterways Wildlife Park was triggered by a complaint from a member of the public about the condition of some of the animals and their enclosures. The animals were assessed by a veterinarian and a koala expert who determined that they needed to be removed for treatment. The veterinarians and others who examined and cared for the koalas and lizards after their removal concurred with this assessment. It is clear that the decision by RSPCA Inspectors to remove the animals was motivated by genuine and valid concerns about the welfare of the animals. However, the Committee recognised that there was a significant delay between the complaint and the removal of the animals and has made recommendations to expedite the process of obtaining veterinary treatment and improving communication between the RSPCA and animal owners.

Of particular concern to the Committee is that the Department of Industry and Investment, which is tasked with ensuring that the Park complies with the *Exhibited Animals Protection Act 1986*, was aware of potential breaches of the legislation in 2007, well before the RSPCA intervention in February 2010. If the Department had acted more decisively to address its concerns, the events of 3 February 2010 may have been avoided. For this reason, the Report makes a number of recommendations to improve the Department's regulation of facilities licensed under the Act.

Even though the footage has not been broadcast, the presence of a camera crew from the television program 'Animal Rescue' during the RSPCA 'raid' undoubtedly inflamed emotions surrounding the events of 3 February. The RSPCA's involvement in 'Animal Rescue' is primarily intended to raise awareness of animal welfare issues and the Committee accepts that the 'raid' was not motivated by commercial considerations. We do however make a specific recommendation to ensure that the written consent of property owners is obtained prior to the commencement of filming.

The removal of animals from the Park attracted considerable media attention and caused a great deal of concern in the local community. The Park owners, Mr and Mrs Colin and Nancy Small, are longstanding Gunnedah residents and have operated the Park and cared for injured animals for many years. On behalf of the Committee, I would like to acknowledge the Smalls' continuing contribution to their community. I would also like to acknowledge the assistance provided by Gunnedah Shire Council and the Gunnedah community to the Smalls since the removal of the animals. I hope that this translates into continuing support to create an environment in which the welfare of the animals is guaranteed.

I would like to thank all of the participants in the Inquiry – including those who made written submissions and those who gave their valuable time to talk to the Committee during its public hearings and site visit. I am also grateful to my fellow Committee members for their contribution to the Inquiry, and to Beverly Duffy, Abigail Groves and Shu-Fang Wei from the Committee Secretariat for their consistent and highly professional support.

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I commend this report to the Government.



Mr Ian Cohen MLC  
**Committee Chair**

## Summary of recommendations

- Recommendation 1** **33**  
That the RSPCA's standard operating procedures include a requirement that where an Inspector identifies the need for urgent veterinary intervention, the nearest suitably qualified veterinarian be called upon to provide emergency examination and treatment.
- Recommendation 2** **34**  
That the RSPCA's standard operating procedures include a requirement to provide written findings of an RSPCA investigation to animal owners and to any relevant licensing authorities within 48 hours of an inspection.
- Recommendation 3** **42**  
That the Department of Industry and Investment ensure that inspections of facilities licensed under the *Exhibited Animals Protection Act 1986* that are conducted in response to a complaint, be followed up with a further inspection within six months.
- Recommendation 4** **42**  
That the Department of Industry and Investment ensure that reports from inspections of facilities licensed under the *Exhibited Animals Protection Act 1986* are provided to licence holders within 30 days of the date of an inspection.
- Recommendation 5** **43**  
That the Department of Industry and Investment conduct biennial inspections of all facilities licensed under the *Exhibited Animals Protection Act 1986*.
- Recommendation 6** **45**  
That the Department of Industry and Investment apply the provisions of the *Exhibited Animals Protection Act 1986*, and its associated Regulation and Standards, in a timely manner.
- Recommendation 7** **46**  
That the Gunnedah Shire Council formalise its support for the Waterways Wildlife Park.
- Recommendation 8** **48**  
That the Department of Environment, Climate Change and Water conduct biennial inspections of facilities which are licensed under both the *Exhibited Animals Protection Act 1986* and the *National Parks and Wildlife Act 1974*. Where practicable, inspections of facilities licensed under both the *Exhibited Animals Protection Act 1986* and the *National Parks and Wildlife Act 1974* should be carried out concurrently.
- Recommendation 9** **49**  
That the Department of Industry and Investment and the Department of Environment, Climate Change and Water develop a Memorandum of Understanding with the RSPCA to respond to animal welfare concerns at facilities licensed under the *Exhibited Animals Protection Act 1986* and the *National Parks and Wildlife Act 1974*.

**Recommendation 10**

**60**

That the RSPCA ensures that its contract with Imagination Television requires the Animal Rescue film crew to obtain written consent from property owners prior to the commencement of filming.



# Chapter 1 Introduction

This Chapter provides an overview of the Inquiry process and the structure of the report.

## Terms of Reference

- 1.1 The Inquiry's Terms of Reference were referred to the Committee by the Legislative Council on 12 May 2010. The terms of reference require the Committee to inquire into and report on matters associated with the Royal Society for the Prevention of Cruelty to Animals (RSPCA) raid on the Waterways Wildlife Park in Gunnedah on 3 February 2010. This includes the actions and investigations undertaken by the RSPCA and whether relevant protocols were adhered to; the actions of the Department of Industry and Investment with respect to the licensing of the Park; and the involvement of the television program 'Animal Rescue'. The Terms of Reference are reproduced in full on page iv.

## Submissions

- 1.2 A media release announcing the Inquiry was distributed on 19 May 2010 and the Committee placed a call for submissions in the *Northern Daily Leader* and the *Namoi Valley Independent*. The Committee also wrote to key stakeholders inviting them to participate in the Inquiry.
- 1.3 The Committee received 35 submissions and three supplementary submissions to the Inquiry. A list of submissions is contained in Appendix 1. The published submissions to the Inquiry are available on the Committee's website: [www.parliament.nsw.gov.au/gpsc5](http://www.parliament.nsw.gov.au/gpsc5).

## Public hearings

- 1.4 The Committee held two public hearings: one at Parliament House in Sydney and the other at the Town Hall in Gunnedah. The Committee heard evidence from the Department of Environment, Climate Change and Water, the RSPCA, the Koala Hospital and Study Centre, the Waterways Wildlife Park, and the Gunnedah Shire Council. A full list of witnesses is reproduced at Appendix 2. Transcripts of the hearings are also available on the Committee's website.
- 1.5 The Department of Industry and Investment requested that it be allowed to provide evidence to the Committee in camera, because of concerns that its evidence 'could be construed as improperly and unfairly influencing the outcome of the licensing investigation process currently underway in relation to the Waterways Wildlife Park.'<sup>2</sup> This request was granted by the Committee. The Department of Industry and Investment provided answers to questions on notice and requested that these answers also remain confidential. The Department made this request because it is currently involved in a "show cause" process with the Waterways Wildlife Park. This requires the proprietors of the Park to show cause as to why the licence

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<sup>2</sup> Submission 34, Department of Industry and Investment, p 2

they hold under the *Exhibited Animals Protection Act 1986* should not be cancelled, and the Department therefore sought to avoid prejudicing the integrity or fairness of this process.<sup>3</sup>

- 1.6 Because the information provided by the Department of Industry and Investment in its answers to questions on notice was crucial to address the Terms of Reference, the Committee decided to publish some of this material.

### Site visit to Waterways Wildlife Park

- 1.7 The Committee conducted a site visit to the Waterways Wildlife Park in Gunnedah on 6 July 2010. The Committee was given a tour of the Park by its proprietors, Mr and Mrs Colin and Nancy Small.
- 1.8 The Committee would like to thank all individuals and organisations that gave evidence or made a submission to the Inquiry.

### Video footage

- 1.9 The Committee requested a copy of the footage filmed by 'Animal Rescue' during the RSPCA visit to the Waterways Wildlife Park on 3 February. Imagination Television, the company that produces 'Animal Rescue', supplied a copy of the unedited footage. The footage was supplied on six DVDs, comprising about three hours of footage, which were viewed by the Committee. The RSPCA also provided a copy of footage filmed by one of its Inspectors on 3 February.

### Inquiry background

- 1.10 On 22 January 2010, RSPCA Inspector Kylie Prowse visited the Waterways Wildlife Park in Gunnedah, following a complaint received from a member of the public about the condition of some of the animals.
- 1.11 Twelve days later, on 3 February 2010, the RSPCA 'raided' the Waterways Wildlife Park. Three inspectors from the RSPCA were accompanied by a National Parks and Wildlife ranger, a veterinarian, a koala expert and a camera crew from the television program 'Animal Rescue', which screens on Channel 7. Eight koalas and two shingleback lizards were removed by the RSPCA for veterinary treatment.
- 1.12 The RSPCA was acting under the *Prevention of Cruelty to Animals Act 1979* (NSW). Section 24 of the Act provides inspectors with powers to enter and inspect premises and examine animals where there is reasonable suspicion that an animal is in distress. Inspectors may also treat, destroy or remove animals in distress.
- 1.13 The koalas were taken to the Koala Hospital and Study Centre in Port Macquarie for treatment. One was subsequently euthanased, on 24 February 2010. Five koalas were returned to the park on 15 April 2010, and the remaining two on 20 May. The two lizards were also returned to the Park on 15 April.

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<sup>3</sup> Correspondence from Dr Richard Sheldrake, Director-General, Department of Industry and Investment, to Chair, 9 August 2010

- 1.14** The removal of the animals received widespread publicity, particularly in the local media. The footage taken by 'Animal Rescue' has not been aired. The RSPCA did not mount a prosecution of the Park owners, but did subsequently issue a Section 24N notice which required improvements to animal husbandry at the Park. The Department of Industry and Investment also inspected the Park on 8-9 February and issued a range of directions to the Park owners.

## **Report structure**

- 1.15** Chapter 2 provides background information about the legislative framework surrounding animal protection and management in New South Wales, and the respective roles of government agencies and the RSPCA in administering this legislation. Background information about the Waterways Wildlife Park is also provided.
- 1.16** Chapter 3 details the actions and investigations undertaken by the RSPCA, including the RSPCA's visit to the Park on 22 January 2010 and the follow-up visit on 3 February 2010. The chapter examines the criteria used by the RSPCA to determine that animals should be removed from the Park and reviews the evidence from the Park owners, the RSPCA and veterinarians and other wildlife experts regarding the condition of the animals both at the Park and following their removal.
- 1.17** Chapter 4 details the actions of the Department of Industry and Investment and the Department of Environment, Climate Change and Water in respect to the licensing the Waterways Wildlife Park. This chapter outlines the requirements placed on the Waterways Wildlife Park to obtain and maintain its licences, and regulatory action taken by government agencies both prior to and since 3 February 2010.
- 1.18** Chapter 5 explores the involvement of the television program 'Animal Rescue'. A television crew from 'Animal Rescue' accompanied RSPCA inspectors on their visit to the Waterways Wildlife Park on 3 February and concerns have been expressed about the role and perceived influence of 'Animal Rescue' on the actions of the RSPCA.



## Chapter 2 Background

This chapter summarises the legislative framework surrounding animal protection and management in New South Wales and provides some brief information about the Waterways Wildlife Park

### Relevant legislation

- 2.1 The welfare of animals, including farm animals and pets, is protected by the *Prevention of Cruelty to Animals Act 1979* (NSW). The objects of the Act are to prevent cruelty to animals and to promote animal welfare by requiring a person in charge of an animal to provide care for the animal, to treat it in a humane manner and ensure its welfare. The associated Prevention of Cruelty to Animals (General) Regulation 2006 regulates particular animal management practices such as de-barking and tail-docking.
- 2.2 The Department of Industry and Investment administers the *Prevention of Cruelty to Animals Act 1979* and the associated Regulation. However, officers of the Department do not have powers of enforcement. The Department has a role primarily in relation to policy, in the development of standards and guidelines under the Act.
- 2.3 Powers of enforcement under the *Prevention of Cruelty to Animals Act 1979* are delegated to three organisations: the Royal Society for the Prevention of Cruelty to Animals NSW (RSPCA), the Animal Welfare League, and the NSW Police. In 2008-09 the then Department of Primary Industries provided \$424,000 to RSPCA NSW and \$75,000 to the NSW Animal Welfare League to assist in the management of the *Prevention of Cruelty to Animals Act 1979*.<sup>4</sup>
- 2.4 The Department of Industry and Investment also administers the *Exhibited Animals Protection Act 1986* (NSW), which regulates the operation of zoos, circuses and wildlife parks. The 'General Standards for Exhibiting Animals in New South Wales' were issued in 2004.
- 2.5 Establishments which exhibit animals are required to obtain a licence from the Department and meet the 'General Standards for Exhibiting Animals in New South Wales'; other standards also apply in relation to prescribed species, such as the 'Standards for Exhibiting Australian Mammals in New South Wales'.
- 2.6 Licences held under the *Exhibited Animals Protection Act 1986* are renewed annually, and the Department operates an inspectorate that enforces the Act. The Waterways Wildlife Park currently holds a licence under the Act; the actions of the Department with respect to the licensing of the Park are discussed in detail in Chapter Four.
- 2.7 *The National Parks and Wildlife Act 1974* (NSW) protects native wildlife. The Act is administered by the Department of Environment, Climate Change and Water (DECCW), through the National Parks and Wildlife Service.

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<sup>4</sup> NSW Department of Primary Industries, *Annual Report 2008-2009*, New South Wales, 2009, p 77

- 2.8 Mr Ron Haering, Manager, Wildlife Licensing and Management Unit, DECCW, explained the role of the Department in relation to wildlife rehabilitation:

In New South Wales it is an offence to possess, harm or release protected fauna without a licence, so what we do is license groups or individuals to assist us with the rescue and rehabilitation of sick, injured or orphaned fauna with the intention that those animals will be returned to the wild as soon as possible. People or organisations seeking a licence apply to the Department of Environment, Climate Change and Water and successful applicants receive a general licence under section 120, 132C and 127 of the National Parks and Wildlife Act to harm – and “harm” in its broader sense – capture or kill; to hold sick injured or orphaned native fauna for the purpose of rehabilitation and to dispose of them according to the conditions of the licence.<sup>5</sup>

- 2.9 The Department issues licences annually to groups and individuals to care for native fauna. There are currently about 30 groups and individuals who hold such licences, with between 4,000 and 4,500 authorised carers.<sup>6</sup>

### **The Royal Society for the Prevention of Cruelty to Animals (RSPCA) NSW**

- 2.10 RSPCA NSW was founded in 1873. Its mission is to prevent cruelty to animals by actively promoting their care and protection. It operates shelters and clinics around NSW and currently employs approximately 400 people.<sup>7</sup>
- 2.11 RSPCA NSW has an annual operating budget of close to \$37 million.<sup>8</sup> Most of the RSPCA’s income comes from charitable donations and bequests; government funding makes up only a small proportion of the organisation’s revenue. According to Mr Steve Coleman, Chief Executive Officer, RSPCA NSW, ‘our operating budget is funded to the tune of just under 2 per cent by the New South Wales government’.<sup>9</sup>
- 2.12 RSPCA NSW operates an Inspectorate which enforces the *Prevention of Cruelty to Animals Act 1979*. RSPCA Inspectors are Special Constables with legal powers under the Act. The Inspectorate employs 30 Inspectors around the State; of these, 15 are based in the metropolitan Sydney region and 15 in regional areas.
- 2.13 Section 24 of the *Prevention of Cruelty to Animals Act 1979* provides RSPCA Inspectors with powers to enter properties and detain vehicles or vessels for the purpose of enforcing the Act. Inspectors may examine, remove, treat, or, if necessary, destroy animals which are found to be in distress.<sup>10</sup>

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<sup>5</sup> Mr Ron Haering, Manager, Wildlife Licensing and Management Unit, Department of Environment, Climate Change and Water, Evidence, 5 July 2010, p 1

<sup>6</sup> Mr Haering, Evidence, 5 July 2010, p 1

<sup>7</sup> RSPCA NSW, 'Annual report 08-09'

<sup>8</sup> Mr Steve Coleman, Chief Executive Officer, RSPCA NSW, Evidence, 5 July 2010, p 23

<sup>9</sup> Mr Coleman, Evidence, 5 July 2010, p 23

<sup>10</sup> *Prevention of Cruelty to Animals Act 1979* (NSW) s 24

- 2.14** In evidence to the Inquiry, Mr Coleman noted that most of the RSPCA's work is generated in response to complaints. He said:

I wish our organisation was in a position resource-wise to be able to be more proactive and be able to call in without there necessarily being a complaint. But the reality for us is that the vast majority of the work we do through our inspectors is generally by way of a complaint.<sup>11</sup>

- 2.15** Mr Coleman also explained the RSPCA's standard process for responding to complaints:

Once the complaint is received and logged, it is assessed to ensure that there are reasonable grounds to suspect that an offence has, is or is about to be committed. If that can be established, it is then prioritized and dispatched to inspectors, wherever it be in New South Wales, and an investigation proceeds.<sup>12</sup>

- 2.16** The RSPCA reports that in 2008-2009 it investigated 14,030 complaints of animal cruelty in NSW, and brought 491 charges against 105 individual defendants.<sup>13</sup> Mr Coleman said that:

We are very proud of the fact that when our inspectors investigate the thousands of calls they do each and every year, around about 1 per cent of all of those calls end up as a prosecution. There are many interpretations, if you like, of that percentage or statistic, but the fact is that our inspectors on 99 per cent of occasions are able to work with people and negotiate with people and find an amicable solution to what started out as a legitimate complaint without it necessarily being a prosecution.<sup>14</sup>

### **The Waterways Wildlife Park**

- 2.17** The Waterways Wildlife Park is a privately owned wildlife park located seven kms west of Gunnedah. It is owned and operated by Mr and Mrs Colin and Nancy Small. The Park hosts a large collection of animals such as kangaroos, wallabies, wombats, echidnas, birds and koalas.

- 2.18** The Park has operated since 1981 and was officially opened in 1999: it is open to the public seven days a week and a small admission fee is charged. In his submission, Cr Adam Marshall, Mayor of Gunnedah, wrote:

Initially Waterways Wildlife Park commenced as an animal refuge for sick and injured wildlife, including koalas. It evolved as a tourist attraction, featuring koalas that were not able to be returned to the wild and has become a community facility that Gunnedah residents support and are fiercely proud of.<sup>15</sup>

- 2.19** In her submission, Mrs Small wrote, 'Since 1981 I have been caring for animals that are healthy, orphaned, sick or injured. Basically, any wild animal in the district that needs help ends up at our place'.<sup>16</sup> Mrs Small is a qualified veterinary nurse.

<sup>11</sup> Mr Coleman, Evidence, 5 July 2010, p 19

<sup>12</sup> Mr Coleman, Evidence, 5 July 2010, p 20

<sup>13</sup> Submission 9, RSPCA NSW, p 43

<sup>14</sup> Mr Coleman, Evidence, 5 July 2010, pp 20 - 21

<sup>15</sup> Submission 11, Cr Adam Marshall, Mayor, Gunnedah Shire Council, p 1

<sup>16</sup> Submission 13, Mr and Mrs Colin and Nancy Small, Owner and Operators, Waterways Wildlife Park, p 1

**2.20** Cr Marshall noted that Mr and Mrs Small have cared for sick and injured animals for many years and that ‘Council and the community acknowledge their efforts and very much appreciate what they do in our community.’<sup>17</sup>

**2.21** The Waterways Wildlife Park currently holds a licence under the *Exhibited Animals Protection Act 1986*. The Park owners also care for injured or orphaned animals at the Park and the Friends of the Waterways Wildlife Park holds a current licence under the *National Parks and Wildlife Act 1974*.

**2.22** The Friends of the Waterways Wildlife Park is a volunteer organisation which provides support to the Park; the group was established in 1996. The Park relies on volunteers to assist in its operations, and a number of volunteers participated in the Inquiry. Mrs Small said that:

We normally have about three people plus myself daily through the week. At the weekend we have between 10 and 15 people on a Sunday to do maintenance work and look after the animals.<sup>18</sup>

**2.23** The Waterways Wildlife Park receives some financial and in-kind support from local businesses.<sup>19</sup> The Gunnedah Shire Council also provides \$5,000 annually to the Friends of the Waterways Wildlife Park, which supports the Park.<sup>20</sup> In his evidence to the Committee, Cr Marshall said that:

[C]ouncil has a long association with the park and Nancy and Colin Small, in particular. As everyone would be aware, we certainly badge ourselves as the koala capital of the world, and have done for quite some time. So koalas are an important part of our civic image and pride and hence Waterways and Nancy and Colin are as well. So, yes, it is a critical part of our tourism in our community, and it is a very treasured part as well.<sup>21</sup>

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<sup>17</sup> Cr Adam Marshall, Mayor, Gunnedah Shire Council, Evidence, 6 July 2010, p 40

<sup>18</sup> Mrs Nancy Small, Owner and Operator, Waterways Wildlife Park, Evidence, 6 July 2010, p 16

<sup>19</sup> Cr Marshall, Evidence, 6 July 2010, p 42

<sup>20</sup> Cr Marshall, Evidence, 6 July 2010, p 42

<sup>21</sup> Mr Coleman, Evidence, 5 July 2010, p 23

## Chapter 3      **The RSPCA's investigation into the Waterways Wildlife Park**

This chapter details the RSPCA's investigation of the Waterways Wildlife Park, including its first visit on 22 January 2010 and the subsequent 'raid' on 3 February. Several participants in the Inquiry provided differing accounts of these visits, particularly in relation to the behaviour of RSPCA Inspectors and the condition of the animals. This chapter focuses on the condition of the animals, which was the determining reason for their removal by the RSPCA.

### **The RSPCA visit to the Waterways Wildlife Park on 22 January 2010**

- 3.1** RSPCA Inspector Kylie Prowse visited the Waterways Wildlife Park at 12.30 pm on 22 January 2010.<sup>22</sup> This visit was in response to a complaint received from a member of the public on 19 January.<sup>23</sup> The complainant alleged that: 'Some of the dingoes were very thin, with their back bones and ribs showing, that the park was very run down and that the bird cages needed cleaning.'<sup>24</sup>
- 3.2** Mr Steve Coleman, Chief Executive Officer, RSPCA NSW, noted that the RSPCA had visited the Waterways Wildlife Park some 18 months previously, also in response to a complaint.<sup>25</sup> Mr Coleman stated that 'there did not appear to be issues in contravention of the Prevention of Cruelty to Animals Act some 18 months previous.'<sup>26</sup>
- 3.3** When she attended the Park on 22 January 2010, Inspector Prowse was met by Ms Teena Sutcliffe, former daughter in law of the Park proprietors Mr and Mrs Colin and Nancy Small.<sup>27</sup> Ms Sutcliffe informed her that the proprietor, Mrs Nancy Small, was in hospital, while Mr Colin Small was at work.
- 3.4** Ms Sutcliffe informed Inspector Prowse that Ms Jodi Markwick (Mr and Mrs Small's daughter) was in charge of the Park in Mrs Small's absence, and that she was in town but would return shortly.<sup>28</sup> On Ms Markwick's return, Inspector Prowse toured the Park with Ms Markwick and Ms Sutcliffe.
- 3.5** Inspector Prowse noted that she was concerned about the condition of the koalas. She wrote that she saw '8 koalas with 3 on the ground hugging the water bowls.'<sup>29</sup> Inspector Prowse took photos of some of the koalas with her mobile phone.<sup>30</sup>

<sup>22</sup> Submission 9, RSPCA NSW, p 43

<sup>23</sup> Mr Steve Coleman, Chief Executive Officer, RSPCA NSW, Evidence, 5 July 2010, p 83

<sup>24</sup> Mr Coleman, Evidence, 5 July 2010, p 83

<sup>25</sup> Mr Coleman, Evidence, 5 July 2010, p 28

<sup>26</sup> Mr Coleman, Evidence, 5 July 2010, p 28

<sup>27</sup> Submission 9, p 43

<sup>28</sup> Submission 9, p 44; Submission 21, Ms Teena Sutcliffe, p 7

<sup>29</sup> Submission 9, p 44

<sup>30</sup> Answers to questions on notice taken during evidence 5 July 2010, Mr Steve Coleman, Chief Executive Officer, RSPCA NSW, p 3 - 5

- 3.6** Inspector Prowse expressed concerns to Ms Markwick about the condition of some of the other animals at the Park, including two dingoes which appeared emaciated, saying that '[t]hese dingoes are not in very good condition; they are emaciated and appear to have some sort of mange'.<sup>31</sup>
- 3.7** Inspector Prowse also noted that: 'there was absolutely no pasture available in any enclosure, there was no fresh hay for grazing. I did sight plenty of rotten fruit and mouldy hay in the wombats' enclosures'.<sup>32</sup>
- 3.8** Inspector Prowse questioned Ms Markwick about the condition of some animals, their enclosures and diets. Ms Markwick was unable to answer her questions or provide documentation about the status of animals at the Park in the absence of Mrs Small.<sup>33</sup>
- 3.9** Inspector Prowse asked Ms Markwick to advise Mrs Small to contact her and provide details of the animals at the Park, and Ms Markwick undertook to do this.<sup>34</sup>
- 3.10** Ms Markwick and Ms Sutcliffe said that that they spoke with Inspector Prowse and made notes of the information which Inspector Prowse was seeking.<sup>35</sup> In her submission, Ms Markwick noted that:
- The RO [RSPCA Officer] asked Teena to write these details on one of our notepads, about food of all the animals, ailments of the animals in each area, feeding schedule, meat quantities, diet of each animal, sexes of animals in each yard etc. No formal request was made on official paper for this information.<sup>36</sup>
- 3.11** Similarly, Inspector Prowse wrote that she said:
- Can you please get Nancy to contact me and provide details on what species are in the Park, how many are in each enclosure, the size of the enclosures, what the diets are for each species and what the breeding programs are. <sup>37</sup>
- 3.12** Ms Sutcliffe wrote that '[W]e went back to the Kiosk to write a few things down for mum. This was not an official notification'.<sup>38</sup> Both Ms Sutcliffe and Ms Markwick wrote that Inspector Prowse provided her contact details on RSPCA notepaper.<sup>39</sup> Ms Markwick said that, 'I asked the RO for her card, but she didn't have any RSPCA's cards left and wrote her name and phone number on a notepad'.<sup>40</sup>

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<sup>31</sup> Submission 9, p 46

<sup>32</sup> Submission 9, p 44

<sup>33</sup> Submission 9, p 46

<sup>34</sup> Submission 9, p 46

<sup>35</sup> Submission 20, Ms Jodi Markwick, p 6

<sup>36</sup> Submission 20, p 6

<sup>37</sup> Submission 9, p 46

<sup>38</sup> Submission 21, p 12

<sup>39</sup> Submission 21, p 12; Submission 20, p 7

<sup>40</sup> Submission 20, p 7

### **The RSPCA officer's demeanour**

- 3.13** Ms Sutcliffe and Ms Markwick both expressed concerns about the Inspector Prowse's manner during her visit to the Park on 22 January. Ms Markwick wrote that 'I have never felt so degraded, having someone come into our Park and speak/yell at us the way the RO did'.<sup>41</sup> Ms Sutcliffe wrote that 'I was very shaken by her abruptness and overbearing manner. I felt degraded and belittled'.<sup>42</sup> Ms Judith Mitchell, a volunteer who was also present at the Park, felt that 'the officer's attitude to us was one of contempt and intimidation as we did not have any qualifications and volunteers mean nothing to her, to her we knew nothing'.<sup>43</sup>

### **After the visit on 22 January 2010**

- 3.14** It is unclear exactly what information was passed on to Mr and Mrs Small after this visit, either by the RSPCA or by Ms Sutcliffe and Ms Markwick. Mrs Small wrote that she was not aware of any instructions given by the RSPCA.<sup>44</sup> However, in her submission Mrs Small wrote that two dingoes about which Inspector Prowse had expressed concerns were subsequently destroyed. Mrs Small wrote that, 'My husband Colin later told me that he had shot and buried the two old dingoes that the RSPCA lady had said should be put down'.<sup>45</sup>
- 3.15** Mrs Small also wrote that she contacted the RSPCA to follow up on their visit to the Park:

When I got out of hospital and returned home, I rang the RSPCA at its Tamworth office and also at its Yagoona office to try and check out who this lady from the RSPCA was. I did this because I had previous experience with a person who actually pretended to be a Wildlife Officer and even was dressed up like one and it turned out that he was a fraud. Because the lady had not left any card or any identification, I wanted to find out whether she really was from the RSPCA. The lady I spoke to at the Yagoona office of the RSPCA asked me if I wanted to make a complaint. I informed her that I didn't. I said that I just wanted to speak personally to the lady who had attended the park. The lady at Yagoona said that she would ask that officer to ring me but, unfortunately, I never heard anything further.<sup>46</sup>

- 3.16** Some participants in the Inquiry expressed concerns that the RSPCA failed to provide directions to the Park owners during or after its visit on 22 January, or notice of the subsequent 'raid' on 3 February. For example, Dr David Amos from the Gunnedah Veterinary Clinic asked:

Surely if those animals were ill, neglected, starved, dehydrated or whatever else they said about them, she should have done something about it. She should have told the park to get some veterinary attention rather than tell them that everything was sweet and then come back and execute them later.<sup>47</sup>

<sup>41</sup> Submission 20, p 7; Submission 21, p 13

<sup>42</sup> Submission 21, p 13

<sup>43</sup> Submission 19, Ms Judith Mitchell, p 2

<sup>44</sup> Submission 13, Waterwyas Wildlife Park, p 8

<sup>45</sup> Submission 13, p 5

<sup>46</sup> Submission 13, p 6

<sup>47</sup> Dr David Amos, Vet, Gunnedah Veterinary Hospital, Evidence, 6 July 2010, pp 29 - 30

- 3.17** The *Prevention of Cruelty to Animals Act 1979* does not require the RSPCA to provide notice of inspections, but it does appear that there was a lack of communication between the RSPCA and the owners of the Waterways Wildlife Park following Inspector Prowse's visit on 22 January. In the video footage taken by 'Animal Rescue' on 3 February, Inspector Prowse expresses disappointment that she did not hear from the Park owners after her visit but is aware that someone contacted the RSPCA to make a complaint. However, Mrs Small says that she contacted the RSPCA and was expecting someone to return her call.<sup>48</sup> This strongly suggests that there was some misunderstanding between the park owners and the RSPCA.

### **The delay in returning to the Park**

- 3.18** The RSPCA did not return to the Waterways Wildlife Park again until 3 February 2010. Several participants in the Inquiry were critical of the delay between Inspector Prowse's initial visit to the Park on 22 January and the subsequent visit on 3 February. For example, Dr Amos asked:

If those animals were as crook as they say they were – they were diabolically crook and it was terrible – why did they wait nine days? They should have said that the animals were unwell and neglected and ordered that something be done about it now.<sup>49</sup>

- 3.19** Following her visit on 22 January 2010, Inspector Prowse sought expert advice regarding her concerns about the animals at the Waterways Wildlife Park. Inspector Prowse contacted Ms Cheyne Flanagan, who is a wildlife biologist and Hospital Supervisor at the Koala Hospital and Study Centre in Port Macquarie.
- 3.20** Ms Flanagan wrote that Inspector Prowse contacted her and said that she had seen some koalas which 'were exhibiting unusual behaviour and also in her opinion did not look well at all'.<sup>50</sup> Inspector Prowse then emailed photos of the koalas to Ms Flanagan for her consideration.
- 3.21** Ms Flanagan stated that she was also concerned about the condition of the koalas, based on the photos.<sup>51</sup> Inspector Prowse asked Ms Flanagan if she would be available to accompany RSPCA inspectors on a visit to the site. She also asked Ms Flanagan to recommend an appropriately qualified wildlife veterinarian in the local area, as there were a number of different species at the Park.<sup>52</sup>

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<sup>48</sup> Video footage, Imagination Television Ltd, *Waterways Wildlife Park Tape No. 45218*, 01:03:34 – 01:03:50

<sup>49</sup> Dr Amos, Evidence, 6 July 2010, p 38

<sup>50</sup> Submission 5, Koala Hospital – Port Macquarie, p 2

<sup>51</sup> Submission 5, p 2

<sup>52</sup> Submission 5, p 3

**3.22** Inspector Prowse also contacted the Department of Industry and Investment and the Department of Environment, Climate Change and Water - the two government agencies which license the Waterways Wildlife Park.<sup>53</sup> Mr Coleman explained that involving relevant government agencies is a standard practice in investigations undertaken by the RSPCA:

In terms of it being a requirement for the RSPCA to notify DII [the Department of Industry and Investment] or National Parks, no, there is no requirement. But it certainly is a standard practice that we do undertake on a regular basis because we are very much aware that there are overlapping jurisdictions around a park such as this. So, we would, as a matter of course, make contact with those agencies for their involvement.<sup>54</sup>

**3.23** According to Mr Coleman, the need to involve an expert on koalas, a wildlife veterinarian and two government agencies in addition to RSPCA inspectors delayed the follow-up visit to the Waterways Wildlife Park until 3 February. Mr Coleman wrote that:

The experts were immediately contacted and the visit on 3 February was their first opportunity to visit the park. The delay was therefore solely attributable to the availability of those experts.<sup>55</sup>

**3.24** The availability of a suitably qualified wildlife veterinarian, in particular, appears to have been a key factor in the delay. Ms Flanagan initially referred Inspector Prowse to Dr Ben Bryant from Western Plains Zoo in Dubbo.<sup>56</sup> However, Dr Bryant was on leave and there was some difficulty in locating another suitably qualified person. Ms Flanagan wrote that:

Inspector Prowse rang me a couple of days later to say that there was difficulty getting Dr Bryant as he was off on leave and she was waiting for a response. There was discussion about seeking assistance from veterinarians from nearby townships but as they were not wildlife veterinarians they were probably not suitable for the job as there were a number of other species of wildlife at this park that Inspector Prowse said required attention also. Inspector Prowse stated that it would have been a conflict of interest and not correct to expect the Gunnedah veterinarians to be involved in a potential local issue. My understanding was that Inspector Prowse was also having difficulty getting personnel from both NPWS [National Parks and Wildlife Service] and Industry and Investment to attend the zoo at short notice and I sensed she was becoming increasingly frustrated in not being able to get a team of qualified people together at one time to assist RSPCA in a proper investigation of the park...It is my understanding that it was the difficulty to have a wildlife veterinarian and a representative from Industry and Investment ready to go which caused the delay.<sup>57</sup>

**3.25** Mr Coleman emphasised that RSPCA Inspectors are not veterinarians and not qualified to make detailed assessments of animal health. He said that:

In many cases, there is nothing wrong with the animals and if we can satisfy ourselves, having seen the animals and spoken to the owners or the persons in charge, that there are not grounds in relation to a POCTA [Prevention of Cruelty to Animals] offence or

<sup>53</sup> Submission 9, p 83

<sup>54</sup> Mr Coleman, Evidence, 6 July 2010, p 20

<sup>55</sup> Answers to questions on notice taken during evidence 5 July 2010, Mr Coleman, p 1

<sup>56</sup> Submission 5, p 3

<sup>57</sup> Submission 5, p 3 - 4

even close to that, we leave. There are other occasions where there are some obvious issues with some of the animals and some that are not so obvious. If they are not so obvious but the inspector has concerns or reservations either because of their observations and/or discussions they might have with a person, they will and do seek expertise to assist with those enquiries.<sup>58</sup>

- 3.26** The difficulty in finding a wildlife veterinarian was compounded by the need to avoid engaging a professional from Gunnedah. Mr Coleman explained that it is standard practice to avoid engaging local professionals in RSPCA investigations, in order to reduce potential conflicts of interest. He said that:

Consistent with normal practice, there are a number of reasons why RSPCA NSW Inspectors would not engage local veterinary practices/businesses. Some of these include relevant expertise, potential conflicts of interest and the fact that the society is mindful of jeopardising those local practices and their future business if they are engaged in a local investigation that may result in a prosecution.<sup>59</sup>

- 3.27** No representative from the Department of Industry and Investment was available to attend the Park on 3 February. Officers from the Department of Industry and Investment subsequently visited the Park on 8-9 February to assess compliance with the *Exhibited Animals Protection Act 1986*. The actions of the Department of Industry and Investment with respect to the licensing of the Waterways Wildlife Park are detailed in Chapter Four.

### **The 'raid' on 3 February 2010**

- 3.28** After Inspector Prowse's visit to the Waterways Wildlife Park on 22 January 2010, RSPCA Inspectors returned to the Park on 3 February 2010 to continue their investigation.
- 3.29** RSPCA Inspectors Makeham, Prowse and French were accompanied by wildlife veterinarian Dr Michelle Campbell from the Western Plains Zoo, Ms Cheyne Flanagan, a wildlife biologist from the Koala Hospital and Study Centre in Port Macquarie, and ranger Ms Rebecca Cass from the National Parks and Wildlife Service. A television crew of three people from 'Animal Rescue' was also in attendance, and the involvement of this program is discussed separately in Chapter Five.

#### **The arrival of the RSPCA inspectors**

- 3.30** According to Inspector Prowse, she and Inspector Makeham entered the Park and spoke to proprietor Nancy Small.<sup>60</sup> They introduced themselves to Mrs Small and advised her of the reason for their visit. Inspector Prowse reported that:

I said "My name is Kylie Prowse, and this is Michael Makeham and we are RSPCA Inspectors. We would like to speak with the person in charge please."

She said, "My name is Nancy Small and this is my Park."

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<sup>58</sup> Mr Coleman, Evidence, 6 July 2010, p 20

<sup>59</sup> Answers to questions on notice taken during evidence 5 July 2010, Mr Coleman, p 1

<sup>60</sup> Submission 9, p 47

I said “I attended this Park recently and after that visit I had a number of concerns about the animals, there [sic] living arrangements, diet, medical conditions and the general condition of the Park. With me today I have a Veterinarian, another wildlife expert, another RSPCA Inspector and there is a film crew. What we would like to do is look around the Park and if suitable ask you a series of questions.”

Nancy said “there are no problems here, that’s fine.”<sup>61</sup>

- 3.31** However, according to Mrs Small, RSPCA inspectors failed to identify themselves to her when they entered the Park.<sup>62</sup> Section 24C of the *Prevention of Cruelty to Animals Act 1979* requires officers to provide evidence that they are an officer. At least one officer must provide their name.<sup>63</sup> Mrs Small said, “This woman did not identify herself to me....None of the three people in RSPCA uniforms provided me with any evidence that he or she was an officer.”<sup>64</sup>
- 3.32** The video footage taken by ‘Animal Rescue’ shows Inspectors Prowse and Makeham approaching Mrs Small. Both are wearing RSPCA uniforms. Inspector Prowse introduces herself and explains that she is an RSPCA inspector, that she has concerns about animals at the Park and that she is accompanied by a group of people including other inspectors, a wildlife vet and a koala expert.<sup>65</sup>

### **The condition of the koalas and their enclosures**

- 3.33** Dr Campbell and Ms Flanagan then proceeded to examine the koalas in the main enclosure. Dr Campbell subsequently provided an assessment of the condition of the koalas and of other animals at the Park, as well as the conditions in which the animals were housed. Of her first impression of the koala enclosure she wrote:

On initial inspection two koalas were sitting motionless on the floor of the enclosure at the base of the erected branches (an unusual location for healthy koalas to rest in an adequately furnished enclosure). Three koalas were sitting in forks in the branches (normal posture) and the remaining koala was lying in sternal recumbency along a horizontal branch with her limbs hanging limply on either side of this branch. There was little suitable foliage available (most leaves remaining on the browse provided were dry and brittle) and the water in which the food was placed was putrid and soiled with faeces. Large numbers of mosquito larvae were present in this malodorous, brown-coloured water. No clean, fresh water could be found in any of the water receptacles within this enclosure.

Clinical examination revealed that 5 of the 6 koalas were in suboptimal body condition (between 1/5 to 2/5). All of the 6 koalas were dehydrated to varying degrees (from mild to moderate) on the basis of skin tone and tenting over the scapulae and the top of the head.<sup>66</sup>

<sup>61</sup> Submission 9, p 47

<sup>62</sup> Submission 13, p 7

<sup>63</sup> *Prevention of Cruelty to Animals Act 1979* (NSW) s 24C (1)

<sup>64</sup> Submission 13, p 7

<sup>65</sup> Video footage, Imagination Television Ltd, *Waterways Wildlife Park Tape No. 45218*, 01:02:35 – 01:03:15

<sup>66</sup> Submission 9, pp 57 - 58

- 3.34** Ms Flanagan also provided a detailed assessment of the koalas. Her account of the main koala enclosure was very similar to that of Dr Campbell:

One of the koalas was observed sitting on the ground drinking from the water bowl as we arrived ... Another koala was lying flat on her stomach around the base of a bucket on the ground while another was sitting behind the same bucket. The three remaining koalas were on the perches in the leaf... They were all breathing quite rapidly (fast respiration). The first thing I observed was their dehydrated state – all had sunken eyes and were exhibiting lethargic behaviour. Some of the koalas were observed to have badly stained, wet perineums and rump areas coated in loose faecal material that had a strong offensive acid urine smell. This smell can be associated with koalas sitting in the same location day after day, with the cage furniture not being replaced. A number of the koalas in this enclosure also had a smell of chlamydiosis.<sup>67</sup>

- 3.35** Dr Campbell recommended full clinical examinations and blood testing for all of the koalas, as well as rehydration and nutritional support. This necessitated their removal from the Park. Dr Campbell wrote that:

Following inspection and examination of this group of koalas, it was deemed necessary to remove these animals from the property to facilitate the provision of supportive treatment and to carry our further medical evaluation.<sup>68</sup>

- 3.36** The decision to remove the koalas from the Park was communicated to Mrs Small, apparently while Dr Campbell and Ms Flanagan were still examining the koalas. Inspector Matt French wrote that:

Flanagan and Campbell continued to examine the koalas in the enclosure. Small approached me and we had a conversation to the effect of:

Small said: "What is happening?"

I said: "Nancy, there are some serious health issues with the koalas. What we need to do is get them hydrated, and then transport them to a specialist clinic for care."<sup>69</sup>

- 3.37** Inspector Prowse wrote that she also had a similar conversation with Mrs Small:

I spoke with Nancy and said "These animals are in urgent need of Veterinary treatment and will be taken into the RSPCA's custody so we can provide them with that treatment. This enclosure needs to be closed as it is below standard. The Vet has indicated to me they need to be removed to receive the treatment they need."<sup>70</sup>

- 3.38** However, Mrs Small recounted a different conversation in which she learned of the decision to remove the koalas. This conversation was between Mrs Small and Dr Campbell at some point. Mrs Small wrote that:

The female who had the Taronga Park Zoo uniform said: "These koalas are sick and underweight. I am a fully qualified vet from Taronga Zoo."

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<sup>67</sup> Submission 5 - Appendix D, Koala Hospital – Port Macquarie, p 3

<sup>68</sup> Submission 9, p 59

<sup>69</sup> Submission 9, p 31

<sup>70</sup> Submission 9, p 48

I said: "I don't care a crap who you are. There is nothing wrong with these koala."

She talked over the top of me and said: "We are taking these two koalas. No, on second thought, we will take the bloody lot."<sup>71</sup>

**3.39** The group then proceeded to examine another two koalas which were held in a separate rehabilitation enclosure. It is unclear why these koalas were being held in the rehabilitation enclosure. According to Ms Flanagan, "The owner appeared to be unable to tell us why these koalas were put in quarantine and said she didn't know "what was wrong with them."<sup>72</sup> Inspector Prowse also noted this.<sup>73</sup>

**3.40** Dr Campbell observed that fresh leaves were available in the rehabilitation enclosure.<sup>74</sup> However, one of these koalas in that enclosure was also dehydrated. Dr Campbell wrote:

The adult appeared to be in reasonable body condition (3/5) and was adequately hydrated. The subadult, however was thin (2/5 body condition score), weak, and had significant urine soiling of the pericloacal fur.<sup>75</sup>

**3.41** Dr Campbell determined that 'the subadult animal was in need of immediate rehydration and nutritional support', and decided to remove these koalas also.<sup>76</sup> She added that: 'It was recommended that the animals remain isolated from other koalas pending the results of Chlamydia screening.'<sup>77</sup>

**3.42** It is not clear whether all of the koalas in the rehabilitation area were examined by Ms Flanagan and Dr Campbell. Ms Flanagan said that she saw 'only a very small little corner' of the rehabilitation facilities at the Waterways Wildlife Park.<sup>78</sup> Mr Steve Coleman, Chief Executive Officer of RSPCA NSW said that:

My understanding is that they looked at a number of animals that were referred to by the owner or manager of the park. As to whether or not it was clearly defined as both exhibited and/or rehab areas that I am not sure of. But my understanding is that we looked at what we were told were all of the animals at this particular park.<sup>79</sup>

**3.43** However, National Parks and Wildlife Service ranger Ms Rebecca Cass observed seven koalas in the rehabilitation area of the Park.<sup>80</sup> There is some uncertainty as to whether this number was accurate because Mrs Small was unable to provide records of the animals present at the Park and there is also some doubt as to whether Ms Cass's observation was accurate. When

<sup>71</sup> Submission 13, p 10

<sup>72</sup> Submission 5 - Appendix D, p 5

<sup>73</sup> Submission 9, p 49

<sup>74</sup> Submission 9, p 59

<sup>75</sup> Submission 9, p 59

<sup>76</sup> Submission 9, p 59

<sup>77</sup> Submission 9, p 59

<sup>78</sup> Ms Cheyne Flanagan, Hospital Supervisor, Koala Hospital – Port Macquarie, Evidence, 5 July 2010, p 11

<sup>79</sup> Mr Coleman, Evidence, 5 July 2010, p 19

<sup>80</sup> Tabled Document, Department of Environment, Climate Change and Water, *The Friends of the Waterways Wildlife Park: Inspection Report dated 4 February 2010*, July 2010, p 1

asked how many koalas were held in the rehabilitation area on 3 February, Mr Haering said, 'we are not entirely sure. We think there were probably about seven.'<sup>81</sup>

- 3.44** The number of koalas observed by Ms Cass is of particular interest in the context of this Inquiry. Inspector Prowse<sup>82</sup>, Ms Flanagan and Dr Campbell all reported that they examined eight koalas, including six in the main enclosure and two in the rehabilitation area. Ms Cass's report includes a photo of two koalas which were being housed in a laundry<sup>83</sup>; Ms Flanagan and Dr Campbell's reports made no mention of these animals. Therefore it appears that not all of the koalas in the Park on 3 February were seized by the RSPCA.

### **The condition of other animals at the Park**

- 3.45** The group then proceeded to examine other animals in the Park. Raptors (birds of prey) were examined first, this cage being close to the main koala enclosure. The party then examined the macropods. The exact number of kangaroos and wallabies held at the Park at the time is not known. Inspector Prowse observed that:

We walked to the top yard which contained numerous red Kangaroos and a number of emus. The paddock was dirt with absolutely no pasture available. I sighted whole potatoes, pineapples, mandarins and other rotten fruit and vegetables. There were piles of some sort of grain husks on the ground.<sup>84</sup>

- 3.46** In her report Dr Campbell commented on a range of issues that posed potential threats to the health of the animals. These issues included inappropriate food, lack of clean water, overstocking or inadequate space in various enclosures. The presence of inappropriate food for the animals and the lack of fresh grass<sup>85</sup> is also apparent in the Animal Rescue footage.<sup>86</sup> Dr Campbell wrote:

Observations made during the inspection that raised serious concern in relation to animal health and welfare in some of the enclosures included high stocking densities, uncontrolled breeding, poor hygiene standards, a lack of fresh water and inappropriate dietary provision.<sup>87</sup>

### **Treatment of the kangaroo**

- 3.47** Dr Campbell and Ms Flanagan treated one kangaroo which had a corneal ulcer on its eye. Ms Flanagan said that, 'one of the male red kangaroos was observed to not only be in poor body condition but had an obvious right eye corneal ulceration which required immediate

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<sup>81</sup> Mr Ron Haering, Manager, Wildlife and Management Unit, Department of Environment, Climate Change and Water, Evidence, 5 July 2010, p 4

<sup>82</sup> Submission 9, pp 47 – 48, pp 72 – 73 and, pp 57 - 59

<sup>83</sup> Tabled Document, Department of Environment, Climate Change and Water, *The Friends of the Waterways Wildlife Park: Inspection Report dated 4 February 2010*, July 2010, p 12

<sup>84</sup> Submission 9, p 50

<sup>85</sup> Submission 9, p 60

<sup>86</sup> Video footage, Imagination Television Ltd, *Waterways Wildlife Park*, Tape No. 45219, 02:16:42 – 02:22:02

<sup>87</sup> Submission 9, p 64

attention'.<sup>88</sup> Dr Campbell also noted that the animal was in lean body condition<sup>89</sup> and observed that: 'This individual had a slight head tilt to the right and was intermittently scratching this side of his head'.<sup>90</sup>

**3.48** Mrs Small has disputed aspects of Dr Campbell's assessment of the kangaroo, saying that 'he was not distressed in any way and definitely did not have a low body condition'.<sup>91</sup>

**3.49** Dr Amos criticised Ms Flanagan's assessment of the kangaroo's condition, saying that:

That kangaroo was about two years old and it had been blind since birth. It obviously grew up unable to see and it was coping quite well and was getting around. Ms Flanagan failed to realise that the animal was blind. It certainly had a sore eye but it was also blind.<sup>92</sup>

**3.50** The animal was sedated and treated with antibiotics and painkillers. Dr Campbell advised Mrs Small that the animal should be monitored closely once it had recovered from its anaesthetic.<sup>93</sup>

**3.51** The animal was subsequently euthanased on 25 February, apparently by the park owners. Dr David Amos provided a post-mortem report to the Committee.<sup>94</sup> Mr Coleman said that:

[T]he question was posed that it had been shot. We were unaware of that animal having been shot. I think the question was asked "Was there anything wrong with it?" and I think the response was no. The obvious question was, "Why was it shot?" I do not think we got a response.<sup>95</sup>

**3.52** The Committee received no evidence from Mr and Mrs Small on this matter. It is not clear why the animal was euthanased. The post-mortem report states that: 'He was in excellent condition, all organs were normal. There was no evidence of either internal nor external parasites. An ulcer in the right eye was incompletely healed'.<sup>96</sup>

### The dingoes

**3.53** Inspector Prowse questioned Mrs Small about the two allegedly emaciated dingoes which had been the subject of the original complaint against the Park. Mrs Small advised that the animals had been euthanased. She said that:

My husband thought that in order to save arguing over it and because they were old animals he would put them down. We were going to put them down anyway. He thought he would solve the problem by going down, shooting them and burying them

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<sup>88</sup> Submission 5, p 7

<sup>89</sup> Submission 9, p 60

<sup>90</sup> Submission 9, p 59

<sup>91</sup> Submission 13, p 13

<sup>92</sup> Dr Amos, Evidence, 6 July 2010, p 29

<sup>93</sup> Submission 9, p 60

<sup>94</sup> Tabled document, Dr David Amos, Veterinarian, Gunnedah Veterinary Clinic, *Post-mortem report*, 6 July 2010

<sup>95</sup> Mr Coleman, Evidence, 5 July 2010, p 30

<sup>96</sup> Tabled document, *Post-mortem report*

and that would be that. He did not realise that they had to undergo a post-mortem and that sort of thing.<sup>97</sup>

- 3.54** Inspector Prowse queried whether a post-mortem examination had been performed on the dead animals and was advised that it had not. The 'General Standards for Exhibited Animals in New South Wales' require exhibitors to conduct a post-mortem of prescribed species to determine the cause of death.<sup>98</sup> Mr Coleman explained that conducting post-mortems,

Is a normal and fairly routine husbandry practice. If for whatever reason there were something new in terms of disease, as a responsible manager of a wildlife park one would want to know that so that certain species could be isolated or quarantined so that whatever it was would not spread.<sup>99</sup>

- 3.55** Dr Amos expressed the view that the requirement to conduct post-mortems on exhibited animals was onerous, saying that:

I do everything for nothing, but I sure as hell cannot get the pathology done for nothing....if an animal dies or we euthanase it because it is too badly injured no post-mortem is done and we do not do all the pathology. It is too expensive and we cannot do it.<sup>100</sup>

- 3.56** Dr Amos also felt that the requirement to conduct post-mortems may threaten the viability of the Waterways Wildlife Park:

Places like Waterways Wildlife Park are not making a fortune. Colin Small drives a truck around carrying bricks to keep the place going. Huge numbers of animals are brought in, nurtured, and returned to the wild because of the expertise of Nancy Small. If you are going to put it under too much pressure and make it too difficult, it will disappear.<sup>101</sup>

### **Parasites**

- 3.57** Inspector Prowse questioned Mrs Small about flea and worm treatment of the dingoes. Mrs Small explained that she was planning to distribute flea powder around the enclosure and administer worm treatment to the animals through their food.<sup>102</sup>

- 3.58** Dr Campbell also expressed concerns about inadequate flea and worm control both among the dingoes and among other animals on the property.<sup>103</sup> She wrote that, 'When asked by the RSPCA inspector whether any of the animals were wormed regularly, Mrs Small was heard to say that she did not believe that there was a parasite problem on the property and that

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<sup>97</sup> Mrs Nancy Small, Owner and Operator, Waterways Wildlife Park, Evidence, 6 July 2010, p 23

<sup>98</sup> General Standards for Exhibiting Animals in New South Wales, cl 51

<sup>99</sup> Mr Coleman, Evidence, 5 July 2010, p 30

<sup>100</sup> Dr Amos, Evidence, 6 July 2010, p 37

<sup>101</sup> Dr Amos, Evidence, 6 July 2010, p 37

<sup>102</sup> Submission 9, p 53

<sup>103</sup> Submission 9, p 63

treatment was therefore not necessary.<sup>104</sup> Monitoring and control of parasites is a requirement of the 'General Standards for Exhibited Animals in New South Wales'.<sup>105</sup>

### **Shingleback lizards**

- 3.59** After examining the lizards, Dr Campbell determined that one was in such poor condition that it was cruel to keep it alive. The lizard was euthanased.<sup>106</sup> Dr Campbell recommended that two other lizards should be removed for treatment:

Two additional shingleback lizards were in poor body condition, were dehydrated (with sunken eyes and dry mucous membranes), had a moderate tick burden and had crusting of the eyeballs bilaterally...After inspection and examination it was deemed necessary to remove these animals from the property for further evaluation and treatment.<sup>107</sup>

- 3.60** Mrs Small has disputed Dr Campbell's assessment of the lizards. She wrote:

I did not agree with their view as to the state of the shinglebacks at all. I doubted their ability to make such judgment. As it turned out, one of the shingleback that she alleged was obese gave birth to a baby shingleback about a month later so obviously this woman confused pregnancy with obesity.<sup>108</sup>

### **Removal of the animals and the behaviour of RSPCA inspectors**

- 3.61** The group then returned to the koala enclosure, where Dr Campbell and Ms Flanagan administered rehydration treatment to the koalas on-site. This treatment was watched by Mrs Small, Ms Sutcliffe, and a number of other people who had arrived at the Park, including a journalist from the Namoi Valley Independent newspaper. According to Ms Sutcliffe:

Allan George [the husband of a volunteer at the Park] comes up and tells us “they are trying to poison the old koala.” When we get to the koala’s yard we see them trying to stuff something down the koala’s throat. The sheila with the Taronga Zoo shirt on says “I am not poisoning her I am giving her oral rehydration.” The koala was screaming and making distressing noises. Mum, Cindy and I were very distress [sic] and in shock at what they were doing...We had a heated discussion with Kylie Prowse and Matt French.<sup>109</sup>

- 3.62** Both Ms Sutcliffe<sup>110</sup> and Mrs Small<sup>111</sup> referred to heated exchanges with RSPCA Inspectors about the removal of the koalas. The Animal Rescue video shows one tense exchange between Inspector Prowse and Mrs Small when the removal of the koalas is discussed.

<sup>104</sup> Submission 9, p 63

<sup>105</sup> General Standards for Exhibiting Animals in New South Wales, cl 47(1)(e)

<sup>106</sup> Submission 9, p 62

<sup>107</sup> Submission 9, p 62

<sup>108</sup> Submission 13, p 12

<sup>109</sup> Submission 21, p 2

<sup>110</sup> Submission 21, p 3

<sup>111</sup> Submission 13, p 15

- 3.63** The group discussed arrangements for the removal of the animals. According to Mrs Small she was initially advised that the koalas would be removed the following day,<sup>112</sup> and the video footage taken by Animal Rescue shows the group discussing this at one point. However, it was later decided that the animals should be removed that day.<sup>113</sup>
- 3.64** A Dutch couple, Mr Frank van Kraaij and Ms Hanna Brok, were present in the Park during the RSPCA's visit and later wrote to the Gunnedah Shire Council. Mr Kraaij and Ms Brok said that:
- As we were ready to leave the Koala's and start our visit to the rest of the Park, a lady from the RSPCA walked toward us. She said to us: "What you are doing is illegal!!! Have you been petting the Koala's? What are doing in the Koala shelter? You have to get out of there. The Koala's are stressed out and dehydrated!" Then she started to shout to the elderly Lady, as if she was her 12 year old daughter. Rude, arrogant and respect less behavior.<sup>114</sup>
- 3.65** Mrs Small said, 'the RSPCA and, in particular, Inspector Prowse, behaved in such a way on 3 February 2010 that I felt like a criminal and completely abandoned, gutted and confused.'<sup>115</sup> However, Ms Flanagan expressed the view that:
- I did not witness Inspector Prowse yelling at or abusing Mrs Small or any of the volunteers at any point while we were at the zoo as stated in some submissions. On 3 February I witnessed Inspectors Prowse, Makeham and French to be well mannered, polite and calm. They dealt with the park owners and volunteers in a dignified fashion. Their behaviour was nothing short of professional for the entire time we were at the park.<sup>116</sup>
- 3.66** The video footage taken by 'Animal Rescue' does not show all of the interactions which took place at Waterways Wildlife Park on 3 February. However, it does show RSPCA Inspectors explaining their actions to Mrs Small at length, and their demeanour is calm and professional.<sup>117</sup>
- 3.67** RSPCA Inspectors Prowse, French and Makeham made arrangements for the removal of the koalas. With Mrs Small's agreement, they took some leaves from storage at the Park to feed the animals in transit.<sup>118</sup> The koalas were loaded into RSPCA vehicles, while the lizards were taken by Dr Campbell in her car.
- 3.68** Inspector French spoke with Mr and Mrs Small and Ms Sutcliffe. According to Inspector French, he advised them that the koalas were being taken to a specialist vet centre for koalas, and that they had the option of surrendering the animals to the RSPCA.<sup>119</sup> Ms Sutcliffe signed the RSPCA seizure notice.<sup>120</sup>

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<sup>112</sup> Submission 13, p 10

<sup>113</sup> Video footage, Imagination Television Ltd, *Waterways Wildlife Park*, Tape No. 45222, 05:09:40 – 05:12:09

<sup>114</sup> Submission 11, Gunnedah Shire Council, p 6

<sup>115</sup> Submission 13, p 20

<sup>116</sup> Ms Flanagan, Evidence, 5 July 2010, p 9

<sup>117</sup> Video footage, Imagination Television Ltd, *Waterways Wildlife Park*, Tape Nos. 45218 - 45222

<sup>118</sup> Submission 9, p 59; Submission 13, p 16

<sup>119</sup> Submission 9, p 36

<sup>120</sup> Submission 21, p 6

- 3.69** According to Mrs Small and Ms Sutcliffe, ranger Rebecca Cass advised them that the koalas would be taken to Gunnedah Veterinary Hospital overnight.<sup>121</sup> In fact, the koalas were removed to Saleyards Veterinary Clinic in Gunnedah, and the next day they were taken to the Koala Hospital and Study Centre in Port Macquarie.

### **Treatment of the animals removed from the Park**

- 3.70** On arrival at Saleyards Veterinary Clinic the koalas were examined by Dr Campbell and transferred into cages with fresh leaves. One koala was given additional hydration fluids. The lizards were also given hydration treatment.<sup>122</sup>
- 3.71** The following day the lizards were taken to Western Plains Zoo in Dubbo, where they were given further treatment.<sup>123</sup>
- 3.72** The koalas were transported to the Koala Hospital in Port Macquarie on 4 February. The Koala Hospital is operated by the Koala Preservation Society of NSW and provides treatment and rehabilitation for koalas, as well as participating in research. Between 200 and 250 koalas are admitted each year.<sup>124</sup> On arrival the koalas were briefly examined by the supervising veterinarian at the Koala Hospital, Dr Chris Livingston, and given further hydration fluids.
- 3.73** On 5 February Dr Livingston gave the koalas a full clinical examination which included taking blood tests and performing ultrasounds on all except one animal which was carrying a joey. The koalas were also tagged and given numbers from 'K206' through to 'K213' for identification purposes.
- 3.74** 'K206' was the koala which Mrs Small called the 'little old lady'.<sup>125</sup> It was emaciated and dehydrated, had ringworm, tapeworm and diarrhoea. Blood tests indicated some underlying disease process and the animal also tested positive for Chlamydia.<sup>126</sup> Dr Livingston noted that:
- [T]his animal was in need of veterinary attention and, in my opinion, would have needed this attention for sometime. The degree of emaciation, dehydration, skin lesions, diarrhoea and matting of the fur would have been clearly apparent for some period of time prior to my examination. These clinical signs are not simply the result of age, but the koala's advanced age means that she is less able to cope with disease.<sup>127</sup>
- 3.75** Dr Livingstone observed that all of the other koalas 'presented with dehydration, varying levels of poor body condition (all were well below their ideal weights), several with diarrhoea and all swabbed positive for Chlamydia.'<sup>128</sup>

<sup>121</sup> Submission 13, p 17; Submission 21, p 4

<sup>122</sup> Submission 9, p 59; Submission 13, p 14

<sup>123</sup> Submission 9, p 59; Submission 13, p 14

<sup>124</sup> Koala Hospital – Port Macquarie, *About the hospital* <<http://www.koalahospital.org.au/about-the-hospital>> (accessed 4 August 2010)

<sup>125</sup> Submission 13, p 15

<sup>126</sup> Submission 9, p 59; Submission 13, pp 65 - 66

<sup>127</sup> Submission 9, p 59; Submission 13, p 70

<sup>128</sup> Submission 9, p 59; Submission 13, p 70

### Dehydration and the koalas' diet

**3.76** The dehydration of the koalas appears to have been caused by inadequate access to fresh eucalyptus leaves. The diet of koalas consists entirely of eucalyptus leaves, and moisture is gained through these leaves. While koalas can and do drink water, Ms Flanagan explained that:

The Aboriginal term "koala" means "no drink" or "little drink". The majority of their water consumption comes via eucalypt leaves. Provided the leaf has good moisture content – it should be more than 65 per cent moisture – they do not need to drink water. It is very rare for them to have to drink.<sup>129</sup>

**3.77** Both Ms Flanagan and Dr Campbell observed that the leaves available in the main koala enclosure on 3 February were dry and brittle, which made them unsuitable as a source of nutrients and hydration for the koalas; consequently the animals were on the ground attempting to drink from water bowls.

**3.78** Mrs Small has disputed suggestions that the leaves available to the koalas on 3 February were inadequate.<sup>130</sup> She said that:

The other leaves were not dry. We topped them up that night and were going to do a complete cleanout the next morning...They still had access to good fresh leaves. I noticed one branch hanging down. It was dry and that was the piece I saw Flanagan crush with her fingers. They took the same leaves out of the containers that were in the koala enclosure.<sup>131</sup>

**3.79** Dr Campbell observed that there were some fresh leaves in the koala rehabilitation enclosure, and in storage in a large bin containing fresh water.<sup>132</sup> As already mentioned, RSPCA inspectors took some leaves from a storage container to feed the koalas in transit. Eucalyptus leaves can be rehydrated by placing the stems in fresh water.<sup>133</sup> However, Ms Flanagan noted that the water in which the leaves in the koala enclosure were placed was dirty, rendering it ineffective for rehydrating leaves.

**3.80** The video footage taken by 'Animal Rescue' supports the comments about the leaf and water available to the koalas. The video shows dry leaves and dirty, stagnant water.<sup>134</sup>

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<sup>129</sup> Ms Flanagan, Evidence, 5 July 2010, p 9

<sup>130</sup> Mrs Small, Evidence, 6 July 2010, pp 18 - 21

<sup>131</sup> Mrs Small, Evidence, 6 July 2010, p 21

<sup>132</sup> Submission 9, p 59

<sup>133</sup> Supplementary Submission 5a, Ms Cheyne Flanagan, Hospital Supervisor, Koala Hospital – Port Macquarie, p 1

<sup>134</sup> Video footage, Imagination Television Ltd, *Waterways Wildlife Park*, Tape No. 45218, 01:15:37 – 01:17:17; Video footage, RSPCA NSW, *Part I taken in the koala enclosure*, 00:00:01 – 00:00:25

**3.81** Several participants in the Inquiry attested that it is common to see koalas in the Gunnedah area drinking water in hot weather.<sup>135</sup> Mrs Small also disputed the view that koalas do not drink water, saying that, 'Koalas in this area do drink a lot of water.'<sup>136</sup> Mrs Small said that:

Everyone in this district can tell you how the koalas come to the ground. Heat rises and all the native animals, including kangaroos, lie on the ground in the heat. Koalas go to the ground. They turn themselves over like little fat frogs. They lie flat out and their eyes are sunken in. If you touch them they will not move. Once it cools down they go back up into the trees and they survive.<sup>137</sup>

**3.82** However, it appears likely that the dehydration and malnourishment exhibited by the koalas emerged over a period of longer than one day or even several days. Ms Flanagan emphasised that the dehydration was chronic rather than acute:

In my opinion, low eucalypt leaf moisture coupled with the hot dry temperatures of the western plains summers (i.e. condition of animals was result of preceding conditions, not immediate on the day), had been a contributing factor to what I would have no doubt in clinically categorising as chronic dehydration.<sup>138</sup>

**3.83** Ms Flanagan offered the opinion that this chronic dehydration would have taken some time to develop,<sup>139</sup> suggesting that 'the below average weights of all of these koalas would more than likely have been present for more than one month and possibly could have been for more than 6 months.'<sup>140</sup>

**3.84** Similarly, Dr Campbell's professional opinion was that:

The koala tagged 206 is estimated to have been in the aforementioned condition for many months. The remaining koalas examined on the day were in a variable state of dehydration and poor body condition: based on my experience and the examination performed on 3<sup>rd</sup> February, I have estimated that these animals had been in suboptimal condition for a period of at least a few weeks, but possibly up to a few months.<sup>141</sup>

**3.85** Mrs Small has disputed the findings of Ms Flanagan, Dr Campbell and Dr Livingston.<sup>142</sup> In relation to Dr Campbell's observations of the condition of the koalas on 3 February, Mrs Small said:

I do not care what she [Dr Campbell] said. They were not dehydrated, they were not starving and they were not stressed. There was no time that they were in that condition. They were not dehydrated.<sup>143</sup>

<sup>135</sup> Ms Jodi Markwick, Volunteer, Waterways Wildlife Park, Evidence, 6 July 2010, p 11; Cr Adam Marshall, Mayor, Gunnedah Shire Council, Evidence, 6 July 2010, p 48

<sup>136</sup> Mrs Small, Evidence, 6 July 2010, p 18

<sup>137</sup> Mrs Small, Evidence, 6 July 2010, p 22

<sup>138</sup> Submission 5 - Appendix D, pp 2 - 3

<sup>139</sup> Ms Flanagan, Evidence, 5 July 2010, p 9

<sup>140</sup> Submission 9, p 59; Submission 13, p 77

<sup>141</sup> Submission 9, p 59; Submission 13, p 64

<sup>142</sup> Mrs Small, Evidence, 6 July 2010, p 22

<sup>143</sup> Mrs Small, Evidence, 6 July 2010, p 22

## Diarrhoea

- 3.86** Ms Flanagan felt that the diarrhoea exhibited by the koalas was probably caused by stress. She said that: 'It can be a tapeworm infestation, which they did have but it was not enough to warrant the diarrhoea they had. Koalas exhibit diarrhoea by stress as one of the classic signs.'<sup>144</sup> Ms Flanagan opined that the animals' stress may have been caused by living in an overcrowded enclosure.<sup>145</sup>

## Chlamydia

- 3.87** Chlamydia is a sexually transmitted disease common among wild koala populations; the disease typically leads to uro-genital conditions and may also affect the eyes and lead to blindness.<sup>146</sup> The progress of the disease can vary significantly in individual animals. It is possible – indeed quite common – for a koala to be infected with Chlamydia but to display no external symptoms at all; this is termed 'sub-clinical infection'.<sup>147</sup> Chlamydia is known to be present among koalas in the Gunnedah area, though prevalence is estimated to be low in comparison to other regions.<sup>148</sup>
- 3.88** Several of the koalas exhibited from the Waterways Wildlife Park had stained fur or 'wet bottom'<sup>149</sup> associated with incontinence caused by Chlamydia, to varying degrees.<sup>150</sup> For example, Ms Flanagan noted on first entering the koala enclosures that some of the koalas smelled of chlamydiosis.<sup>151</sup> Others were later found to be 'sub-clinically' infected, which means they displayed no visible symptoms. Two animals were sub-clinically infected but had ovarian cysts which occur as a result of Chlamydia.<sup>152</sup>
- 3.89** Mrs Small has disputed that the koalas had Chlamydia before they were removed by the RSPCA on 3 February. She said that:

I have never seen Chlamydia in this area. When they took the koalas to Port Macquarie it is well known that it is a Chlamydia disease area. What have they done to our koalas? When they brought them back they had Chlamydia. I am damn sure that they did not have any, but suddenly we have Chlamydia, which is a well-known stress disease.<sup>153</sup>

- 3.90** It is not known when the koalas became infected with Chlamydia, but it appears likely that this occurred well before their removal from the Waterways Wildlife Park. Ms Flanagan observed that the ovarian cysts that two koalas exhibited 'usually take a number of weeks to

<sup>144</sup> Ms Flanagan, Evidence, 5 July 2010, p 10

<sup>145</sup> Submission 9, p 59; Submission 13, p 76

<sup>146</sup> Correspondence from Dr Damien Higgins, Senior Lecturer, Koala Infectious Diseases Research Group, Faculty of Veterinary Science, University of Sydney, to Principal Council Officer, 13 July 2010

<sup>147</sup> Correspondence from Dr Higgins, to Principal Council Officer, 13 July 2010

<sup>148</sup> Correspondence from Dr Higgins, to Principal Council Officer, 13 July 2010

<sup>149</sup> Answers to questions on notice taken during evidence 5 July 2010, Ms Cheyne Flanagan, Hospital Supervisor, Koala Hospital – Port Macquarie, p 1

<sup>150</sup> Submission 9, p 59; Submission 13, pp 66 - 70

<sup>151</sup> Submission 9, p 59; Submission 13, p 3 & p 6

<sup>152</sup> Answers to questions on notice taken during evidence 5 July 2010, Ms Flanagan, p 1

<sup>153</sup> Mrs Small, Evidence, 6 July 2010, p 22

months to initially arise on the reproductive organs and thus could easily have been in place for years.<sup>154</sup> It is possible that some of the animals were infected before entering the Waterways Wildlife Park.

- 3.91** The koalas removed from the Park on 3 February were all female. However, a male koala which lived at the Park died in January 2010: it is therefore possible that the koalas became infected while living at the Park.<sup>155</sup> Following their removal from the Park, the animals were placed in quarantine and did not come in direct contact with other koalas.<sup>156</sup>

### **The male koala**

- 3.92** Mrs Small reported that a male koala which had lived at the Park died some weeks before the RSPCA's visit to the Waterways Wildlife Park on 3 February. Mrs Small said that she attributed the animal's death to heat stress. '[T]he heat really affects the male koalas...I just put it down to heat stress,' she said.<sup>157</sup>

- 3.93** Ms Flanagan was very critical of the circumstances surrounding the death of this animal, saying that, 'This is a significant statement as no animal should die in a captive zoo environment of heat stress.'<sup>158</sup>

- 3.94** However, Dr Amos pointed out that it was not certain that the koala had died of heat stress.

I understand that it died suddenly without any prior signs. Making the assumption – and it is an assumption – that that animal died of heat stress, you could say that that should not have happened. Until you can say it died of heat stress, it is an irrelevant question. It is almost like saying that in a controlled environment nothing will die suddenly. They do.<sup>159</sup>

- 3.95** It is impossible to determine the cause of the death of this koala, because no post-mortem examination was conducted. Mrs Small explained that she had intended to have the koala's body examined by a veterinarian but this was not possible:

I picked him up and put him in the freezer and I thought that I would get David to check him out after I got out of hospital. But during that time we had a blackout and I lost two freezers and a refrigerator. Everything that was contained in them we burned.<sup>160</sup>

- 3.96** Inspectors from the Department of Industry and Investment visited the Waterways Wildlife Park on 8-9 February 2010 (this inspection is discussed further in Chapter Four). Mr Matthew Crane, from the Department of Industry and Investment, reported that he

<sup>154</sup> Submission 9, p 59; Submission 13, p 3 & p 77

<sup>155</sup> Mrs Small, Evidence, 6 July 2010, p 22

<sup>156</sup> Answers to questions on notice taken during evidence 5 July 2010, Ms Flanagan, p 1

<sup>157</sup> Mrs Small, Evidence, 6 July 2010, p 23

<sup>158</sup> Submission 5, p 8

<sup>159</sup> Dr Amos, Evidence, 6 July 2010, p 37

<sup>160</sup> Mrs Small, Evidence, 6 July 2010, p 22

inspected a freezer containing the frozen carcasses of various animals including two koalas, a macropod, and a parrot.<sup>161</sup>

The freezer in the feed prep area (presumably provided to keep food stuffs fresh) contained no obvious food stuffs but rather the frozen carcasses of various animals including two koalas, a large macropod (wallaroo?) and a large green parrot (Mrs Small advised it was a King Parrot). Mrs Small stated that the animals were placed there by volunteers while she was in hospital probably because they did not know what to do with them when they died. None of the animals were bagged and were all frozen together. It is possible that these had died due to disease and as such should not have been brought into the food prep area, let alone stored in a freezer used to store animal food.<sup>162</sup>

**3.97** However, Mr Crane did not report on the gender of these animals or how long they had been in storage; it is therefore not possible to know whether the male koala which died in January was among them.

**3.98** Mr Crane also observed another koala carcass during a following inspection on 7 June 2010. According to Mr Crane he was advised that this animal was a rehabilitation koala and therefore may have been among the koalas observed by Ms Cass on 3 February. Mr Crane wrote that:

One of the freezers in the food prep area contained the frozen body of a dead koala. Mrs Small advised that this was a rehabilitation koala that had died and that she was proposing to take it to David Amos, the vet though this should have already occurred if the vet was to maximize the information that could be obtained from the animal after its death. The problem was that it had been placed in a freezer holding fresh feed animals for the animal collection and had to be taken through the food prep area to be placed in the freezer. The unsatisfactory nature of this practice was recorded in the last inspection report, i.e. due to the potential for disease to be transferred to other animals. Despite this the unsatisfactory practice was being repeated.<sup>163</sup>

### **Independent veterinary inspection**

**3.99** Several participants in the inquiry expressed the view that an independent veterinarian should have been allowed to examine the animals which were removed from the Park. For example, Dr Amos wrote: 'Mrs Small had no opportunity to seek an alternative opinion on the health of the koala, either then or in the months that followed, such was the shroud of secrecy.'<sup>164</sup>

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<sup>161</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Ross Burton, Director, Emergencies & Animal Welfare, Industry and Investment NSW, p 27

<sup>162</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 27

<sup>163</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 141

<sup>164</sup> Submission 14, Dr David Amos, Vet, Gunnedah Veterinary Hospital, p 3

**3.100** It appears that Dr Campbell's visit to the Waterways Wildlife Park was the first time that the koalas had received veterinary attention for some time. Routine inspections by a veterinarian of each animal are a requirement of the 'General Standards for Exhibiting Animals in New South Wales'.<sup>165</sup> Mrs Small said that:

David [Dr David Amos] came out when I requested him to do so if I thought we had a problem. He also looked after the park animals or the rehabilitation animals when I took them in to him. All the other veterinarians in town did the same thing.<sup>166</sup>

**3.101** Dr Amos confirmed that he did treat animals from the Waterways Wildlife Park but did not attend the park on a regular basis. He said that it had been 'several years' since he examined any of the Park's koalas.<sup>167</sup> Dr Amos said that:

I do not visit the park very often. In fact, it is quite rare for me to go to the park. I only deal with things if I am requested to go there. I have not been to the park for some considerable time.<sup>168</sup>

**3.102** After the removal of the animals on 3 February, Mr and Mrs Small requested that an independent veterinarian be permitted to inspect the koalas. This request was made through the solicitor acting for Mr and Mrs Small on 9 February.<sup>169</sup> The RSPCA agreed to this request on 10 February<sup>170</sup>, but sought an assurance that the veterinarian would not disclose the location of the koalas.<sup>171</sup>

**3.103** No examination was subsequently conducted.<sup>172</sup> Mrs Small said that this was because:

They actually wrote back and said, "We'd like David to come, but we'll have to blindfold him and take him off to a secret destination." I think David said, basically, "Stuff you... We know where they are, plus the time frame – you have gone for the February inspection because of the time frame. We have evidence of what the koalas were like on the day", and so on.<sup>173</sup>

**3.104** Dr Amos said that he was aware of the offer to have the animals examined by an independent veterinarian but that he declined the offer because he felt he was not independent.<sup>174</sup> On 15 February, the RSPCA offered Mrs Small the opportunity to participate in a formal interview.<sup>175</sup> Mrs Small did not respond to this offer.<sup>176</sup>

<sup>165</sup> General Standards for Exhibiting Animals in New South Wales, cl 47

<sup>166</sup> Mrs Small, Evidence, 6 July 2010, p 24

<sup>167</sup> Dr Amos, Evidence, 6 July 2010, p 37

<sup>168</sup> Dr Amos, Evidence, 6 July 2010, p 29

<sup>169</sup> Submission 13 – Attachment A, Mr and Mrs Colin and Nancy Small, Owners and Operators, Waterways Wildlife Park, p 6

<sup>170</sup> Submission 13 – Attachment A, p 7

<sup>171</sup> Submission 13 – Attachment A, p 10

<sup>172</sup> Mrs Small, Evidence, 6 July 2010, p 27

<sup>173</sup> Mrs Small, Evidence, 6 July 2010, p 27

<sup>174</sup> Dr Amos, Evidence, 6 July 2010, p 39

<sup>175</sup> Submission 13 – Attachment A, p 12

<sup>176</sup> Submission 13 – Attachment A, p 20

- 3.105** Mrs Small suggested that the ill-health of the koalas was caused by their removal from the Park. She said that:

The condition that those koalas were in and what the RSPCA is saying about the koalas is totally wrong. Whatever happened after they took them from my place, I do not know what happened...everything that happened to them happened to them in their care, not my care. We gave them the best.<sup>177</sup>

### **The koalas' response to treatment**

- 3.106** The koalas were all placed in enclosures at the Koala Hospital, given further fluid treatment and treated for Chlamydia with antibiotics. One volunteer who worked at the Koala Hospital wrote that the koalas 'devoured the fresh leaf like there was no tomorrow'.<sup>178</sup>
- 3.107** The koala named 'K206' was monitored closely. She put on weight (400g) after her arrival at the Koala Hospital. Blood tests taken on 9 February showed an increased protein level and there was some improvement in her skin conditions. However, by 23 February she had lost 200g, had severe diarrhea, was depressed and had cold extremities. Veterinarian Christopher Livingston determined that the animal was not responding to treatment and that it was cruel to keep it alive. K206 was euthanased on 23 February.<sup>179</sup> Its body was transported to the University of Sydney where a post-mortem was conducted by Dr Mark Krockenberger of the Faculty of Veterinary Science, on 25 February.
- 3.108** All of the remaining koalas recovered well. Their diarrhoea resolved and they put on weight. One koala (identified as K212) gained 1.3kgs.<sup>180</sup> Dr Livingston observed that:

All the koalas have gained significant weight following access to good quality fresh leaf daily, supportive nutrition (in the case of 210) and provision of adequate shelter and space. In the case of 212, a 23% increase in body weight was seen in the space of approximately 3 weeks. This is attributable to both rehydration and increase in body mass, which would be likely to continue in the coming weeks. It would appear that, given these facts, the husbandry conditions that these koalas were existing in prior to admission to the Koala Hospital, were less than adequate.<sup>181</sup>

- 3.109** As some of the volunteers from the Koala Hospital noted, it is not necessarily possible to observe an animal's body condition by sight because koalas have a thick coat.<sup>182</sup> However, it was also noted that at the time of their arrival at the Koala Hospital most of the animals had a dry, brown coat, which is a more obvious indicator of poor health.<sup>183</sup>

<sup>177</sup> Mrs Small, Evidence, 6 July 2010, p 27

<sup>178</sup> Submission 5 – Appendix H, Ms Cheyne Flanagan, Hospital Supervisor, Koala Hospital – Port Macquarie, p 5

<sup>179</sup> Submission 9, p 59; Submission 13, p 3 & p 66

<sup>180</sup> Submission 9, p 59; Submission 13, p 81

<sup>181</sup> Submission 9, p 59; Submission 13, p 70

<sup>182</sup> Submission 5 – Appendix H, p 2 & p 6

<sup>183</sup> Ms Flanagan, Evidence, 5 July 2010, p 15

### The joey

- 3.110** 'K209' was another elderly female koala in poor body condition on arrival at the Koala Hospital; she was dehydrated and tested positive for Chlamydia. This animal was also carrying a young joey of less than three months age.<sup>184</sup> The animal recovered well and gained 1.1kgs in weight but the joey it was carrying died.<sup>185</sup>
- 3.111** Ms Cheyne Flanagan, Hospital Supervisor at the Koala Hospital in Port Macquarie, reported that:
- [the mother's] pouch was externally examined weekly. We did not handle her or interfere too much to remove the possibility of causing distress to her or her pouched young...At the fourth week there was no evidence of a pouch young.<sup>186</sup>
- 3.112** Ms Flanagan suggested that the joey may have died because of the mother's advanced age.<sup>187</sup> 'Most animals of that age lose pinkies very easily because they are old,' she said. 'It is hard enough for them to survive at the best of times and then to carry young as well, of course they are going to lose them.'<sup>188</sup>
- 3.113** The foetus could not be found and was therefore not examined after its death. Ms Flanagan suggested that the dead foetus may have been consumed by its mother, or by a bush rat which entered the koala's enclosure.<sup>189</sup> Mrs Small was critical of this explanation for the joey's death, saying that:
- The explanation given by the RSPCA as to how the joey had died is without basis. The joey, by mid-March 2010, would have been the size of a human child's fist. It would be impossible to miss if it was lying on the ground. Koala do not eat their young.<sup>190</sup>
- 3.114** However, it is common for mammalian species to consume a dead foetus. Several wildlife carers and veterinarians attested that they were aware of, or had seen, koalas doing this.<sup>191</sup>

### RSPCA actions following the 'raid'

- 3.115** On 22 February the RSPCA served a Section 24N notice on Mr Colin Small. A Section 24N notice may be served when an RSPCA Inspector is satisfied on reasonable grounds that provisions of the *Prevention of Cruelty to Animals Act 1979* have been contravened. The Notice provides directions to an animal owner to prevent further contraventions of the Act.<sup>192</sup>

<sup>184</sup> Submission 9, p 59; Submission 13, p 67

<sup>185</sup> Submission 9, p 59; Submission 13, p 81

<sup>186</sup> Supplementary Submission 5a, p 3

<sup>187</sup> Ms Flanagan, Evidence, 5 July 2010, p 15

<sup>188</sup> Ms Flanagan, Evidence, 5 July 2010, p 15

<sup>189</sup> Ms Flanagan, Evidence, 5 July 2010, p 15

<sup>190</sup> Submission 13, p 21

<sup>191</sup> Supplementary Submission 5a, p 3

<sup>192</sup> Submission 13 – Attachment B, Waterways Wildlife Park, p 2

- 3.116** The notice served on the Smalls provided detailed directions in regard to appropriate diet for a number of species at the Park.<sup>193</sup> It also provided specific directions in relation to the following matters:
- Treatment of the kangaroo which was treated by Dr Campbell on 3 February
  - Veterinary checks and flea and worm treatment for the remaining dingoes
  - Provision of fresh clean water in all enclosures
  - Cleaning of the wombat enclosure
  - Implementation of a worming program for all species.<sup>194</sup>
- 3.117** The park owners disputed that they contravened the *Prevention of Cruelty to Animals Act 1979* at any time.<sup>195</sup>
- 3.118** Five of the koalas were returned to the Waterways Wildlife Park on 15 April 2010. The shingleback lizards, which were treated at Western Plains Zoo in Dubbo, were also returned on 15 April.<sup>196</sup> The two remaining koalas (K209 and K212) were returned on 20 May.<sup>197</sup>
- 3.119** During the RSPCA's visit to the Park on 20 May, the five koalas which were returned on 15 April were weighed. Two of the animals had lost weight, with one losing 600gms and the other losing 900gms.<sup>198</sup>
- 3.120** The RSPCA requested that it be allowed to return to the Park to weigh the koalas again. Mr and Mrs Small refused this request and advised that they were already complying with the requirement in the 'General Standards for Exhibiting Animals in New South Wales' to weigh koalas regularly.<sup>199</sup>
- 3.121** Mr Coleman said that the RSPCA would take a proactive approach to the Waterways Wildlife Park in future. He said:

[W]hat needs to be remembered is that well beyond this inquiry and well beyond the angst that this has caused some community members, and whilst ever this particular park continues to be licensed, we need to continue being active in our communication with Waterways and ensure that there is no fallback in those conditions and that any support that has been given to Mrs Small or Mr Small or indeed Waterways Wildlife Park continues well beyond this particular inquiry because ultimately the RSPCA work with people despite comments from some. We actually look to try and work with people because in the end we believe that the Smalls have contributed to that particular community over many decades. The RSPCA has never questioned that.<sup>200</sup>

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<sup>193</sup> Submission 13 – Attachment B, p 2 - 5

<sup>194</sup> Submission 13 – Attachment B, p 3

<sup>195</sup> Submission 13 – Attachment A, p 17

<sup>196</sup> Submission 9, p 59; Submission 13, p 24

<sup>197</sup> Submission 9, p 59; Submission 13, p 26

<sup>198</sup> Submission 9, p 59; Submission 13, p 41

<sup>199</sup> Correspondence from Mr Steve Coleman, Chief Executive Officer, RSPCA NSW, to Chair, 23 July 2010

<sup>200</sup> Mr Coleman, Evidence, 5 July 2010, p 25

### **Allegations regarding koalas returned to the Waterways Wildlife Park**

- 3.122** Mrs Small noted that 'they took two brown koalas and six grey ones. They euthanased Old Girl and the other brown one did not come back. Perhaps she had a colour change while she was there.'<sup>201</sup> Dr Amos added that:

Nancy is of the opinion that the one with the joey in the pouch has not been returned and another has been returned in its place. I do not know. However, I have certainly begun to chase up to see whether we can have parentage testing done. We have some DNA available from an offspring of the one that left here...I am currently trying to find out whether I can get DNA parent verification done.<sup>202</sup>

- 3.123** Ms Flanagan explained that it is normal for a koala's coat to change in colour as its health improves, as a healthy koala will have a grey coat.<sup>203</sup> Several volunteers who cared for the animals also noted that the koalas' coats became grey and gained a healthy lustre during their stay at the Koala Hospital.<sup>204</sup>
- 3.124** Ms Flanagan commented that: 'Apparently there were comments that we had sent back the wrong koalas because they sent down brown koalas and got grey ones back. I think that speaks volumes in itself.'<sup>205</sup>

#### ***Committee Comment***

- 3.125** The Committee is satisfied that the RSPCA followed appropriate protocols in responding to the complaint received against the Park and in its subsequent investigations. However, the nature of the Park's stock and the need to involve several different stakeholders caused a significant delay between the RSPCA's initial visit to the Park on 22 January and its second visit on 3 February.
- 3.126** According to the RSPCA, the twelve day delay in returning to the Park was due to the difficulty encountered by their Inspector in organising a suitably qualified 'team' of professionals to assist with the next stage of the investigation<sup>206</sup>. The Committee believes that where serious concerns about animal health are identified by RSPCA Inspectors, it is appropriate to seek immediate veterinary attention to avoid delays in the treatment of animals in distress.

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### **Recommendation 1**

That the RSPCA's standard operating procedures include a requirement that where an Inspector identifies the need for urgent veterinary intervention, the nearest suitably qualified veterinarian be called upon to provide emergency examination and treatment.

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<sup>201</sup> Mrs Small, Evidence, 6 July 2010, p 22

<sup>202</sup> Dr Amos, Evidence, 6 July 2010, p 36

<sup>203</sup> Submission 9, p 59; Submission 13, pp 80 - 81

<sup>204</sup> Submission 5 – Appendix H, p 5, p 7 & p 8

<sup>205</sup> Ms Flanagan, Evidence, 5 July 2010, p 15

<sup>206</sup> Answers to questions on notice taken during evidence 5 July 2010, Mr Coleman, p 1

- 3.127** It was unfortunate that there was no communication between the RSPCA and the park owners between 22 January and 3 February. Clearer communication between the RSPCA and Mrs Small at this point of the investigation may have reduced some of the difficulties encountered following the 'raid' on 3 February.
- 3.128** The Committee is satisfied that the RSPCA followed appropriate protocols during its visit to the Waterways Wildlife Park on 3 February 2010. The evidence indicates that RSPCA Inspectors acted within their powers and conducted themselves in a professional manner. The issue of the television crew from 'Animal Rescue' is discussed separately in Chapter Five. However, no written communication explaining the results of the investigation was provided to Mr and Mrs Small. The Committee believes that the RSPCA's standard operating procedures should provide for written communication of the results of an investigation to be provided to animal owners within 48 hours of an inspection.

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### **Recommendation 2**

That the RSPCA's standard operating procedures include a requirement to provide written findings of an RSPCA investigation to animal owners and to any relevant licensing authorities within 48 hours of an inspection.

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- 3.129** The Committee is satisfied that the decision to remove eight koalas and two lizards from the Waterways Wildlife Park was made on the basis of appropriate advice from a veterinarians and a wildlife expert. Evidence from another veterinarian who subsequently examined the animals also supports the advice provided by Dr Campbell and Ms Flanagan on 3 February.

## Chapter 4      The role and actions of government agencies

This Chapter outlines the actions of the government agencies which license the Waterways Wildlife Park: the Department of Industry and Investment and the Department of Climate Change, Environment and Water (DECCW).

### Department of Industry and Investment

- 4.1      The *Exhibited Animals Protection Act 1986* regulates the operation of zoos and fauna parks and institutes standards for the display of animals. There are 61 fauna parks currently licensed to operate under the Act; further permits may be required to exhibit prescribed species.<sup>207</sup> The Act is administered by the Department of Industry and Investment (formerly the Department of Primary Industries).
- 4.2      The Waterways Wildlife Park holds a licence under the *Exhibited Animals Protection Act 1986* to operate an animal display establishment, as well as permits to exhibit a number of prescribed species, including koalas. The Park has held this licence for many years. The proprietor of the Park, Mrs Nancy Small, observed that:
- It started off with National Parks. That is who we were first licensed through. Then it changed. I am sorry, it was to Zoological Board first and the National Parks. Then it went to the Department of Agriculture. Then it went to the Department of Primary Industries. There it went to I and I.<sup>208</sup>
- 4.3      Mrs Small commented that, 'We make no complaint about the D of I & I because we have always been able to work with them in order to achieve the best possible outcome for the animals in our care.'<sup>209</sup> Mrs Small also noted that historically, the Department had conducted regular inspections of the Park: 'In that time we had regular inspections about once every two years. We had previous inspections a few years back, just before the RSPCA.'<sup>210</sup>
- 4.4      The Department of Industry and Investment conducts both routine inspections and inspections in response to a complaint. However, there is no specific requirement to conduct regular inspections of licensed establishments.<sup>211</sup>
- 4.5      It appears that routine inspections of the Waterways Wildlife Park by the Department of Industry and Investment have not been conducted since 22 August 2003.<sup>212</sup>

<sup>207</sup> Answers to questions on notice taken during evidence 5 July 2010, Mr Ross Burton, Director, Emergencies & Animal Welfare, Industry and Investment NSW, p 2

<sup>208</sup> Mrs Nancy Small, Owner and Operator, Waterways Wildlife Park, Evidence, 6 July 2010, p 15

<sup>209</sup> Submission 13, Waterways Wildlife Park, p 21

<sup>210</sup> Mrs Small, Evidence, 6 July 2010, p 15

<sup>211</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 2

<sup>212</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 6

### **The complaint against the Waterways Wildlife Park in 2007**

- 4.6** A complaint against the Park was received on 13 November 2007. The complaint alleged that the water available for animals to drink was not clean, that there were dead animals in enclosures (including a dead echidna, a dead parrot, and a dead mouse in a water bowl), and that there were feral cats on the property.<sup>213</sup>
- 4.7** Mr Colin Hyde, an Inspector from the Animal Welfare Branch of the then Department of Primary Industries, inspected the Park on 26 November 2007 in response to the complaint. Mr Hyde submitted a report of his findings.<sup>214</sup>
- 4.8** Mr Hyde also recommended that a follow-up inspection of the Park be conducted before 30 June 2008, to ensure that appropriate husbandry standards were being maintained.<sup>215</sup>
- 4.9** Mr Hyde subsequently wrote to Mr and Mrs Small on 10 December 2007.<sup>216</sup> Mr Hyde's letter enclosed a copy of the inspection report, detailing the specific clauses of the Act, Regulation or Standards of which the Park was found to be in breach.
- 4.10** Mr Hyde also provided eight specific directions to the Park owners to remedy these breaches. In summary, the eight things that the Park owners were directed to do were:
- to establish shrubs in the corners of macropod enclosures
  - to provide fresh browse to all parrots twice weekly
  - to ensure that all excrement, waste, leftover food and feathers were removed from enclosures daily
  - to complete maintenance and replacement of signage on animal enclosures
  - to ensure that house cats are prevented from entering exhibits
  - to ensure that animal records are kept up to date at all times
  - to seek approval for any alterations or extensions to animal displays
  - to weigh each koala monthly and keep a record of that weight.<sup>217</sup>
- 4.11** Mrs Small recalled the 2007 visit from the Department of Primary Industries in the following terms:

[T]hey did write up a few things: we had to have signage, give extra care in cleaning the water dishes out, and they did say that ...there were two dead carcasses in the enclosure. I said, "Well, what were they?" He said, "A mouse in the water dish", and one of the birds had fallen down behind the brick and had died behind the cage. They were the two dead carcasses.<sup>218</sup>

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<sup>213</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 3

<sup>214</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, pp 6 - 15

<sup>215</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 15

<sup>216</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 3

<sup>217</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, pp 3 - 5

<sup>218</sup> Mrs Small, Evidence, 6 July 2010, p 16

- 4.12** The inspection report compiled in 2010 (discussed below) states that the previous inspection was conducted on 26 November 2007.<sup>219</sup> It therefore appears that there was not follow-up inspection of the Waterways Wildlife Park, despite Mr Hyde's recommendation that one be conducted before June 2008.
- 4.13** It appears that the Park's licence was renewed in 2008, though the Committee received no evidence to this effect. The Park's licence was renewed on 10 August 2009, for the period 1 July 2009-2010.<sup>220</sup>
- 4.14** A number of conditions were attached to the issue of the licence when it was renewed in 2009: these included a general requirement to comply with the 'General Standards for Exhibiting Animals in New South Wales', as well as some special conditions, such as the establishment of shrubs in macropod enclosures.<sup>221</sup> These special conditions appear to have been attached to the Park's licence for some years, as they were referred to in the inspection report submitted by Mr Hyde in 2007.<sup>222</sup>

#### **The involvement of Industry and Investment in the 'raid' on 3 February 2010**

- 4.15** According to Mr Ross Burton, Director, Emergencies and Animal Welfare, Department of Industry and Investment, the Department was notified of the RSPCA's intention to visit the Waterways Wildlife Park in the week preceding 3 February 2010.<sup>223</sup> However, no officer from the Department was available to attend on that day.<sup>224</sup>
- 4.16** Ms Cheyne Flanagan, Hospital Supervisor at the Koala Hospital and Study Centre, was very critical of the Department's failure to attend the Waterways Wildlife Park on 3 February. She expressed the view that:

RSPCA requested a representative from the Department of Industry & Investment to attend the Waterways Wildlife Park on 3 February to assist in the inspection of the koalas and other animals and this request was not met in that a representative did not arrive on the day. If an Industry & Investment inspector had attended the Park on that day I am confident that a completely different outcome would have resulted rather than what occurred. It is my opinion that, when seeing the state of the koalas, the dingoes, lizards, kangaroos, the substandard feed and water offered them, an Industry & Investment inspector would have enacted immediate action: either to close the zoo forthwith or put in place prosecution/fines and put the zoo on notice.<sup>225</sup>

<sup>219</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 20

<sup>220</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, pp 50 - 51

<sup>221</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, pp 50 - 51

<sup>222</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, pp 6 - 7

<sup>223</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 2

<sup>224</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, Director, Emergencies & Animal Welfare, Industry and Investment NSW, p 2

<sup>225</sup> Submission 5, Koala Hospital – Port Macquarie, p 9

- 4.17** Ms Flanagan suggested that the Department's failure to attend the visit to the Waterways Wildlife Park on 3 February was due to a lack of resources. She said:

I think their problem is they have a lack of inspectors. If they had had more inspectors to be able to do this work on a regular basis, yes, that would have been a great help.<sup>226</sup>

### **The inspection of Waterways Wildlife Park on 8-9 February 2010**

- 4.18** RSPCA Inspector Kylie Prowse subsequently made a complaint to the Department on 5 February 2010. Inspector Prowse detailed a number of concerns regarding animal welfare and husbandry practices at the Waterways Wildlife Park.<sup>227</sup>

- 4.19** Mrs Small said that she also spoke to officers of the Department after the RSPCA had visited the Park:

I contacted Matthew Crane, who runs the Exhibited Animals Section of the Department of Industry and Investment, the day after the RSPCA had been to the Park [4 February 2010] and informed him of what had happened...He said to me that he would come to Gunnedah as it would be necessary for him to do an inspection given that the RSPCA had been to the property.<sup>228</sup>

- 4.20** Mr Matthew Crane, Leader, Exhibited Animals Section and Dr Stephen Jackson, Inspector, from the Department of Industry and Investment, inspected the Waterways Wildlife Park on 8 and 9 February 2010, five days after the RSPCA 'raid'.<sup>229</sup>

- 4.21** Mr Crane, along with Mr Ross Burton, Director, Emergencies and Animal Welfare, and Ms Pam Welsh, Regional Director, from the Department of Industry and Investment also attended a meeting with Mr and Mrs Small and representatives from the Gunnedah Shire Council in Gunnedah on 24 February 2010.<sup>230</sup>

- 4.22** Mr Crane and Mr Jackson submitted an inspection report on 31 March 2010.<sup>231</sup> The inspection report detailed 39 alleged breaches of the *Exhibited Animals Protection Act 1986*, its Regulation and Standards. However, this report was not sent to Mr and Mrs Small until 22 April.<sup>232</sup>

- 4.23** The alleged breaches of the Act related to a range of animal welfare issues and husbandry practices similar to those raised by the RSPCA. The breaches also included a number other matters specifically related to the licensing of the Park and conditions attached to the licence,

<sup>226</sup> Ms Cheyne Flanagan, Hospital Supervisor, Koala Hospital – Port Macquarie, Evidence, 5 July 2010, p 12

<sup>227</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, Director, Emergencies & Animal Welfare, Industry and Investment NSW, pp 59 - 60

<sup>228</sup> Submission 13, p 18

<sup>229</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 20

<sup>230</sup> Answers to questions on notice taken during evidence 6 July 2010, Cr Adam Marshall, Mayor, Gunnedah Shire Council, p. 1-2

<sup>231</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 20

<sup>232</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 18

including failures to comply with directions issued in Mr Colin Hyde's letter of 10 December 2007.<sup>233</sup>

**4.24** In summary, the alleged breaches included the following:

- Exhibition of a prescribed species (a lace monitor) without a permit, and construction of two exhibits for the display of animals without approval from the Director-General
- Failures to comply with directions given after the previous inspection of the Park in 2007
- Failure to comply with conditions attached to the licence
- Failure to keep adequate animal records
- Failure to engage sufficient number of trained and competent staff to maintain adequate standards of animal husbandry.
- Failure to adequately maintain animal enclosures
- Failures to provide adequate or appropriate food to animals
- Failure to remove excrement, waste and other rubbish and foreign objects
- Failure to maintain standards of hygiene in the storage and preparation of food
- Failures to conduct regular animal health checks or provide veterinary treatment for sick and injured animals
- Failure to euthanase animals according to guidelines, and conduct post-mortems following the death of a prescribed species (specifically in relation to the two dingoes discussed in Chapter Three)
- Failure to institute an appropriate breeding program for macropods
- Intentional breeding of hybrids (birds)
- Failure to display species in correct biogeographical groupings
- Failure to adequately control pests such as rats and cats
- Failure to weigh koalas regularly and maintain records of their weight.<sup>234</sup>

**4.25** Specifically in relation to the condition of koalas at the Park, Mr Crane observed that:

No veterinary or treatment records were available. No records of koala weighing were observed. Mrs Small observed that records were not kept because regular koala weighing does not occur.<sup>235</sup>

<sup>233</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, pp 39 - 46

<sup>234</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, pp 39 - 46

<sup>235</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 36

**4.26** Mr Crane and Mr Jackson recommended that:

- the licence holders be provided with a copy of the inspection report informing them of the alleged breaches,
- that the licence and permits held by Mr and Mrs Small be suspended, and that they be asked to show cause as to why the licence should not be cancelled, and,
- that penalty infringement notices be issued to Mr and Mrs Small in relation to the alleged breaches.<sup>236</sup>

**4.27** Dr Richard Sheldrake, Director-General of the Department of Industry and Investment, wrote to Mr and Mrs Small on 22 April 2010, enclosing the inspection report.<sup>237</sup> Dr Sheldrake detailed the alleged breaches of the legislation and asked Mr and Mrs Small to show cause as to why their licence to operate an animal display establishment and exhibit prescribed species should not be cancelled.<sup>238</sup> Mr and Mrs Small were required to respond by 30 June 2010.<sup>239</sup> Dr Sheldrake did not suspend the Park's licence or issue any penalty infringement notices.

#### **The delay in producing a report**

**4.28** Mrs Small was critical of the Department of Industry and Investment because of the delay in receiving a report from the inspection conducted on 8-9 February. She wrote:

Matthew said that he would write up his report and that I would have that within seven days...The promised D of I&I report was not forthcoming within seven days as Matthew Crane had stated...I spoke to Matthew Crane to organise a meeting at Gunnedah with representatives from the Gunnedah Shire Council. At that time I asked where the report was. Mr Crane informed me that he would bring a copy of a draft report with him to the meeting and that it would be available for me...The meeting with Matthew Crane took place at Gunnedah on 24 February 2010. At that meeting, I was advised that the D of I&I would provide me with the report by 5 March 2010. At 3.48 pm on 5 March 201 [sic], the D of I&I advised that it was experiencing delays and could not meet its own deadline The D of I&I subsequently indicated that the report would be available by 12 March 2010 was also not met.<sup>240</sup>

**4.29** Mrs Small indicated that the delay in providing the report meant that many of its findings were 'no longer relevant to the issue of the ongoing operation of the Park', as many of the problems identified in the report had been already been addressed.<sup>241</sup>

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<sup>236</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Ross Burton, Director, Emergencies & Animal Welfare, Industry and Investment NSW, p 47

<sup>237</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Ross Burton, Director, Emergencies & Animal Welfare, Industry and Investment NSW, pp 18 - 19

<sup>238</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Ross Burton, Director, Emergencies & Animal Welfare, Industry and Investment NSW, pp 18 - 19

<sup>239</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Ross Burton, Director, Emergencies & Animal Welfare, Industry and Investment NSW, p 19

<sup>240</sup> Submission 13, pp 18 - 19

<sup>241</sup> Submission 13, p 19

- 4.30** Cr Adam Marshall, Mayor, Gunnedah Shire Council, was also critical of the delay in producing a report. Cr Marshall said:

[A] meeting took place on or about 24 February in the Gunnedah Shire Council chambers. Nancy was present, as was her legal counsel, and three representatives from the Department of Industry and Investment... They advised that they were preparing an issues paper to be provided to Nancy and Colin as the operators to identify the issues that had to be addressed before 30 June – the time when the current licence expired. They needed to address those issues before a new licence would be issued.

There was a commitment made that that report was almost finished and would be furnished to Nancy and Colin within seven days. That report finally arrived on 23 April, nearly two months later, and the rest is history. The operators are working through the measures. But from our perspective, the involvement of Industry and Investment – and this is where we probably agree with Ms Flanagan in her submission – it is certainly council's submission that Industry and Investment has been quite tardy in this matter.<sup>242</sup>

- 4.31** Ms Flanagan was also critical of the delay in the delivery of the inspection report. Ms Flanagan wrote:

It is my understanding that after some inspections of the park were made by Industry & Investment licensing staff; a 90-page document was compiled listing all the failures of Waterways Wildlife Park to meet Exhibited licence conditions which also included 20 pages of fines. This document was NOT served on Waterways Wildlife Park who continued to remain open in spite of continuing to breach [sic] a large number of the exhibited licence regulations. The question here is why wasn't this document served on the park? Was this failure to serve the 90-page document of Waterways Wildlife Park because of political and public pressure from the people of Gunnedah? It is my understanding that a very "weak" document was issued recently.<sup>243</sup>

- 4.32** The Committee received no other evidence in regard a 90-page report. The Committee received copies of three reports from inspections of the Waterways Wildlife Park: Mr Hyde's report from 2007, Mr Crane and Mr Jackson's report from the inspection of 8-9 February 2010 (which totals 27 pages), and a report from Mr Crane's subsequent inspection on 7 June 2010, which is discussed below.

#### *Committee Comment*

- 4.33** It would appear that the Department of Industry and Investment did not conduct a further inspection of the Waterways Wildlife Park in 2008 after its inspection on 26 November 2007, despite a recommendation to this effect from an Industry and Investment inspector. Mr Hyde's report from his inspection of the Waterways Wildlife Park on 26 November 2007 identified significant breaches of the Act, its Regulation and Standards. It is disappointing that a further inspection was not conducted in 2008, as this may have assisted in resolving the issues identified by Mr Hyde.
- 4.34** The Department of Industry and Investment's failure to enforce the directions made in its letter to Mr and Mrs Small of 10 December 2007 is unacceptable.

<sup>242</sup> Cr Marshall, Evidence, 6 July 2010, p 41

<sup>243</sup> Submission 5, pp 9 - 10

- 4.35** The Committee believes that as a matter of course all inspections of facilities licensed under the *Exhibited Animals Protection Act 1986* that are conducted in response to a complaint, should be followed up with a further inspection within six months, to ensure that directions are complied with.

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**Recommendation 3**

That the Department of Industry and Investment ensure that inspections of facilities licensed under the *Exhibited Animals Protection Act 1986* that are conducted in response to a complaint, be followed up with a further inspection within six months.

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- 4.36** The Committee considers that the involvement of the Department of Industry and Investment as the relevant licensing body is crucial to maintaining appropriate standards for exhibiting animals in NSW and resolving breaches of the *Exhibited Animals Protection Act 1986*. It is therefore unfortunate that a departmental representative was not available to attend the Waterways Wildlife Park on 3 February to provide advice to the Park owners and the RSPCA.
- 4.37** The Committee nevertheless considers that the Department of Industry and Investment acted appropriately in conducting an inspection of the Waterways Wildlife Park in response to the complaint it received from the RSPCA on 5 February 2010.
- 4.38** While acknowledging the complexity of matters considered by the Department in relation to the licensing of the Waterways Wildlife Park, the delay in providing a report from the inspection of 8-9 February until 22 April is unsatisfactory – indeed, the Department's 'tardiness' in furnishing this report to Mr and Mrs Small is the one area of agreement between Inquiry participants whose perspectives are otherwise widely divergent.
- 4.39** Unfortunately the Committee received no evidence from the Department in regard to the reason for the delay in providing the report from the Department's inspection of the Park on 8-9 February. Given that Mr Crane and Mr Jackson identified serious breaches of the Act, the Regulation and Standards, timely provision of this report was necessary to address the breaches and animal welfare concerns identified by the inspectors, as well as to provide clarity and direction to the licence holders.
- 4.40** The Committee believes that as a matter of course, reports from inspections of licensed facilities should be provided to licence holders within 30 days of an inspection.

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**Recommendation 4**

That the Department of Industry and Investment ensure that reports from inspections of facilities licensed under the *Exhibited Animals Protection Act 1986* are provided to licence holders within 30 days of the date of an inspection.

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- 4.41** The conduct of regular inspections may have helped to prevent breaches of the Act identified following the complaint received by the Department in 2007. The Committee acknowledges that there are constraints on the Department's resources but nevertheless believes that the

Department of Industry and Investment should ensure that all of the 61 facilities licensed under the *Exhibited Animals Protection Act 1986* are inspected at least every two years as a prerequisite for licence renewal.

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### **Recommendation 5**

That the Department of Industry and Investment conduct biennial inspections of all facilities licensed under the *Exhibited Animals Protection Act 1986*.

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#### **Renewal of Waterways Wildlife Park licence**

- 4.42** Mr and Mrs Small lodged an application for renewal of their licence on 28 May 2010.<sup>244</sup> The existing licence was due to expire on 30 June 2010.
- 4.43** Mr Matthew Crane inspected the Waterways Wildlife Park again on 7 June 2010. This inspection was made at the request of Mr and Mrs Small, to assess their level of compliance with the directions contained in the Director-General's letter of 22 April. Mr Crane produced a report from this inspection on 11 June 2010.<sup>245</sup>
- 4.44** Mr Crane and Ms Barbara Jones, Legal Officer, Department of Industry and Investment also attended a meeting with Mrs Small, Dr David Amos from the Gunnedah Veterinary Clinic, and representatives of the Gunnedah Shire Council on 8 June 2010.
- 4.45** Mr Crane did not examine animals during his inspection of the Park on 7 June but he did note that the park owners had instituted a program to weigh koalas regularly.<sup>246</sup> Regular weighing of koalas is a requirement under the 'Standards for Exhibiting Australian Mammals in New South Wales', and this was brought to the attention of the Park owners in inspection reports in 2007 and April 2010.
- 4.46** Mr Crane's report of 11 June 2010 contained a further 21 directions to the Park owners; many of these directions went to matters previously raised in the inspection report of 22 April, such as maintenance of enclosures and signage, keeping of records, employment of appropriate staff, routine veterinary inspections, control of pests, and appropriate feeding arrangements.<sup>247</sup> In his report, Mr Crane commented that:

The level of compliance of the park and its management showed some improvement, particularly with respect to the superficial appearance of the park. However, as demonstrated in this report, there are still many areas that have to be upgraded to achieve compliance. It is noted that nearly all of the matters of non-compliance observed were examples of matters brought to the attention of the Smalls via the most recent inspection report.

Given the large number of directions that relate to the General Standards for Exhibiting Animals in New South Wales it is evident that there are still significant

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<sup>244</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 17

<sup>245</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 159

<sup>246</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 123

<sup>247</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, pp 157 - 159

issues with the lack of husbandry knowledge of the licence holders of the park. The various issues observed demonstrate that these skills are limited in the licence holders and that the welfare of the animals in the park is still being seriously compromised by inadequate husbandry knowledge.<sup>248</sup>

- 4.47** Mr Crane's directions included the employment of appropriately qualified zookeeping staff<sup>249</sup>, and engagement of a qualified wildlife veterinarian<sup>250</sup> to assess the health of the animals on a regular basis. However, Mr Crane also expressed concerns about the financial viability of the Waterways Wildlife Park. He said:

The fundamental issue of resourcing the park and the Park's financial viability must be resolved as a matter of urgency. Adequate funds need to be available to ensure the employment of qualified staff, the maintenance of enclosures (of which a number need renovation or replacing), allow the provision of adequate food quality and quantity, and to utilize the services of an experienced wildlife veterinarian.<sup>251</sup>

- 4.48** The solicitor acting for Mr and Mrs Small, Mr Peter Long of Slater & Gordon, wrote to the Department of Industry and Investment on 30 June 2010, enclosing a draft business plan for the Waterways Wildlife Park.<sup>252</sup>

- 4.49** This draft business plan noted that to date, the Park has been financed by Mr Colin Small's personal earnings and admission fees (of approximately \$12,000 a year).<sup>253</sup> Mr and Mrs Small received \$26,000 in donations raised by the Gunnedah community after the visit by the RSPCA.<sup>254</sup> A drive for businesses to sponsor particular enclosures at the Park had also commenced, and the business plan anticipated that this will make available 'many thousands of dollars.'<sup>255</sup>

- 4.50** The draft business plan also noted that Mrs Small, Ms Jodi Markwick and Ms Rachel Davis (a volunteer at the Park), are planning to complete a zookeeper's course through the Richmond College of TAFE. It is planned that Ms Markwick will continue operation of the Park once Mr and Mrs Small become unable to do so.<sup>256</sup> Dr David Amos and Dr Tina Clifton from the Gunnedah Veterinary Hospital have been retained to provide veterinary advice on a regular basis.<sup>257</sup>

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<sup>248</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, pp 156 - 157

<sup>249</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 157

<sup>250</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 159

<sup>251</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 157

<sup>252</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, pp 96 - 97

<sup>253</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 101

<sup>254</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 102

<sup>255</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 101

<sup>256</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 103

<sup>257</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 100

- 4.51 Dr Sheldrake wrote to Mr and Mrs Small on 2 July 2010.<sup>258</sup> Dr Sheldrake enclosed a copy of the report from the inspection of 7 June, including the 21 directions to the Park owners. In his letter, Dr Sheldrake wrote:

I wish to acknowledge the efforts made by your client so far to address the issues that I raised in my letter of 22 April 2010 and I encourage them to continue along their current path. I recognise the effort that has gone into this work on their part and on the part of the supporters of the Park. It is testimony to the value that the Gunnedah community places in the continuation of the Waterways Wildlife Park.<sup>259</sup>

- 4.52 In his letter of 2 July 2010, Dr Sheldrake agreed to extend the deadline for Mr and Mrs Small to respond to his 'show cause' letter of 22 April until 2 August 2010. Dr Sheldrake also extended the Park's licence until 1 October 2010.<sup>260</sup>

### *Committee Comment*

- 4.53 The Committee believes that ensuring animal welfare should be the overriding priority of the Department of Industry and Investment in its regulation of the *Exhibited Animals Protection Act 1986*.
- 4.54 The Committee acknowledges the important contribution that Mr and Mrs Small have made, and continue make, to their local community. However, the Committee is concerned that without significant increases in available human and financial resources the Waterways Wildlife Park may not be able to meet all of the requirements of the *Exhibited Animals Protection Act 1986* on an ongoing basis.
- 4.55 The Committee believes that practices such as the failure to conduct post-mortems of deceased animals and placing animal carcasses in food storage areas are unacceptable. The Park owners' disregard for the Standards and directions provided by Inspectors presents serious concerns for the future of animal welfare at the Park. Breaches of the Act and its requirements cannot be allowed to continue indefinitely.

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### **Recommendation 6**

That the Department of Industry and Investment apply the provisions of the *Exhibited Animals Protection Act 1986*, and its associated Regulation and Standards, in a timely manner.

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### **Other matters**

- 4.56 On 23 February the Minister for Primary Industries, the Hon Steve Whan MP, announced that the government would provide \$5,000 to assist the Waterways Wildlife Park to develop a business recovery plan, and assist the park in meeting relevant Standards. The business plan was to be developed in conjunction with the Gunnedah Shire Council.<sup>261</sup>

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<sup>258</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, pp 108 - 109

<sup>259</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, p 108

<sup>260</sup> Answers to questions on notice taken during in-camera evidence 5 July 2010, Mr Burton, pp 108 - 109

<sup>261</sup> NSWPD (*Legislative Assembly*), 23 February 2010, p 20718

- 4.57 Cr Adam Marshall was critical of the way the Council found out about the government's announcement, saying that:

[I]n terms of the role council had, it is interesting...to go back a little bit. I have a copy of that media release issued by the Minister – not with me, but it is in my satchel. Council actually found out about that via the media. No-one contacted council to advise that we were going to be party to the developing of the business plan or the sponsoring of money from the Government. It was a very unfortunate way to find out such a positive thing. We all want to see a business plan developed. It would have been nice to work together instead of finding out about things through the media.<sup>262</sup>

- 4.58 The Committee received no other evidence in relation to this grant.

***Committee Comment***

- 4.59 The Committee welcomes the support provided by the Gunnedah community and the Gunnedah Shire Council to the Waterways Wildlife Park. The Committee welcomes the involvement of the Gunnedah Shire Council in supporting the Park and believes that formalising this support could help to ensure both animal welfare and the long term viability of the Park.

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**Recommendation 7**

That the Gunnedah Shire Council formalise its support for the Waterways Wildlife Park.

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## **The Department of Environment, Climate Change and Water**

- 4.60 The Department of Environment, Climate Change and Water (DECCW) licenses the Friends of the Waterways Wildlife Park to rehabilitate native fauna under the *National Parks and Wildlife Act 1974* (NSW). The group has held this licence, which is renewed annually, since 1996.<sup>263</sup>
- 4.61 The conditions of the licence require that licensed groups provide certain information about their activities on an annual basis, including a register of animals held by the group and a summary of animals that have been cared for and released each year.<sup>264</sup>
- 4.62 Mr Ron Haering, Manager of the Wildlife and Management Unit, Department of Environment, Climate Change and Water, noted that the information provided by the Friends of the Waterways Wildlife Park in its annual licence renewal application in September 2009 was incomplete.

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<sup>262</sup> Cr Marshall, Evidence, 6 July 2010, p 43

<sup>263</sup> Mr Ron Haering, Manager, Wildlife and Management Unit, Department of Environment, Climate Change and Water, Evidence, 5 July 2010, p 2

<sup>264</sup> Mr Haering, Evidence, 5 July 2010, p 2

**4.63** DECCW wrote to Mr and Mrs Small on 21 January 2010 to seek the required information. Mr Haering explained that:

[W]e were going about our regular business in following up on non-compliance with licence returns. We wrote a letter on 21 January seeking that information formally. But, as I say, that was mainly around information and low-scale issues.<sup>265</sup>

**4.64** According to Mr Haering, the RSPCA contacted DECCW on 1 February 2010 regarding its concerns about animal welfare at the Waterways Wildlife Park, and requested that DECCW accompany them on a planned inspection of the Park.<sup>266</sup>

**4.65** Ranger Rebecca Cass accompanied the RSPCA during the visit to the Park on 3 February. Ms Cass subsequently filed a report detailing the animals held in the rehabilitation area of the Park.<sup>267</sup> The report listed the following animals:

- 1 Brush Tail Possum
- 7 Koalas
- 3 Corellas
- 5 Book Owls
- 1 Channel Billed Cuckoo
- 1 Swamp Wallaby<sup>268</sup>

**4.66** Ms Cass also observed that there were animals from the exhibition being held in the rehabilitation area and vice versa.<sup>269</sup> Mr Haering reported that:

We asked her [Ms Cass] to look into some of the record keeping. She did not look into it extensively on the day but she was finding that some of the basic information we required from the licence conditions were not able to be provided.<sup>270</sup>

### **DECCW actions following 3 February**

**4.67** Ms Cass returned to the Waterways Wildlife Park on 15 February 2010 to conduct a formal audit. This audit found areas of non-compliance with licence conditions.<sup>271</sup>

<sup>265</sup> Mr Haering, Evidence, 5 July 2010, p 3

<sup>266</sup> Mr Haering, Evidence, 5 July 2010, p 3

<sup>267</sup> Tabled Document, Department of Environment, Climate Change and Water, *The Friends of the Waterways Wildlife Park: Inspection Report dated 4 February 2010*, July 2010, p 1

<sup>268</sup> Tabled Document, Department of Environment, Climate Change and Water, *The Friends of the Waterways Wildlife Park: Inspection Report dated 4 February 2010*, July 2010, p 1

<sup>269</sup> Mr Haering, Evidence, 5 July 2010, p 3

<sup>270</sup> Mr Haering, Evidence, 5 July 2010, p 3

<sup>271</sup> Mr Haering, Evidence, 5 July 2010, p 6

**4.68** Mrs Small was unable to provide all of the records requested by the Department on 15 February and was given seven days to comply with the Department's request. Mr Haering noted that:

One of our main concerns is the keeping of records – the recordkeeping is very poor. We provided her [Mrs Small] with a folder with all the templates and information she needs to do that for the next 12 months. We went through a couple of the issues about putting animals in the exhibit area and tried to better understand why she did that. We reminded her that it is not in the interests of the animals to do that.<sup>272</sup>

**4.69** Ms Sally Barnes, Deputy Director-General of DECCW, said that officers of that Department had visited the Waterways Wildlife Park four times since the 'raid' on 3 February, including a visit on 1 July 2010.<sup>273</sup> Ms Barnes said that:

What we wanted to do is assist her and improve the situation and make sure she had the policies, the guidelines and materials there. Altogether we have been there about four times in a guidance and assisting role.<sup>274</sup>

### ***Committee Comment***

**4.70** The Committee considers that the Department of Environment, Climate Change and Water acted appropriately in relation to the investigation of the Waterways Wildlife Park and appreciates its co-operation with the Inquiry. The Committee is nevertheless concerned that the Park did not comply with licence requirements in relation to the rehabilitation of native wildlife and urges the Department to continue to assist the Park to meet its obligations under the *National Parks and Wildlife Act 1974*.

**4.71** The Committee believes that the Department of Industry and Investment and the Department of Environment, Climate Change and Water should work together more closely in relation to facilities or groups that are licensed by both departments. The Committee believes that DECCW, like the Department of Industry and Investment, should conduct biennial inspections of facilities which are licensed under both the *Exhibited Animals Protection Act 1986* and the *National Parks and Wildlife Act 1974* and that, wherever practicable, these inspections should be carried out concurrently.

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### **Recommendation 8**

That the Department of Environment, Climate Change and Water conduct biennial inspections of facilities which are licensed under both the *Exhibited Animals Protection Act 1986* and the *National Parks and Wildlife Act 1974*. Where practicable, inspections of facilities licensed under both the *Exhibited Animals Protection Act 1986* and the *National Parks and Wildlife Act 1974* should be carried out concurrently.

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<sup>272</sup> Mr Haering, Evidence, 5 July 2010, p 6

<sup>273</sup> Ms Sally Barnes, Deputy Director-General, Department of Environment, Climate Change and Water, Evidence, 5 July 2010, p 4

<sup>274</sup> Ms Barnes, Evidence, 5 July 2010, p 4

**The relationship between RSPCA, the Department of Industry and Investment, and the Department of Climate Change, Environment and Water**

- 4.72 Mr Coleman expressed the view that a more formal relationship between the RSPCA, DECCW and the Department of Industry and Investment would help in resolving animal welfare concerns at facilities such as the Waterways Wildlife Park. He said:

We have been and are very keen to formalize a procedure with the two other agencies, the Department of Industry and Investment and National Parks. Because it is certainly our experience if there are welfare issues generally at a park that is open to the public, one would think that the chances of there being a potential issue overlapping with another jurisdiction would be fairly regular....I would think that, practically speaking, if there was the opportunity to formalise that relationship with those two agencies – even if it meant something of an MOU so that there was at least objectivity, balance and a wide-ranging field of expertise to cover the three jurisdictions between the agencies – that would be very useful from our perspective. I believe it would be very progressive for animal welfare and, ultimately, better for the people involved, owners and/or managers of parks.<sup>275</sup>

***Committee Comment***

- 4.73 The Committee believes that a closer working relationship between the RSPCA and the Department of Industry and Investment may assist in the timely resolution of concerns regarding animal welfare in relation to facilities licensed under the *Exhibited Animals Protection Act 1986*.

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**Recommendation 9**

That the Department of Industry and Investment and the Department of Environment, Climate Change and Water develop a Memorandum of Understanding with the RSPCA to respond to animal welfare concerns at facilities licensed under the *Exhibited Animals Protection Act 1986* and the *National Parks and Wildlife Act 1974*.

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<sup>275</sup> Mr Steve Coleman, Chief Executive Officer, RSPCA NSW, Evidence, 5 July 2010, p 27



## Chapter 5 The involvement of 'Animal Rescue'

A number of participants in the Inquiry expressed concerns about the role of the television program 'Animal Rescue' in the RSPCA's visit to the Waterways Wildlife Park on 3 February 2010. This chapter discusses these concerns.

### Animal Rescue

- 5.1** 'RSPCA Animal Rescue' is an observational documentary which currently screens on Channel 7 on Monday nights. The show features cases dealt with by RSPCA Inspectors who are filmed by a television crew which accompanies them in their investigations.
- 5.2** 'Animal Rescue' is produced by an independent production company, Imagination Television, which has a contract with the RSPCA. The RSPCA also has an agreed protocol with Imagination Television. The protocol does not address financial arrangements between the two organisations, but explicates agreements in relation to obtaining consent for filming; all filming is subject to approval by the RSPCA.
- 5.3** Mr Ross Wilson, Producer, from Imagination Television, explained that production of the series involves significant amounts of filming. He said that,

For each series we spend a long time filming the work of the RSPCA. For example, the fourth series has involved: a. a film crew being engaged for twenty weeks since August 2009, to follow RSPCA officers in NSW and film the activities they come across in their day-to-day workings; and b. other crews being engaged for a further thirty-five shooting weeks in other states of Australia.<sup>276</sup>

- 5.4** A television crew from 'Animal Rescue' was present during the RSPCA's visit to the Waterways Wildlife Park on 3 February. The footage filmed by the crew has since been 'shelved'.<sup>277</sup> However, a copy of the footage was provided to the Committee.

### The relationship between the RSPCA and 'Animal Rescue'

- 5.5** The terms of the protocol between the RSPCA and Imagination Television state that: 'The Imagination TV crew can never determine or influence what cases the RSPCA takes on. We are there to follow RSPCA Inspectors, not to interfere with outcomes.'<sup>278</sup> Mr Steve Coleman, Chief Executive Officer, RSPCA NSW, said that, 'At the outset of their [Animal Rescue's] involvement, it was very, very clear to the inspectors in terms of rules of engagement, if you like – that is, the animals always come first before cameras.'<sup>279</sup>

<sup>276</sup> Submission 16, Imagination Television, p 1

<sup>277</sup> Submission 16, p 5

<sup>278</sup> Submission 16, p 6

<sup>279</sup> Mr Steve Coleman, Chief Executive Officer, RSPCA NSW, Evidence, 5 July 2010, p 21

- 5.6** Mr Steve Coleman, explained that decisions regarding which cases Imagination Television will be invited to follow are usually made by individual Inspectors. He said that:

What generally occurs, there are discussions between the producer of the crew and the operational staff. There are many complaints for a variety of reasons that we would not advise the Animal Rescue crew of. Generally speaking, it is an on-the-ground discussion between the individual inspectors and the production crews.<sup>280</sup>

- 5.7** In late January or early February 2010, RSPCA Inspector Kylie Prowse invited a television crew from Imagination Television to join her on its visit to the Waterways Wildlife Park, which was planned for 3 February.<sup>281</sup>

- 5.8** Mr Ross Wilson, from Imagination Television, said that a representative from the company spoke with Inspector Prowse on 28 January 2010:

Our crew was filming a story with RSPCA Inspector Kylie Prowse and asked her if she had any other jobs coming up. Kylie told them that she had previously visited the Waterways Wildlife Park at Gunnedah and that she was planning to make a return visit to check on the condition of the Park's koalas, once she could organise assistance from vets and wildlife specialists.<sup>282</sup>

- 5.9** The RSPCA provided a similar account of this decision, though according to the RSPCA this conversation took place on 1 February 2010:

On the 1<sup>st</sup> of February, 2010 Inspector Kylie Prowse was contacted by the producer for the 'Animal Rescue' program to discuss an unrelated matter. During that conversation the producer enquired if Prowse had any jobs happening that they may be able to attend. Prowse told the producer that she was attending the Waterways Wildlife Park on the 3<sup>rd</sup> of February and that if Animal Rescue wanted to attend it was up to them to get there, that we would not wait for them.<sup>283</sup>

- 5.10** Under the terms of the RSPCA's agreement with Imagination Television, all filming is subject to approval by the RSPCA. Consent is also required from those tenants or owners of a property that the film crew enters. Obtaining this consent is the responsibility of the television crew.<sup>284</sup> Mr Coleman explained that:

It is very well understood from the inspector's perspective that the requirement to seek consent is not the job of the RSPCA; it is the job of the production company. If a person chooses not to allow them onto the property, again, if I can put it this way, that is Animal Rescue's problem, not the RSPCA's problem.<sup>285</sup>

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<sup>280</sup> Mr Coleman, Evidence, 5 July 2010, p 28

<sup>281</sup> Submission 9, RSPCA NSW, p 1

<sup>282</sup> Submission 16, p 3

<sup>283</sup> Submission 9, p 1

<sup>284</sup> Submission 16, pp 5 - 6

<sup>285</sup> Mr Coleman, Evidence, 5 July 2010, p 21

- 5.11** Mr Wilson said that Inspector Prowse emphasised this when she invited Imagination Television to attend:

Kylie emphasised that she didn't know if the owners of the Park would permit us on the property or whether any action would be taken. In short, like all our filming on this programme there a risk of the whole trip being a non-story for our crew. This is the nature Animal Rescue – we follow Inspectors around without knowing if or when we will film a story that is suitable for the programme.<sup>286</sup>

- 5.12** Ms Cheyne Flanagan, Hospital Supervisor at Koala Hospital and Study Centre in Port Macquarie, said that she was also aware that Imagination Television had been invited. She wrote that Inspector Prowse had informed her that a television crew may be attending.<sup>287</sup> Ms Flanagan said that she met the television crew on the morning of 3 February and that:

It is my understanding from listening to the general conversation amongst the inspectors, veterinarian Michelle Campbell, Ranger Rebecca Cass and myself, prior to arrival at the park, that the film crew were well aware when they arrived at Waterways Wildlife Park that they may not be granted permission by the park owners to both come on site and film within the park grounds. The film crew appeared to not be overly concerned about potential refusal from the park owners. It was my impression that if refusal of entry had occurred the crew would have been quite happy to drive back to Sydney.<sup>288</sup>

### Consent to filming

- 5.13** Several participants in the Inquiry expressed concerns about whether the proprietor of the Waterways Wildlife Park, Mrs Nancy Small, provided consent to the television crew to enter the Park and film the actions of the RSPCA, or whether the consent provided was valid. For example, Cr Adam Marshall said that:

they went in and were filming before approaching Mrs Small to ask for permission. I think it is fair to say that her options and rights were not properly explained. It is our submission that proper procedure was not followed. There is a number of issues, but the one that most annoys people is the cameras.<sup>289</sup>

- 5.14** The Committee received conflicting evidence regarding: the entry of the RSPCA Inspectors and the television crew into the Waterways Wildlife Park; whether RSPCA Inspectors advised Mrs Small of the presence of the television crew; and when the film crew first entered the Park.

- 5.15** Mrs Small recalled that the group, including the camera crew, approached her at the main koala enclosure. She said that:

I saw that there were three people in RSPCA uniforms and I recognized one of them from the TV show Animal Rescue. There was also a lady there who I had seen on that same program. She had an emblem on her shirt saying "Taronga Zoo". There was

<sup>286</sup> Submission 16, p 3

<sup>287</sup> Submission 5, Koala Hospital – Port Macquarie, p 12

<sup>288</sup> Submission 5, p 13

<sup>289</sup> Cr Adam Marshall, Mayor, Gunnedah Shire Council, Evidence, 6 July 2010, p 46

another girl who had an emblem on her shirt saying "Dubbo Zoo". There was also a female National Parks & Wildlife Service officer. On top of that, there were two men and a lady who seemed to be part of a camera crew.<sup>290</sup>

**5.16** However, according to the fact sheet supplied by the RSPCA, two Inspectors entered the Park:

Two RSPCA officers entered the park and could not locate any person in attendance at the front reception area. They located Nancy Small at the koala exhibit. The AR [Animal Rescue] crew had also entered and were filming. Small was informed that RSPCA were attending to examine the animals in the park and that there was also a wildlife vet and wildlife expert in attendance.<sup>291</sup>

**5.17** There is a discrepancy between the information supplied by the RSPCA and Inspector Prowse's own recollection of when the television crew entered. According to Inspector Prowse's statement, she entered the Park with Inspector Michael Makeham, introduced herself to Mrs Small and explained that she was accompanied by a veterinarian, a koala expert, a ranger and a film crew.<sup>292</sup> Inspector Prowse said that after speaking with Mrs Small, she and Inspector Makeham returned to the carpark and spoke with the other members of the group before re-entering the Park.<sup>293</sup>

**5.18** The video footage provided by Imagination Television shows Inspector Prowse introducing herself to Mrs Small.<sup>294</sup> As just mentioned, Inspector Prowse contends that she explained that she was accompanied by several other people, including a camera crew.<sup>295</sup> The video footage shows her explaining that she is accompanied by several other people, but she does not mention the presence of a film crew, though this would no doubt have been obvious as the exchange was filmed.<sup>296</sup>

**5.19** The protocol between the RSPCA and Imagination Television states that 'Imagination TV acknowledges that it is responsible for ensuring compliance with all relevant laws regarding filming in private and public areas and that it will seek the relevant consents where required.'<sup>297</sup> According to Imagination Television, the camera crew followed RSPCA Inspectors into the Park. Imagination Television wrote that:

As our film crew followed the RSPCA officers onto the property, Catherine [Catherine Ledingham, Producer, 'Animal Rescue'] approached Mrs Small. Catherine said she and the crew were working for the programme "Animal Rescue" and asked for permission to film. Mrs Small was agreeable and said, "Yes, I have nothing to hide". This verbal exchange occurred near the start of the visit at the earliest reasonable opportunity, and before consent forms were discussed and signed.<sup>298</sup>

<sup>290</sup> Submission 13, Waterways Wildlife Park, p 7

<sup>291</sup> Submission 9, p 2

<sup>292</sup> Submission 9, p 47

<sup>293</sup> Submission 9, pp 46 - 47

<sup>294</sup> Video footage, Imagination Television, *Waterways Wildlife Park Tape No. 45218*, 01:02:35 – 01:03:15

<sup>295</sup> Submission 9, p 47

<sup>296</sup> Video footage, Imagination Television, *Waterways Wildlife Park Tape No. 45218*, 01:02:35 – 01:03:15

<sup>297</sup> Submission 16, p 6

<sup>298</sup> Correspondence from Mr Ross Wilson, Producer, Imagination Television, to Chair, 2 September 2010, p 2

**5.20** It is not clear what RSPCA Inspectors communicated to Mrs Small about the presence of the television crew.

**5.21** According to Inspector Matthew French, he advised Mrs Small that she could ask the television crew to leave while Dr Campbell and Ms Flanagan were examining the koalas:

I said: "In regard to the TV crew, it's totally up to you if they stay. You have that control. If you don't want them here I will get them to leave"

Small said: "No, it's alright, I guess they are here to do a job too."

I said: "Just so long as you know, if you don't want this you can let me know."<sup>299</sup>

**5.22** However, Mrs Small's recollection of this conversation was quite different. She said that, 'Matt French was there. I said to him, "How come you have a camera crew here?" He said, "Where I go, they follow." That was it.'<sup>300</sup>

**5.23** According to Mr Ross Wilson, Imagination Television, Ms Catherine Ledingham, Producer, 'Animal Rescue', approached Mrs Small to seek written consent for the filming.<sup>301</sup> It appears that this occurred while Dr Campbell and Ms Flanagan were examining the koalas.<sup>302</sup>

**5.24** Mrs Small signed the release form provided by the television crew but maintains that she did not know what she was signing.<sup>303</sup> Mrs Small said that 'this film crew sought to obtain my signature on a release document by lying to me as to what that document was.'<sup>304</sup> According to Mrs Small:

A lady who was with the film crew pushed a piece of paper in front of me to sign. I said: "What for? The cameras are already rolling!"

She replied: "It won't stop the cameras. This paper is to allow you to get across your point of view."

I didn't have my glasses with me but I could read the heading of the piece of paper which was in large print and said the words "Animal Rescue". I couldn't read the rest of the document.

The lady said that she would read it to me but she didn't read it to me. She also put another piece of paper in front of me to sign as well. I didn't know what I was signing.<sup>305</sup>

<sup>299</sup> Mr Coleman, Evidence, 5 July 2010, pp 31 - 32

<sup>300</sup> Submission 13, p 20

<sup>301</sup> Correspondence from Mr Ross Wilson, Producer, Imagination Television, to Chair, 2 September 2010, p 2

<sup>302</sup> Submission 13, p 8

<sup>303</sup> Submission 13 – Attachment A, Waterways Wildlife Park, p 16

<sup>304</sup> Submission 13, p 21

<sup>305</sup> Submission 13, pp 8 - 9

- 5.25** The account provided by Imagination Television differs from Mrs Small's recollection of the signing of the consent form. Imagination Television denied suggestions that Mrs Small was misled. According to Imagination Television:

Catherine later asked Mrs Small if she would agree to appear on camera and be interviewed. She said yes and was asked to sign an individual release form and a location release form. Catherine advised Mrs Small that no material shot on her premises could go to air without these forms being signed. Mrs Small provided her address and other details to enable Catherine to complete these forms before Mrs Small signed them... Mrs Small asserts that she was told by our producer that the camera would keep rolling regardless of being granted permission or not. Catherine Ledingham strongly denies this.

From our perspective Mrs Small willingly consented to our filming and we sought and obtained this consent verbally and in writing. Mrs Small happily signed the consent forms and we strongly disagree with the suggestion that we misled Mrs Small.<sup>306</sup>

- 5.26** The footage provided by Imagination Television sheds little light on these issues. The footage does not show Mrs Small signing the release form, but does show her being interviewed at a later point.<sup>307</sup> The footage also shows several conversations between RSPCA Inspectors and Mrs Small both before and after the consent form was signed, but it does not show them discussing the presence of the television crew.<sup>308</sup>

- 5.27** Several participants in the Inquiry questioned whether Mrs Small's consent could be considered valid in the circumstances.<sup>309</sup> For example, Mrs Margaret Dodd expressed the view that, 'Mrs Small was confused and without her glasses she was unable to discern what sort of document she was signing. The whole incident was conducted under extreme anxiety, and intimidation.'<sup>310</sup> Similarly, Cr Leon Mills said that:

[H]ere it is: Mrs Small, somebody who has been law abiding all her life, is faced with three RSPCA officers dressed like police, and also there were people in uniform from the Taronga Zoo, and a film crew. If one can look at it in their mind's eye, how intimidating would that be when a piece of paper is put in front of you asking you to sign a document to allow you to be filmed?<sup>311</sup>

- 5.28** According to Inspector French, he spoke to Mrs Small after she had signed the release form and said, 'Remember Nancy, this is up to you, you control this and you can take that back.'<sup>312</sup>

- 5.29** Ms Flanagan commented that:

I found the film crew acted in a dignified and professional manner the whole day. They were not pushy nor did they get in the way of our work. The film crew was mindful of Mrs Small's recent illness and were considerate and very accommodating

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<sup>306</sup> Correspondence from Mr Ross Wilson, Producer, Imagination Television, to Chair, 2 September 2010, p 2

<sup>307</sup> Video footage, Imagination Television, *Waterways Wildlife Park*, *Tape Nos. 45219*

<sup>308</sup> Video footage, Imagination Television, *Waterways Wildlife Park*, *Tape Nos. 45218 - 45222*

<sup>309</sup> Cr Marshall, Evidence, 6 July 2010, p 41

<sup>310</sup> Submission 3, Mrs Margaret Dodd, p 3

<sup>311</sup> Cr Leon Mills, Councillor, Gunnedah Shire Council, Evidence, 6 July 2010, p 51

<sup>312</sup> Submission 9, p 32

for her during the day and it is my opinion that the crew did not place her under any pressure in relation to filming the entire day.<sup>313</sup>

- 5.30** Mr Coleman emphasised that, while it is the responsibility of the television company to seek consent to filming, RSPCA Inspectors may also direct a television crew to cease filming or leave a property, even if an owner has consented to filming. Mr Coleman expressed the view that:

I cannot agree with the notion of someone's back against the wall if they have signed a consent form and have been given an opportunity for the stressor to be removed, when that was not undertaken. If at any point our inspectors felt that Ms Small was unduly stressed or was not comfortable with that stressor, in other words *Animal Rescue* being there, they would have been removed.<sup>314</sup>

- 5.31** The RSPCA's protocol with Imagination Television specifies that a television crew will seek relevant consents to filming where required, but does not specify when this consent will be obtained or whether this will be verbal or written consent.<sup>315</sup> However, it is clear that filming had already commenced before either verbal or written consent was sought.

### **The RSPCA's relationship with Animal Rescue**

- 5.32** RSPCA NSW has a contract with Imagination Television, which produces the program.<sup>316</sup> The contract is currently in its fourth year. Mr Steve Coleman, Chief Executive Officer of RSPCA NSW, explained that the RSPCA received \$25,000 for the first series of the show, and the second. In the third and fourth seasons, this figure increased to \$50,000 a year.<sup>317</sup>
- 5.33** Some participants in the Inquiry expressed concerns about the nature of the relationship between the RSPCA and 'Animal Rescue', and questioned whether this relationship was appropriate, including Cr Adam Marshall, Mayor of Gunnedah Shire Council:

Council wishes to express also its unease where the commercial relationship that exists between the RSPCA and the Channel 7 television show, *Animal Rescue*. We are concerned, obviously, that there is a contractual arrangement between the RSPCA and a commercial television station. The RSPCA is a body that has, let us face it, enormous powers under various Act to not only search premises, to seize animals, to issue fines and ultimately to prosecute but is a body that has all of those powers granted to them by legislation. Yet I ask how comfortable everyone is with allowing that same organisation with all those powers to have contractual arrangements whereby money changes hands in exchange for exclusive images of searches.<sup>318</sup>

<sup>313</sup> Submission 5, p 13

<sup>314</sup> Mr Coleman, Evidence, 5 July 2010, p 29

<sup>315</sup> Submission 16, pp 5 - 6

<sup>316</sup> Mr Coleman, Evidence, 5 July 2010, p 21

<sup>317</sup> Mr Coleman, Evidence, 5 July 2010, p 25

<sup>318</sup> Cr Marshall, Evidence, 6 July 2010, p 41

- 5.34** Some participants in the Inquiry believe that the decision to investigate the Waterways Wildlife Park or to remove animals from the Park was motivated by its relationship with 'Animal Rescue', and the desire to gain television coverage of the events. For example, Mr Stan Heuston wrote:

[T]he RSPCA wished to stage a dramatic rescue of the animals for the benefit of a television crew they had invited. Having the separate motive of television coverage for removing the animals, the RSPCA's claims of other reasons justifying the removal are irreparably compromised.<sup>319</sup>

- 5.35** Similarly, Dr David Amos from the Gunnedah Veterinary Clinic suggested that the commercial relationship between the RSPCA and 'Animal Rescue' may have influenced the decision to raid the Waterways Wildlife Park. Dr Amos said:

They [the RSPCA] are about milking donations from the unsuspecting public for the RSPCA and the Port Macquarie Koala Hospital. No doubt Channel 7 would get nice ratings from a warm and fuzzy story about rescuing these koalas from these terrible people. The fact that this has blown up somewhat and people are attacking a relatively defenceless little old lady, which Nancy Small is seen as, is pretty good evidence that they like a soft target.<sup>320</sup>

- 5.36** Ms Cheyne Flanagan, Hospital Supervisor at the Koala Hospital and Study Centre in Port Macquarie refuted suggestions that the Koala Hospitals participation in the RSPCA investigation of the Waterways Wildlife Park was influenced by 'Animal Rescue'. Ms Flanagan asked, 'Do these critics genuinely believe that internationally recognised institutions such as Taronga Western Plains Zoo and the koala hospital would be party to seizure of perfectly healthy koalas just for good footage?'<sup>321</sup>

- 5.37** Several participants felt that 'Animal Rescue' performed an important role in raising awareness of animal welfare issues. For example, Ms Marilyn Lees, a volunteer at the Koala Hospital, wrote: 'It is my opinion that "Animal Rescue" is a good TV program and brings to the public the worst side of animal care as well as the good side. People should be made aware of how badly animals are sometimes treated.'<sup>322</sup> Ms Flanagan expressed the view that:

There is a great need for a show such as *Animal Rescue* to enlighten the general public as to what can occur when animals are not cared for correctly and thus who to contact if an animal welfare issue is observed...it is no different to the filming of the reality show at Australian airports, *Border Security*, or police reality shows such as *The Force: Behind the Line* and *Dog Squad* – all of which portray people caught doing things they shouldn't.<sup>323</sup>

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<sup>319</sup> Submission 1, Mr Stan Heuston, p 2

<sup>320</sup> Dr David Amos, Vet, Gunnedah Veterinary Hospital, Evidence, 6 July 2010, p 30

<sup>321</sup> Ms Cheyne Flanagan, Hospital Supervisor, Koala Hospital – Port Macquarie, Evidence, 5 July 2010, p 8

<sup>322</sup> Submission 5 - Appendix H, Ms Cheyne Flanagan, Hospital Supervisor, Koala Hospital – Port Macquarie, p 13

<sup>323</sup> Submission 5, p 13

- 5.38 Mr Coleman explained that the RSPCA's objective in its involvement in the show is to raise awareness of animal welfare issues in the community. He said:

It has been our experience that the involvement of this particular show has brought a higher level of awareness around people's responsibilities with their animals. I guess the other objective as far as the RSPCA is concerned is an opportunity to demonstrate to the general public that it is not just about prosecuting people; it is about trying to work with people and find a reasonable solution to a range of animal welfare issues.<sup>324</sup>

- 5.39 Mr Coleman also emphasised that the RSPCA's involvement in the show is not motivated by financial gain:

Since the involvement of Animal Rescue we have not been able to track there being a significant increase in donations. What we have definitely been able to track is an increase in complaints by the public to the RSPCA to have an inspector look at a particular issue. If we enter this arrangement on the basis that the RSPCA would in some way, shape or form receive significant funding from it, that is certainly not our understanding and that is not our experience.<sup>325</sup>

### **The footage**

- 5.40 In a public statement on 8 February 2010, Mr Coleman said that 'after discussions with RSPCA Animal Rescue the footage that was taken (and consented to by the owner) will be shelved in the interests of everyone involved, including the animals'.<sup>326</sup>
- 5.41 The RSPCA's protocol with Imagination Television states that Imagination Television may not use any footage that relates to a matter which is the subject of legal proceedings.<sup>327</sup> Mr Wilson wrote that:

We then awaited further information from the RSPCA to see if this would become a prosecution case. If so, we would not seek to include any part of the story within the Animal Rescue programme until the matter was settled in the courts. This is normal practice. We have had several stories on file for two or more years, awaiting a court verdict. Subsequently, we learnt about the Inquiry and agreed that the story would not be included until that matter had been resolved.<sup>328</sup>

- 5.42 To date, the footage has not been broadcast.

### ***Committee Comment***

- 5.43 The Committee accepts that the RSPCA's decision to investigate the Waterways Wildlife Park and its conduct of the investigation were not influenced by 'Animal Rescue'. The RSPCA's visit to the Waterways Wildlife Park was primarily motivated by concerns about the welfare of the animals and not by a desire for television coverage.

<sup>324</sup> Mr Coleman, Evidence, 5 July 2010, p 22

<sup>325</sup> Mr Coleman, Evidence, 5 July 2010, p 23

<sup>326</sup> RSPCA NSW, *RSPCA asks for calm among the Gunnedah community*, media release, 8 February 2010 <[http://www.rspcansw.org.au/\\_\\_data/assets/pdf\\_file/0006/29895/RSPCA\\_Media\\_Release\\_-\\_RSPCA\\_asks\\_for\\_calm\\_among\\_the\\_Gunnedah\\_Community.pdf](http://www.rspcansw.org.au/__data/assets/pdf_file/0006/29895/RSPCA_Media_Release_-_RSPCA_asks_for_calm_among_the_Gunnedah_Community.pdf)> (accessed 1 September 2010)

<sup>327</sup> Submission 16, pp 5 - 6

<sup>328</sup> Submission 16, p 4

- 5.44 The Committee acknowledges that the proprietor of Waterways Wildlife Park, Mrs Nancy Small, signed a release form to allow Imagination Television to film events at the Park on 3 February 2010.
- 5.45 The Committee received conflicting evidence in relation to the circumstances surrounding Mrs Small's consent. The Committee understands that filming had already commenced when Imagination Television approached Mrs Small to ask if she would agree to filming and certainly before she was asked to sign a release form. The Committee urges the RSPCA to review its contract with Imagination Television to ensure that written consent is obtained **before** filming commences.
- 5.46 The Committee acknowledges that Mrs Small found the presence of RSPCA Inspectors, other experts and a television crew understandably intimidating and this may have influenced her decision to sign the release form. The Committee urges the RSPCA to take extra care in explaining the presence of a television crew to vulnerable people.

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**Recommendation 10**

That the RSPCA ensures that its contract with Imagination Television requires the Animal Rescue film crew to obtain written consent from property owners prior to the commencement of filming.

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- 5.47 The Committee accepts that the commercial relationship between the RSPCA and 'Animal Rescue' is not inappropriate. The Committee is of the view that the RSPCA's participation in 'Animal Rescue' can play a useful role in educating the public about animal welfare issues. However, it is crucial that production of the show does not influence the RSPCA's investigation of complaints and that adequate protections are provided to animal owners and other participants.

## Appendix 1 Submissions

No	Author
1	Mr Stan Heuston
2	Mr Leon Mills
3	Mrs Margaret Dodd
4	Mrs Shirley George
5	Ms Cheyne Flanagan (Koala Hospital – Port Macquarie)
5a	Ms Cheyne Flanagan (Koala Hospital – Port Macquarie)
6	Mr Xavier Martin
7	Name suppressed
8	Confidential
9	RSPCA NSW
10	Mrs Ellen Ash
11	Gunnedah Shire Council
12	Ms Joan Overeem
13	Mr Colin and Mrs Nancy Small (Waterways Wildlife Park)
14	Mr David Amos (Gunnedah Veterinary Hospital)
15	Confidential
16	Imagination Television
17	Confidential
18	Mr Mal Davies (Save Our Snowy Organisation)
19	Ms Judith Mitchell
20	Ms Jodi Markwick
21	Ms Teena Sutcliffe
22	Confidential
23	Confidential
24	Confidential
24a	Confidential
25	Confidential
26	Confidential
27	Confidential
28	Confidential
28a	Confidential
29	Confidential

<b>No</b>	<b>Author</b>
30	Confidential
31	Confidential
32	Mr Brendan O'Reilly (Department of Premier & Cabinet)
33	Ms Lee Tsakalos and Mr Gay McGregor
34	Mr Richard Sheldrake (Department of Industry and Investment NSW)
35	Confidential

## Appendix 2 Witnesses

Date	Name	Position and Organisation
<b>Monday 5 July 2010</b> <b>Room 814/815</b> <b>Parliament House</b>	Mr Ross Burton	Primary Industries Division, Industry and Investment NSW
	Ms Barbara Jones	Primary Industries Division, Industry and Investment NSW
	Ms Sally Barnes	Deputy Director-General, Department of Environment, Climate Change and Water
	Mr Ron Haering	Manager, Wildlife Licensing and Management Unit, Department of Environment, Climate Change and Water
	Ms Cheyne Flanagan	Hospital Supervisor, Koala Hospital - Port Macquarie
<b>Tuesday 6 July 2010</b> <b>Town Hall</b> <b>Gunnedah Shire Council</b>	Ms Jodi Markwick	Volunteer, Waterways Wildlife Park
	Mrs Nancy Small	Owner and operator, Waterways Wildlife Park
	Dr David Amos	Veterinary Surgeon, Gunnedah Veterinary Hospital
	Cr Adam Marshall	Mayor, Gunnedah Shire Council
	Mr Leon Mills	Councillor, Gunnedah Shire Council

## Appendix 3 Tabled documents

**Monday 5 July 2010**

**Public Hearing, Room 814/815, Parliament House, Sydney**

1. Inspection report entitled 'The friends of Waterways Wildlife Park' – tendered by Ms Sally Barnes, Deputy Director-General, Department of Environment, Climate Change and Water

**Tuesday 6 July 2010**

**Public Hearing, Town Hall, Gunnedah Shire Council, Gunnedah**

2. Photos – tendered by Ms Jodi Markwick, Volunteer, Waterways Wildlife Park
3. Post-mortem report on kangaroo – tendered by Dr David Amos, Veterinarian, Gunnedah Veterinary Hospital

## **Appendix 4 Answers to questions on notice**

The Committee received answers to questions on notice from:

1. Dr David Amos
2. Koala Hospital – Port Macquarie
3. NSW Industry and Investment
4. RSPCA NSW
5. Shire of Gunnedah

## Appendix 5 Minutes

### Minutes No. 42

Thursday 22 April 2010

Members Lounge, Parliament House, at 5.45 pm

#### 1. Members present

Mr Ian Cohen (*Chair*)

Mr Rick Colless (*Deputy Chair*)

Mr Robert Brown

Mr Shaoquett Moselmane

Mr Charlie Lynn

Ms Lynda Voltz

Ms Helen Westwood

#### 2. Participating member

The Chair advised that Mr Khan would be attending the meeting as a participating member

#### 3. Confirmation of previous minutes

Resolved, on the motion of Mr Brown: That draft Minutes No. 41 be confirmed.

#### 4. Correspondence

The Committee noted the following items of correspondence received:

##### *Received*

- \*\*\*
- 21 April 2010 – Letter from four members of GPSC5 regarding a proposed inquiry into the RSPCA raid on the Waterways Wildlife Park, Gunnedah.

#### 5. Waiving requirement for 24 hours notice to consider TOR

The Chair sought the leave of the Committee to consider the terms of reference at 5.45 pm today, notwithstanding that members will have only received 23.5 hours notice.

No objection taken.

Leave granted.

#### 6. Proposed terms of reference: Inquiry into the raid by the RSPCA on the Waterways Wildlife Park, Gunnedah.

The Chair tabled a letter to the Clerk of the Committee signed by four committee members requesting a meeting of the Committee to consider proposed terms of reference into the RSPCA raid on the Waterways Wildlife Park, Gunnedah.

The Chair sought advice from the A/Clerk Assistant Committees regarding procedural issues pertaining to the proposed terms of reference.

The Committee deliberated.

Resolved, on the motion of Mr Colless: That no further action be taken by the Committee regarding the proposed terms of reference.

**7. Adjournment**

The Committee adjourned at 6.08 pm *sine die*.

Beverly Duffy

**Clerk to the Committee**

**Minutes No. 43**

Tuesday 18 May 2010

Room 1102, Parliament House, at 9.00 am

**1. Members present**

Mr Ian Cohen (*Chair*)

Mr Rick Colless (*Deputy Chair*)

Mr Robert Brown

Mr Tony Catanzariti

Ms Lynda Voltz

Ms Helen Westwood

Mr Don Harwin

**2. Substitutions**

The Chair advised that Hon Don Harwin MLC, the Opposition Whip, had issued a written advice stating that he would be substituting for Mr Lynn for the purposes of this meeting.

**3. Minutes**

Resolved, on the motion of Mr Colless: That draft Minutes No. 42 be confirmed.

**4. Correspondence**

The Committee noted the following correspondence:

***Received***

- 17 May 2010 - From Cr. Adam Marshall, Mayor, Gunnedah Shire Council, to the Chair, inviting the Committee to hold a hearing at the Council Chambers in Gunnedah.

**5. Inquiry into the RSPCA raid on the Waterways Wildlife Park**

The Chair tabled the following Terms of Reference which were received from the House on 12 May 2010:

1. That General Purpose Standing Committee No 5 inquire into and report on matters associated with the RSPCA raid on the Waterways Wildlife Park, Gunnedah, on 3 February 2010 and in particular:
  - a) the actions and investigations undertaken by the RSPCA prior to the investigation to assess the welfare of the animals at the Waterways Wildlife Park,
  - b) protocols adopted by the RSPCA with respect to investigations and prosecutions and whether those protocols were adhered to,
  - c) the criteria used by the RSPCA to determine that the removal of the animals should be undertaken,
  - d) the actions of the Department of Industry and Investment with respect to the licensing of the Waterways Wildlife Park, and
  - e) the involvement of the television program "Animal Rescue" at the Waterways Wildlife Park.
2. That the committee report by 9 September 2010.

**5.1. Submissions**

Resolved, on the motion of Mr Brown: That the closing date for submissions be 18 June 2010.

**5.2. Advertising the inquiry**

Resolved, on the motion of Mr Colless: That the Inquiry and call for submissions be advertised in the week commencing 24 May 2010 in the Tamworth Northern Daily Leader and associated publications, and the Namoi Valley Independent.

**5.3. Call for submissions**

Resolved, on the motion of Mr Colless: That the Committee write to the following individuals and organisations to invite them to make a submission to the Inquiry:

- NSW Department of Industry and Investment
- Waterways Wildlife Park – prop. Nancy Small
- RSPCA
- Gunnedah Shire Council
- ‘Animal Rescue’ – Channel 7
- Australian Veterinary Association
- Koala Hospital and Study Centre (Port Macquarie)
- Dr David Amos (Gunnedah veterinarian)
- Zoo and Aquarium Association
- University of Sydney
- Department of Environment and Climate Change.

**5.4. Hearings**

Resolved, on the motion of Mr Brown: That the Committee conduct a hearing in Gunnedah on Tuesday 6 July.

Resolved, on the motion of Mr Colless: That the Committee conduct a hearing in Sydney on Monday 5 July, commencing at 2.00 pm.

**5.5. Site Visit**

Resolved, on the motion of Mr Brown: That the Committee visit the Waterways Wildlife Park on Tuesday 6 July.

**5.6. Travel**

Resolved, on the motion of Mr Colless: That the Committee travel to Gunnedah by charter flight.

**6. Adjournment**

The Committee adjourned at 9.30 am *sine die*.

Abigail Groves

**Clerk to the Committee**

**Minutes No. 44**

Wednesday 23 June 2010

Members’ Lounge, Parliament House, at 1.10 pm

**1. Members present**

Mr Ian Cohen (*Chair*)

Mr Rick Colless (*Deputy Chair*)

Mr Tony Catanzariti

Ms Marie Ficarra

Ms Lynda Voltz

Ms Helen Westwood

## 2. Substitution

The Chair advised that he had received written advice that the following members would be substituting for the duration of the inquiry:

- Ms Ficarra to substitute for Mr Lynn.

## 3. Previous minutes

Resolved, on the motion of Ms Colless: That draft Minutes No. 43 be confirmed.

## 4. Inquiry into the RSPCA raid on the Waterways Wildlife Park

### 4.1. Correspondence

The Committee noted the following items of correspondence:

#### *Received*

- 2 June 2010 – email from Mr Peter Long, Solicitor, Slater & Gordon, requesting change of date for Gunnedah hearing on 6 July 2010
- 4 June 2010 – email from Mr Peter Long, Solicitor, Slater & Gordon, requesting clarification about the rules of evidence in a parliamentary inquiry
- 10 June 2010 – email from Lorraine to the Committee Secretariat, suggesting to widen the Terms of Reference to include other matters in relation to the conduct of the RSPCA.

#### *Sent*

- 7 June 2010 – email from Committee Secretariat to Mr Peter Long, Solicitor, Slater & Gordon, in response to the request for clarification about the rules of evidence in a parliamentary inquiry
- 17 June 2010 – email from Committee Secretariat to Mr Peter Long, Solicitor, Slater & Gordon, in response to the request of changing the public hearing date for Gunnedah on 6 July 2010.

### 4.2. Publication of submissions

Resolved, on the motion of Ms Voltz: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of Submissions Nos 1, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21; and the Appendices A, B, C, D, E, F, G, H to submission No. 5.

Resolved, on the motion of Ms Voltz: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the partial publication of Submissions No 2 by suppressing adverse mention.

Resolved, on the motion of Mr Colless: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the partial publication of Submissions No 7 by suppressing names and identifying information.

Resolved, on the motion of Ms Westwood: That the Committee keep Submissions Nos. 8, 15, and 16 confidential.

### 4.3. Submissions which do not address the Terms of Reference

Resolved, on the motion of Mr Colless: That the Committee accept but keep confidential Submission Nos. 22, 23, 24, 24a, 25, 26, 27, 28, 28a, 29, 30 and 31.

### 4.4. Consideration of the correspondence received from the Department of Premier and Cabinet dated 23 June 2010

Resolved, on the motion of Mr Voltz: That the Committee contact the Department of Premier and Cabinet to confirm the timeframe and process for the consideration of the licensing status of Waterways Wildlife Park.

Resolved, on the motion of Ms Westwood: That the Committee seek advice from the Clerk as to whether there would be any impediment to the Committee proceeding with the hearings scheduled for 5 and 6 July 2010, given the licence status for the Waterways Wildlife Park is currently under consideration.

## 5. Adjournment

The Committee adjourned at 1.30 pm until 10.45 am, Thursday 24 June 2010.

Abigail Groves

**Clerk to the Committee**

### Minutes No. 45

Thursday 24 June 2010

Members' Lounge, Parliament House, at 10.45 am

## 1. Members present

Mr Ian Cohen (*Chair*)

Mr Rick Colless (*Deputy Chair*)

Mr Tony Catanzariti

Ms Lynda Voltz

Ms Helen Westwood

## 2. Apology

Mr Robert Brown

## 3. Previous minutes

Resolved, on the motion of Ms Voltz: That draft Minutes No. 44 be confirmed.

## 4. Inquiry into the RSPCA raid on the Waterways Wildlife Park

### 4.1. Correspondence

The Committee noted the following items of correspondence:

#### *Sent*

- 23 June 2010 - email from Committee Secretariat to Mr Daniel Simpkins, Department of Premier and Cabinet, regarding the Committee's request for further information on the status of the licence for Waterways Wildlife Park.

#### *Received*

- 23 June 2010 - email from Mr Daniel Simpkins, Department of Premier and Cabinet, regarding the Committee's request for further information
- 24 June 2010 - letter from Ms Lynn Lovelock, Clerk of NSW Legislative Council, responding to Committee's request for advice on further Committee activity.

### 4.2. Publication of submissions

Resolved, on the motion of Ms Voltz: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of Submissions No. 32.

Resolved, on the motion of Ms Voltz: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of two additional Appendices to submission No. 5 which contain statements from volunteers working at Koala Hospital – Port Macquarie.

**4.3. Reconsideration of the publication status of Submission No 18**

Resolved, on the motion of Mr Colless: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the partial publication of previously published Submission No. 18 by suppressing certain adverse mention.

**4.4. Advice from Clerk re: Further Committee activity**

The Secretariat tabled advice from the Clerk regarding the conduct of the inquiry.

Resolved, on the motion of Ms Voltz: That the Committee proceed to conduct a public hearing in Sydney and Gunnedah on Monday 5 and Tuesday 6 July 2010 respectively.

**4.5. Public Hearings and site visit – 5 and 6 July 2010**

Resolved, on the motion of Mr Catanzariti: That the Committee invite representatives from Industry and Investment NSW to appear before the Committee at a public hearing.

Resolved, on the motion of Mr Colless: That representatives from the following organisations be invited to appear as witnesses during the public hearings on Monday 5 and Tuesday 6 July 2010:

- RSPCA NSW
- Koala Hospital and Study Centre
- Industry and Investment NSW
- Waterways Wildlife Park
- Gunnedah Shire Council
- Dr David Amos, and
- Mr Leon Mills.

**5. Adjournment**

The Committee adjourned at 10.55 am until Monday 5 July 2010.

Beverly Duffy

**Clerk to the Committee**

**Minutes No. 46**

Monday 5 July 2010

Room 814/815, Parliament House, at 1.45 pm

**1. Members present**

Mr Ian Cohen (*Chair*)  
Mr Rick Colless (*Deputy Chair*)  
Mr Robert Brown  
Mr Tony Catanzariti  
Ms Marie Ficarra (*for Mr Lynn*)  
Mr Luke Foley  
Ms Helen Westwood

**2. Substitutions**

Ms Ficarra for Mr Lynn, for the duration of the Inquiry.

The Chair welcomed Mr Foley to the Committee.

**3. Previous minutes**

Resolved, on the motion of Mr Catanzariti: That draft Minutes No. 45 be confirmed.

#### 4. Correspondence

The Committee noted the following items of correspondence:

##### *Sent*

- 25 June 2010 – Letter from Hon Ian Cohen to the Minister for Climate Change and the Environment, advising of inquiry hearing and requesting representation from Industry and Investment NSW
- 25 June 2010 - Letter from Hon Ian Cohen to the Minister for Primary Industries, advising of inquiry hearing and requesting representation from Industry and Investment NSW
- 1 July 2010 - Letter from Hon Ian Cohen to Hon Peter Draper MP, advising of site visit to Gunnedah.

##### *Received*

- 1 July 2010 – Email from Lucy Clynes, Senior Policy Advisor, Office of the Hon Steve Whan MP, Minister for Primary Industries
- 5 July 2010 – Letter from Dr Richard Shel Drake, Director-General, Industry and Investment NSW, requesting that witnesses from Industry and Investment NSW be heard in-camera.

#### 5. Inquiry into the RSPCA raid on the Waterways Wildlife Park

##### 5.1 Publication of submissions

Resolved, on the motion of Ms Westwood: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of Submissions Nos. 33 and 34.

##### 5.2 Reconsider publication status of submissions

The author of submission no. 16, Mr Ross Wilson, previously requested that the submission be confidential. However, he has now requested that the submission be published, but not available online.

Resolved, on the motion of Ms Westwood: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of Submission No.16, but that it not be placed on the website.

The author of submission no. 17, Mr Cyril Baker, has requested that the status of his submission be changed from public to confidential.

Resolved, on the motion of Ms Westwood: That Submission No. 17 remain confidential.

##### 5.3 Request to hear evidence in camera

Resolved, on the motion of Mr Cantanzariti: That the Committee agree to the request from Industry and Investment NSW, that the representatives from Industry and Investment NSW be heard in camera.

##### 5.4 Answers to questions on notice

Resolved, on the motion of Ms Westwood: That answers to questions on notice taken during the hearings on 5 and 6 July be provided by 20 July 2010.

##### 5.5 In-camera hearing

Resolved, on the motion of Mr Brown: That the Committee proceed to take evidence from Mr Ross Burton and Ms Barbara Jones, representatives of Industry and Investment NSW in camera.

The Committee proceeded to take in camera evidence.

Persons present other than the Committee: Beverly Duffy, Abigail Groves, Shu-Fang Wei and Hansard Reporters.

The evidence concluded and the witness withdrew.

Resolved, on the motion of Mr Brown: That the hearing resume in public.

### 5.6 Public hearing

The witness, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses from Department of Environment, Climate Change and Water were sworn and examined:

- Ms Sally Barnes, Deputy Director-General
- Mr Ron Haering, Manager, Wildlife Licensing and Management Unit.

Ms Barnes tendered the following document:

- Waterways Wildlife Park – Department of Environment, Climate Change and Water Inspection report.

The evidence concluded and the witnesses withdrew.

The following witness from the Port Macquarie Koala Hospital was sworn and examined:

- Ms Cheyne Flanagan, Hospital Supervisor.

The evidence concluded and the witness withdrew.

The following witness from RSPCA NSW sworn and examined:

- Mr Steve Coleman, Chief Executive Officer.

The evidence concluded and the witness withdrew. The public hearing concluded and the public and the media withdrew.

### 5.7 Publication of tendered documents

Resolved, on the motion of Mr Colless: That the Committee accept and publish, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the following document tendered during the hearing, subject to suppression of penultimate paragraph:

- Waterways Wildlife Park – Department of Environment, Climate Change and Water Inspection report, tendered by Ms Barnes.

### 5.8 Further questions on notice

Resolved, on the motion of Mr Colless: That Committee members forward any further questions on notice to the Secretariat by 5pm, Wednesday 7 July 2010.

## 6. Adjournment

The Committee adjourned at 5.00 pm until 7.00 am, Tuesday 6 July 2010.

Beverly Duffy

**Clerk to the Committee**

### Minutes No. 47

Tuesday 6 July 2010

Waterways Wildlife Park, Gunnedah, at 9.00 am

## 1. Members present

Mr Ian Cohen (*Chair*)

Mr Rick Colless (*Deputy Chair*)

Mr Robert Brown  
Mr Tony Catanzariti  
Ms Marie Ficarra (*for Mr Lynn*)  
Mr Luke Foley  
Ms Helen Westwood

## **2. Inquiry into the RSPCA raid on the Waterways Wildlife Park**

### **2.1. Site visit – Waterways Wildlife Park**

The Committee attended the Waterways Wildlife Park and was met by the following:

- Mrs Nancy Small
- Mr Colin Small
- Ms Jodi Markwick
- Ms Teena Sutcliff
- Ms Erin McCabe

The Hon Trevor Khan and Cr Adam Marshall were also present at the Park.

Mrs Small provided a tour of the Waterways Wildlife Park.

### **2.2. Public Hearing (Town Hall, Gunnedah Shire Council)**

Witnesses, the public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness from Waterways Wildlife Park was sworn and examined:

- Ms Jodi Markwick, Volunteer.

The evidence concluded and the witness withdrew.

The following witness from Waterways Wildlife Park was sworn and examined:

- Mrs Nancy Small, Owner and operator.

The evidence concluded and the witness withdrew.

The following witness from the Gunnedah Veterinary Hospital was sworn and examined:

- Dr David Amos, Veterinary Surgeon.

The evidence concluded and the witness withdrew.

The following witness from Gunnedah Shire Council was sworn and examined:

- Cr Adam Marshall, Mayor.

The evidence concluded and the witness withdrew.

The following witness from Gunnedah Shire Council was sworn and examined:

- Mr Leon Mills, Councillor.

The evidence concluded and the witness withdrew.

The public hearing concluded at 5.03 pm.

The public and the media withdrew.

**2.3. Publication of tendered documents**

Resolved, on the motion of Mr Brown: That the Committee accept and publish, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the following documents tendered during the hearing:

- Photos tendered by Ms Jodi Markwick
- Post-mortem report on kangaroo, tendered by Dr Amos.

**2.4. Request for copy of video footage**

Resolved, on the motion of Ms Westwood:

- That the Chair write to the RSPCA and to the producers of 'Animal Rescue' to request that they provide unedited copies of any video footage taken during the raid on the Waterways Wildlife Park on 3 February 2010
- That the Committee agree to view any video footage provided by the RSPCA or the producers of 'Animal Rescue' in camera, if so requested
- That the Chair write to the RSPCA and request unedited copies of photos taken by Inspector Prowse on 22 January 2010.

**3. Adjournment**

The Committee adjourned at 5.08 pm *sine die*.

Beverly Duffy

**Clerk to the Committee**

**Minutes No. 48**

Monday 9 August 2010

Members' Lounge, Parliament House, at 1.15 pm

**1. Members present**

Mr Ian Cohen (*Chair*)

Mr Rick Colless (*Deputy Chair*)

Mr Robert Brown

Ms Marie Ficarra (*for Mr Lynn*)

Mr Luke Foley

Ms Helen Westwood

**2. Previous minutes**

Resolved, on the motion of Mr Brown: That draft Minutes Nos. 46 and 47 be confirmed.

**3. Inquiry into the RSPCA raid on the Waterways Wildlife Park****3.1. Correspondence*****Received***

- 7 July 2010 – Email from Hon. Helen Westwood, requesting further information regarding prevalence of Chlamydia among koalas in Gunnedah region
- 7 July 2010 – Email from Name Suppressed, requesting information on parliamentary privilege and media coverage of committee inquiry
- 9 July 2010 - Email from Mr Ross Wilson, Series Producer of the RSPCA Animal Rescue, Imagination Television, to the Committee, agreeing to provide the footage taken at the Waterways Wildlife Park on 3 February 2010
- 13 July 2010 – Email from Mr Damien Higgins, Senior Lecturer, Pathobiology and Wildlife Health, Koala Infectious Diseases Research Group, Faculty of Veterinary Science, University of Sydney, providing advice in relation to Chlamydia disease in koalas in Gunnedah area

- 14 July 2010 – Photos from Ms Jodi Markwick, Volunteer, Waterways Wildlife Park, photos taken in January 2010 illustrating condition of the animals in the park prior to the RSPCA raid
- 15 July 2010 – Letter from Mr Steve Coleman, Chief Executive Officer of the RSPCA NSW, providing answers to questions on notice and additional questions from the Members
- 16 July 2010 – DVDs supplied by Mr Ross Wilson, Imagination Television
- 19 July 2010 – Letter from Ms Cheyne Flanagan, Hospital Supervisor, Koala Hospital – Port Macquarie, providing answers to additional questions from the Members and supplementary information
- 20 July 2010 – Letter from Mr Ross Burton, Industry and Investment NSW, providing answers to question on notice and requesting that the transcript of evidence and answers to questions on notice remain confidential
- 21 July 2010 – Letter from Cr Adam Marshall, Mayor, Shire of Gunnedah, providing answers to question on notice
- 4 August 2010 – Letter from Mr Steve Coleman, Chief Executive Officer of the RSPCA NSW, providing correspondences between the RSPCA's legal representatives and solicitors representing the Operators of the Waterways Wildlife Park
- 6 August 2010 – Email from Dr David Amos, Gunnedah Veterinary Clinic, providing answers to questions on notice.

**Sent**

- 8 July 2010 – From the Chair to Mr Steve Coleman, Chief Executive Officer of the RSPCA, requesting a copy of the video footage taken during the RSPCA raid on the Waterways Wildlife Park on 3 February 2010
- 8 July 2010 – From the Chair to Mr Ross Wilson, Series Producer, RSPCA Animal Rescue, Imagination Television, requesting a copy of the video footage taken during the RSPCA raid on the Waterways Wildlife Park on 3 February 2010
- 30 July 2010 – From the Chair to Dr Richard Sheldrake, Director-General, Industry and Investment NSW, requesting advice regarding the timeframe for licensing of the Waterways Wildlife Park, Gunnedah.

**3.2. Publication of Submission**

Resolved, on the motion of Ms Westwood: That Submission No. 35 remain confidential.

Resolved, on the motion of Ms Ficarra: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of supplementary information supplied by Ms Cheyne Flanagan, Koala Hospital – Port Macquarie, as Submission No. 5a.

**3.3. Publication of DVDs received from Imagination Television**

Resolved, on the motion of Ms Westwood: That the Committee Secretariat liaise with Imagination Television regarding publication of segments of the 'Animal Rescue' footage and seek advice from the Clerk regarding the practicalities of doing so.

**3.4. Answers to Questions on Notice**

Resolved, on the motion of Mr Brown: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of answers to questions on notice received from:

- Dr David Amos
- Shire of Gunnedah
- Koala Hospital – Port Macquarie.

Resolved on the motion of Mr Colless: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of answers to

questions on notice received from RSPCA NSW, subject to removal of 'RSPCA Inspectors Standard Operating Procedures – draft version', which is to remain confidential.

**Answers to questions on notice from Mr Ross Burton, Director, Emergencies and Animal Welfare, Industry and Investment NSW.**

Resolved on the motion of Mr Brown: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of those sections of the answers to questions on notice provided by Industry and Investment NSW referred to in the Report.

Resolved on the motion of Mr Brown: That the transcript of evidence provided by Mr Ross Burton, Director, Emergencies & Animal Welfare, Industry and Investment NSW, and Ms Barbara Jones, Director, Legal, Industry and Investment NSW remain confidential.

**3.5. Correspondence received from Industry and Investment NSW**

Resolved on the motion of Mr Brown: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of the letter dated 9 August 2010 from Dr Richard Sheldrake, Director-General, Industry and Investment NSW, to the Chair regarding the timeframe for the Waterways Wildlife Park licensing process.

**4. Adjournment**

The Committee adjourned at 1.55 pm, until Monday 6 September.

Beverly Duffy

**Clerk to the Committee**

**Minutes No. 49**

Monday 6 September 2010

Room 1102, Parliament House, at 10.00 am

**1. Members present**

Mr Ian Cohen (*Chair*)

Mr Rick Colless (*Deputy Chair*)

Mr Tony Catanzariti

Mr Robert Brown

Ms Marie Ficarra (*for Mr Lynn*)

Mr Luke Foley

Ms Helen Westwood

**2. Previous minutes**

Resolved, on the motion of Ms Ficarra: That draft Minutes No. 48 be confirmed.

**3. \*\*\***

**4. Inquiry into the RSPCA raid on the Waterways Wildlife Park**

**4.1. Correspondence**

The Committee noted the following items of correspondence:

***Received***

- 2 September 2010 – From Mr Ross Wilson, Series Producer, Animal Rescue Series, to the Chair, agreeing to make footage taken during the RSPCA raid on the Waterways Wildlife Park available for public viewing within Parliament's precinct.

**Sent**

- 25 August 2010 – From Chair to Mr Ross Wilson, Series Producer, Imagination Television, requesting agreement to partial publication of the footage provided and inviting the Producer to respond to statements made in the submission lodged by Mrs Nancy Small, Owner and Operator of the Waterways Wildlife Park.
- 26 August 2010 – From Chair to Dr Richard Sheldrake, Director-General, Industry and Investment NSW, advising him of the Committee's decision to partially publish evidence provided by Industry and Investment NSW.

**4.2. Publication of correspondence from Imagination Television**

Resolved, on the motion of Mr Brown: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of the correspondence sent by Imagination Television, dated 2 September 2010.

**4.3. Publication of answers to questions on notice**

Resolved, on the motion of Mr Colless: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of the following documents provided by Industry and Investment NSW in response to questions on notice taken 5 July 2010:

- Mr Ross Burton, Director, Emergencies and Animal Welfare, Industry and Investment NSW, letter to Ms Abigail Groves, Principal Council Officer, Legislative Council – 20 July 2010
- I&I NSW Inspection Report – Waterways Wildlife Park – 26 November 2007
- I&I NSW letter to Colin and Nancy Small – Directions arising from inspection – 10 December 2007
- Memo to Mr Matthew Crane – 5 February 2010
- I&I NSW Inspection Report Waterways Wildlife Park – 8-9 February 2010
- I&I NSW letter to Mr and Mrs Small – show cause – 22 April 2010
- I&I NSW follow up inspection report – Waterways Wildlife Park – 7 June 2010
- Draft business plan, Waterways Wildlife Park – 30 June 2010
- I&I NSW letter to Mr and Mrs Small – extension of "show cause" deadline – 2 July 2010.

**4.4. Publication of video footage**

Resolved, on the motion of Mr Brown: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of video footage provided by Imagination Television. This footage will not be placed on the Parliament's website and will only be able to be viewed within the parliamentary precinct.

**4.5. Consideration of draft report – inquiry into the RSPCA raid on the Waterways Wildlife Park, Gunnedah**

The Chair tabled his amended Chapter Five of the report entitled 'The inquiry into the RSPCA raid on the Waterways Wildlife Park', which was previously circulated.

The Chair then tabled his draft report entitled 'The inquiry into the RSPCA raid on the Waterways Wildlife Park', which, having been previously circulated was taken as being read. The Committee proceeded to consider the report in detail.

Chapter 1 read.

Resolved, on the motion of Mr Brown: That paragraph 1.9 be amended by omitting 'RSPCA' and inserting instead 'Committee'.

Chapter 2 read.

Resolved, on the motion of Mr Brown: That Chapters 1 and chapter 2, as amended, be adopted.

Chapter 3 read.

Resolved, on the motion of Mr Colless: That the title of Chapter Three be amended by inserting 'RSPCA's' after 'The'.

Resolved, on the motion of Mr Brown: That paragraph 3.5 be amended by referencing the source of the photos taken by Inspector Prowse.

Resolved, on the motion of Mr Brown: That paragraph 3.35 be moved to the beginning of paragraph 3.81.

Resolved, on the motion of Mr Foley: That paragraph 3.63 be amended by omitting the final sentence.

Resolved, on the motion of Mr Foley: That paragraph 3.67 be amended by:

- omitting 'supports Ms Flanagan's view. While the video'.
- Inserting 'However,' after 'February'.

Resolved, on the motion of Mr Brown: That paragraph 3.109 be amended by referencing the source of the sentence: 'However, it was also noted that at the time of their arrival at the Koala Hospital most of the animals had a dry, brown coat, which is a more obvious indicator of poor health'.

Resolved, on the motion of Mr Brown: That paragraph 3.126 be amended by:

- omitting 'While unfortunate', and inserting instead 'According to the RSPCA';
- referencing the source of the first sentence;
- omitting 'by the' and inserting instead 'their'.

Resolved, on the motion of Mr Catanzariti: That paragraph 3.126 be amended by omitting 'also'.

Resolved, on the motion of Mr Brown: That, the following new Recommendation be inserted after paragraph 3.126:

That the RSPCA's standard operating procedures include a requirement that where an Inspector identifies the need for urgent veterinary intervention, the nearest suitably qualified veterinarian be called upon to provide emergency examination and treatment.

Resolved, on the motion of Ms Westwood: That, the following new Recommendation be inserted after paragraph 3.128:

That the RSPCA's standard operating procedures include a requirement to provide written findings of an RSPCA investigation to animal owners and to any relevant licensing authorities within 48 hours of an inspection.

Resolved, on the motion of Mr Colless: That, Chapter 3 be adopted.

Chapter 4 read.

Resolved, on the motion of Mr Colless: That, Recommendation 4 be amended by omitting 'enforce' and inserting instead 'apply'.

Resolved, on the motion of Mr Colless: That, Recommendation 5 be amended by omitting 'Minister for Local Government recommend that the'.

Resolved, on the motion of Mr Brown: That, Recommendation 6 be amended by inserting after the end of the recommendation the following sentence: 'Wherever practicable, inspections of facilities licensed under

both the *Exhibited Animals Protection Act 1986* and the *National Parks and Wildlife Act 1974* should be carried out concurrently.'

Resolved, on the motion of Mr Brown: That Chapter 4, as amended, be adopted.

Chapter 5 read.

Resolved, on the motion of Mr Brown: That, paragraph 5.43 be amended by omitting 'satisfied' and inserting instead 'accepts'.

Resolved, on the motion of Ms Westwood: That, Recommendation 1 be amended by omitting 'protocol' and inserting instead 'contract'.

Resolved, on the motion of Mr Brown: That paragraph 5.47 be amended by omitting 'is satisfied' and inserting instead 'accepts'.

Resolved, on the motion of Mr Catanzariti: That Chapter 5, as amended, be adopted.

Resolved on the motion of Mr Brown: That the draft report, as amended, be adopted.

Resolved on the motion of Mr Brown: That the Committee present the report, as amended, to the House, together with transcripts of evidence, submissions, tabled documents, answers to questions on notice, minutes of proceedings and correspondence relating to the inquiry, except for in camera evidence and documents kept confidential by resolution of the Committee.

#### **4.6 Media conference**

The Chair advised that he may conduct a media conference on the tabling of the report.

#### **5. Adjournment**

The Committee adjourned at 1.00 pm, *sine die*.

Beverly Duffy

**Clerk to the Committee**