

**Submission to
the Western Australian
Parliament's Select Committee
into the Operations of the Royal
Society for the Prevention of
Cruelty to Animals Western
Australia (Inc.)**



Australian
Deer
Association

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Introduction

The Australian Deer Association (ADA) is a national organisation representing the interests of deer hunters in Australia. Established since 1969, the association is active in every State and Territory of Australia.

Since the Association's formation we have watched the transformation of the RSPCA from an animal welfare organisation into an animal rights organisation.

We believe that this transformation is attributable primarily to two developments. One is the emergence of radical animal liberation organisations such as PETA, Animals Australia, Animals Liberation Western Australia, Voiceless and Humane Society International. As the RSPCA has competed with these organisations for support and resources, it has become more radical.

The second is the change in the focus, aspirations and objectives of the RSPCA's leaders compared with those of the organisation's leaders when its Royal charter and privileged legal position was bestowed on it.

The implications of this transformation are profound. The RSPCA's new, ideologically-driven animal rights culture is pervasive and systemic. It is not limited to one region or even Australia. It has penetrated the home of the RSPCA—the United Kingdom—where the consequences for both animals and their owners and the taxpayer are better publicised and more widely understood as evidenced by the decline in public support for the RSPCA in recent times.

This transformation raises two issues. One is whether it is appropriate for the RSPCA to retain its privileged position given it is now an animal rights organisation rather than an animal welfare organisation.

The conflicts that the RSPCA has between its law enforcement role, its commercial activities and its role as an animal rights organisation are such that it should not retain the unique and privileged position conferred on it by the State.

The RSPCA also has responsibility for education as reflected by the key component of its annual grant from the Western Australian governmentⁱ.

There should be an expectation tied to that funding that the RSPCA focus on delivering messages and programs to further improve the standards of animal welfare and to use its prosecutorial powers as an instrument of last resort.



RSPCA's conflicts of interest

The RSPCA has two types of powers. Statutory powers and the powers granted by its social license.

By virtue of Royal warrant its privileged position afforded by government sanction, the RSPCA has a position in society which is unrivalled by any other not-for-profit organisation.

Governments and the general public place a great deal of trust in the advice and opinions of the RSPCA due to its status as a public institution.

The ADA believes that the evolution of the RSPCA from an animal welfare organisation into an animal rights organisation has generated a conflict of interest, a manifestation of which is its injudicious and irresponsible exploitation of its privileged position.

In some cases this conflict of interest is exacerbated by commercial considerations.

The RSPCA's abuse of its position is not limited to one state. Nor is it limited to Australia.

THE ADA believes that the RSPCA's conflict of interest is so fundamental that responsibility for the enforcement of the Animal Welfare Act 2002 should be limited solely to relevant government authorities.

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Graziers

Victoria

Following a David and Goliath battle, in May two Victorian cattle breeders James Holdsworth and Heather Ellison were awarded \$1.45 million damages against the RSPCA. Presumably the breeders also will be awarded legal costs. While, unlike the RSPCA, Mr. Holdsworth and Mrs. Ellison could not afford a Q.C. or a national legal firm, the costs would be substantial given the case dragged on for 11 years and, to quote the judge, was '*extremely vexed and relentlessly contested*'.ⁱⁱ

The judge said that '*at times, some issues were contested almost to the point of the absurd*.' (ibid)

One issue that the judge may have had in mind when making this statement was the attempt by the RSPCA, after all the witnesses had given evidence and at what the judge described as the '*59th minute of the 11th hour*'ⁱⁱⁱ to argue that it was not responsible for the actions of its inspectors. The judge gave this manoeuvre short shrift.

Nevertheless the RSPCA's position is disturbing.

The RSPCA has a privileged position. It is a private organization exercising legal powers conferred by parliaments, including the Western Australian parliament.

The idea that it is not responsible for the consequences of its employees' exercising these powers is one which ought to be of great concern to governments and the community generally.

The breeders' story began in February 2003 during the latest drought when they moved about 480 cattle from Corowa in New South Wales to agist them at Framlingham in western Victoria.

Three months later, without consulting the breeders or informing the Kirrae-Whurrong Aboriginal Corporation, the owners of Framlingham Forest of their intentions, two RSPCA inspectors oversaw the killing of 131 pure bred Murray Grey cattle including four bulls and breeding cows.

The senior inspector, Jason Nicholls, claimed that the cattle were emaciated and that, because he did not know who owned them, he had to kill them all, even though he had arranged to meet Mr. Holdsworth the day after he oversaw this slaughter and had spoken to him at length days before.

Various witnesses, including workers at the abattoir to which the slaughtered animals were taken, said that the condition of the cattle did not warrant their being killed and the judge did not accept that Mr. Nicholls did not know who the owner was.

He said that the '*whole operation conducted by Nicholls on behalf of (the RSPCA)...seems to have been conducted with what could be described as indecent haste*'. (*Holdsworth and Ellison v RSPCA* 2014 VCC 1186 (8th August, 2014)

In 2005 the RSPCA prosecuted the breeders for breaches of the *Prevention of Cruelty to Animals Act* in the Ballarat Magistrates Court. The magistrate dismissed the charges.



South Australia

While this may be the first time that the RSPCA will be forced to pay for its abuse of its privileged position, Mr. Holdsworth and Mrs. Ellison are not the only graziers to have incurred the wrath of the RSPCA for their treatment of cattle during a drought.

In 2009 more the RSPCA laid more than 100 charges of animal cruelty against Thomas Brinkworth, his wife Patricia and members of their staff after inspecting 12 properties in 2007.

The RSPCA said that this was one of the worst cases of animal mistreatment in South Australia's history.

In early 2010, just before the case was scheduled to proceed the RSPCA dropped all charges. It turned out that an RSPCA employee had forged a signature on a critical document.

The result was that Mr. Brinkworth sought to recover full costs from the RSPCA. The claim was settled on a confidential basis.

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Jumps racing

While the RSPCA was arguing with Mr. Brinkworth over legal costs, in Victoria it was charging Andrew Duff, a barrier stall worker at Warrnambool with animal cruelty for removing a horse injured in the first lap of a jumps race to prevent the risk of further accidents when the remaining horses raced around the track for the second lap.

If found guilty, Mr. Duff faced the possibility of up to 12 months jail or a \$14,000 fine and banishment from working with animals for 10 years. The RSPCA did not charge Racing Victoria or the Warrnambool Racing Club.

The opinion of Professor Paul McGreevy, a veterinary ethologist at the University of Sydney and well-known anti-racing campaigner upon which the RSPCA relied, was dismissed by three leading equine veterinarians.

According to journalist Patrick Barley, who won a media award for a story about this affair, *'they blasted the RSPCA's prosecution brief as curious, obsessive, lacking serious firsthand experience of handling injured or distressed horses, and a philosophical or political intrusion.'*^{iv}

Two years later the RSPCA dropped the case, thereby avoiding the possibility of being required to pay Mr. Duff's legal costs, including the cost of the senior barrister he had to engage.

The RSPCA did not apologise for the pain and suffering it inflicted on Mr. Duff or for his face' being plastered over hundreds of anti-jumps posters that lined the entry gates to major Spring Carnival race meetings.

Journalists Patrick Barley and Jared Lynch describes the RSPCA as *'a long time anti-jumps crusader'*.^v It is this ideological comment and the observation of the three vets about 'philosophical or political intrusion' which provides an example of why the use of a conflict of interest within the RSPCA is not an academic matter.

Zoo

In the same year the RSPCA raided the Waterways Wildlife Park in Gunnedah and removed several koalas.

The raid, which led to an inquiry by the NSW Legislative Council, was accompanied by a Channel 7 television crew. While Channel 7 knew about the raid, neither the owner nor the local vet did.

The RSPCA did not show anyone the koalas they removed for weeks and the raid led for a call for the NSW Government to remove these powers from the RSPCA.

Farmers

This call was echoed by NSW Farmers at its annual conference last year. James Jackson, chair of the Association's sheep meat committee, said that *'the time has come for the Department of Primary Industries and the State government to take up the role because it's a divisive issue and the RSPCA has lost credibility.'*^{vi}

Western Australia

In a written submission^{vii} to the WA Parliament's recent Inquiry into the potential environmental contribution of recreational hunting systems the RSPCA made a number of assertions about hunting and deer hunting which were unreferenced, unquantified and which are demonstrably false. For example the RSPCA said that *"opening public lands up to recreational hunters will cause unnecessary suffering to many animals, impair the effectiveness of coordinated and planned pest management programs, and jeopardise the safety and enjoyment of these places for the rest of the community"*^{viii}.

The truth is that hunters (either recreational or otherwise) are governed by strict animal welfare regulations, specifically the Animal Welfare Act^{ix}.

However, statements such as these raise more fundamental issues than accuracy and dealing with facts. Arguments about the effectiveness of pest management programs, public safety and public amenity extend well beyond torture, mutilation, malicious beating or wounding, abuse, torment, or ill-treatment of animals.^x

These assertions provide another example of the transformation of the RSPCA from an organisation driven by a commitment to animal welfare to an ideologically motivated organisation. They also the conflict of interest the RSPCA has between its ideologically-driven agenda and its obligation to prevent cruelty.

It is clear from the statement quoted above prefers the poisoning of animals to shooting them. Yet, it does not require much imagination to recognise that shooting animals is not only more humane than poisoning them, but also more discriminate. The New South Wales government's vertebrate pest research unit has determined ground shooting to be relatively more humane than alternatives such as trapping and poisoning^{xi}.

The RSPCA's holding itself out as an expert on community safety on public land is an example of the extent to which the organisation finds itself out of its depth as it moves further down an ideologically-driven path. In 2010 the Victorian Institute of Forensic Medicine prepared a report^{xii} on hunting related fatalities which contextualises the safety of hunting with that of other active sports – The report found that people were almost fifty times more likely to become the victim of a fatality as a result of water sports such as fishing and snorkelling than due to hunting.

In the submission the RSPCA also said; *"Hunters often do not want to reduce pest numbers, as they want to ensure they have animals to shoot in the future. Pest animal management programs target all animals (including females and young) whereas hunters will often target large trophy males and leave behind females and/or young to maintain a sustainable harvest for the future."*^{xiii}

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The effectiveness of hunting as a pest control measure would not be a matter for an organisation focused on animal welfare. It is not surprising that the RSPCA is ignorant about the need for shooters as part of comprehensive game and pest management programmes.

A Federal parliament inquiry into the impact on agriculture of pest animals reported^{xiv}

"Despite the widespread use of baiting and fencing, shooting is still an important part of many programs for dealing with pest animals, particularly large animals such as dogs, pigs, donkeys, camels and goats, and native species such as possums and kangaroos" "Hunting organisations have also made important contributions to pest animal control efforts in particular regions. For example, Victorian hunters from FGA participated in a fox bounty trial that destroyed more than 198,000 foxes in just over twelve months"; and an inquiry by the New South Wales parliament into the management of public land in that state found that "In addition to baiting programs for wild dogs, pigs and other land-based feral animals, shooting, either ground based or aerial, can be part of feral animal control strategies.^{xv}" and "The NSW Government informed the Committee that ... licence holders are allowed to remove game and feral animals from declared State forests. The NSW Government put forward the view that, in State forests, this helps to 'exert downward pressure on feral animal populations'."

The RSPCA also purported to divine the mindset of hunters. Hunters do accept the need for game and pest management. What they do not support are invariably fruitless attempts at game extermination, a consequence of classifying an animal as a pest. One would have thought that an animal welfare organisation would support that view.

ACT

In June 2013 the RSPCA's ACT CEO told a Legislative Assembly estimates hearing that rabbit eradication at the site would occur in the most humane way possible. *'We would cover rabbit warrens with traps, we would get rabbits out of their warrens and into the traps and we would humanely euthanise them,'^{xvi}*

However, on the 28th August the RSPCA filled five rabbit holes with concrete slurry. The RSPCA denied that they would use this as a method to eradicate rabbits and denied that there was a chance of rabbits' starving or suffocating on a large scale. However, Assistant Professor Arnold from the University of Canberra said that where *'burrows are blocked, if there are rabbits inside, they will starve to death'^{xvii}* and United Voice which represents employees at the RSPCA raised the issue of slurring, citing concerns about animal welfare.

A question which this incident invites is whether an organisation should enjoy the privileged, legal position the RSPCA enjoys if it invites the suggestion that it does not apply the standards it seeks to enforce on everybody else.

Commercial activities

Coles is relying on the standing of the RSPCA, for which the RSPCA no doubt is well remunerated, to underpin its marketing strategy to sell only free range chickens and free range eggs.

Yet the RSPCA would know that increasing free range chicken and egg production increases the risk of bird flu. Dr Peter Scott, a poultry veterinarian and senior research fellow at the University of Melbourne, says that *'there's no way to commercially vaccinate against this when it happens. It's like vaccinating against all the strands of the common cold - too tricky and too expensive.'*^{xviii} There is already evidence of the risk and price of free-range chicken farms. Mr. Joyce's comments were in response to revelation in October 2013 that an egg farmer at Young in New South Wales had to destroy 400,000 birds after an outbreak of avian influenza. The taxpayer bore 80 per cent of the cost of dealing with the situation^{xix}.

Ten days later the Department of Primary Industries announced a nearby farm had become infected. It is thought the infection spread from free-range chickens on the first farm.

However the RSPCA has not told Coles' customers or taxpayers the risk they bare for the promotion of farming practices it endorses for commercial or ideological reasons or both.

Victoria

The latest and most blatant example of the transformation of the RSPCA from an animal welfare organisation into an animal rights organisation occurred during the Victorian elections last year.

Animals Australia and the RSPCA funded a campaign attacking Labor Party candidates because of the Labor Party's commitment to continuing duck seasons. The campaign included a full page advertisement in a *Saturday Age*. This partisan intrusion in the election campaign on an issue unrelated to animal welfare primarily benefited the Greens.

The Victorian Farmers Federation said that this alliance signals a new era in animal activism. Animal welfare spokesman Brian Ahmed said that he believes 'it is part of a bigger strategy to wear the animals industry down.

Mr. Ahmed said the policy was driven by funding needs and Animals Australia's success in attracting public donations. 'It is big business now and they are all competing for the same dollar.'^{xx} It provides a major example of the extension to which the RSPCA has lost its way and why it should be stripped of the privileged legal position it holds.

United Kingdom

It is not only in Australia that there is increasing evidence of and consternation about the RSPCA's transformation into a radical, animal rights organisation.

In January, 2013 a debate erupted in the House of Commons with the revelation that the RSPCA spent £326,000 prosecuting the Prime Minister's local hunt. Hunts have been banned in the United Kingdom since 2004 but neither the Police nor the Crown Prosecution Service have prosecuted a hunt.

A former solicitor general, Sir Edward Garnier, said the prosecution costs were a '*misjudgement*' and that there is a danger of the RSPCA's '*using the weapon of the state prosecution for political campaigns.*' He said the RSPCA should investigate animal welfare issues but that it should hand the evidence over to the "dispassionate" Crown Prosecution Service^{xxi}.

A few months later the current Archbishop of Canterbury declined an invitation to be a vice patron of the organisation.

Following the furore and amid a substantial decline in the level of financial support for the RSPCA, the organisation commissioned Stephen Wooler, a former Crown Prosecution Service investigator, to review the manner in which it discharges its prosecution role, a review which the Attorney General had suggested might be a good idea. The review assumed that the prosecution of animal welfare offences is an integral component of the RSPCA's strategy for fulfilling its role.

Mr. Wooler reported last September. He said that while the RSPCA had the power to prosecute hunts, the organisation should leave that role to the Police and the Crown Prosecution Service.

Days after Mr. Wooler provided his advice the RSPCA initiated legal proceedings against the Cattistock 'trail' hunt, which is a hunt to find fox trails and not foxes. The RSPCA's case depended upon a video of a fox crossing a road and running across a field in a similar direction to that taken by the dogs. The video was filmed by the International Fund for Animal Welfare which knows the Cattistock hunt is a 'trail' hunt because it monitors the hunt. Eight months later the RSPCA dropped the case.

This fiasco is an example of why the RSPCA should leave prosecutions to the Police and the Crown Prosecution Service. The International Fund for Animal Welfare did not take the video to either of them. Instead it chanced its arm with the RSPCA, which left itself open to the allegation, to use Sir Edward Garnier's words, that it was '*using the weapon of the state prosecution for political campaigns.*'

Mr. Wooler's review also echoed Sir Edward's observation when it observed that 'the Society's campaigning, commercial and *de facto* regulatory roles do not always sit comfortably with the role of prosecutor^{xxii}.

The Review also drew attention to the significant difference in the fees the RSPCA paid barristers and solicitors compared with the fees the Crown Prosecution Service pays barristers for comparable cases^{xxiii}.

This RSPCA honey pot for selected banisters and solicitors raises a number of issues. One is the financial incentive for the lawyers to recommend prosecutions. A second is the RSPCA's breach of the trust of its supporters.

The third is equally serious. The Wooler Review noted that *'the level of claims for costs by the RSPCA has attracted comment from the senior judiciary as well as legal practitioners who described the resultant pressure on defendants to plead guilty – especially those who do not qualify for legal aid and, if acquitted, may only recover costs on a legal aid basis, thus being heavily out of pocket'*^{xxiv}. It could be speculated that the RSPCA engages in a similar abuse of its financial position in Australia. For example, in the prosecution of Mr. Holdsworth and Mrs. Ellison, the RSPCA engaged an upmarket legal firm and a Senior Counsel. Mr. Holdsworth and Mr. Ellison hired a two-partner legal firm and were represented by a junior barrister in a case which dragged on for 11 years.

Mr. Wooler also concluded that *'the proportion of cases where the consideration of the public interest test was flawed was too high'*^{xxv}. He had more than the aggressive pursuit of hunts when he made this statement.

Since the debate in the House of Commons about the prosecution of the Prime Minister's hunt, there have emerged extraordinary stories about abuses of the RSPCA's powers. The tactics adopted by the RSPCA bear an eerie resemblance to the approach adopted by the RSPCA in its raid on the Waterways Wildlife Park.

Cats

Richard Byrnes and his wife Samantha suffered two years of trauma after an In May 2013, an RSPCA inspector seized Richard and Samantha Byrnes' 16-year-old cat, that he was too thin and had matted fur. They were given no chance to appeal the forced euthanasia despite the fact that the cat was in good health for his age.

In one conversation the inspector said; *'If you two don't authorise that the vet can euthanise Claude then there is the option of overriding that decision where I can go to the police, who will authorise it for me. You can also end up with a fine or potential imprisonment. Imprisonment is very rare but because it's being dealt with by magistrates' court that is an option.'*

Following a last minute request by the RSPCA in April this year a post-mortem be carried out. It revealed that, despite being underweight, the cat was in relatively good health at the time of his death.

Last August, the Crown Prosecutor Service ruled that there was not enough evidence to proceed and the case was dismissed^{xxvi}.

At about the same time as the Byrnes' ordeal began, Julie Nadian, a 48-year-old folk singer with autism, incurred the wrath of the RSPCA when she rejected a vet's opinion that her elderly cat Ziggy had to be put down. Two other vets supported Ms. Nadian's view.

Nevertheless the Police broke down Ms. Nadian's door without a warrant in an RSPCA raid and seized her three cats. The RSPCA prosecuted her for breaches of the Animal Welfare Act. In March last year the Crown Prosecution Service prevented the RSPCA from prosecuting Ms. Nadian for cruelty. The CPS allowed the RSPCA to continue the prosecution of a fourth charge of failing to provide a suitable environment for her pets^{xxvii}. Ms. Nadian was re-united with her cats ten months after her ordeal began.

At least Ms. Nadian's story had a happy ending.

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In 2011 the RSPCA raided the property of Dean and Diane Webb, who bred and showed cats, were raided and seized 33 cats and kittens from their property and three ducks. The organisation obtained a court order enabling it to neuter and re-home the animals while the Webbs were on bail awaiting trial.

The Webbs received death threats and were so harassed they left England. When they returned after the conclusion of the trial, they did not go back to Derbyshire.

The RSPCA said that the animals *'were in an appalling state. Their basic care needs had not been met and had not been for some time'*^{xxviii}. However, when the trial concluded in May, 2013, the magistrate cleared the Webbs of causing unnecessary harm and suffering to the animals.

However their animals were not returned.

Children

It is not only adults who have felt the wrath of the RSPCA.

In 2011 the RSPCA prosecuted Tracey Johnson and her daughter Sophie, 16, for leaving five cocker spaniel puppies in their back garden while they went shopping.

In throwing out the case, Medway's District Judge Michael Kelly criticised the RSPCA for putting Miss Johnson and her daughter Sophie, now 17, through their unnecessary ordeal.

During a court hearing, he said:

'My view to criminalise a mother and daughter in this way, who in the previous seven weeks had cared properly for these puppies was wrong.

'Their (the RSPCA) actions in this case were draconian and could have been dealt with by a warning; to prosecute them was going too far.

'To prosecute a 16-year-old in these circumstances was totally inappropriate; the proceedings should never have been brought. She clearly had very little involvement with these animals and was not responsible for them.'^{xxix}

It is not the first time the RSPCA has tried to prosecute a child.

In 2008 a 15-year-old girl noticed that the family cat's tail had been badly injured, probably in a road accident, and asked her father whether it should be taken to the vet. The father decided to wait a couple of days to see if it healed. However someone saw the cat and reported it to the RSPCA.

The RSPCA prosecuted not only the father but also the girl for failing to disobey her father and take it to the vet on her own. The father pleaded guilty to neglect, but the girl was acquitted but the RSPCA appealing the decision as far as the High Court—unsuccessfully^{xxx}.

Birds

It is not only cats which are having to keep an eye out for ideological zealots in the RSPCA.

In a submission to Mr. Wooler, the British Bird Council said:

'In the past we had regular contact with the RSPCA, however since the time when the RSPCA announced they were totally opposed to the captive keeping and

breeding of British birds, and they become increasingly concerned with bringing private prosecutions against aviculturists, the relationship has been strained and almost non-existent...

'In précis the RSPCA are pursuing, for their own political agenda, the persecution of law abiding aviculturists, gaining confidential information from the Police that would not be available to any other organisation or member of the public, using their considerable financial backing to pursue private prosecutions and abusing their status as a charity. They have somehow gained influence in the corridors of powers, probably because of the limited resources of the Police in pursuing such low priority crime which they are quite happy to see the RSPCA pursuing as it saves their resources for other crime. They have stepped over the threshold with regards to their charitable status and if they wish to continue in this vain then they should set out their agenda clearly to their donors, be stripped of their charitable status and also be treated as any other member of the public by the Police and other government bodies.'^{xxxix}

From the Inside

In May this year^{xxxii} a former President of the RSPCA WA, Eric Ball, wrote a scathing report on the organisation. In the report Mr Ball described the RSPCA as "lost" and raised serious concerns about the use of the RSPCA's extraordinary position in society by its leaders "It is my suspicion that the present management of the RSPCA does not understand that all inspectors are appointees of the State and the State is ultimately accountable for their action".

Mr Ball also wrote of the RSPCA's seemingly routine use of deception "A mail promotion to hundreds of potential donors uses untrue information and statements about an alleged local prosecution designed to appeal to the heartstrings of WA recipients, but a prosecution which RSPCA WA has never undertaken".

Mr. Ball's insight reinforces the view that the RSPCA should not continue to have the privileged position conferred on it by the State.

RSPCA's objective

The RSPCA states its mission as:

"To improve the Welfare of Animals through leadership, collaboration with stakeholders and the provision of quality services"^{xxxiii}.

The ADA submits that the RSPCA fails in its mission through its failure to engage with the hunting community as key stakeholders. By acting antagonistically towards the hunting community the RSPCA denies a large section of the community the opportunity to engage with it on key animal welfare issues and, potentially, sacrifices the opportunity to improve the welfare of animals in hunting.

The RSPCA is apparently organisationally conflicted by its increasingly divergent roles as a responsible animal welfare body with extraordinary statutory powers and its political role as an ideologically driven animal rights organisation.

RSPCA's funding from the government

It is unsustainable for an organisation to act as both a government funded regulator and to spend money actively campaigning against government policies.

A key component of the RSPCA's annual grant from the Western Australian government is education^{xxxiv}.

A University of Queensland study found that over forty-one percent of Australian hunters have voluntarily participated in accredited hunter training^{xxxv}.

Government should have an expectation tied to their funding that the RSPCA positively engage with the Western Australian hunting community to deliver messages and programs to further improve the standards of animal welfare in hunting.

Instead of spending resources furthering animal welfare outcomes by positively engaging with hunters, the RSPCA has spent more than ten thousand dollars^{xxxvi} this year alone on provocative print advertising aimed at maligning recreational hunting.

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