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THE PARLIAMENTARY STANDING COMMITTEE ON PUBLIC ACCOUNTS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON WEDNESDAY 26 JUNE 2013.

INQUIRY INTO THE RSPCA

Mr KEVIN HARKINS WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Dean) - Welcome, Mr Harkins. Kevin, you have given evidence to committees before and understand the situation with parliamentary privilege applying in here but not outside. It is a public hearing and is being recorded by *Hansard*. In view of previous evidence given to this committee, we are giving you the opportunity to make your statement.

Mr HARKINS - I will read through what I have, if that is okay with you, Chair. I have copies I can hand around.

As James O'Neill did the same thing, I thought I would open with a bit of history about myself. People see you as something you not necessarily are. I am currently the secretary and treasurer of Unions Tasmania, which is the peak union body in the state. Previously I was the secretary of the CEPU Tasmania Branch and before that an assistant secretary with the EUT Victoria-Tas Branch.

Currently, I am a director of TasBuild, which is a construction industry long service leave fund, a director of WorkCover Tasmania board, chairman of the WorkCover Advisory Committee, a member of the Tasmanian Public VET Steering Committee, and a member of the Tasmanian Training Agreements Committee. In the past I have been a member of the Electrical Licensing Board, a director for Connect Industry Superannuation Fund, a director for the Protect Industry Severance Fund, a director of 370°group, which is a group training organisation employing approximately 300 apprentices, and deputy chair and treasurer of Energy Skills Australia. I have completed a director's course with the Australian Institute of Company Directors, so I know a little about directorships and those sorts of things.

I was aware that there were a number of issues taking place at the RSPCA, as I am sure we all were, between the board, the chief executive officer and staff, but I had no direct involvement. I understand Mr James O'Neill was asked to attend this inquiry and provided a statement, which was prepared by his own evidence in conjunction with the RSPCA's legal counsel, Mr Leonard Fernandez.

In that statement Mr O'Neill has made accusations in relation to a number of conversations he had with me about an investigation he was undertaking at the RSPCA. It is my intention to respond to those accusations.

Early on the morning of Friday, 21 September 2012 I was contacted by phone by an unknown female staff member of the RSPCA employed at the Mornington Animal

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Shelter. The staff member was clearly very distressed and told me that they had tried to contact their union on a number of occasions without success. It was early in the morning - 7 a.m., 7.30 a.m. something like that.

I told the staff member that I would try to contact the union on their behalf and did so without success. Given the distressed state of the employee and the fact that the shelter is basically on my way to work - which it is, I live near the airport - I attended at the shelter. This would not be an unusual occurrence for me, especially given the circumstances and distress level of the staff member who had identified herself as a union member.

On arrival I met with five or six staff, all of whom were female. While all staff were obviously distressed and in a state of some panic, one staff member was visibly upset and was being comforted by a work colleague. I attempted to settle and reassure the employees. Staff described how they had been contacted both late the previous day and early on that morning and had been instructed to attend interviews to be conducted by Mr James O'Neill as part of an investigation. They had no previous notice.

It is highly unusual that any such interview would take place without contact and discussion first being made with the employee's union, or an offer to employees to attend with a support person. This is even more relevant given the interviews were to be conducted by a third party, most likely unknown to RSPCA staff.

I felt this was an ambush tactic by the employer, in this case the board, and Mr O'Neill, to catch staff off guard. Staff told me that the CEO, Mr Ben Sturges, had been stood down pending an investigation relating to issues between him and the board, adding obviously to the shock of what was going on for staff at that time.

There was about half an hour of discussion by which time the ASU organisers were in attendance - Brendon Honner and Brendan Parkinson were in attendance. We continued to calm the staff and assured them that they would be fully supported by the union. Given that the ASU was in attendance, I left the shelter. I told Mr Honner on leaving that I would contact Mr O'Neill to gain more information about what was going on at the centre.

Mr O'Neill is well known to me and we have had many dealings in the past. I was well aware of his history and how he conducted himself in past interventions with unions and employees. On calling, Mr O'Neill admitted that he was on his way to the shelter to conduct an investigation and intended on holding interviews with staff. He said he was not at liberty to discuss the issues of concern with me. I told Mr O'Neill that there would be no interviews conducted that day, given that the staff were upset and that proper process had not been followed. This should include an offer, again, for staff to attend with a support person and/or making contact with the union. Mr O'Neill told me he was happy with that, but would still attend the centre to discuss the issues with any staff members that may agree to do so - a position I did not agree with, but could do little to stop.

I questioned Mr O'Neill in an affable way about what credentials he had to carry out any such investigation, and he laughed. I remember it well. I admit to telling Mr O'Neill, at

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the time, words to the effect 'to be careful as everyone will be watching', and here are the reasons that people would be watching:

Mr O'Neill had never carried out an investigation of this type and had no training in this area of investigation.

This type of investigation, if it is to be done independently, is a specialist field of HR.

I have no faith that any investigation carried out by Mr O'Neill could in any way be considered as independent.

It is my firm view that the outcome of the investigation conducted by Mr O'Neill is almost certainly the outcome required by the board.

On many occasions, Mr O'Neill has demonstrated a lack of understanding of the Fair Work Act in that he had contacted union officials for advice on industrial matters, including the relatively simple process of negotiating agreements.

Mr O'Neill is not 'highly thought of' within the industrial relations community where integrity is everything.

I was aware that there had been previous issues at the RSPCA between the board and the previous CEO, Mr Tredinnick, which resulted in an unfair dismissal case. I was aware, after a discussion with staff, that allegations of bullying were likely to be made against two board members. I was aware that CEO, Ben Sturges, is the son of Mr Graeme Sturges MP, so media attention was likely.

The fact that this issue has had extensive media attention and is now a matter before a parliamentary inquiry, would indicate that I was correct in my assumption and that the caution to Mr O'Neill was warranted.

I have never seen a copy of the final investigation report, nor am I aware of its contents. That was the end of my involvement with the matter given that the ASU was involved. I am aware, from media reports and conversations, what has transpired since.

Some further observations - Mr O'Neill said in his submission that, 'I tried to keep it to the lowest possible denominator and therefore it is not my normal practice to invite employees to have someone with them.' This flies in the face of basic and proper human resources practice to ensure employees are properly supported through this type of process in an environment free from intimidation, and to ensure natural justice is provided means all employees should be invited to attend with a support person or their union representative. I also find it interesting that shortly after this occurrence and before the investigation was resolved, an employee of James O'Neill and Associates was appointed as the acting CEO.

I am aware that there are issues with the board and that a number of previous directors had left because it was, in their words, dysfunctional. In my experience, to suggest that a board could operate correctly and provide good governance practices with only three members is fanciful.

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Other staff, not connected with this investigation and who have subsequently left the RSPCA, have complained to me of board interference in the daily operations of the organisation and that they felt bullied by board members. It is clear that the root cause of the dispute relates to the relationship between the original board and the CEO. The process of existing board members appointing new board members without reference to the general membership or advertising the vacancies publicly is inappropriate and, in my view, is likely to be a breach of the constitution.

I have viewed a copy of the proposed constitution and find it undemocratic and confusing. It places all the power with the board and largely excludes the general membership from the decision-making process. The proposed constitution also allows for the refusal of membership or renewal of membership by the board without explanation and without providing for an appeal process. The constitution does not identify what the reasons may be for a person to be denied membership or renewal and does not include a definition of a fit and proper person, which would be standard practice. Criticisms of the board in itself should not be considered as criticism of the RSPCA and should not be grounds for refusing membership.

I should also tell the committee that I am a member of the RSPCA.

CHAIR - Thank you. Your independence could be questioned, I suspect.

Mr HARKINS - How so?

CHAIR - You are a member of the RSPCA, I do not know.

Mr HARKINS - If I did not tell you that now -

CHAIR - I appreciate that. James O'Neill indicated he had given all staff about two days notice -

Mr HARKINS - That is not true.

CHAIR - of his intention to want to talk to them.

Mr HARKINS - That is not true. The state of the staff when I turned up, it was a pretty ordinary place to be.

CHAIR - How do you know it is not true?

Mr HARKINS - The staff told me it was not true.

CHAIR - All of the staff told you that?

Mr HARKINS - No. When I went to the Mornington centre there were five, six, seven staff members there, all female, I remember that distinctly. One of them was bawling her eyes out and was getting cuddled by one of the other staff. The way they explained it to us was they had been told that someone was coming out to interview them, they did not know who it was and it was panic. It is difficult to explain this, but in my world it

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happens reasonably often, unfortunately. That is what they said, 'No-one told us they were coming.'

Mr BOOTH - Kevin, you mentioned you are currently a director of TasBuild. Were you a director of TasBuild when they lost \$40 million during the GFC?

Mr HARKINS - Yes.

Mr BOOTH - You have stated that you are not a member. You are now a member of the RSPCA. When did you become a member?

Mr HARKINS - About 12 months ago.

Mr BOOTH - Prior to this incident or post this incident?

Mr HARKINS - How far back is the incident?

Mr BOOTH - You were out there.

Mr HARKINS - No, before this.

Mr BOOTH - Before that?

Mr HARKINS - Yes.

Mr BOOTH - What standing did you have to go out there that day? You are not a member of the union that represents those people.

Mr HARKINS - No, but I am a secretary of Unions Tasmania, so I look after everyone.

Mr BOOTH - You might look after them but do you have standing to do that? Is there some official right that you have as a union member?

Mr HARKINS - I do not know. You would have to test that in a court, but I was happy to do it.

Mr BOOTH - I am asking you. You just turned up because you -

Mr HARKINS - No, one of the affiliate unions, the ASU, was uncontactable because it was early in the morning, and that is fair enough. Workers rang me highly distressed, wanting support and help, so I think it was the responsible thing to do, as you would if you were their local member of parliament, to turn up, and help and support them, and that is what I did.

Mr BOOTH - So you did that on your own volition basically?

Mr HARKINS - As I would do any day of the week for any worker who was in strife.

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Mr BEST - I am interested because when I was asking Mr O'Neill some important questions about the evidence he gave I did, in fact, directly ask him about his contract with the RSPCA and I was pretty clear, I thought, about what the -

CHAIR - I think we need to have straight questions.

Mr BEST - The question is: in the evidence you have provided to us, Mr Harkins, you said you found it interesting that sometime shortly after this occurrence, and before the investigation result, an employee of James O'Neill and Associates was appointed as the acting CEO -

Mr HARKINS - That is right.

Mr BEST - Mr O'Neill, as I understood in evidence, maintained that the only engagement he had with the RSPCA was this one investigation. Are you now telling us that there was an ongoing business relationship in some way?

Mr HARKINS - I cannot say how long that lasted, but I am aware of three relationships. James O'Neill was engaged to do an investigation, and we can talk about whether he was qualified to do that if you want to. The HR manager at the RSPCA left the RSPCA, went and worked for James O'Neill and is now back at RSPCA, so go figure, and one of his people was appointed as the acting CEO of the RSPCA during the time all this kerfuffle was going on.

Mr BEST - So there may well be more than one contract? Obviously you would not know that-

Mr HARKINS - No.

Mr BEST - But it is possible that there may be. In regard to Mr O'Neill's qualifications, I am interested because I understood he had lengthy experience. Do you know what qualifications he holds?

Mr HARKINS - Specifically, no. But I have had a lot of dealings, on a day-to-day basis almost, with James O'Neill over a long period of time and I am well aware of his competence to conduct an investigation. I asked him on the day whether he was qualified to do it and he laughed at me. James is very good at convincing people that he is capable of doing the job, when it is not necessarily the case -

CHAIR - That is an assumption that you are putting forward, and I think you need to be a little careful.

Mr HARKINS - We can bring witnesses to attest to that if you want, but that is not the point of the investigation.

Mr BEST - I was just interested.

I know you have indicated that you do not have the benefit of Mr O'Neill's report, and it is confidential, but I am certain I can speak and ask questions in relation to it. Having looked at the report, it states that basically -

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Mr BOOTH - Point of order, Chair. It is confidential, Mr Best.

Mr BEST - No, I am not going to quote the report.

Mr BOOTH - You just said 'it states that' -

Mr BEST - It states that Mr Sturges was stood down without being given the opportunity to reply to the anonymous complaint that was made at the time. We have heard this anyway - that he was not interviewed. Mr O'Neill gave that evidence - that he was not interviewed.

CHAIR - We need to be very careful in dealing with any evidence that was given in camera to this committee, and I will not provide an opportunity for anybody to be identified or -

Mr BEST - It is not my intention-

CHAIR - Just wait a moment. If you ask a question now -

Mr BEST - If I can, because there is nothing private - rather than have this discussion.

The thing is -

Mr BOOTH - Are you quoting from his report or not?

CHAIR - Order.

Mr BEST - Calm your farm, okay. As I understand it, the CEO was unable to respond. Mr O'Neill told us that because an anti-discrimination complaint was made by the CEO, he did not interview him. I am wondering what your thoughts might be about that process - that you can be stood down, you are unable to answer the allegations that are put to you, other people are being investigated in connection with the situation and when you want to give an explanation you are told you cannot - it would be inappropriate because you have lodged an anti-discrimination claim. How does that work? To go back a point before that, it would be highly unusual. It is a precedent to stand someone down on the basis of an anonymous letter or complaint. You do not work on anonymous letters or complaints. I can write about you or you or you and what do we do, stand you all down? You do not normally do that but to stand someone down without giving any chance

CHAIR - I would ask you to answer the question about whether you think the CEO should have been interviewed by Mr O'Neill.

Mr HARKINS - He should have been interviewed by someone.

Mr BEST - Yes, and the process that was adopted that he could not answer. I wondered what your thoughts about that were.

Mr HARKINS - The whole process, to me, has been a joke.

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CHAIR - Mr O'Neill gave evidence that he made contact with you at the casino and there was an exchange there in relation to the RSPCA and that you repeated to him about being careful. Did that happen?

Mr HARKINS - I do not know if I did or not. I would not say that I did not but I cannot remember it. My caution to him was I knew where this would end up, and it has. It is all through the papers and everywhere else.

CHAIR - You are saying that you cannot remember having that conversation.

Mr HARKINS - Not at the casino but it is possible.

Mr BOOTH - What was in your mind when you said that to him, 'be careful, people are watching'? What does that mean - people are watching out for you or words to that effect?

Mr HARKINS - I know where you are coming from but it is not going to work.

Mr BOOTH - I was wondering if you were going to kneecap him or something.

Mr HARKINS - James O'Neill is fitter than me. He is still playing football. If we went into the ring together I reckon he would go all right and I would be struggling for a breath. The point is that if you have something that is going to be controversial like this then I am telling him to be careful how he runs it because I knew where it was going to end up. I have known James for a long time; it is not as if we bumped into each other in the street the other day.

Mr BOOTH - You were being friendly as a mate, 'Be careful, James, this has to be done by due process'?

Mr HARKINS - In the industrial relations industry there is a level of interaction between both sides without malice or anything else.

Mr BOOTH - There is no malice in what you are saying?

Mr GUTWEIN - What relationship, if any, do you have with Graeme Sturges, Ben, or any members of the family?

Mr HARRISS - I know Graeme, probably not as well as you do. He came from my union originally so I know him; I know Jill who works for a different union but works in our office. Ben I do not know so well. I have met him because he comes with his father sometimes, years ago. I have probably not seen him for years - since he left the post office probably.

Mr GUTWEIN - Apart from the obvious, I presume you have an interest in the prevention of cruelty to animals, which is why you joined the RSPCA? Is there any other reason; were you asked to join?

Mr HARKINS - The person who first approached me to join was Angela Ayling who said I should be a member, join up, join the RSPCA, so I did. It has always been an area of

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interest. I come from a farming background, believe it or not. Amazing, I know, you end up being a union official. It was always an area of interest; \$35 a year to be supporting a good - and the RSPCA in itself is a fantastic organisation, the work that it does is fantastic. It is in this circumstance things have gone a little bit awry.

Mr GUTWEIN - As a member of the RSPCA, what involvement did you have with them? Did you just pay the \$35 and that was it? Have you attended board meetings or been aware of any other issues apart from what you have read?

Mr HARKINS - No. I would not be here if there had not been those stupid comments.

CHAIR - Following up from what people are saying that you said had not met with Ben for some time -

Mr HARKINS - Years.

CHAIR - You have not spoken to him at all, or he has not spoken to you about this issue with the RSPCA?

Mr HARKINS - He has talked to me about it.

CHAIR - Have you spoken to him -

Mr HARKINS - I talked to him on the phone. The problem is that there is one employee that works for Unions Tas, Angela Ayling, and Jill Sturgess works in our office for another union. Happy, happy days when you have that situation. There was some discussion with Ben about the ongoing relationship in our office.

CHAIR - So you have had conversation with Ben?

Mr HARKINS - Not about the specifics of the inquiry or anything else, more about what was going on at my work place and his.

CHAIR - Over how many times did that occur?

Mr HARKINS - Once or twice. Once, I think.

Mr BEST - In his evidence Mr O'Neill - and I understand, having gone to the worksite, you might have said you spoke with Mr Honner -

Mr HARKINS - Yes.

Mr BEST - I did not know whether you were aware or not, Mr O'Neill said in his evidence that Mr Honner from the ASU was in total agreement with the process he went through and his interviews.

CHAIR - You are asking the witness to give hearsay evidence.

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Mr HARKINS - I spoke to Mr Honner this morning because he is in a training course at Unions Tas today - a health and safety training course - he is on a paternity leave, but he intends to make submissions to the committee.

Mr BOOTH - Kevin, you said you spoke to Ben over the relationships between Angela Ayling and Ben's mother in your office. You are the union representative for both of them?

Mr HARKINS - No. Angela Ayling works for Unions Tas as a trainer; Mrs Sturges works for the Independent Education Union as an administration assistant.

Mr BOOTH - Had you spoken of this to Jill Sturges prior to going out to the shelter?

Mr HARKINS - I talk to her every day.

Mr BOOTH - You do not talk to her about this matter every day, do you?

Mr HARKINS - No.

Mr BOOTH - How often do you?

Mr HARKINS - She only works a couple of days a week, but I never talked to her about it because it upsets her.

Mr BOOTH - How do you know it upsets her if you do not talk to her about it?

Mr HARKINS - I am not going to tell you, Mr Booth, what is going on in my office unless there is an inquiry into my office.

CHAIR - A question has been asked of you in this committee, so if you could answer the question.

Mr HARKINS - Ask me again.

Mr BOOTH - The question I was asking was whether you have ever talked to Mrs Sturges about this matter?

Mr HARKINS - Yes.

Mr BOOTH - Prior to you going out there?

Mr HARKINS - No, since my involvement.

Mr BOOTH - Yes, but prior to you going out to the shelter that day, had you spoken to Mrs Sturges about that?

Mr HARKINS - Not that I recall. Things were all good and dandy until Ben was stood down.

Mr BOOTH - Have you ever spoken to Angela Ayling about this matter?

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Mr HARKINS - Once, yes.

Mr BOOTH - Can you tell us what that conversation was?

Mr HARKINS - I said to her, 'What you do in your personal time is your business. Don't bring it into this office'.

Mr BOOTH - Was there ever any kind of threats towards her in regard to what may happen to her position?

Mr HARKINS - No. If she does her job, I have no problem.

Mr GUTWEIN - I am not sure how objective you might be on this, but on the basis you are a member of the RSPCA, you have also had contact with Mrs Sturges and are aware of where Angela Ayling is at on this particular issue. As a member of the RSPCA, what is your view of the current circumstances that befall the RSPCA? In the context of where we are coming from, which is looking at this organisation and its propriety to receive public funds -

Mr HARKINS - Are you asking me for an opinion?

Mr GUTWEIN - Yes.

Mr HARKINS - I think you should sack the board and appoint an administrator, or hold fresh elections for a new board.

Mr BOOTH - You think that would probably fix it, Kevin? In other words, if they held new elections at some point and got a board that was elected in the proper way, that should fix it?

Mr HARKINS - There were a number of good and capable people who joined the board for a short time - and I do not know if you know about that - and they left. To be honest, I have had some discussions with one of those persons because I am involved with football clubs and we have talked about how we might fix it. There have been discussions about it. It needs a clean out and a good shake and go on. Let us not trash the brand of a fantastic organisation.

CHAIR - Kevin, is there anything else you would like to say in conclusion?

Mr HARKINS - No. Thank you very much for the opportunity. I am happy to come back if anyone has any questions.

CHAIR - We appreciate the fact that you wanted to come in. We gave you that opportunity and we thank you for that.

Mr HARKINS - Do not believe everything you read in the *Mercury*.

THE WITNESS WITHDREW.