



# Animal Defenders Office

Using the law to protect animals

ABN: 12837355070 | Member: CLCNSW Inc. | GPO Box 2259 Canberra ACT 2601 | [www.ado.org.au](http://www.ado.org.au) | [contact@ado.org.au](mailto:contact@ado.org.au)

The Animal Defenders Office Inc. is accredited by the National Association of Community Legal Centres.

---

## Legislative Council Select Committee on the Use of Battery Cages for Hens in the Egg Production Industry

### Animal Defenders Office Answers to Questions Taken on Notice:

#### QUESTION 1:

**The Hon. MARK PEARSON:** Keeping your legal hat on, in the Prevention of Cruelty to Animals Act it says that it is an offence to cause harm, which includes suffering, and it is an offence to cause distress, infuriate, et cetera. It is a bit broad but it is there in the legislation. Do you think that there would be a reasonable prospect of success if the RSPCA or police were to, at the point when an egg farmer had depopulated and was about to repopulate the cages, seek a restraining order in the Supreme Court restraining that farmer from putting one hen in a cage while the court determined as to whether that was about to be an act of cruelty? Science and public opinion argue that it would cause unnecessary, unjustifiable and unreasonable distress and suffering to that hen for the time it is in the cage.

**Mr DAVID SHOEBRIDGE:** That sounds like a different inquiry, Mark.

**The Hon. BEN FRANKLIN:** Yes, law and justice.

**Mr SEYEDI:** We may have to take the question of that substantive, detailed scenario on notice. I take your point that the Prevention of Cruelty to Animals Act does list as an offence various acts on an animal, including any that cause suffering, distress and pain.

#### ANSWER 1:

We have understood the Hon. Mark Pearson's question to be whether an injunction could be sought to prevent a person from restocking a battery cage facility on the grounds that keeping hens in the battery cages would constitute animal cruelty.

Mr Pearson's question raises various complex legal issues, which we will touch on in broad terms only for the purposes of providing information to the Committee.

One issue is whether action could be taken to prevent *anticipated* or *likely* cruelty from occurring, rather than against conduct that has already happened. There is no reference to 'likely' to cause harm in the the *Prevention of Cruelty to Animals Act 1979* ("**POCTA Act**"), which is inherently reactive (ie the alleged cruelty arguably has to have occurred before action can be taken against the perpetrator, which belies the title of the Act).

In the case of *Animal Liberation Ltd v National Parks & Wildlife Service* [2003] NSWSC 457, the NSW Supreme Court granted an injunction to prevent likely cruelty from occurring in an aerial cull

of wild goats. The Court accepted that an arguable case was shown on the material before the Court from a previous cull of the potential for the proposed conduct to inflict cruelty on the animals to be culled.

There is very little case law authority on whether confining hens in battery cages would, in and of itself, constitute animal cruelty. In *Mark, Stoner, Setter and Pearson v Henshaw* (1998) 155 ALR 118, the Federal Court declined to consider whether battery hen farming was cruel, but accepted that it was lawful.

We note the definition of ‘cruelty’ in the *Prevention of Cruelty to Animals Act 1979* (“**POCTA Act**”) includes abusing, tormenting, torturing, terrifying or infuriating an animal, or inflicting an animal with pain (s4(2)). We also note that the ‘test for cruelty’ developed by English courts and applied in Australian cases<sup>1</sup> requires that actual pain be inflicted on an animal, and that the pain is unnecessary. Assuming that sufficient evidence could be adduced to prove that confining hens permanently in battery cages causes pain, and given that viable alternatives to battery cages exist, it is arguable that the pain and suffering caused by battery cages is not reasonably necessary, and therefore would meet the legal test for cruelty.

However, as we stated in our submission and in providing evidence before the Committee, the *Model Code of Practice for the Welfare of Animals—Domestic Poultry* (“**the Poultry Code**”) as adopted under the POCTA Act<sup>2</sup>, and Part 2, Division 2 (‘Laying fowl confined in cages’) of the *Prevention of Cruelty to Animals Regulation 2012*, permit the use of what are in effect battery cages, and could be used to prove that keeping hens in battery cages in compliance with the Poultry Code does not constitute cruelty under the POCTA Act.<sup>3</sup>

This comes back to the ‘legalised cruelty’ discussed in our oral evidence given to the Committee. That is, while keeping hens in battery cages may *prima facie* be animal cruelty under NSW animal welfare laws, these same laws create an exemption for keeping hens in battery cages because it is permitted in an industry code of practice.

## QUESTION 2:

**The Hon. SHAOQUETT MOSELMANE:** Just following up on the questions from the Hon. Ben Franklin with regards to the financial support provided to the one provider in the ACT, has there been any analysis on your part or any other research done on how the amount of financial assistance provided for that company in the ACT would translate to New South Wales, even a sample as to how much it would cost New South Wales if we were to apply the same process?

**Mr SEYEDI:** I do not think we have that information on hand.

**Ms WARD:** I am not aware of that analysis being undertaken. It is certainly a good suggestion.

**The CHAIR:** Is it something you want to take on notice?

**The Hon. SHAOQUETT MOSELMANE:** If that is possible.

---

<sup>1</sup> *Ford v Wiley* 1889 23 QBD 203; and *Department of Local Government and Regional Development (WA) v Emanuel Exports et al* (Magistrates Court of Western Australia [Criminal Jurisdiction], 8 February 2008).

<sup>2</sup> Section 34A of the *Prevention of Cruelty to Animals Act 1979*.

<sup>3</sup> Clause 33 of the *Prevention of Cruelty to Animals Regulation 2012*.

**Mr SEYEDI:** Yes.

**Ms WARD:** Yes.

**ANSWER 2:**

The ACT Government entered into an agreement with Pace Farm (also known as Parkwood Farm) to assist it in transitioning to a non-cage egg farm. The Government agreed to purchase, for \$7.5 million, a 24-hectare subdivision of Parkwood Farm that was surplus to that business's requirements, which would then be rezoned and sold for industrial use.<sup>4</sup>

Regarding potential financial assistance to NSW egg farmers – we have not been able to find the kind of analysis referred to by the Hon. Shaoquett Moselmane. As we are not experts in economics, and do not have access to reliable data regarding the size and scale of NSW battery egg layer hen farms, we are not able to comment on the equivalent cost for the NSW Government should it adopt a similar transition-assistance model. This would depend on the circumstances of each farm and would need to be assessed on a case-by-case basis. We therefore would encourage the consideration of alternative approaches to banning battery cages, such as incorporating a 'transition' period during which farms could transition away from cages at the end of the life of their current cage infrastructure, thereby removing or minimising the need for compensation.

Farnham Seyedi and Tara Ward  
Volunteer lawyers  
Animal Defenders Office

17 September 2019

---

<sup>4</sup> Details of this agreement was provided in a media release by the ACT Government:  
[https://www.cmtedd.act.gov.au/open\\_government/inform/act\\_government\\_media\\_releases/barr/2012/government\\_helps\\_parkwood\\_farm\\_convert\\_to\\_cage-free\\_eggs](https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/barr/2012/government_helps_parkwood_farm_convert_to_cage-free_eggs).