

Select Committee on Animal Cruelty Laws in NSW

Thursday 13 February 2020

Animal Defenders Office

Questions on Notice and ADO Answers:

Question 1:

The CHAIR: Are you aware that the unlawfully obtained evidence of live baiting in Queensland and New South Wales led to a major police task force which used the unlawfully obtained evidence to navigate their way to find lawfully obtained evidence? Is that the case? Are you aware of that?

Ms WARD: Is that Grech and Kadir?

The CHAIR: I am not sure, but it is the cruelty charges that were laid against people both in New South Wales and Queensland in relation to live baiting and other practices in the greyhound industry.

Mr SEYEDI: It sounds like that case.

Ms WARD: I am just not aware of the details.

The CHAIR: Would you like to take that on notice?

Ms WARD: Yes, thanks.

Mr SEYEDI: Yes, thank you.

Answer 1:

QUEENSLAND

On 16 February 2015 the ABC's 4 Corners program screened an exposé of the use of live animals as bait by greyhound trainers. The program was called 'Making a Killing'.¹

Immediately following the airing of the program, the 'Queensland Greyhound Racing Inquiry Task Force' was established as a joint task force between the Queensland Police Service and the RSPCA ("the Task Force").

By the end of March that year, the Task Force had charged five people in Queensland with 23 offences including serious animal cruelty.²

By May 2015 the Task Force had made 25 arrests on 68 charges, with 46 of those relating to the offence of serious animal cruelty.³

¹ <https://www.abc.net.au/4corners/making-a-killing/6127124>.

² <https://mypolice.qld.gov.au/news/2015/03/27/greyhound-racing-inquiry-task-force-further-charges/>.

³ <https://www.abc.net.au/news/2015-05-29/greyhound-taskforce-expect-more-arrests-in-queensland/6507590>.

Media articles from the time reported that the cases used secretly filmed footage, but also that the Task Force was 'continually gathering more evidence'.⁴

NEW SOUTH WALES

Calls were made for the NSW Government to set up a special police taskforce into the greyhound industry to complement the special commission of inquiry into the industry⁵, but we could not confirm that such a taskforce was ever created.

Nonetheless, several high-profile industry figures captured on hidden cameras did end up being convicted of animal cruelty, including trainers Ian Morgan and John Cauchi.⁶

Two other greyhound trainers caught on secretly installed cameras were charged with serious animal cruelty for their part in the live bait scandal. However, they challenged the evidence against them on the grounds that either it had been obtained illegally, or it had been obtained as a result of illegally obtained evidence (eg search warrant evidence). Their challenge went all the way to the High Court which handed down its decision on 5 February 2020. The cases are *Zeki Ray Kadir v The Queen* and *Donna Grech v The Queen* [2020] HCA 1.

In its unanimous judgement, the High Court ruled that the recordings obtained by the secretly installed cameras were unlawfully obtained and hence inadmissible in the criminal proceedings pursuant to paragraph 138(1)(a) of the *Evidence Act 1995* (NSW), as they were obtained in contravention of Australian law.

However, the High Court went on to determine that the evidence obtained by search warrant, which would not have been obtained without the knowledge of the secretly-obtained recordings, was admissible, as were admissions obtained from one of the trainers by an activist posing as a greyhound owner.

Question 2:

Ms ABIGAIL BOYD: Just following on from that—to be clear, if a prosecution was allowed by any private individual, the burden would be on that individual to gather their own evidence and to present that case?

Ms WARD: Not necessarily. Allowing private prosecutions does not actually go to the investigation side of things. They can be separate processes. In other words, just to stop the alarmist, "If we allow private prosecutions"—as was the case and is the case in other jurisdictions in the animal law space—"it would mean that we would have every sort of vigilante running onto farms." That is not the case because it does not affect who can investigate.

Mr SEYEDI: We could provide this on notice as well, but there are existing legislative frameworks that allow for private prosecutions, usually with a failsafe to ensure that it is not just a bunch of individuals initiating private prosecutions. Usually, the office of public prosecutions or DPP could, at any time, take over the prosecution and decide to either proceed or withdraw it. Usually there would be some sort of authority there.

The Hon. MICK VEITCH: If you could provide that on notice, that would be good.

Mr SEYEDI: Yes, we are happy to provide that.

Answer 2:

⁴ <https://www.qt.com.au/news/concerns-live-baiting-footage-might-lose-out/2605735/>.

⁵ For example by Greens MP John Kaye: <https://www.abc.net.au/news/2015-06-10/calls-for-nsw-police-taskforce-to-investigate-greyhound-industry/6533742>.

⁶ <https://www.abc.net.au/news/2015-12-16/three-greyhound-trainers-sentenced-for-animal-cruelty/7033436>.

Section 14 of the *Criminal Procedure Act 1986* (NSW) provides that a prosecution or proceeding in respect of any offence under any Act may be instituted by any person unless the right to institute the prosecution or proceeding is expressly conferred by that Act on a specified person or class of persons.

In other words, ‘any person’ can commence a prosecution relating to any criminal offence in an Act, unless the Act specifically restricts the persons or class of persons who can commence the prosecution.

We note, however, that subsection 9(1) of the *Director of Public Prosecutions Act 1986* (NSW) provides that if a prosecution has been initiated by anyone other than the Director of Public Prosecutions (DPP), the DPP may take over the prosecution. Subsection 9(4) specifies that the DPP can then decide to either proceed with the prosecution or decline to proceed further in the prosecution.

These rules are expanded on in section 10, page 17 of the Office of the Director of Public Prosecutions’ *Prosecution Guidelines*.⁷

⁷ <https://www.odpp.nsw.gov.au/sites/default/files/prosecution-guidelines.pdf>.