

ORGANISATIONS UNDER THE PREVENTION OF CRUELTY TO ANIMALS ACT 1979

Hearing: Thursday, 2 April 2026

SUPPLEMENTARY QUESTIONS

Ms Tara Ward, Volunteer Managing Solicitor, Animal Defenders Office

QON #1:

Are you finding that there are cases that are not prosecuted that you have heard of as a lawyer that you felt should have been prosecuted? At the same time, are there cases that are being prosecuted where you think, "Why has the charity stepped in here?"

Members of the public contact our office about the lack of enforcement action in various animal industries. These are usually industries where the treatment of animals is visible including rodeos, display animals, and horseracing, or companion animals such as dogs kept in backyards or horses in paddocks. We are advised by members of the public that they routinely complain about neglected dogs or other animals such as goats tethered in people's homes and seemingly neglected. While inspections may occur, members of the public are frustrated at the perceived lack of action taken in relation to protecting the animal(s) in question.¹

There is also a perceived reluctance to take on cases that may reform the law, ie cases that test the boundaries of our welfare laws. One of the cases where our office is regularly contacted by distressed members of the public is the case of the cockatoo who for many years has been kept in a cage by a car dealership and used to entertain customers.² The bird is clearly housed in inappropriate conditions yet no enforcement action is taken by authorised officers under the POCTA Act despite the significant public interest in the case. In another instance the ADO approached an ACO to take on a test case it had prepared against a certain type of animal entertainment with significant welfare concerns, but the ACO declined.

We are aware of complaints being made by other entities regarding the treatment of animals observed at rodeos in NSW and yet ACOs either decline to attend or attend and take no action.

QON #2:

The Hon. EMMA HURST: *Can I jump in to get some thoughts from Ms Ward on the proposed changes to legislation. As a lawyer who works in the animal space—and I'm happy for you to take this on notice—do you think that the proposed changes would be*

¹ See for example the case of 'Bruce' the dog: <https://www.change.org/p/help-save-bruce>.

² <https://www.change.org/p/hayes-toyota-toyota-australia-geoff-provest-mp-tweed-shire-council-rspca-nsw-animal-welfare-le-free-toyota-the-australian-native-sulphur-crested-cockatoo>.

good or sound changes to legislation? ... I think it was a recklessness or intent in regard to failing to get veterinary treatment.

Introducing a requirement in NSW animal welfare laws that a mental element in animal cruelty offences, such as intention or recklessness, would make animal cruelty charges harder to prove and therefore would not increase animal protection or prevent cruelty to animals. In the context of animal protection laws, the important point is whether harm was *in fact* inflicted on an animal, and whether that harm was unnecessary or unjustifiable. This approach has been the legal test for animal cruelty since at least the late 1800s.³ It does not require that a mental state of the perpetrator be proved. The ADO submits that it has stood the test of time and that, without substantial evidence demonstrating a change would result in greater protection for animals, it should remain the approach in NSW. The approach also has sufficient checks and balances as the physical elements of an offence must be established beyond reasonable doubt which is a very high standard of proof.

SUPPLEMENTARY QUESTIONS

(1) *You cited wrongful prosecution of wildlife carers—how many cases meet that threshold in the past five years?*

In the last 12 months at least 3 matters where enforcement action has been taken by an ACO against wildlife carers have come to the attention of the ADO, including the conviction of Tracy Dods that was subsequently overturned by the District Court of NSW.

In another case, an elderly volunteer wildlife rescuer risked life and limb to rescue a possum in the middle of cyclone Alfred, only to be inspected by an ACO officer who seized the animal. The ACO then issued the rescuer with two penalty infringement notices with substantial fines. The rescuer sought the ADO's help and the ADO challenged the legality of the fines. Both fines were withdrawn within hours of them being reviewed by senior officers within the ACO, demonstrating that they should not have been issued in the first place.

In another case an experienced carer's property was inspected by an ACO and the carer was issued with written notices regarding the animals in her care. The carer complied and advised the ACO but never heard back. The situation caused the carer considerable stress. The carer was denied closure, and is constantly looking over their shoulder. Ultimately the person resigned as a wildlife carer due to the stress so native animals lost another valuable carer for them.

³ *Ford v Wiley* (1889) 23 QBD 203.

(2) *What legal deficiencies in current prosecution standards allow these cases to proceed?*

Current prosecution standards in NSW are set out in the Office of the Director of Private Prosecutions' Guidelines (**ODPP Guidelines**).⁴ As private charities, ACOs are not required to follow the ODPP Guidelines or to produce their own prosecution guidelines or policies.

As ACOs are entities that institute or conduct prosecutions for offences, consideration could be given to requiring ACOs to comply with the ODPP Guidelines.⁵

(3) *Are prosecutors applying an incorrect interpretation of "reasonable care" under POCTAA?*

Detailed analysis of prosecutions by ACOs would need to be undertaken before being able to answer this question. As a small unfunded, volunteer-run community legal centre, the ADO lacks the resources to undertake such an analysis.

We note, however, that whether a person exercises reasonable care of an animal to prevent the commission of an act of cruelty is one of several different elements in animal cruelty offences, and that not all animal cruelty offences contain the element of exercising reasonable care.⁶

(4) *What evidentiary standards should be required before charges are laid?*

As animal cruelty offences are criminal offences, the same evidentiary standards required for other criminal offences should also apply to charges under POCTAA. In deciding whether to prosecute, the ODPP guidelines require a decision-maker to consider whether there is no reasonable prospect of conviction on the admissible evidence.⁷

(5) *Should an independent prosecutorial review be mandatory before proceedings commence?*

Mandating independent prosecutorial reviews before all proceedings initiated by ACOs commence would probably unduly burden the prosecutorial process for these organisations. ACOs should instead be required to furnish their own prosecution guidelines that involve a mandatory public consultation process before being finalised. Ideally, an

⁴ <https://www.odpp.nsw.gov.au/prosecution-guidance/prosecution-guidelines>. The guidelines are issued under s 13 of the *Director of Public Prosecutions Act 1986* (NSW) (**DPP Act**).

⁵ Under s 14(2) of the DPP Act, the Director may, by order in writing, and after consultation with the Attorney General, furnish guidelines to the Commissioner of Police or any such person with respect to the prosecution of indictable offences or most summary offences. Consideration could be given to issuing guidelines for prosecutions of offences by ACOs under s 14(2).

⁶ *Prevention of Cruelty to Animals Act 1979* (NSW) (**POCTAA**), s 5(3)(a). By contrast, s 5(3)(c) requires that, where it is necessary for an animal to be provided with veterinary treatment, that the person in charge provide the animal with that treatment. Reasonable care is not an element in this offence.

⁷ ODPP Guidelines, p 8.

independent office of animal protection would be responsible for furnishing the prosecution guidelines for enforcement officers under NSW animal protection laws.

(6) You argue vulnerable carers are being targeted—what proportion of enforcement activity involves wildlife carers?

Detailed analysis of ACOs' prosecution caseload would be required to answer this question, and the ADO lacks the capacity to undertake such an analysis. However, the important question is why is *any* vulnerable carer being targeted? It is not a question of proportion. Targeting one vulnerable carer unnecessarily is one too many.

(7) How should enforcement priorities be rebalanced in law or policy?

In the animal protection space, priority must be given to matters where the most animals benefit from the action. This would include farmed animals and wildlife.

(8) What objective criteria should determine “public interest” in prosecution decisions?

Objective criteria for determining whether a prosecution is in the public interest are set out in the ODPP Guidelines.⁸ Objective animal welfare factors could be included in prosecution guidelines for animal welfare enforcement officers in NSW, including:

1. the seriousness of the offence in terms of the harm inflicted on an animal
2. the extent of the harm in terms of the number of animals affected
3. whether the accused was using animals for commercial or other financial gain.

(9) Who should be responsible for setting those criteria?

The criteria should be determined by an independent office of animal protection in consultation with the public.

(10) At the hearing, NSW Farmers suggested that the enforcement of animal cruelty laws with respect to the commercial animal agribusiness industry should move to DPIRD. Do you have concerns about this? If yes, can you please detail your concerns?

The suggestion that an agency responsible for the promotion of animal industries should also be responsible for the enforcement of animal cruelty laws in relation to animal industries is absurd. It is essential that DPIRD be stripped of any enforcement responsibilities under animal protection laws. This is due to the inherent conflict of interest in an agency responsible for supporting industries' use of animals at ever-diminishing costs also being the chief enforcer of animal cruelty laws, compliance with which imposes additional costs and duties on animal users. This inherent conflict of interest is why the creation of an independent office of animal protection is essential.

⁸ Chapter 1.4.

(11) Do you think DPIRD has a conflict of interest in taking on enforcement of animal cruelty laws relating to commercial animal agribusiness? If yes, please explain why.

Yes. See answer to Q (10) above.