

## COMPLIANCE, ENFORCEMENT AND PROSECUTION POLICY

### 1 Introduction

The Royal Society for the Prevention of Cruelty to Animals, Western Australia Inc ('RSPCA WA') is a not-for-profit organisation whose objects are to:

- promote animal welfare and kindness to animals
- prevent or suppress cruelty to animals
- do all such lawful acts as the Society may consider conducive or incidental to the attainment of its objectives

The RSPCA WA Inspectorate have been appointed by the Department of Food & Agriculture ('DAFWA') and have been given authority to enforce the *Animal Welfare Act 2002* ('AWA').

This policy has been designed to be consistent with the *Statement of Prosecution Policy and Guidelines 2005* and the *DAFWA Compliance and Enforcement Policy*. It reflects best practice across RSPCA organisations throughout Australia.

#### 1.1 Purpose

This policy provides a general outline of the approach to enforcement of the AWA. The purpose of the policy is to provide strategic focus and guidance for the Inspectorate and to ensure:

- transparency and accessibility for the public
- that, where required, properly assessed cases proceed to prosecution
- that the Society supports the delivery of quality regulatory procedures

#### 1.2 Definition

A prosecution commences when a Prosecution Notice is signed by an Inspector in the presence of a Justice of the Peace.

#### 1.3 Prosecutions

All prosecutions will be assessed on a case by case basis and consideration will be given as to whether it is:

- in the public interest
- in the interest of better animal welfare outcomes
- an effective use of the Society's resources

### 2 Compliance

RSPCA WA encourages compliance of the AWA through education and, if necessary, enforcement. The reduction and/or prevention of animal cruelty is paramount.

### **3 Enforcement**

The Inspectorate carry out investigations in relation to animal cruelty and consider whether there is a breach of the AWA.

#### **3.1 Enforcement criteria**

Enforcement will be considered based on the following:

- whether there has been failure to comply with a Direction Notice issued by an Inspector
- the length of time since the incident
- the subsequent behaviour of the person of interest since the incident
- mitigating or aggravating circumstances
- any history of non-compliance
- the level of public interest
- the need for deterrence
- the potential consequence of the Society's failure to respond to non-compliance

#### **3.2 Mitigating and aggravating circumstances**

Aggravating factors may include:

- whether the person of interest has a relevant history of offending
- the number of animals and duration of suffering
- failure to comply with a Direction Notice or advice
- evidence of continuing offences
- non-compliance with the relevant Code of Practice (where animals are used for commercial reasons)

Mitigating factors may include:

- age
- mental capacity
- previous good character
- the behaviour of the person of interest is inconsistent with the offence

#### **3.3 Enforcement**

RSPCA WA will consider the following options in relation to enforcement:

- **Informal action**

An Inspector may liaise with the person of interest and attend his/her property to record information as to the animal(s) concerned. If the Inspector is satisfied with the level of information given by the person of interest, the matter may be closed. Alternatively, there may be follow up requests in the form of telephone calls or further visits to the property.

- **Infringement Notice**

In due course, and as provided by the AWA, an Inspector may be able to issue Infringement Notices.

- **Direction Notice**

An Inspector may be required to issue a Direction Notice to a person of interest to facilitate a better animal welfare outcome. Failure to comply with such Notice constitutes a breach of the AWA. The Direction Notice issued may be subject to a review of the decision by DAFWA or the State Administrative Tribunal.

- **Prosecution**

Prosecution may be commenced only where the evidence is sufficient to support such action.

#### 4 **Prosecution**

##### 4.1 **Criteria governing the decision to prosecute**

Under the AWA, an Inspector may commence a prosecution within two years of the alleged offence. The decision to prosecute involves an assessment as to whether:

- there is sufficient evidence to justify prosecution
- there is a reasonable prospect of success
- it is in the public interest

##### 4.2 **Prima facie case**

In the first instance, there must be sufficient evidence to try to prove the alleged offence. All the elements of the offence must be established. The Court will decide whether the evidence presented is beyond all reasonable doubt.

##### 4.3 **Public interest**

A prosecution should only proceed where a second test is satisfied, namely that a prosecution is in the public interest. This is evaluated as follows:

###### 4.3.1 **Reasonable prospects of conviction**

It is not in the public interest to commence a prosecution which has no reasonable prospect of success. The evaluation as to the prospect of a conviction requires a thorough examination of the evidence, including:

- the voluntariness of any alleged confession
- the competence, reliability and availability of witnesses
- the possibility of a conflict in any particular aspect of the case among prosecution witnesses
- possible defences

###### 4.3.2 **Other relevant factors**

It may not be in the public interest to proceed if other factors render a prosecution inappropriate, such as:

- the age, physical and/or mental health of the person of interest or a witness
- evidentiary issues
- the need for deterrence
- the estimated cost of a trial
- the risks involved in proceeding to trial

### 4.3.3 Irrelevant factors

A decision as to whether or not to prosecute must not be influenced by:

- race, colour, ethnicity, sex, religious beliefs, social position, marital status, sexual preference, political opinions or cultural views of the person of interest
- political consequences
- personal feelings concerning the person of interest
- the possible effect of the decision to prosecute on the personal or professional circumstances of those responsible for such decision

RSPCA WA will not consider issues such as media impact or the ability to promote the Society through prosecutions. It will, at all times, act impartially and in the public interest.

### 4.4 Decision to proceed with a prosecution

The decision as to whether a prosecution should be commenced will be considered by In-house Counsel and/or the Prosecutions Panel.

## 5 Role of the Prosecutor

The Prosecutor represents the community and has a duty to the Court to present the case without bias. A Prosecutor must exercise professional judgment and common sense at all times.

## 6 Charge bargaining

Negotiations between the parties are to be encouraged and may occur at any stage of the progress of a matter through the Courts. Charge negotiations must be based on principle and reason, not on expedience alone. A written record of the charge negotiations must be kept, in the interests of transparency and probity.

## 7 Prohibition Order

A Prohibition Order can only be sought if a conviction is recorded. It is at the discretion of the Magistrate. On the making of such Order, a person convicted of animal cruelty may not be permitted to have any contact with animals or be in charge of them.

## 8 Disclosure

To assist with the efficient operations of the Court, the prosecution case should be disclosed to the accused at the earliest possible opportunity, in accordance with the *Criminal Procedure Act 2004*.

## 9 Public release of information

RSPCA WA understands that there is often public interest as to the progress of cases. Specific details, such as the name of the alleged offender, will not be released either prior to the matter coming before the Court or during the Court process.

Decisions concerning the public release of information are made at executive level within the Society.

## **10 Appeals**

The right to appeal against a decision is only to be exercised in circumstances where:

- a sentence is so disproportionate to the seriousness of the crime as to reflect an error in sentencing principles
- a sentence is so disproportionate to the seriousness of the offence
- a sentence is so out of line with other sentences imposed for the same or similar offences
- there are idiosyncratic views of individual judicial officers as to particular offences
- points of sentencing principles are giving, or are likely to give, rise to disputes

## **11 Recovery of costs**

Given the limited resources of RSPCA WA, it will seek to recover reasonable care and treatment costs of the animal(s) in accordance with the AWA.

## **12 Effect of this policy**

This policy is not intended to be legally binding on RSPCA WA and does not confine, restrain or limit its discretion.

**END**