Companion Animal Cruelty and Neglect in Queensland: Penalties, Sentencing and "Community Expectations"

*By Tracy-Lynne Geysen, Jenni Weick & Steven White**

1. Introduction

A consistent feature of animal welfare law reform in Australian jurisdictions over the last decade has been increases in the maximum penalties for animal cruelty and duty of care offences. Queensland is no exception, with substantial increases introduced in 2001 through the passage of the *Animal Care and Protection Act 2001* ('ACPA'). More recently, a change in the value of "penalty units" has significantly increased the maximum fine which may be imposed on offenders. This commitment to increased penalties raises a number of questions, including why this is occurring, what effect the increased penalties are having on sentencing outcomes, and whether increasing maximum penalties for cruelty and duty of care offences is the most effective way of addressing the protection of animals.

Considerable empirical research will be required before questions about the role and effectiveness of animal welfare penalties and sentences can be answered with any confidence. Two recent excellent contributions to the *Australian Animal Protection Law Journal* have made a start on the empirical research necessary to address these issues. Taylor and Signal have reported on research into public opinion about the nature and appropriateness of the response of the criminal justice system to animal

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abuse.[1] Boom and Ellis have explored the enforcement of animal welfare law in NSW, including a consideration of penalty and sentencing issues.[2] As well, Markham has recently provided the first detailed Australasian account of sentencing issues in an animal welfare context.[3]

Focussing on the Queensland jurisdiction, this article seeks to briefly address the grounds relied upon by State Government in persuading Parliament to increase penalties for animal welfare offences, and whether this political commitment to reform is reflected in sentencing outcomes in Magistrates Courts. The key justification used by government for increased penalties is the need to give effect to "community expectations". The meaning of the term "community expectations" is, however, inexact. What does is it mean to give effect to community expectations, and to what extent do these expectations feed though into sentencing outcomes in Magistrates Courts?

The first part of this article provides a brief account of the key animal welfare offences in Queensland, including the reform in 2001.

The focus is on companion animals, for two reasons. First, the key cruelty and duty of care provisions in the ACPA apply directly to companion animals. The treatment of commercially farmed animals and other categories of animal may be exempt from the application of these offences where there is compliance with a relevant code of practice.[4] Second, RSPCA Qld and the then Department of Primary Industries and Fisheries (DPI&F) entered into a memorandum of understanding (MOU) as to their respective enforcement responsibilities:

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1 Nik Taylor and Tania Signal, 'Lock 'em up and Throw Away the Key? Community Opinions Regarding Current Animal Abuse Penalties' (2009) 3 Australian Animal Protection Law Journal 33.

2 Keely Boom and Elizabeth Ellis, 'Enforcing Animal Law: The NSW Experience' (2009) 3 Australian Animal Protection Law Journal 6.

3 Annabel Markham, 'Animal Cruelty Sentencing', chapter 12 in Peter Sankoff and Steven White (eds), Animal Law in Australasia: A New Dialogue (The Federation Press, 2009).

4 For a detailed account of the operation of codes of practice see Arjna Dale, 'Animal Welfare Codes and Regulations – The Devil in Disguise?', chapter 8 in Peter Sankoff and Steven White (eds), Animal Law in Australasia: A New Dialogue (The Federation Press, 2009).

> The MOU was jointly developed by the DPI&F and the RSPCA, with all clauses subject to mutual agreement. ... The question of who enforces the [Act] is influenced by location and expertise. ... Although not a mandated requirement under the MOU, it is mutually accepted [that] the DPI&F will generally have primary responsibility for dealing with livestock animal welfare issues. Conversely, the RSPCA largely has responsibility for companion animal issues. This division of responsibilities is not an issue of constraining operations of agencies, but rather one of logistics and operational practicality.[5]

While the RSPCA brings a small but significant number of prosecutions each year, and publicly reports on these, DEEDI (formerly DPI&F) brings very few prosecutions, and does not publicly report on these. Together, the application of statutory exemptions and the administrative arrangements/operational priorities of RSPCA Qld and DEEDI mean that Queensland Magistrates deal almost exclusively with animal welfare offences involving companion animals.

The second part of this paper addresses the notion of "community expectations" and the role they have played in the reform of animal welfare law in Queensland, at least as expressed by politicians in Parliament, through second reading speeches and supporting materials such as Explanatory Notes.

Part Three considers how community expectations can be identified, and the article concludes by suggesting the need for further extensive empirical research in this area.

2. Companion Animals and Animal Welfare Offences in Queensland

Until 2001 the key animal welfare statute in Queensland was the *Animals Protection Act 1925*. This statute followed the first animal welfare legislation passed by the Queensland Parliament, the *Animals Protection Act 1901*. Before that, animal cruelty was addressed by 1850 NSW legislation. The RSPCA played a central role in making the case for animal welfare reform in 1925:

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5 Evidence to Senate Rural and Regional Affairs and Transport Committee, Parliament of Australia, Canberra, 15 February 2006, 4 (Jim Varghese, Director-General, Queensland Department of Primary Industries and Fisheries).

> The RSPCA had strongly lobbied for the 1901 Act because the 1850 legislation did not afford animals the protection desired nor did it provide the RSPCA with sufficient authority to efficiently discharge their duties. However by 1925, the RSPCA had become aware of shortcomings in the 1901 legislation and the *Animals Protection Act 1925* was enacted *for the more effectual prevention of cruelty to animals*. This Act was modelled on English and Western Australian legislation of the time, and, significantly, provided officers of the RSPCA with powers to enter premises in order to assist animals and secure evidence of an offence. It provided for the protection of animals against cruelty and neglect. When the Bill was introduced to Parliament in 1925, debate focused on issues of importance of the day - the working and doping of horses and greyhounds; employees' and drivers' treatment of work animals; the use of horses for food on pig farms; and protecting homing pigeons described by the Home Secretary, Hon. J. Stopford, as a "national asset".[6]

Despite numerous amendments over the years, by 2001 the maximum penalty for cruelty under the *Animals Protection Act 1925* was a fine of $1500 and/or imprisonment for six months. After a failed attempt to introduce a new Act in the early 1990s, the 2001 legislation was passed by the Queensland Parliament with support from all political parties, and widespread interest group support, including from RSPCA Qld.[7] The Act was proclaimed in March 2002.

The two key animal welfare offences in Queensland are now set out in s17 and s18 of the ACPA. Section 17 is a duty of care provision, and provides:

> 17 Breach of duty of care prohibited
>
> (1) A person in charge of an animal owes a duty of care to it.
>
> (2) The person must not breach the duty of care.
>
> (3) For subsection (2), a person breaches the duty only if the person does not take reasonable steps to—

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6 Glenda Emmerson, Duty and the Beast: Animal Care and Protection Bill 2001, Research Brief No 2001/23, Queensland Parliamentary Library, 2001 13 (emphasis in original, footnotes omitted).

7 Ibid 13-14, 35-36.

(a) provide the animal's needs for the following in a way that is appropriate—

(i) food and water;

(ii) accommodation or living conditions for the animal;

(iii) to display normal patterns of behaviour;

(iv) the treatment of disease or injury; or

(b) ensure any handling of the animal by the person, or caused by the person, is appropriate.

(4) In deciding what is appropriate, regard must be had to—

(a) the species, environment and circumstances of the animal; and

(b) the steps a reasonable person in the circumstances of the person would reasonably be expected to have taken.

The maximum penalty for conviction of an offence under s17 is one year's imprisonment and/or a fine of 300 penalty units. As from 1 January 2009, a fine of 300 penalty units equates to a dollar amount of $30,000. Prior to this date the maximum fine was $22,500.[8]

The Explanatory Notes to the Animal Care and Protection Bill 2001 explicitly state that s17, a provision in form which is unique to Queensland, is intended to give effect to the so-called "Five Freedoms":

> This is the key proactive aspect of the Bill. Positively providing for the welfare needs of animals is at the opposite end of the welfare continuum to the mere absence of being cruel, the focus of the current Act [*Animals Protection Act 1925*]. The Bill makes it an offence for persons in charge of animals to fail to comply with

8 The value of a penalty unit was increased from $75 to $100 effective 1 January 2009: Penalties and Sentences and Other Acts Amendment Act 2008 (Qld) ss 2-3, amending Penalties and Sentences Act 1992 (Qld) s 5(1).

their duty of care. The duty of care requirements are based on internationally acknowledged "Five Freedoms" of animal welfare originating from an inquiry into animal welfare by the "Brambell Committee" in the United Kingdom in 1965 and subsequently modified in 1992 by the United Kingdom Farm Animal Welfare Council.[9]

Section 18 of the Act creates an offence against cruelty, and provides a non-inclusive list of what may amount to cruelty:

> 18 Animal cruelty prohibited
>
> (1) A person must not be cruel to an animal.
>
> (2) Without limiting subsection (1), a person is taken to be cruel to an animal if the person does any of the following to the animal—
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> (a) causes it pain that, in the circumstances, is unjustifiable, unnecessary or unreasonable;
>
> (b) beats it so as to cause the animal pain;
>
> (c) abuses, terrifies, torments or worries it;
>
> (d) overdrives, overrides or overworks it;
>
> (e) uses on the animal an electrical device prescribed under a regulation;
>
> (f) confines or transports it—
>
> (i) without appropriate preparation, including, for example, appropriate food, rest, shelter or water; or

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9 Explanatory Notes, Animal Care and Protection Bill 2001 (Qld) 4. For a discussion of the "Five Freedoms" and their origins see Mike Radford, Animal Welfare Law in Britain: Regulation and Responsibility (Oxford University Press, 2001) 264-266. Tasmanian legislation also explicitly imposes a "duty of care" on a person who has the "care or charge of an animal" but, unlike Queensland, does not define the content of this duty or establish specific penalties for breach: see Animal Welfare Act (Tas) s6.

(ii) when it is unfit for the confinement or transport; or

(iii) in a way that is inappropriate for the animal's welfare; or

(iv) in an unsuitable container or vehicle;

(g) kills it in a way that—

(i) is inhumane; or

(ii) causes it not to die quickly; or

(iii) causes it to die in unreasonable pain;

(h) unjustifiably, unnecessarily or unreasonably—

(i) injures or wounds it; or

(ii) overcrowds or overloads it.

The maximum penalty for conviction of an offence under s18 is two year's imprisonment and/or a fine of 1000 penalty units. As from 1 January 2009, a fine of 1000 penalty units equates to a dollar amount of $100,000. Prior to this date the maximum fine was $75,000.[10] The current maximum fine reflects a more than 65-fold increase on that applicable under the pre-2001 legislation.[11]

While the focus of this article is on s17 and s18 of the ACPA, it is important to note that a number of other provisions in the ACPA also

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10 Above n8.

11 By way of contrast, in NSW the maximum penalty for cruelty is $5,500 and/or six months' imprisonment, and for aggravated cruelty is $22,000 and/or imprisonment for two years: Prevention of Cruelty to Animals Act 1979 (NSW) s5 and s6 respectively; in South Australia, the maximum penalty for cruelty is $20,000 and/or two years' imprisonment, and for aggravated cruelty is $50,000 and/or imprisonment for four years: Animal Welfare Act (SA) s13; in Tasmania, the maximum penalty for cruelty is $12,000 and/or one years' imprisonment, and for aggravated cruelty is $24,000 and/or 18 months' imprisonment: Animal Welfare Act 1993 (Tas) s8 and s9 respectively; and in Western Australia, the maximum penalty for cruelty is $50,000 and/or imprisonment for five years: Animal Welfare Act 2002 (WA) s19.

create cruelty-related offences in some circumstances.[12] As well, the *Criminal Code* (Qld) includes offences against animals.[13] Significantly, the offence of injuring a companion animal brings with it a maximum penalty of up to three years' imprisonment (ie one year greater than that for cruelty under the ACPA) and/or a fine of $50,000.[14] However, by contrast with the strict liability cruelty offence in the ACPA, the offence of injuring an animal under s468 *Criminal Code* (Qld) applies to the wilful and unlawful killing, maiming or wounding of an animal.

3. Reform of the Law in Queensland and "Community Expectations"

As Part 2 shows, in Queensland since 2001 there have been substantial increases in the relevant maximum penalty for cruelty offences, and the introduction of a stand-alone offence of breach of duty of care, also with a comparatively high maximum penalty.

On what basis have such significant increases been justified? A close reading of the Explanatory Notes for the Animal Care and Protection Bill 2001, as well as the Minister's second reading speech emphasises the community expectation that such offences should be treated seriously.

The Explanatory Notes to the Animal Care and Protection Bill 2001 refer to community expectations about animal welfare and sentencing in a number of places:

> The primary objective of the Bill is to repeal the current and antiquated animal cruelty legislation, the *Animals Protection Act 1925* . . . and to replace it with contemporary and proactive legislation that promotes the responsible care and use of animals and helps to protect animals from acts of cruelty . . . The current Act [*Animals Protection Act 1925*] . . . does not reflect current attitudes, community expectations or knowledge about animal welfare issues . . . The community generally expects governments to take a far more proactive approach to animal welfare issues rather than the passive

12 See, eg, ACPA s19 (abandonment), s23 (cropping dog's ear), s24 (docking dog's tail), s25 (debarking), s26 (removal of cat's claw).

13 See, eg, Criminal Code (Qld) s211 (bestiality), s468 (injuring an animal).

14 By contrast with the greater level of protection afforded to companion animals under the ACPA, the maximum penalty for injuring 'stock' animals under the Criminal Code is seven years' imprisonment, significantly greater than that for injuring companion animals.

> approach reflected in the current Act . . . The Bill is necessary to meet community expectations and provide a modern legislative framework for dealing with animal welfare issues. Such legislation is one means of demonstrating to the community . . . that Queensland meets community . . . expectations in relation to animal welfare . . . The general community has an expectation that inappropriate practices relating to animals should be outlawed and penalties with a sufficient deterrent value provided.[15]

In his second reading speech on the Animal Care and Protection Bill 2001, the Hon. H Palaszczuk, Minister for Primary Industries and Rural Communities, repeats some of the material in the Explanatory Notes. In addition, he states:

> The bill retains some important conventional wisdoms that the general community holds that deliberate cruelty to animals is abhorrent and unacceptable and expects that, in other than exceptional circumstances, the perpetrator must be punished severely, and severely enough to deter others.[16]

It is notable that with one exception, discussed below, no further detail is provided by the Minister or in the Explanatory Notes as to how these community expectations have been identified. Where do we find the "conventional wisdoms" referred to by the Minister?

4. Evidence of Community Expectations

(i) Political Process

A useful starting place for identifying the community expectations which underpin animal welfare reform in Queensland is the political process. For example, in his Second Reading Speech on the Animal Care and Protection Bill, the Minister said:

> In the year 2000, I received over 7,000 items of correspondence from members of the community on animal welfare issues. The bill will help governments act wisely and in tune with the community on animal welfare issues in contentious areas. This will be through a

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15 Explanatory Notes, Animal Care and Protection Bill 2001 (Qld) 1-2, 5-6.

16 Queensland, Parliamentary Debates, Legislative Assembly, 31 July 2001, 1988 (Henry Palaszczuk).

> provision to establish an Animal Welfare Advisory Committee to advise me on animal welfare matters.[17]

Representations from the public may be important in gauging public attitudes in an ad hoc way, but it also has to be acknowledged that they are not systematic and may be distorted by a range of factors, including the self-selecting nature of those who make representations and narrow interest group campaigns. As well, '[t]he difficulty of obtaining detailed information means the community has little basis on which to evaluate the efficacy of current animal welfare law enforcement or legislative change with respect to it'.[18]

More broadly, the passage of the Bill attracted a large number of speakers during the second reading debate, and the Bill received the unanimous support of the Legislative Assembly. This parliamentary consensus may be construed as evidence of community expectations, although questions may be raised, again, about how systematically this consensus was achieved and how well-informed members of parliament are about animal welfare matters generally.[19] In particular, as may occur in addressing crimes of violence against humans, parliamentary action on animal welfare penalties may reflect an unreflective desire to "get tough on crime". As Boom and Ellis suggest, 'harsher penalties are not necessarily the best way of dealing with animal cruelty', even if 'there is a legitimate debate to be had with respect to sentencing issues without recourse to an unthinking and punitive law and order response'.[20] Boom and Ellis argue that:

> Governmental reforms tend to focus on symbolic initiatives, such as increasing penalties, rather than politically less popular strategies that might help to change cultural attitudes and behaviours in the longer term, such as banning the sale of animals in pet shops.[21]

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17 Queensland, Parliamentary Debates, Legislative Assembly, 31 July 2001, 1989 (Henry Palaszczuk).

18 Boom and Ellis, above n2, 31. Although considering the position in NSW, this observation applies at least as strongly in Queensland, where even less publicly available information is available on penalties and sentencing processes and outcomes.

19 For contributions to the debate see: Queensland, Parliamentary Debates, Legislative Assembly, 16 October 2001 2860-2866; 17 October 2001 2914-2956.

20 Boom and Ellis, above n2, 31.

21 Ibid.

Finally, it might be argued that community expectations are reflected back to government through the views of the various animal welfare groups/organisations, on the basis that they collectively reflect broader community attitudes to animal welfare matters. In his Second Reading Speech the Minister claimed that:

> The policies in this bill have been developed over several years in consultation with animal welfare groups, livestock industries and other animal user groups. All of these have supported the policy principles enshrined in this bill and all support the need for modern legislation. Relevant stakeholder groups have scrutinised the bill and given it their thumbs up.[22]

In terms of companion animals and sentencing for cruelty/breach of duty, the key organisation is RSPCA Qld and it strongly endorsed the passage of the Bill. Emmerson states:

> RSPCA Qld's Chief Executive Officer Mark Townend said that with this Bill, the government is moving to protect animals with the strongest deterrents possible, making Queensland one of the most advanced animal welfare protection jurisdictions in the world.[23]

A key issue here, though, is the extent to which all stakeholder groups are given opportunities to comment and the seriousness with which those comments are taken, especially where they suggest an approach not consistent with the government's preferred approach.

(ii) Research into Community Expectations

Until very recently, there has been little systematic research into the nature of community expectations in Australia about penalties and sentencing in an animal welfare context.

Legal research is thin on the ground. In 2002 it was suggested that:

> [T]here is a further reason for taking a tougher and more creative approach to sentencing animal cruelty offenders. As the enactment of POCTAA [*Prevention of Cruelty to Animals Act 1979* (NSW)] has demonstrated, many Australians consider the treatment of animals

22 Queensland, Parliamentary Debates, Legislative Assembly, 31 July 2001, 1990 (Henry Palaszczuk).

23 Emmerson, above n6, 36, citing RSPCA Qld Media Release of 31 July 2001.

> with minimum standards of decency to be a core value of a civilised society. Courts that show undue leniency to animal cruelty offenders disregard our community's core moral values. They also reinforce the notion that animals are property and not living, sentient beings . . . Whilst acknowledging that many violent offenders have themselves been victims of cycles of violence, Courts must exercise caution when sentencing offenders who have committed brutal and morally repugnant crimes. Just as some crimes against humans demand lengthy jail terms, certain crimes against animals demand serious treatment with respect to sentencing. Courts must send a strong message to the community that certain acts of animal cruelty will not be tolerated.[24]

The assertions made here are very possibly correct, especially if one accepts that the political and parliamentary processes answer all questions about the legitimacy of a particular legal reform. However, no systematic empirical or other research is cited supporting the proposition that "undue leniency" is inconsistent with community expectations. Further, as discussed above, there is a risk that parliamentary fiat in this area reflects other agendas, such as a punitive "get tough on crime agenda", as well as concerns about the well-being of animals.

Sociological and survey research is beginning to fill some of the gaps in determining "community expectations" about animal welfare penalties and sentencing. Taylor and Signal summarise international research on attitudes to serious animal abuse as demonstrating that 'the public in general is supportive of increasing penalties for animal abuse'.[25] However, they acknowledge that 'any research into this area has to make allowances for difference in opinion vis a vis an animal's status (e.g. as a 'pet' or 'pest') and/or the species of the animal concerned as well as various human personality and contextual variables'.[26] Analysing results based on a large, representative community sample (obtained through the Central Queensland Social Survey), Taylor and Signal conclude that 'the general public are strongly in favour of the [Criminal Justice System] considering the abuse of cats and dogs as a

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24 Katrina Sharman, 'Sentencing Under Our Anti-Cruelty Statutes: Why Our Leniency Will Come Back to Bite Us' (2002) 13 Current Issues in Criminal Justice 333, 334.

25 Taylor and Signal, above n1, 40.

26 Ibid.

serious crime which should attract serious penalties'. Importantly, though:

> [h]ow extended punitive measures should play out is an open question. For example, whether the public supports greater maximum penalties being introduced by parliament and/or higher sentences being imposed by the judiciary within prevailing laws is a matter for further research.[27]

This qualification is a particularly important one, given the argument above that the public may not be well-informed about existing animal welfare enforcement processes.

(iii) Magistrates, Sentencing and Community Expectations

Even if there remain some unanswered questions about the nature and foundation of "community expectations" about animal welfare penalties and sentencing, the evidence discussed above suggests a public preference for the imposition of more serious penalties. In Queensland, interest group organisations such as RSPCA Qld and BLEATS (Brisbane Lawyers Educating and Advocating for Tougher Sentences) have expressed the concern that the penalty reforms effected in 2001 have not been reflected to the extent they should in sentencing decisions of Magistrates. If true, [28] there are at least two reasons for why this might be occurring, one procedural and one substantive.

As to procedural concerns, BLEATS has:

> pinpointed factors that were thought to be responsible for [the] anomaly [between sentences imposed and the maximum penalties available under ACPA]. The first of these was the standard of briefs prepared by the prosecuting authority, in this case the RSPCA, provided to either its inspectors or to solicitors instructed on its behalf in the course of prosecutions. The second was the inadequacy of submissions made to the Court in the course of prosecutions. There

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27 Ibid 50.

28 After reviewing Australasian legislation and cases, Markham concludes that 'it would be wrong to dismiss legitimate criticisms of sentencing outcomes as the reactions of a punitive and ill-informed interest group . . . at a basic level the issue is one of giving effect to legislative intent. In general, this intent has not been realised to date': above n3, 303. For a conclusion to similar effect in a NSW context see Boom and Ellis, above n2, 31.

appeared in these to be little assistance to the Court as to the relevance of the factors necessary for the Court to take up under the *Penalties and Sentences Act* 1992 (Qld) and how these factors might properly be applied to a prosecution under this act as against an act dealing with offences against humans. Submissions that had been made appeared to contain no discussion of the form of the provisions of sections 17 and 18 of the Act. There was little direction given as to the necessity to consider the deterrent aspect of the sentence given that there existed little by way of rehabilitation and counselling available particularly relating to conduct towards animals.[29]

As to substantive matters, BLEATS argues that:

> sentences appeared to reflect little acceptance of the nature of the changes that were made in 2001, particularly as to the maximum penalties included in sections 17 and 18 of the *Animal Care and Protection Act.*[30]

In other words, Magistrates had failed to understand the significance of the changes in penalties introduced by ACPA. Again, even although this may well be true, the matter may be more complex than this.

First, the use of the past tense is significant. Just prior to the passage of ACPA, Emmerson summarised outcomes for RSPCA Qld under the *Animals Protection Act 1925* as follows:

> In 1999-2000, the RSPCA Queensland Inspectorate responded to 9,411 complaints of alleged cruelty, an increase of 506 cases from the previous year. In addition, they placed a record number of 70 prosecutions before the Queensland courts. Courts imposed fines of almost $33,000, and awarded costs of more than $40,000 against defendants . . . The difficulty the RSPCA has in bringing prosecutions is demonstrated by the prosecution list for February to May 2001, which shows that the largest fine imposed was $1,000, with the average being $600. In most cases, costs awarded were less than $500; however two prosecutions involved the awarding of costs of around $10,000.[31]

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29 Graeme Page SC, 'Changing Attitudes and Expectations of the Community and the Relevance of those Changes to Sentencing in Prosecutions commenced under the Animal Care and Protection Act 2001', address to the Queensland Magistrates Conference, 25-28 May 2008, 1-2.

30 Ibid 2.

31 Emmerson, above n6, 12.

By contrast:

> During the period 2007-2008, the RSPCA Qld sought to prosecute 51 new (i.e., not held over from previous years) cases of serious animal cruelty. Of the 51 cases, one resulted in imprisonment (a one month sentence); one offender was given a six month probationary period; one offender was sentenced to 120 hours community service; one offender could not be located; six cases were pending; four were withdrawn; one was dismissed and the remaining 36 cases were resolved by the imposition of a fine. Of these 36, the highest fine given was $6,000, the lowest was $500, and the remaining spread [was concentrated between fines of $1,000 and fines of $2,999].[32]

This shows that Magistrates may be starting to pay greater cognisance to penalties reform. More recent sentencing outcomes in which BLEATS has coordinated legal services for RSPCA Qld prosecutions further bears this out:[33]

Sept 2009	**Man mutilated 7 month old fox terrier 'Peanut' with a pair of secateurs before decapitating him.**	**Maximum penalty of 3 years imprisonment (prosecuted under *Criminal Code*)**
Sept 2009	**Man loaded 120 cattle onto a truck to be transported 1600km. Before the truck was loaded the man was advised of the cattle's appalling condition but the man insisted that they be transported. Unfortunately all of the cattle died on the way.**	**$120,000.**

32 Taylor and Signal, above n 1, 35-36.

33 BLEATS, 'Cases' <http://www.bleats.com.au/cases> at 21 June 2010.

Dec 2009	A man brutally killed 2 kittens by drowning them and a 3rd kitten survived but had suffered a week of abuse - where the man hit, kicked and threw the kitten against walls.	$5000 and 2 years probation, $2499.31 in costs to the RSPCA and undertake 150 hours of community service (and attend other psychological treatment directed by probation officer).
Dec 2009	Woman kept female dog and 8 puppies in squalid living conditions and failed to provide treatment for the dog resulting in the dog's emaciation.	$3,000 fine and ordered to pay $4,426.99 to the RSPCA for their costs.
Dec 2009	Man failed to treat a dog with a severe injury, the dog suffered immensely.	$1200 fine and $681.00 to the RSPCA for their costs.
Feb 2010	Woman failed to treat an advanced skin cancer on a cat, the cat suffered tremendously.	$3000 fine and $73.80 court costs.
March 2010	Woman dumped 8 newborn puppies in a plastic bag into a bin. The puppies were found by a passerby, alive, but had they not been found would have suffered a slow and agonising death.	$2,500 plus 5 year probation ordered. Abandonment matters usually $500-$1,000, but because of the severity of this case the fine was increased.

March 2010	Man left a dog and 10 puppies in faeces laden, putrid backyard and did not feed them or treat them at all. Pups underweight and flee laden.	$3,000 and 5 year probation plus costs to the RSPCA.
March 2010	Woman was living out of her car with 12 Persian cats and 11 Pomeranian dogs. The 12 cats were in cages, with no access to food, water or litter trays. The cats were soaked in their own excrement, had matted hair, ringworm, and extensive skin sores.	$4,000 fine and RSPCA costs of $5,000.
March 2010	Woman surrendered her dog which had suffered severe neglect - flea burdened, mangy coat, had gone blind due to 100s maggots in his eyes, and suffered dental disease.	$5,000 fine and $547.58 costs to the RSPCA.

Secondly, a NSW Magistrate has spoken publicly about sentencing in animal cruelty cases. She urged caution in relation to criticism of sentencing matters generally, and criticised sensationalist media reporting for misinforming the public about the reasons for sentencing in particular cases. When specifically addressing sentencing in animal cruelty cases, she questioned the existence of a coherent set of community expectations:

> [T]here is no unanimous agreement about what society allows as acceptable cruelty – there is a growing segment of the population which is not comfortable with the fact that cruelty in some circumstances is permitted as long as it causes no "unnecessary" pain on the animal. This is an area of growing concern and matters relating to animal rights, animal welfare and animal law are being increasingly addressed all over the world. In many situations our view of cruelty is biased and subjective. In more than 25 years sitting as a Magistrate in

> both city and country areas, I can count on the fingers of one hand the numbers of prosecutions brought for cruelty to animals used in agriculture. I would be surprised if this reflected the extent of animal cruelty in that area of agriculture. Apart perhaps from cases of sadism (cruelty for its own sake) I suggest there would be no general agreement in the community as to an appropriate penalty in any particular case. This comment might apply to many other types of offences, but particularly so in animal cruelty cases. These matters raise high emotion in everyone involved.[34]

This comment powerfully underscores the need for further extensive empirical research into community expectations about penalties and sentencing in animal welfare matters, across all categories of animals, and not just those animals – ie companion animals - where the imposition of harsher penalties is most readily agreed upon by the public. It also highlights the need to address a significant research gap, placing sentencing in animal welfare offence cases in the broader context of sentencing for crimes of violence against humans.

5. Conclusion

The notion of "community expectations" has provided the foundation for reform of animal welfare offence penalties in Queensland, effected most notably through the passage of ACPA. However, the content and application of "community expectations" is not straightforward. Further empirical legal, political and sociological research is required to ensure that we better understand the meaning of "community expectations" and the extent to which they are, and should be, reflected in the regulation of penalties in animal welfare offence cases. If it is found that recent reforms to maximum penalties for cruelty are not being reflected in sentencing outcomes, are still higher statutory penalties required? Are higher penalties the most effective way of ensuring improved welfare outcomes for animals? How can we ensure the community is better informed about animal welfare, including penalties and sentencing in cruelty cases, and what effect will improved understanding have on community expectations about sentencing outcomes?

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34 Sue Schreiner, 'Sentencing Animal Cruelty' in Cruelty to Animals: A Human Problem, Proceedings of the 2005 RSPCA Australia Scientific Seminar, Canberra, 22 February 2005, 43