

AUSTRALIAN ANIMAL PROTECTION LAW JOURNAL

Australia's first animal law journal

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EDITOR

John Mancy

ASSISTANT EDITOR

Jacque Mancy-Stuhl

The AAPLJ is Australia's first animal law journal. It is a forum for principled consideration and spirited discussion of the issues of law and fact affecting the lives of non-human animals. The greatest threat to animals is passivity and ongoing acceptance of the status quo; a status quo most easily maintained through silence.

In this issue of the AAPLJ:

- Keely Boom and Elizabeth Ellis look critically at how animal welfare law enforcement operates in NSW, with a particular focus on the *Prevention of Cruelty to Animals Act 1979*.
- Dr Nik Taylor and Dr Tania Signal report on a study of community attitudes to current penalties for animal abuse, concluding that, at least in the case of cats and dogs, public opinion would support a more harsh response by the criminal justice system.
- Brent Salter completes his two-part consideration of the legal status of animals in Australia's first colonial courts. The first part appeared in (2009) 2 AAPLJ 35.
- Lynden Griggs considers whether existing consumer protection legislation can provide the sort of purchasing information that consumers of animal-based products should know, and proposes "a hierarchical development of civil and criminal sanctions to ensure that consumers are able to make decisions that accord with their own sense of values".

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Concise letters in reply to any of the articles published are always welcomed

The AAPLJ logo was drawn by Christine Townsend who, in 1976, convened the first meeting of Animal Liberation (Australia). - JM.

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Each of these factors is problematic on its own but, taken together, they tend to construct a view of animal cruelty as different from, and less serious than, other criminal conduct. Even within a welfare paradigm that accepts the routine use of animals for human ends, much more is required if animals are to receive meaningful protection.

Lock 'em up and Throw Away the Key? Community Opinions Regarding Current Animal Abuse Penalties

Dr Nik Taylor¹¹⁴ and Dr Tania Signal¹¹⁵

Using data drawn from a sample of the general community in Central Queensland (n=1237) the aims of the present study were threefold. Firstly, to assess public opinion regarding the need for the criminal justice system (CJS) in Australia to take animal abuse seriously, secondly, to assess opinions regarding the appropriateness of current penalties for deliberate animal harm (that results in the death of the animal in question), and thirdly to assess factors that may impact upon these opinions. Over two-thirds of the sample indicated that they thought it very or extremely important for the CJS to take this type of crime seriously. The majority of people also indicated their belief that the current penalties for deliberate animal abuse are not strong enough. Variables which affected these responses included the status of the abused animal, i.e. whether respondents deemed them to be members of the family or not, whether respondents considered the animal in question to be a 'pet' or a 'pest', gender, occupation and income of respondent. Following a discussion of the need for the CJS to respond more harshly to animal abuse, the authors conclude that the public would be in favour of such a move.

Introduction

That animal abuse harms animals is axiomatic. However recent decades have seen large amounts of research and scholarship regarding the broader harms of animal abuse. That is, there is increasing testimony to the fact that animal abuse has deleterious effects on humans who perpetrate and/or witness it. This often manifests in the form of a generalised normalisation of violent and callous attitudes¹¹⁶ towards both humans and animals as well as in the form of links

¹¹⁴ Lecturer, Sociology, Flinders University, GPO Box 2100, Adelaide SA 5001. Tel: 08 8201 2491 Email: nik.taylor@flinders.edu.au

¹¹⁵ Senior Lecturer, Psychology, School of Psychology & Sociology, Central Queensland University, Rockhampton, QLD 4701. Tel: 07 4923 2303 Email: tsignal@cqu.edu.au

¹¹⁶ Piers Beirne, 'From animal abuse to interhuman violence? A critical review of the progression thesis' (2004) 1 *Society & Animals* 39.

between companion animal abuse, domestic violence and/or child abuse. For example, companion animal abuse has been deemed a good indicator of inter-human family dysfunction.¹¹⁷ Beyond this, there is also a growing body of scholars who argue that animal abuse is the outcome of a belief in human superiority/anthropocentrism which, in turn, is deemed linked to environmental destruction/degradation.¹¹⁸ For some, this stems from the same hierarchical worldview which leads to racist and sexist attitudes towards, and oppressions of, other humans.¹¹⁹

Given such broad reaching consequences of animal abuse, it is important that it be taken seriously on both animal and human welfare levels. Despite this, many argue that current legal penalties for animal abuse are inadequate.¹²⁰ Some scholars argue that the current legal system - where protection to animals is extended on the basis of their status as the property of humans - is fundamentally unable to protect animals other than at a superficial level.¹²¹ As Francione argues, it is not possible to secure legal rights for animals within a legal system which designates them as property and where it is a "fundamental premise" (1995, below, p.4) that property cannot have rights. Francione points out that the legal system requires that, in assessing the treatment of animals, human interests be balanced against animal interests. The human interests he refers to are those protected by rights in general and in particular by the right to own property. He concludes that "when we are faced with a human/animal conflict and use the prescribed 'balancing method' to determine whose interests should prevail, the answer is determined from the outset" - animals will necessarily lose.

¹¹⁷ Fiona Becker & Leslie French, 'Making the links: child abuse, animal cruelty and domestic violence' (2004) 13 *Child Abuse Review* 399; Clifton Fynn, 'Battered women and their animal companions: Symbolic interaction between human and non-human animals' (2000) 8 *Society & Animals* 99.

¹¹⁸ Bruno Latour, *Politics of Nature: How to Bring the Sciences into Democracy* (tr. by Catherine Porter, 2004).

¹¹⁹ Charles Patterson, *Eternal Treblinka: Our Treatment of Animals and the Holocaust* (2002); Marjorie Spiegel, *The Dreaded Comparison: Human and Animal Slavery* (1988).

¹²⁰ Joseph Sauder, 'Enacting and enforcing felony animal cruelty laws to prevent violence against humans' (2000) 6 *Animal Law* 1; Gary Francione, *Animals, Property and the Law* (1995); Steven Wise, *Ranting the Cage: Toward Legal Rights for Animals* (2000).

¹²¹ Ibid. Steven Wise 'Hardly a revolution: The eligibility of nonhuman animals for dignity-rights in a liberal democracy' (1998) 22 *Vermont Law Review* 793; Francione, above n5.

However, the fact remains that any redress of animal harm in the current climate must be sought from the criminal justice system (CJS) within current legal paradigms. The current paper reports on an investigation into public opinion regarding the response of the criminal justice system to certain forms of animal cruelty. Here, the CJS is taken to mean the general system of law enforcement which encompasses apprehension, prosecution, sentencing and supervision of those suspected of or charged with criminal offences.

The first section provides some context by detailing animal cruelty cases brought to court by the RSPCA in Queensland during the 2007-2008 period. After that, an overview of research into public attitudes towards animal cruelty is presented, followed by specific details of the current study. The paper concludes with a discussion of the issues raised in the study.

Responses to Animal Cruelty: A Snapshot

In Queensland, animal cruelty is prohibited by the *Animal Care and Protection Act 2001* (ACPA). The maximum penalty for an individual convicted of cruelty to animals is \$100,000 or two years imprisonment. During 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 is shown in the following table.

Table 1

Fines imposed during 2007-08 following RSPCA prosecutions

Fine	Frequency	Percentage
Under \$1000.00	5	13.9%
\$1000 - \$1999	11	30.6%
\$2000 - \$2999	12	33.3%
\$3000 - \$3999	4	11.1%
\$4000 - \$4999	2	5.6%
\$5000+	2	5.6%

Public Opinion Regarding Animal Abuse.

The last two decades have seen increased public agitation regarding issues of animal welfare. This has led to many jurisdictions introducing (or seeking to introduce) new legislation which allows harsher penalties for animal abuse (e.g. the *Animals Legislation Amendment (Animal Care) Bill 2007* in Victoria, Australia which doubled the maximum penalties that may be applied for animal abuse). Similarly, the Humane Society of the United States operated a campaign throughout the 1990s encouraging individual states to adopt animal cruelty legislation which would elevate animal abuse from a misdemeanour to a felony. By 2004, 41 states and Washington DC had done so.¹²² Public opinion also seems to be supportive of harsher sentences within existing laws for animal abuse. For example, BLEATS (Brisbane Lawyers Educating and Advocating for Tougher Sentences) - whose major aim is to focus attention on the "apparent unwillingness or seeming inability of Magistrates to wield their powers under the Animal Care and Protection Act 2001" - have an online petition aimed at encouraging magistrates to more forcefully exercise their powers "in accordance with the intention of the Animal Care and Protection Act 2001 and enforce the maximum penalties upon the perpetrators of animal cruelty." In December 2009, BLEATS reported that 14,500 people had signed the petition (<http://www.bleats.com.au/indexF.html>).

¹²² Michael Allen et al, 'Human to animal similarity and participant mood influence on punishment recommendations for animal abusers' (2002) 10 *Society & Animals* 267.

Survey research indicates that people find animal cruelty problematic. For example, Hills in a survey of 300 people found 99% agreed cruelty towards animals was unacceptable.¹²³ Similarly Braithwaite and Braithwaite in an assessment of Australian university students' attitudes to animal suffering found there was a general distaste for any animal abuse/suffering. This distaste was stronger for abuse/suffering deemed 'unnecessary' (e.g. companion animal abuse) than for that deemed 'necessary' (e.g. medical experimentation).¹²⁴ However, this is complicated by various factors including a lack of a concrete definition regarding animal cruelty and various situational and contextual factors.¹²⁵ For example, previous research shows a consistent gender difference in attitudes towards most animals with females more supportive of animal welfare and wellbeing and more likely to be critical of the various uses and abuses of animals.¹²⁶

In a recent study examining beliefs regarding appropriate punishments for animal abuse, researchers reported that participant gender was one of the strongest predictors of harshness of recommended punishment, female participants being more likely to endorse harsher punishments for animal abuse than males.¹²⁷ An exception to this pattern is that gender does not seem to affect attitudes towards animals deemed pest species.¹²⁸ This suggests attitudes towards animals categorised as pest species are qualitatively different than towards other categories; that companion animals and viable animals are accorded some 'welfare' related attitudes but that pest species are not.¹²⁹ In the development of a scale which discriminates between attitudes towards 'pet', 'pest' and 'profit' animal species, Taylor and Signal point out that research into attitudes towards animals is generally limited to an investigation of attitudes towards animals which are deemed to have value to humans, as opposed to pest animals, which by their very name are generally seen as superfluous (or even detrimental) to human lives.

¹²³ Adelina Hills, 'Motives underlying attitudes toward the use of animals in teaching and research' (1994) 7 *ANZCCART News* 3.

¹²⁴ John Braithwaite and Valerie Braithwaite, 'Attitudes towards animal suffering: An exploratory study' (1982) 3 *International Journal for the Study of Animal Problems* 42.

¹²⁵ Adelina Hills and Nathan Latich, 'Judgments of cruelty towards animals: Sex difference and effect of awareness of suffering' (1998) 11 *Anthrozoos* 142.

¹²⁶ Hal Herzog, 'Gender differences in human-animal interactions: A review' (2007) 20 *Anthrozoos* 7.

¹²⁷ Valerie Sims, Matthew Chin and Ryan Yordon, 'Don't be cruel: Assessing beliefs about punishments for crimes against animals' (2007) 20 *Anthrozoos* 251.

¹²⁸ Nicole Taylor and Tania Signal, 'Pet, pest, profit: Isolating differences in attitudes towards the treatment of animals' (2009) *Anthrozoos* in press.

¹²⁹ *Ibid*.

The specific species (as opposed to 'category') of the animal in question may also play a part in determining responses to animal cruelty.

Cameron, Johnstone and Pious found research participants were more distressed when watching the abuse of animals deemed more similar to humans than watching those deemed less similar.¹³⁰ In a more recent study, Allen et al measured the effect of human-to-animal similarity on recommended punishments for animal abuse. They found that there was a consensus between the amount of fine and jail time recommended and the type of animal being abused. Specifically, respondents thought that the abuse of animals least similar to humans (insects and fish) should attract less punishment and the abuse of animals most closely associated with humans (primates) should attract a higher level of punishment.¹³¹ Similarly, Sims et al reported that harsher punishments were endorsed for acts of cruelty involving a companion animal (specifically a puppy) than when the victim was not a companion animal, in this case a chicken. They suggested that when considering appropriate punishments, individuals focus more on the type of animal involved than the type of cruelty engaged in (or the sex of the perpetrator). Sims et al therefore suggest a need for research to focus on differences in attitudes to appropriate punishment for deliberate acts of cruelty against animals in the same 'category', specifically companion animals such as cats and dogs.¹³²

If attitudes towards animal cruelty punishments differ according to animal category (eg 'pet', 'pest', or 'profit' species), and/or by the given animals similarity to humans, then this has implications for policy initiatives aimed at securing general animal wellbeing. It may be that public support will be limited to legislation aimed at securing better welfare for companion and commercial animals but not pest species. A difference in attitudes to different animal categories (and attendant punishment for cruelty to them) has broader implications.

Research has suggested that those who are deliberately cruel to certain animal species may have an elevated propensity for violence and be more likely to develop anti-social and aggressive behaviours later in life.¹³³ Even though much of this research has been conducted with

incarcerated samples utilising self-reports of childhood experiences of animal cruelty (with the inherent risks involved in this type of retrospective methodology), researchers are consistently reporting that those who engage in animal cruelty from a young age often target cats specifically.¹³⁴ Tallichet et al also reported that those who begin harming animals at a young age also reported engaging in more instances of animal cruelty than those who reported cruelty offences from a later age.¹³⁵ Similarly, researchers have reported that males convicted of the most violent human-related offences are significantly more likely to abuse both pets and stray (or pest) animals.¹³⁶ So, it's important when assessing attitudes towards CIS responses to animal abuse to try to discriminate by animal category, as well as species, where possible.

As outlined above, it's reasonable to assume the public will be less supportive of legislation designed to punish those who are cruel to pest species than those who are cruel to companion species. Given the evidence cited above, regarding the links between high levels of human directed violence and harm across animal categories (including pest species), this lack of public support may need addressing in the early stages of any pressure to change legislation.

A further factor which may play a role in determining public support for harsher animal cruelty penalties is the perception of a given actor's own awareness of the cruelty of their actions.

Utilising 501 undergraduate business students (252 female, 249 male) Hills examined attitudes towards animal cruelty. She specifically assessed the effect an actor's own awareness of causing suffering to an animal had on participants' judgments about the cruelty of that person as well as the cruelty of what happened. She found that "judgments of what happened were made independently of judgments about the cruelty of the person responsible for what happened. Awareness of suffering

¹³⁰ Scott Pious, 'Psychological mechanisms in the human use of animals' (1993) 49 *Journal of Social Issues* 11.

¹³¹ Allen et al, above n17, 267.

¹³² Sims et al, above n14, 251.

¹³³ Suzanne Tallichet and Christopher Hensley, 'Rural and urban differences in the commission of animal cruelty' (2005) 49 *International Journal of Offender Therapy and*

Comparative Criminology 711; Suzanne Tallichet et al 'Targets for cruelty: Demographic and situational factors affecting the type of animal abused' (2005) 18 *Criminal Justice Studies*, 173.

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ Linda Merz-Perez, Kathleen Heide and Ira Silverman, 'Childhood cruelty to animals and subsequent violence against humans' (2001) 45 *International Journal of Offender Therapy and Comparative Criminology* 556.

clearly influenced judgments about the cruelty of the person, but had little effect on judgments about the cruelty of what happened".¹³⁷

Similarly, public opinion about appropriate penalties for animal cruelty are subject to contextual and individual factors. Vollum, Buffington-Vollum and Longmire analysed the results of several questions regarding animal abuse contained within the 2001-2002 Texas Crime Poll. Results of particular relevance to the current study included the fact that for "intentionally running over a cat or a dog with a car" 40% of respondents endorsed jail time; 57.2% endorsed either a fine or probation; and only 2.8% endorsed no punishment. For "intentionally harming or killing another person's pet" 66.7% of respondents endorsed jail time; 32.1% endorsed a fine or probation; and only 1.2% endorsed no punishment.¹³⁸

In summary, international research seems to indicate that animal abuse should be taken seriously for the associated welfare/wellbeing of humans. Moreover, given that animals clearly suffer when abused there is a need to take animal abuse seriously for the wellbeing of the animals themselves.

Extant research also demonstrates that the public in general is supportive of increasing penalties for animal abuse. Furthermore, 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. Whilst the latter is beyond the scope of the current study, save for an investigation into certain demographic variables, the aim of the current study is to assess the general public's opinions regarding both the need for the CJS to take animal abuse seriously and the suitability of current penalties for deliberate animal harm. In order to begin to tap into differences regarding animal category and species, the questions were written to elicit differences in opinion regarding the severity of animal abuse for both cats and dogs. These two species were chosen because dogs in Australia are firmly considered to be 'pet'

species whilst cats have a more ambiguous status in that many believe them to be a pest species.¹³⁹

The Current Study

A telephone survey was administered by the Centre for Social Science Research at Central Queensland University to a random sample of 3171 adults over 18 who were residing in Central Queensland at the time. The survey resulted in a sample of 1237 valid responses from 619 males and 618 females. This represents a 39% response rate. As part of the annual Central Queensland Social Survey (CQSS), researchers were invited to contribute up to 10 questions which reflected their research interests. The survey instrument consisted of three components: a standardized introduction, demographics, and researcher-contributed questions. Demographic questions included: gender, age, marital status, strength of religious belief, length of time living in the current community, income, and political beliefs.

Further demographic information on the following was also collected:

- education level (Primary, Secondary, Tertiary - technical, Tertiary - university).
- current occupation (coded using major categories listed within an online job search engine (www.seek.com.au) resulting in seven categories.
 - Primary Industries: Food (e.g., farmer, grazier, meat industry worker etc);
 - Primary Industry: Mineral (e.g., miner);
 - Education;
 - Healthcare;
 - White Collar;
 - Blue Collar;
 - Other.
- employment status (Unemployed, Pension, i.e., in receipt of other state benefit, Student, At Home, Employed).

¹³⁷ Hills, above n12, 146.

¹³⁸ Scott Vollum, Jacqueline Buffington-Vollum and Dennis Vollum 'Moral disengagement and attitudes about violence toward animals' (2004) 12 *Society & Animals* 209.

¹³⁹ www.hivisiveanimals.com

The researcher directed questions were:

1. How important do you think it is for the CJS to take deliberate companion animal abuse seriously – when the victim is a DOG? [1=Not at all important, 2=Slightly important, 3=Important, 4= Very important, 5= Extremely important]
2. How important do you think it is for the CJS to take deliberate companion animal abuse seriously – when the victim is a CAT? [same answer options as Q.1]
3. If a companion animal dies due to deliberate abuse what kind of response from the CJS is appropriate if that animal is a DOG? [fail time, Fine, Probation, Community Service or No response needed]
4. If a companion animal dies due to deliberate abuse what kind of response from the CJS is appropriate if that animal is a CAT? [same answer options as Q.3]
5. On a scale of 1-5, do you think that current legal penalties for deliberate companion DOG abuse are strong enough? [1=Not all strong enough, 2=Sometimes strong enough, 3=About right, 4=Usually too strong, 5=Always too strong]
6. On a scale of 1-5, do you think that current legal penalties for deliberate companion CAT abuse are strong enough? [same answers options as Q.5]
7. Do you consider companion DOGS to be members of the family? [YES/NO]
8. Do you consider companion CATS to be members of the family? [YES/NO]
9. Do you think that domesticated DOGS are pets or pests? [PET/ PEST]
10. Do you think that domesticated CATS are pets or pests? [PET/ PEST]

The 2007 Central Queensland Survey sample was drawn from a telephone database using a computer program to select, with replacement, a simple random sample of phone numbers within the region. All duplicate, mobile and business numbers were removed from the computer-generated list. Nursing homes and other collective dwellings (e.g. youth hostels) were also deleted from the sample. Within the household, one person was selected as the respondent for the 20-minute interview based on gender and age in order to ensure a representative sample of the Central Queensland population.

Results

Following receipt of the data set (in SPSS for Windows, v.15), data cleaning and consistency checks resulted in 1237 cases being utilised in the following analyses.

How important do you think it is for the CJS to take deliberate companion animal abuse seriously when the victim is a dog/cat?

Table 2 presents the distributions of responses to the above question. Although respondents generally endorsed the idea that it is important for the CJS to take this type of abuse seriously (approximately 72% and 67% very to extremely important when the animal involved was a dog or cat respectively) the pattern of responses was significantly different depending on the type of animal involved ($t(2472)=-3.539$, $p=0.000$). That is, respondents tended to see the deliberate harm of a companion dog as more worthy of concern than the abuse of a cat.

Table 2

Percentage of respondents endorsing 'How important do you think it is for the CJS to take deliberate companion animal abuse seriously when the victim is a dog/cat?'

	DOG	CAT
	%	%
Extremely important	47.9	44.6
Very important	24.1	22.0
Important	21.7	22.8
Slightly important	4.7	5.7
Not at all important	<1	3.8
Don't Know/No response	<1	<1

Examination of the interactions between respondents' ratings for the above question and various demographic items (personal income level, occupation, education, age, gender, whether dog/cat is perceived as a 'member of the family' [yes/no]; whether dog/cat are seen as a pet or a pest) revealed that while education level had no observable effect ($F_{\text{dog}}(4,1224)=0.480$; $p=0.750$; $F_{\text{cat}}(4,1223)=0.149$; $p=0.963$) all of the other demographic variables significantly affected ratings of importance. That is, higher importance was ascribed to the CJS taking this type of abuse seriously by women ($F_{\text{dog}}(1223)=5.035$; $p=0.000$; $t_{\text{cat}}(1146)=7.359$; $p=0.000$); those on incomes of less than \$1,000/week (3,910)=3.982; $p=0.008$; $F_{\text{cat}}(3,906)=7.411$; $p=0.000$); those employed in the Health sector vs. Primary Industry: Food and Minerals (cats only; $F_{\text{dog}}(6,775)=1.969$; $p=0.068$; $F_{\text{cat}}(6,775)=3.201$; $p=0.004$); those who perceive dog/cats as members of the family ($F_{\text{dog}}(1198)=11.039$; $p=0.000$; $t_{\text{cat}}(296)=11.259$; $p=0.000$) and those who perceive dog/cats as pets rather than pests ($F_{\text{dog}}(1177)=5.925$; $p=0.000$; $t_{\text{cat}}(196)=10.188$; $p=0.000$). While age proved to have a significant effect ($F_{\text{dog}}(5,1217)=2.538$; $p=0.027$; $F_{\text{cat}}(5,1215)=2.794$; $p=0.016$), post hoc analyses (Tukey's) showed that the source of the difference was between those participants in the 25-34 and 55-64 year old brackets, with the younger group endorsing a higher level of importance than the older group.

Significantly, while almost 20% of respondents felt that cats were not a member of the family, less than 10% said the same about dogs. Similarly over 14% of respondents considered cats a pest species while less than 2% thought the same about dogs.

Attitudes towards the current legal penalties for deliberate abuse of a companion dog/cat

Despite the differences seen above, when participants were asked for their opinions regarding the current legal penalties for deliberate companion animal harm (i.e. not harm caused by neglect) there was no difference in the pattern of responding dependent on species. As can be seen in Figure 1, by far the largest cohort of respondents suggested that current penalties were 'Not at all strong enough', with less than 4% suggesting that current penalties were too strong (3.6% and 3.8% for dogs and cats respectively).

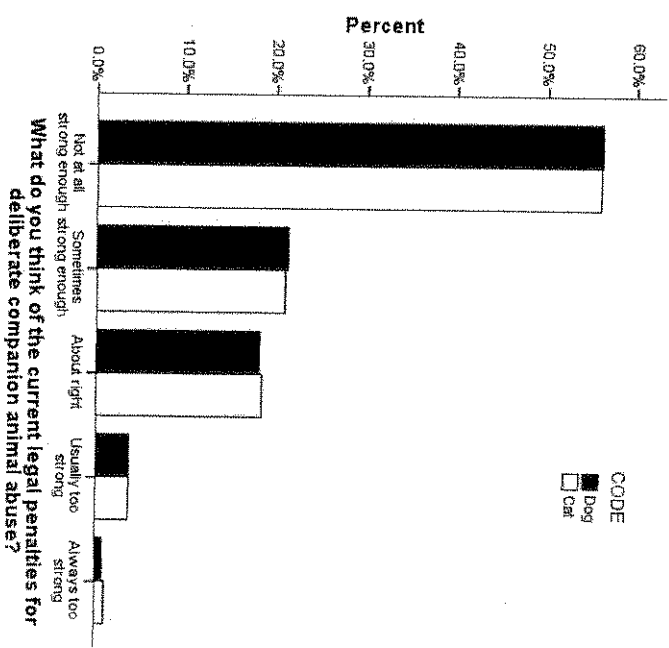


Figure 1. Opinions of the current legal penalties for deliberate companion animal abuse (dog/cat)

Appropriate CJS response when a companion animal (dog/cat) dies due to deliberate abuse.

Participants were given five possible CJS responses (Jail time; Fine; Probation; Community Service or 'No action needed') and asked which they thought would be the appropriate response in a situation where a companion animal (dog/cat) dies as a result of deliberate abuse. As can be seen in Figure 2, for both species the largest cohort of respondents suggested Jail time (42.8%, $n=530$; 41.6%, $n=515$ dog and cat respectively) followed by Fine (29.3%, $n=363$; 29.7%, $n=368$ dog and cat respectively). More respondents endorsed the 'No action needed' option when the animal involved was a cat (2%, $n=24$ vs 0.7%, $n=9$).

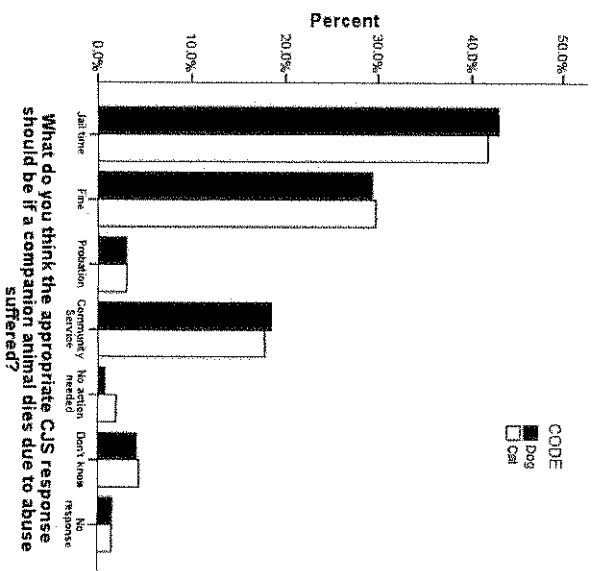


Figure 2. Appropriate CJS response when a companion animal (dog/cat) dies due to deliberate abuse.

Public Opinion, Animal Abuse and the Criminal Justice System

The aims of the study were to assess public opinion (using a large, normative, community sample) on two aspects of animal abuse penalties. The first aspect was the need for the CJS to take animal abuse seriously and the second concerned the appropriateness of current penalties for deliberate animal harm that results in the death of the animal. The study aimed to assess some of the factors that may impact upon these opinions. More than two-thirds of the sample thought it very or extremely important for the CJS to take this type of crime seriously (regardless of animal type). This result mirrors that of

previous research and supports the calls of groups such as BLEATS for all members of the CJS to take instances of animal abuse seriously.¹⁴⁰

Attitudinal variables that influenced respondents' ratings of importance included their belief in the status of the abused animal (i.e. whether respondents saw them to be family members, a 'pet', or a 'pest'). Following suggestions from previous research,¹⁴¹ respondents' opinions were sought as to the CJS response to animal abuse across two species – cats and dogs – in order to differentiate between animals deemed by the majority to be pets (dogs) and animals which occupy a more ambiguous status in Australian society (cats). Where an animal was deemed a pest, or not a family member, average ratings on the importance of the CJS taking the abuse seriously were significantly lower. So, it may be that implementing harsher penalties for abuse of non-pet species (e.g. pest or stray/wild animals) will prove more problematic than for companion animals – or at least commonly accepted companion animals (i.e. dogs cf. cats). However, in light of emerging evidence of the elevated risk for interpersonal violence within cohorts that abuse across animal categories, and particularly 'stray' or 'pest' species, it's imperative that animal abuse is taken seriously by the CJS regardless of the status of the animal in question.¹⁴² As Sauder argues, "prosecutors must treat even minor acts of cruelty seriously and recommend appropriate sentences and treatment as a condition of sentence and/or probation in order to prevent future violent conduct."¹⁴³

Thus, given the compelling nature of various evidence to date, the State in all its manifestations has to be willing to clearly signal the unacceptability of *any* animal abuse. The CJS, and particularly the judiciary, have an important role here and need to make sure they take 'pest' and 'wild' animal abuse as seriously as companion animal abuse despite the former's more ambiguous status within the legal system. Recent cruel and abusive acts reported by the media, such as the slaughter of koalas at Kallangur and the bashing of a blind, elderly flamingo at Adelaide Zoo provide ample opportunity.

¹⁴⁰ Sims et al, above n14, 251.

¹⁴¹ Sims et al, above n14, 251.

¹⁴² Tallicet and Hensley, above n20, 711; Tallicet et al, above n20, 173.

¹⁴³ Sauder, above n5, 1.

As with previous research regarding willingness to report instances of animal abuse and attitudes to animals, the study found gender was an important factor. Females were more likely to think it more important that the CJS take animal abuse seriously irrespective of the species of animal.¹⁴⁴

Income was also a factor. Those in the lower income bracket thought it more important that the CJS take abuse seriously.

Occupation was also a factor. Those employed within the Health sector considered it more important than those in other sectors, and were significantly more likely to rate this type of crime as extremely serious than those employed within the Primary Industries – Food sector (for cats this difference also applied to Primary Industries – Mineral). This may well be because Health sector workers, on the frontline, are more likely to see consequences of links between animal abuse and familial abuse. Similarly, research consistently shows that those employed within primary industries display a more utilitarian and/or “dominionistic” attitude towards animals, which may account for their not considering it as important.¹⁴⁵

Age affected opinions on a need for the CJS to take animal abuse seriously in that younger people (specifically 25-34 year olds) rated it more important. Although reasons for this are unclear, it may be related to the trend for 25-34 year olds to be living in single person dwellings where companion animals may take the place of traditional families. This would potentially elevate the proportion of those in this group who deem dogs/cats as family members – a variable shown to elevate the average importance ascribed to animal abuse.

The most surprising finding regarding the appropriateness of current applications of penalties for animal abuse, is that attitudinal differences due to the species in question disappear. That is, the majority of people considered current penalties were not strong enough irrespective of whether the animal in question was a cat or a dog. The fact that this overwrites previously demonstrated species differences suggests it is

¹⁴⁴Nicola Taylor and Tania Sigel, ‘Community demographics and the propensity to report animal cruelty’ (2006) 9 *Journal of Applied Animal Welfare Science* 201; Tania Sigel and Nicola Taylor, ‘Attitudes to animals: Demographics within a community sample’ (2006) 14 *Society & Animals* 147.

¹⁴⁵Ibid 147; Stephen Kellert, ‘American attitudes toward and knowledge of animals: An update’ (1980) 1 *International Journal for the Study of Animal Problems* 87; Vollum et al. above n25 (wrong cross-reference), 209.

something strongly felt by the community, which in turn suggests that they would support measures designed to increase the penalties applied for deliberate animal abuse. Related to this, when interviewees were asked what they thought the appropriate response of the CJS was for animal abuse where the animal in question died, the most common response was ‘Jail Time’, again irrespective of whether the animal in question was a cat or a dog. This is in stark contrast to the ‘normal’ CJS applied penalty which tends to be a fine.¹⁴⁶ However, it is noted that more people endorsed the ‘no action needed’ option when the animal was a cat, again suggesting that the ‘category’ of animal involved is a factor in community opinion.

Conclusion

In summary, it can be said that the general public are strongly in favour of the CJS considering the abuse of dogs and cats a serious crime which should attract serious penalties.

An increasing number of animal crimes occurring and/or being reported suggests the CJS may well have to rethink the approach to animal cruelty.

An RSPCA Qld spokesperson, Mr Michael Beatty, said recently that the organisation had investigated more than 12,000 cases of animal cruelty and neglect in a recent 12 month period. Given the levels of cruelty to animals involved and attendant animal suffering and the growing amount of evidence pointing to the potentials for deleterious effects for humans the pervasiveness of this type of abuse is concerning. One way to tackle this kind of abuse at its source is to firmly convey its unacceptability to the community as well as to the individual perpetrators. The CJS is “a powerful agency of public disapproval and reparation” and is uniquely placed to do just this.¹⁴⁷ Evidence presented from the current study suggests not only that the public wish to see this response from the CJS but that they are sufficiently concerned about animal cruelty to support any future initiatives aimed at extending punitive measures for animal cruelty. How extended punitive measures should play out is an open question. For example, whether the public

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http://www.liveneews.com.au/Articles/2008/10/21/Puppy_killing_the_worst_act_of_animal_cruelty_RSPCA

¹⁴⁷ Robyn Holder, ‘Domestic and family violence: Criminal justice interventions’ (2001) 3 *Australian Domestic and Family Violence Clearinghouse Issues Paper* 2.

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.

Finally, one major philosophical supposition of the paper must be discussed.

The aims of the study were to begin to assess the factors which affect community opinions about the abuse of two animal species - cats and dogs - who are, to a greater or lesser degree, accorded the status of companion animal. This deliberately excludes other species, such as farmed animals, who are routinely the victims of large scale institutionalised violence.¹⁴⁸ Whilst this leaves us open to the charge of 'selective indignation',¹⁴⁹ it was a deliberate methodological choice. Not only is the kind of animal abuse investigated in the current article more readily amenable to control and thus more 'susceptible to correction and enforcement',¹⁵⁰ it is also readily identifiable to the majority of people who might question the very idea that farming practices constitute institutional violence. As such, the kinds of scenarios presented to our respondents were less likely to create controversy and more likely to be answered appropriately *within the confines of the current study*. Still needed is an assessment of community attitudes towards routine, institutional violence done daily to animals.

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- ¹⁴⁹ Geertu Cazaux, 'Beauty and the Beast: Animal Abuse from a Non-Speciesist Criminological Perspective' (1999) 31 *Crime, Law & Social Change* 120.
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Possess or Protect? Exploring the Legal Status of Animals in Australia's First Colonial Courts:

Part 2 - Seals, strays and sovereignty

Brent Salter *

In the previous issue of the *Australian Animal Protection Law Journal*, some of the earliest records involving the interaction between animals and the first criminal court of New South Wales were examined.¹⁵¹ Part 2 continues to examine the extent to which animals appeared as prominent characters in the first courts of Australia in the context of the civil jurisdiction and some of the first cases to consider British sovereignty, citizenship and the reception of British law. Despite the central role of animals in the development of colonial law, Part 2 further explores the notion that the legal status of animals continued to be defined in terms of their utility as subjects of property rather than their personal protection.

III COMMERCE AND THE CIVIL COURT

a) The structure of the Court of Civil Jurisdiction

The Court of Civil Jurisdiction, like the Criminal Court, was also established by the First Charter of Justice, although it was not mentioned in 27 Geo.3, c.2. Instead of a judge and civil jury as in the superior common law courts of first instance in England, it was composed of the Judge Advocate and two "fit and proper persons", appointed by the Governor. These two assessors (as they came to be called) were not required to be military or naval officers. The court had a general civil jurisdiction to be exercised in a summary way over all commercial and personal pleas, including those over interests in land. It was also empowered to grant probate and issue letters of administration for deceased estates. The Charter did not mention equity, but the court

* Legal Research Officer, High Court of Australia, 2009-2010
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