

## *Sentencing Under Our Anti-Cruelty Statutes: Why Our Leniency Will Come Back To Bite Us*

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In a time when the law and order debate has focussed on the leniency of sentences handed down to violent offenders, some criminals are still getting away with murder. The crimes carried out by these social deviants are often as bloody and violent as the worst crimes against women, children and other vulnerable persons. However, what differentiates these criminals, what absolves their criminal behaviour, is that their victims are animals.

### **A cause for concern**

The primary piece of legislation in New South Wales (NSW) that aims to protect animals from acts of cruelty is the *Prevention of Cruelty to Animals Act 1979 (NSW)* ('POCTAA'). In 2000-2001, the Royal Society for Prevention of Cruelty to Animals ('RSPCA') prosecuted 105 defendants for 239 offences under that Act. A number of those prosecutions involved charges of aggravated cruelty. For example, in October 2001, Luke Park appeared before Ryde Local Court after allegedly putting his sister's kitten in a freezer for up to 40 minutes, attempting to set fire to its whiskers, spraying it with an aerosol can and throwing steak knives at it before stoning it to death.

Two days after Park's case was heard, Trevor Duffy appeared before Coffs Harbour Local Court charged with beating his dog to death with an iron bar. Duffy allegedly attacked his dog, 'Tess', after he found her carrying a kitten in her mouth. Tess's skull was cracked with the force of the initial blow from the iron bar and her eye was knocked out of its socket but the beating continued until she died from massive head injuries. Both Park and Duffy pleaded guilty to aggravated cruelty. The maximum penalty they were liable for was a fine of \$11,000 or 2 years imprisonment. However both men were released on good behaviour bonds<sup>1</sup>.

The lenient sentences handed down in these cases are consistent with sentencing trends under the POCTAA (JIRS 2002). Between January 1996 and December 2000, only 3% of offenders who committed acts of animal cruelty were imprisoned. Of those who were imprisoned, 80% were imprisoned for four months or less. 75% of offenders were fined (98% of whom were fined \$1,000 or less), 20% of charges were dismissed in their entirety or dismissed on the basis that the persons enter into a bond and 2% of offenders received community service orders.

There was little discernible difference between the harshness of sentences handed down to offenders who committed an act of 'aggravated' cruelty as opposed to those sentenced for 'non-aggravated' cruelty (JIRS 2002). In fact the bulk of aggravated cruelty cases were still dealt with by way of a fine or a bond of \$1,000 or less, with a mere 5% of cases resulting in sentences of imprisonment.

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<sup>1</sup> Shortly after Luke Park's sentence was handed down, it was appealed on the grounds of leniency. At the time of writing this comment, the appeal had not been heard.

These sentencing trends are a grave cause for concern because they disregard the increasing body of anecdotal evidence and research that links repeated, intentional, abuse of animals to a variety of violent anti-social behaviours (Lockwood 1999:81). Stephen Kellert and Alan Felthous' studies of serial killers, mass murderers, arsonists, serial rapists and sexual homicide perpetrators in the United States suggest that animal abuse is often a childhood characteristic of violent offenders (Frasch et al 2000:697). For example, mass-murderer and cannibal Jeffrey Dahmer had a history of killing neighbours' pets and once impaled a dog's head on a stick. In a similar pattern, Albert DeSalvo, the 'Boston Strangler', was infamous for shooting arrows into boxes of trapped cats and dogs (Shelburne 2001).

Closer to home, serial killers Martin Bryant (the Port Arthur gunman) and John Travers (one of the killers of Anita Cobby), both had a history of animal cruelty (Mullen 1996; Abru 2000:33). In the recent NSW Supreme Court case of *Regina v Robinson*, the accused pleaded guilty to brutally murdering and mutilating his victim. During the hearing, the Court was told of numerous separate incidents stemming from the accused's childhood, in which he had committed acts of shocking and repugnant cruelty towards animals.

The importance of animals as social sentinels is also evidenced in the household. A British study conducted by James Hutton showed that 83% of families reported for animal abuse had also been identified as at-risk families for child abuse and other violations by social service agencies (Hutton 1983:697). Abusive parents may kill, or threaten to kill pets, to coerce children into sexual abuse or to remain silent about such abuse (Arkow 2000). Battered women often report that their husbands have injured or killed their family pets and disturbed children have been known to kill animals prior to committing suicide (Arkow 2000).

The evidence therefore suggests that animal cruelty is rarely an isolated incident. In fact it is more likely to occur before, after or simultaneously with other criminal behaviour. In this sense, animal cruelty is part of a broader scheme of community-based violence. (Frasch et al 2000:697.) That being the case, it is imperative that our judges heed the warning signs of deviant behaviour. If Courts continue to release the bulk of animal cruelty offenders on probation, it may only be a matter of time before those who commit crimes against animals turn their attention to us.

## **The moral dilemma**

Notwithstanding the evidence described above, there is a further reason for taking a tougher and more creative approach to sentencing animal cruelty offenders. As the enactment of the POCTAA has demonstrated, many Australians consider the treatment of animals 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.

### ***The current legislative and policy framework***

Judges and magistrates responsible for sentencing offenders under the POCTAA look to the *Crimes (Sentencing Procedure) Act 1999* (NSW) for guidance. As that Act is predicated on the basis that imprisonment is a last resort, the legislation provides an array of sentencing options including periodic detention, home detention, community service orders, good behaviour bonds, dismissal of charges, conditional discharges of offenders, suspended sentences and fines. The only genuine limitation on the sentencing process is that the POCTAA provides maximum penalties for all offences and the Court must keep those limitations in mind.

Sentencing outcomes are also influenced by the 'proportionality principle' which has been endorsed by the High Court on a number of occasions (*R v Williscroft*; *Veen v R*; *Veen v R (No 2)*). That principle prohibits the Court from imposing a sentence that is disproportionate to the gravity of the crime. In effect, it requires a Court to consider the objective circumstances of an offence before tailoring the sentence to the particular accused, taking account of any personal mitigating factors present.

Notwithstanding the legislative limitations, the sentencing process in NSW is generally discretionary, and every sentence imposed is said to represent the sentencing judge's 'instinctive synthesis of all the various aspects involved in the punitive process' (*R v Williscroft* 1975:300). When sentencing offenders, judges consider objectives such as retribution, deterrence, rehabilitation, denunciation and community protection. However, as these purposes are difficult to reconcile, sentences are arguably a product of the purpose deemed appropriate in the circumstances of the case (*Fox & Freiberg* 1999:203).

### **Fitting the punishment to the crime**

Whilst acknowledging that imprisonment is a last resort, there are clearly compelling reasons for Courts to give greater weight to the 'community protection' and 'deterrent' objectives of sentencing. It is imperative that the maximum penalty provided by the legislation be imposed in the 'worst cases'. At present, it is not being imposed at all. Animal welfare organisations such as the RSPCA have fought hard to ensure that harsh penalties are provided for in the POCTAA. However, if those penalties are not enforced, the toughest anticruelty legislation will be rendered futile.

Of course incarceration is not always the answer. Animal cruelty will not simply end if judges and magistrates choose to 'get tough' on offenders (*Lockwood* 1999:86). The real solution lies in employing a range of creative sentencing options. This requires the cooperation of politicians, law enforcement agencies and the judiciary. As a preliminary step, it requires parliament to give due consideration to introducing cross-reporting requirements into relevant legislation. Those provisions would require law enforcers such as child protection agencies, firefighters, police officers, animal cruelty inspectors and ambulance officers to report cases of suspected cruelty to humans or animals to the relevant authority.<sup>2</sup>

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2 Provisions of this nature already exist in California, Florida, Ohio and the District of Columbia. See *California Penal Code* ss 11165 and 11166 (West 1998); *Fla Stat Ann* s828.03(1) (West 1997); *Ohio Rev Code Ann* ss1717.04, 1717.06, 1717.09, 1717.14 (West 1994); *DC Code Ann* ss32-908 to 909 (1996). See Frasch et al. (1999) 'State Animal Anti-Cruelty Statutes: An Overview', *Animal Law*, vol 5, p 74.

Consideration should also be given to introducing provisions that require veterinarians to report suspected cases of animal abuse. Whilst veterinarians are in a good position to detect cases of animal cruelty, the law does not require them to act upon their suspicions (Lawrie 2001:14). This contrasts with duties placed on doctors and teachers to report cases of child abuse.<sup>3</sup> There are a number of disincentives for veterinarians to report cruelty. Some examples include fear of personal reprisal from offenders that are reported, potential loss of clients, lack of training about how to deal with cruelty cases and concern about ethical duties or duties of confidentiality (Lawrie 2001:14). Notwithstanding several jurisdictions in the United States have introduced provisions that require veterinarians to report suspected or known cases of animal cruelty.<sup>4</sup> Certain of these jurisdictions provide civil immunity for veterinarians who instigate investigations of suspected cruelty. Given the growing number of reports that link animal cruelty to other forms of violence, the importance of veterinary professionals in identifying instances of abuse needs to be acknowledged and, arguably, enshrined in legislation.

Another proposal for broadening sentencing options under the POCTAA would be to enable Courts to order that fines be paid into an Animal Cruelty Prevention Fund instead of forming part of Consolidated Revenue. The RSPCA often spends considerable sums in prosecuting cases and providing abused animals with veterinary treatment. Those costs are not always recovered and the purpose of an Animal Cruelty Prevention Fund would be to minimise the RSPCA's losses in those cases in which reimbursement was not specifically ordered.<sup>5</sup>

Of course, even if these reforms were to be enacted, the ultimate responsibility for giving effect to the reforms lies with our judges and magistrates. It is the commitment and awareness of the judiciary that will change current trends in lenient sentencing under the POCTAA. A more creative sentencing regime would see the Courts distinguish between offenders convicted of cruelty and aggravated cruelty. It would require the Courts to make greater use of rehabilitative mechanisms such as compulsory counselling, psychological assessment, work and life skills instruction and training in anger management or non-violent conflict resolution (Lockwood 1999:84). Courts must also have the foresight to take a tougher line when sentencing repeat or violent offenders.

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3 In the recent High Court case of *Sullivan v Moody; Thompson v Cannon* [2001] HCA 59 (11 October 2001), it was alleged that the respondents had acted negligently in reporting suspected instances of child abuse. The Court held that medical practitioners, social workers and departmental officers involved in investigating and reporting upon allegations of child sexual abuse did not owe a duty of care to suspects.

4 Provisions of this nature already exist in California, Florida, Idaho, New Hampshire and Oregon. See *California Business & Professional Code* s4380.5 (West 1990), *Fla Stat Ann* s828.12(3) (West 1997), *Idaho Code* s25-3514A (Supp. 1998); *N.H. Rev. Stat. Ann.* s644:8 (1996); *Or Rev Stat* s686.445 (1997). See Frasch et al. (1999) 'State Animal Anti-Cruelty Statutes: An Overview', *Animal Law*, vol 5, p 74.

5 For example, in Colorado, the Animal Cruelty Prevention Fund assists with costs associated with the care, treatment, or shelter of animals that have been subjected to cruelty. It also pays the costs of court-ordered anger-management treatment programs and other psychological evaluations and counselling for offenders. See *Colorado Revised Statutes*, ss. 18-9-201.7

In the end, animal cruelty is not just an issue for the animal welfare lobby. People who commit acts of cruelty against animals are striking out against social norms and demonstrating a level of moral numbness that should concern society as a whole. Surely it is time to heed the warning signals that these offenders are sending, and encourage our lawmakers to ensure that the punishment fits the crime.

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*R v Williscroft, Weston, Woodley & Robinson* [1975] VR 292 at 300.

*RSPCA v Trevor Duffy*, Case no 40873/01/57, Coffs Harbour Local Court, 16 October 2001.

*Veen v R* (1979) 143 CLR 458 at 490.

*Veen v R (No 2)* (1988) 164 CLR 465 at 472.

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*Children And Young Persons (Care And Protection) Act 1998* (NSW), s 27.

*Crimes (Sentencing Procedure) Act 1999* (NSW), ss 5-17.

*Colorado Revised Statutes*, ss 18-9-201 7.

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