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Proposed amendments to animal cruelty penalties under the Qld Criminal Code

This Research Brief looks at the Queensland Government proposal to introduce amendments to the Queensland Criminal Code which will increase the maximum penalties for serious animal cruelty cases. The Research Brief also considers community comment on the proposed amendments and provides a comparative review of the penalties available under anti-cruelty legislation across the various Australian jurisdictions.

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Readers may also wish to refer to the report on the Bill by the relevant portfolio committee (or other committee nominated when the Bill was presented) and the Parliament's Record of Proceedings (Hansard).

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Key Points

1. The Queensland Government has announced a proposal to introduce legislation to amend the [Queensland Criminal Code](#) to create a new offence of serious animal cruelty.
2. This proposed new serious animal cruelty offence will apply to anyone who intentionally inflicts severe pain and suffering on an animal.
3. The anticipated maximum penalty for this new offence will be seven years jail.
4. Currently, the two key pieces of legislation dealing with animal cruelty in Queensland are:
 - the [Animal Care and Protection Act 2001 \(Qld\)](#) (“ACPA”); and
 - the [Queensland Criminal Code](#).

Under s 18 of the ACPA, if a person is cruel to an animal, then the maximum penalty is \$100,000 or two years imprisonment.
5. The key provision in the Queensland Criminal Code relating to animal cruelty is s 468 (Injuring Animals). This section provides that a person who wilfully wounds an animal capable of being stolen is guilty of an indictable offence. The penalty ranges from:
 - imprisonment for 7 years, if the animal is stock; to
 - imprisonment for 2 years, in any other case, or 3 years if the offence is committed at night.

The offender may also be liable to pay a fine of between \$400 and \$50,000 either in addition to or instead of imprisonment.
6. A number of gaps have been identified in the existing Queensland Criminal Code provisions. For example, the Queensland Criminal Code provisions do not apply to:
 - wild animals, as they are not owned by anyone and can not be stolen; and
 - domestic pets or farm livestock where the suffering is inflicted by the animal’s owner.

See the joint [Ministerial Media Statement](#) issued by the Hon [Anna Bligh](#) MP and the Hon [Paul Lucas](#) MP on 14 March 2011.
7. The main reason for the amendments appears to be due to the spate of cruel attacks on animals in recent times, in particular, the following recent high profile cases involving:
 - [Elf, the Shetland pony](#) where a father and son dragged a Shetland pony behind a vehicle along a road at speeds of up to 40km/h;
 - [Sticky, the puppy](#) where a man super-glued the eyes of his four month old Cavalier King Charles Spaniel and beat him; and
 - the flogging of a mare by a Texan stockman in North Queensland.

For further clarification and analysis of the relevant issues, the reader should consult the full text of the Research Brief.

The greatness of a nation and its moral progress can be judged by the way its animals are treated.

Mahatma Gandhi¹

1 Background

The Queensland Government has announced a proposal to introduce legislation that will more than triple the maximum penalty for serious animal cruelty cases.

The proposed legislation, originally anticipated to be introduced to the Queensland Parliament by July 2011,² will amend the Queensland Criminal Code³ to create:⁴

a new offence of serious animal cruelty, with a maximum penalty of seven years jail, which will apply to anyone who intentionally inflicts severe pain or suffering on an animal.

The proposal for this legislation has been prompted by a spate of cruel attacks on animals. Some of the more widely reported incidents are discussed below.

2 Current Penalties in Queensland

Currently, the key legislation dealing with animal cruelty in Queensland is:

1. the [Animal Care and Protection Act 2001 \(Qld\)](#) (“ACPA”); and
2. the [Queensland Criminal Code](#).

2.1 The Animal Care and Protection Act 2001 (Qld)

Section 18(1) of the ACPA provides that “[a] person must not be cruel to an animal”. An inclusive definition which lists the types of actions that constitute being “cruel to an animal” is set out in Section 18(2). The existing maximum penalty is \$100,000 or two years imprisonment.⁵

In relation to the ACPA, the Hon [Tim Mulherin](#) MP, the Minister for Agriculture, Food and Regional Economies,⁶ noted that:

The current provisions under the ACPA include significant penalties compared to equivalent legislation in other Australian states and territories. The ACPA is one of the world’s most advanced pieces of animal welfare legislation and affords high levels of care and protection to all animals in Queensland.⁷

2.2 The Queensland Criminal Code

The key provision in the Criminal Code concerning cruelty to animals is s 468 (Injuring Animals):

Provision	Nature of the Crime	Penalty
Injuring animals (s 468)	Any person who wilfully and unlawfully kills, maims, or wounds, any animal capable of being stolen is guilty of an indictable offence.	If the animal is stock, the offender is guilty of a crime and is liable to imprisonment for 7 years. In any other case, the offender is guilty of a misdemeanour and is liable to imprisonment for 2 years, or, if the offence is committed at night, for 3 years. ⁸ The offender may be liable to a fine of not less than \$400 but no more than \$50,000 either in addition to, or instead of, imprisonment. ⁹

3 Gaps in Current Law

In a joint [Ministerial Media Statement](#) issued on 14 March 2011 by the Hon [Anna Bligh](#) MP, the Premier of Queensland and the Minister for Reconstruction, and the Hon [Paul Lucas](#) MP, the Deputy Premier and Attorney-General, Minister for Local Government and Special Minister of the State, the Hon Paul Lucas MP noted that there is a gap in the current animal protection provisions under the Queensland Criminal Code.¹⁰ More specifically, the Hon Paul Lucas MP noted that s 468 of the Queensland Criminal Code:

doesn't apply to wild animals at all, because they aren't legally owned by anyone and consequently can't be stolen at law. Nor does it apply to domestic pets or farm livestock where the suffering is inflicted by the animal's owner.¹¹

The *Courier Mail* reports that the proposed:

new laws would plug those gaps, making it an offence to deliberately harm wildlife and strengthening laws against people who inflicted pain upon their own animals or strays.¹²

4 E-Petitions

The following [E-Petition \(No. 1600-10\)](#) calling for "stricter laws governing sentencing for cruelty to animals" was tabled on 16 February 2011 in the Parliament of Queensland:

The petition of residents of the State of Queensland draws to the attention of the House the cruelty to many domestic and native animals, eg. the unnecessary flogging of horses; koala's being shot by gun pellets; and dogs having their eyes glued together.

Your petitioners, therefore, request the House to have much stricter laws governing the sentencing of culprits, found guilty of cruelty to animals. Stronger sentencing is required.¹³

A [Response](#) to this E-Petition was issued by the Hon [Tim Mulherin](#) MP, the Minister for Agriculture, Food and Regional Economies, and tabled in the Queensland Parliament on 16 March 2011.

A number of similar E-Petitions (No. [1631-11](#), No. [1647-11](#) and No. [1672-11](#)) were subsequently tabled in the Queensland Parliament, together with various responses by the Hon Tim Mulherin MP (see [Response](#) dated 8 April 2011 and [Response](#) dated 10 June 2011 and "Links to Further Reading" for additional details).

5 Proposed Amendments to Criminal Code

It was announced in the joint [Ministerial Media Statement](#) issued on 14 March 2011 that:¹⁴

Most cases are currently prosecuted under the Animal Care and Protection Act, which provides a maximum penalty of \$100,000 or two years' imprisonment ...

The new provision will be inserted into the Criminal Code with a maximum penalty of seven years' imprisonment to better reflect the gravity of serious animal cruelty offences.

A civilised society has an obligation to protect animals from those who take pleasure in inflicting pain on domestic pets, commercial livestock and native fauna.

The proposed new penalties inserted into the Criminal Code "will be based not on an animal's monetary value as property, but on our moral obligation to protect it from wilful cruelty".¹⁵

6 Reasons for Amendments

The reasons for the amendments appear to be three-fold as highlighted in the joint [Ministerial Media Statement](#):

- 1. Spate of cruel attacks on animals.** In the joint Ministerial Media Statement issued on 14 March 2011, Ms Bligh said that:

the crackdown had been prompted by a series of attacks on wild, domestic and farm animals, such as Frodo – an orphaned koala joey that was shot, Sticky – a puppy whose eyes were glued shut, and the north Queensland mare beaten so badly that she had to be put down.¹⁶
- 2. Link between animal abuse and serious crimes against people.** Mr Lucas said “animal cruelty was often a precursor to serious crimes against people”.¹⁷ Reference in the joint Ministerial Media Statement was also made to research undertaken by the FBI which “has shown that 45% of homicides are committed by perpetrators with a history of cruelty to animals”.¹⁸
- 3. Link between animal abuse and domestic violence.** Research by Monash University academics highlighting a link between animal abuse and domestic violence was also provided as a rationale for the amendments by the joint [Ministerial Media Statement](#). In particular, reference was made to research which “found that in women seeking refuge from abuse, 56% stated that their partner had abused or killed one or more of their pets”.¹⁹

7 Community Comment on Proposed Amendments

Animal Rights Groups

- [RSPCA Queensland](#), RSPCA Queensland Chief Inspector, Mr Michael Pecic:²⁰

the change of legislation would be a positive thing for the animal rights organisation ... it was great to see that (sic) animal cruelty treated more seriously and that there would be a lot of consultation before the legislation came into play.
- [RSPCA Queensland](#), RSPCA Queensland CEO, Mr Mark Townend:²¹

Once again it shows this government is taking the issue of animal cruelty seriously and is prepared to listen to community feedback. ... The links between animal cruelty and other forms of violence and abuse are well recognised now and it’s time that the sentences handed down by the courts reflected this. ... The new legislation will mean that many of the gaps that exist in the Criminal Code in relation to the prosecution of people for offences against any animal will be blocked and that’s great news.
- [RSPCA Queensland](#), RSPCA Queensland Assistant Chief Inspector, Ms Tracey Jackson:²²

An increase in maximum penalties is a positive step, but there needs to be work on the new laws implementation to make sure they’re handled effectively.
- [Paws, Hoofs and Claws Inc, Mount Isa](#), Ms Sue Carson, the President:²³

seven years in prison is still not enough for those who cause harm to animals.

Media Commentary

- The *Courier Mail* Earsay columnist, Mark Oberhardt:²⁴

the changes were apparently made without consultation with the RSPCA and some other interested groups. The amendment will basically override cruelty offences in the Animal Care and Protection Act 2001. As the amendments make offences subject to indictment, it means police will be responsible for enforcing them. RSPCA inspectors cannot currently enforce indictable offences. ... [T]here are worries it is just an extra load for already over-worked police who have enough on their hands with humans.

Legal Commentary

- Tracy-Lynne Geysen, partner of Brisbane law firm [TLG Lawyers](#) and founder of [Brisbane Lawyers Educating & Advocating for Tougher Sentences](#) (BLEATS), is reported as being concerned that:²⁵

the new laws will only be applicable under the Criminal Code, rather than the Animal Care and Protection Act.

- Ms Geysen, in the same article, is reported as having described:

the new laws as one step forward and two steps back.²⁶

8 Position in Australian Jurisdictions

8.1 National Laws

There are no national laws applying to animal welfare, but all states and territories in Australia currently regulate animal welfare in their specific jurisdiction.

Attempts have been made at the national level to achieve model standards “*by encouraging each State and Territory to incorporate Model ‘Codes of Conduct’, or ‘Codes of Practice’ in their anti-cruelty statutes*”.²⁷ These codes are developed by the Primary Industries Ministerial Council and published by the Commonwealth Scientific and Industrial Research Organisation.²⁸ They cover a broad range of issues relating to the welfare of “*farmed animals, including cattle, poultry, pigs, sheep, buffalo and camels, and cover titles dealing with land transportation and feral animals*”.²⁹

In Queensland, the Model Codes of Practice have all been “*adopted under the [Animal Care and Protection Regulation 2002 \(Qld\)](#), although compliance with them is generally voluntary*”.

³⁰ Some examples include:

- the Queensland Code of Practice for Pet Shops (2008);
- the Queensland Code of Practice for Crocodile Farming (2003); and
- the Queensland Code of Practice for Emu Farming (2003).

8.2 State Laws

A cursory review of the anti-cruelty legislation across the various Australian jurisdictions reveals “*that there is little uniformity between the provisions*”.³¹

The legislation in each state and territory is set out below.

Summary of Current Animal Cruelty Penalty Provisions in Australia for Individuals

Jurisdiction	Legislation	Maximum Jail Term	Maximum Fine
Qld	Animal Care and Protection Act 2001 (Qld) (s 18) Queensland Criminal Code (s 468)	2 years If the animal is capable of being stolen, then: <ul style="list-style-type: none"> 7 years if the animal is stock; 2 years in any other case (or 3 years if the offence is committed at night) 	\$100,000 \$50,000 ³²
ACT	Animal Welfare Act 1992 (ACT) (ss 7 & 7A)	12 months (2 years for aggravated cruelty)	\$11,000 (\$22,000 for aggravated cruelty) ³³
NSW	Prevention of Cruelty to Animals Act 1979 (NSW) (ss 5 & 6) Crimes Act 1900 (NSW) (s 530)	6 months (2 years for aggravated cruelty) 5 years for serious animal cruelty (introduced in 2005)	\$5,500 (\$22,000 for aggravated cruelty) ³⁴ -
NT	Animal Welfare Act 1999 (NT) (ss 6 & 75)	12 months	\$13,700
SA	Animal Welfare Act 1985 (SA) (s 13(1) & (2))	2 years (4 yrs for aggravated cruelty)	\$20,000 (\$50,000 for aggravated cruelty)
TAS	Animal Welfare Act 1993 (Tas) (ss 8 & 9)	12 months (18 months for aggravated cruelty)	\$13,000 (\$26,000 for aggravated cruelty) ³⁵
VIC	Prevention of Cruelty to Animals Act 1986 (Vic) (ss 9 & 10)	12 months (2 yrs for aggravated cruelty)	\$14,656.80 (\$29,313.60 for aggravated cruelty) ³⁶
WA	Animal Welfare Act 2002 (WA) (s 19)	5 years	A maximum of \$50,000 and a minimum fine of \$2,000

Source: The above table has been prepared from information obtained from the [RSPCA Australia Knowledgebase](#) (see the [Animal Welfare Legislation](#) and [Penalties for Animal Cruelty](#) pages), updated as necessary.

9 Sentencing in Animal Cruelty Prosecutions

9.1 Concerns about sentencing

In relation to the penalties under the ACPA, RSPCA Queensland Chief Inspector Mr Michael Pecic stated in 2008 that, “[t]he Act does provide very good penalties, but we still don’t see magistrates imposing sentences that can be seen as a deterrent”.³⁷ In the same article, RSPCA Queensland’s Media Officer, Michael Beatty, noted that, “magistrates have failed to take advantage of the high end of the available remedies”.³⁸

More recently, RSPCA Queensland Chief Executive Mark Townend commented in the 15 January 2011 edition of the Weekend Australian Magazine about the penalties issued by the court in the context of animal cruelty cases:

the Queensland parliament “really lifted the bar” in Australia when it passed the Animal [Care and] Protection Act in 2001, significantly increasing the penalties to a maximum fine of \$30,000 or one year’s jail for anyone failing their duty of care to an animal, and \$100,000 or two years’ jail for deliberate animal cruelty. But we weren’t getting sentences anywhere near that.³⁹

9.2 Involvement by BLEATS

Mr Townend notes however that since BLEATS' (Brisbane Lawyers Educating and Advocating for Tougher Sentences) pro-bono work in this area "*the sentences are getting tougher; they're forcing the magistrates to take the issue seriously*".⁴⁰

In this regard, the BLEATS "[Cases](#)" webpage includes a summary of the types of penalties awarded in a number of animal cruelty cases prior to its involvement and an example of the types of penalties awarded since its involvement.

Additionally, the BLEATS website currently hosts the following [online petition](#) which boasts 14,500 signatures and calls for tougher sentences for animal cruelty offenders:

To the Magistrates of Australia:

We, the undersigned, petition that you more forcefully exercise your 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.

9.3 Constraints of existing judicial precedent

The active role taken by BLEATS in prosecuting animal cruelty offences, and in particular, appealing lenient sentences is largely driven by what it perceived as a "*vicious cycle*"⁴¹ caused by the precedent system in law where Magistrates are required to look to previous sentences as a guide when handing down their own sentences:

After researching this situation it became clear to BLEATS that much of the problem lay in precedent law – that is the Magistrates must look at previous sentences as a guide when sentencing offenders. As the prior sentences handed down were low, a vicious cycle developed.⁴²

9.4 Legislative constraints

In addition, certain legislative principles must also be taken into account in sentencing perpetrators of animal cruelty matters, as explained by Dearden DCJ of the Queensland District Court in [Hudson v Miskell; Miskell v Hudson \[2011\] QDC 44 \(8 April 2011\)](#) at paragraph [13]:

It is clear that the principle that a sentence of imprisonment should only be imposed as a last resort is applicable to a count of animal cruelty, as is the associated principle that "a sentence that allows the offender to stay in the community is preferable".⁴³

The principles that his Honour were referring to above are set out in s 9(2)(a)(i) and (ii) of the [Penalties and Sentences Act 1992 \(Qld\)](#).⁴⁴

9.5 Case Examples

The table below sets out some recent high profile cases and their outcomes in the courts:

Facts	Outcome
<p>Elf the Shetland Pony: A father and son dragged a Shetland pony behind a vehicle along a road at speeds of up to 40km/h.⁴⁵</p>	<p><u>Father</u>: Sentenced to three month's imprisonment, wholly suspended for three years, with a conviction recorded. He was ordered to pay \$3,820 in restitution.</p> <p><u>Son</u>: Sentences to two years probation and ordered to pay \$3,820 in restitution. No conviction was recorded.</p>
<p>Sox the Cat: A man trapped a neighbour's trespassing cat, Sox, in a noose and hung the cat by its neck until it died. The crime was video-taped by the perpetrator.</p>	<p><u>First Instance (Magistrates Court)</u>: Sentenced to two months' imprisonment with parole after two weeks.</p> <p><u>Appeal</u>: Sentenced to three months imprisonment with immediate parole from the date of the judgement.⁴⁶</p>
<p>Sticky the Puppy: A man super-glued the eyes of his four month old Cavalier King Charles Spaniel and beat him.⁴⁷</p>	<p>Fined \$1500 and ordered to pay \$269.87 in veterinary costs and prohibited from owning a dog for five years.</p>
<p>Flogging of mare by Texan stockman in North Queensland</p>	<p>Two month wholly suspended jail sentence.</p> <p>Former Attorney-General, the Hon Cameron Dick MP, appealed the Magistrates Court's sentence on the grounds that it was too lenient. The District Court did not allow the appeal.⁴⁸</p>
<p>Drowning of a cat in a wheelie bin by neighbour in Brighton, Brisbane</p>	<p>Fined \$3000 and ordered to pay \$1500 to the RSPCA and \$495 to the cat's owner in restitution and to cover court costs</p> <p>No conviction was recorded.⁴⁹</p>

(**Note:** For additional information on animal cruelty prosecution cases: see RSPCA Queensland, [Court Results](#) and [Justice for Animals](#) webpages and BLEATS, [Cases](#) webpage.)

Key Documents and Links

Related Queensland Legislation

- [Queensland Criminal Code](#)
- [Animal Care and Protection Act 2001 \(Qld\)](#)

Ministerial Media Statements

- Joint statement by the Premier and Minister for Reconstruction, the Hon Anna Bligh MP and the Deputy Premier and Attorney-General, Minister for Local Government and Special Minister of State, the Hon Paul Lucas MP: [More jail time for animal cruelty](#) (14 March 2011).

E-Petitions

- E-Petition (No. [1600-10](#)) on “Stricter laws governing sentencing for cruelty to animals” tabled in the Queensland Parliament on 16 February 2011 (Number of Signatures: 965).
 - [Response](#) by the Hon Tim Mulherin MP tabled in the Queensland Parliament on 16 March 2011.
- E-Petition (No. [1631-11](#)) on “Stricter laws governing sentencing for cruelty to animals” tabled in the Queensland Parliament on 8 March 2011 (Number of Signatures: 3,888).
- E-Petition (No. [1647-11](#)) on “Stricter laws governing sentencing for cruelty to animals” tabled in the Queensland Parliament on 9 March 2011 (Number of Signatures: 30).
 - [Response](#) by the Hon Tim Mulherin MP tabled in the Queensland Parliament on 8 April 2011.
- E-Petition (No. [1672-11](#)) on “Stricter laws governing sentencing for cruelty to animals” tabled in the Queensland Parliament on 10 May 2011 (Number of Signatures: 118).
 - [Response](#) by the Hon Tim Mulherin MP tabled in the Queensland Parliament on 10 June 2011.

Community Groups

- [RSPCA Australia](#)
- [RSPCA Queensland](#)
- [Bleats](#) (Brisbane Lawyers Educating and Advocating for Tougher Sentences)
- [Lawyers for Animals](#) (based in Victoria)
- [Voiceless](#) (an independent, non-profit, think tank established in 2004 and based in New South Wales)
- [Animal Welfare Community Legal Centre](#) (based in Tasmania)

Other Websites and Information

- Commonwealth Government information:
 - [Animal Welfare in Australia \(Department of Agriculture, Fisheries and Forestry\)](#);
 - [Australian Animal Welfare Strategy](#); and
 - [National Consultative Committee on Animal Welfare](#).
- Queensland Government information:
 - [Department of Primary Industries and Fisheries](#) – the Queensland government department responsible for administering the ACPA
 - In particular, see the following links concerning [Animal Welfare & Ethics](#) and [Animal Welfare Law](#).

- For information and statistics on animal cruelty issues in Australia, see:
 - [Animals Australia](#);
 - [Voiceless, The Fund for Animals](#).
- National Animal Law Discussion Board: [Voiceless Law Talk](#)
- [The Centre for Animal Welfare and Ethics](#), The University of Queensland, School of Veterinary Science

Journal Articles

- [‘Animal Cruelty – Crime & Punishment’](#), Dogs Life, March/April 2008.
- C Jackman, ‘The Claws Come Out’, *Weekend Australian Magazine*, 15-16 January 2011, pp 10-14.
- T Reid, ‘Animal Instinct’, *Brisbane Legal*, 5(1), February 2011, pp 12-14.
- K Sharman, [‘Sentencing under our anti-cruelty statutes: why our leniency will come back to bite us’](#), *Current Issues in Criminal Justice, Journal of the Institute of Criminology*, 13(3), 2002, pp 333-338.
- K Sharman, [‘Animal Law in Australia’](#), *Animal Legal and Historical Web Center*, 2004.
- S White & T Geysen, ‘Fight for Their Rights’, *The Verdict*, vol 3, 2009, pp 4-10.

Books

- M Caulfield, *Handbook of Australian Animal Cruelty Law*, Animals Australia, 2008.
- E Eadie, *Animal Suffering and the Law*, Seaview Press, South Australia, 2009.
- D McDowell, *Wildlife Crime Policy and the Law – An Australian Study*, AGPS, Canberra, 1997.
- P Sankoff & S White (eds), *Animal Law in Australasia*, The Federation Press, Sydney, 2009.

Newspaper articles

- No time in prison for kitty killer, *Courier Mail*, 13 April 2011
- Taking care of sadists, *Sunday Mail*, 3 April 2011
- Frodo prepares to return to the Qld bush, *Sydney Morning Herald*, 25 May 2011
- Shot baby Koala to be released in to the wild, *Brisbane Times*, 25 May 2011
- Man awaits fate on animal cruelty charges, *Cairns Post*, 30 March 2011
- Animal cruelty appeal, *Cairns Post*, 28 March 2011
- Bleijie demands tougher penalties, *Sunshine Coast Daily*, 23 March 2011
- Brisbane man fined for drowning cat in bin, *Brisbane Times*, 21 March 2011
- Sentence hikes applauded, *The Satellite*, 21 March 2011
- Earsay: Animal cruelty laws with bite, *Courier Mail*, 18 March 2011
- Editorial: Leniency over animal cruelty perplexing, *Townsville Bulletin*, 18 March 2011
- Animal cruelty laws get tougher, *City News*, 18 March 2011
- Stockman’s Hall of Shame: Judge strikes out horse cruelty appeal, *Townsville Bulletin*, 18 March 2011
- Triple punishment ‘still not enough’, *North West Star*, 16 March 2011
- Be cruel and now you will pay dearly, *News Mail (Bundaberg)*, 16 March 2011
- Father, son freed over pony drag, *Courier Mail*, 16 March 2011
- Shetland pony abusers avoid jail, *Brisbane Times*, 15 March 2011
- It’s a case of animal attraction, *Courier Mail*, 15 March 2011
- Govt gets tough on cruelty offenders, *Toowoomba Chronicle*, 15 March 2011
- Jail time for animal cruelty tripled, *Brisbane Times*, 14 March 2011
- Swan attacker told mate to ‘watch this’, *ABC News Online*, 4 March 2011
- Horse ringer speaks out in defence, *Townsville Bulletin*, 22 November 2010

- Horse cruelty sentence appealed, *Townsville Bulletin*, 18 November 2010
- Harsher sentence call for horse case, *Townsville Bulletin*, 15 November 2010
- Baby koala clings to life after shooting, *CCN World News*, 11 November 2010
- Community outrage: Petition calls for the deportation of convicted horseman, *Townsville Bulletin*, 1 November 2010
- Fury over horse's beating – Calls to deport Texan handler, *Sunday Mail*, 31 October 2010
- Horse beater appeal: Wallace asks police to question jail term on Texan, *Townsville Bulletin*, 29 October 2010
- Cruel intentions fail to destroy RSPCA's conscience for protection, *Courier Mail*, 7 October 2010
- 'Weak laws' for repeat offenders, *Daily News (Warwick)*, 24 September 2010
- Baillieu pledges to act on rogue puppy 'factories', *Age*, 19 September 2010
- Man accused of gluing puppy's eyes shut, *ABC News Online – Qld Regional*, 17 September 2010
- Koala's shot: what next? Shooter must be caught, *Brisbane Times*, 20 January 2010

Endnotes

- 1 See Mahatma Gandhi's quote on the Memorable Quotes [website](#).
- 2 [Ministerial Media Statement](#), p 2.
- 3 The Queensland Criminal Code is set out in Schedule 1 of the [Queensland Criminal Code Act 1899 \(Qld\)](#).
- 4 [Response](#) by the Hon Tim Mulherin MP tabled in the Queensland Parliament on 16 March 2011, p 1 to an E-Petition (No. [1600-10](#)) on "Stricter laws governing sentencing for cruelty to animals" tabled in the Queensland Parliament on 16 February 2011.
- 5 See s 18(1) of the ACPA and section 5 of the [Penalties and Sentences Act 1992 \(Qld\)](#). Section 181B of the [Penalties and Sentences Act 1992 \(Qld\)](#) provides that the maximum fine for a **corporation**, if not expressly provided, is 5 times that for an individual. Note also that s 18 is one of two provisions that form part of Chapter 3, Part 2 of the ACPA which deals with "cruelty offences". The second provision is s 19 which deals with the "unreasonable abandonment or release" of animals.
- 6 Formerly known as the Minister for Primary Industries, Fisheries and Rural and Regional Queensland.
- 7 [Response](#) tabled by the Hon Tim Mulherin MP in the Queensland Parliament on 16 March 2011, p 1 to an E-Petition (No. [1600-10](#)) on "Stricter laws governing sentencing for cruelty to animals" tabled in the Queensland Parliament on 16 February 2011. See also the table on p 4 of this Research Brief under the sub-heading "State Laws" for a summary of the animal cruelty provisions in the various Australian state and territory jurisdictions.
- 8 Although this offence does not apply to a wild animal, the offence has been used for cruelty cases involving domestic animals (see the [Response](#) by the Hon Tim Mulherin MP tabled in the Queensland Parliament on 8 April 2011, p 1 to an E-Petition (No. [1631-11](#)) on "Stricter laws governing sentencing for cruelty to animals" tabled in the Queensland Parliament on 8 March 2011 and an E-Petition (No. [1647-11](#)) on "Stricter laws governing sentencing for cruelty to animals" tabled in the Queensland Parliament on 9 March 2011).
- 9 The different penalties which apply in the Queensland Criminal Code depending on the type of animal involved (i.e., whether the "animal in question is stock" or not) are described as "curious" by Malcolm Caulfield in his book, *Handbook of Australian Animal Cruelty Law*, Animals Australia, 2008, p 26, footnote 30.
- 10 [Ministerial Media Statement](#), p 2.
- 11 [Ministerial Media Statement](#), p 2.
- 12 Brian Williams, p 13.
- 13 The [Response](#) to this E-Petition was tabled by the Hon Tim Mulherin MP in the Queensland Parliament on 16 March 2011.
- 14 [Ministerial Media Statement](#), p 2.
- 15 [Ministerial Media Statement](#), p 2.

¹⁶ [Ministerial Media Statement](#), p 2. These three acts of animal cruelty were widely reported in the press:

- The plight of the plucky koala joey, named Frodo, made world headlines: see [Baby koala clings to life after shooting](#), *CCN World News*, 11 November 2010; [UPDATE: Baby Koala Frodo Astonishes Vets](#), *GlobalAnimal.org*, 20 December 2010; Frodo prepares to return to the Qld bush, *Sydney Morning Herald*, 25 May 2011; and Shot baby Koala to be released in to the wild, *Brisbane Times*, 25 May 2011;
- The case of the King Charles cavalier cross, dubbed Sticky, was described by the RSPCA as “one of the worst it had seen in several years.”: see Man accused of gluing puppy’s eyes shut, *ABC News Online – Qld Regional*, 17 September 2010 (see further discussion below); and
- The cruelty to a North Queensland mare caused by a Texan musterer resulted in “community outrage”, see:
 - Horse beater appeal: Wallace asks police to question jail term on Texan, *Townsville Bulletin*, 29 October 2010;
 - Fury over horse’s beating – Calls to deport Texan handler, *Sunday Mail*, 31 October 2010;
 - Community outrage: Petition calls for the deportation of convicted horseman, *Townsville Bulletin*, 1 November 2010;
 - Harsher sentence call for horse case, *Townsville Bulletin*, 15 November 2010;
 - Horse cruelty sentence appealed, *Townsville Bulletin*, 18 November 2010;
 - Horse ringer speaks out in defence, *Townsville Bulletin*, 22 November 2010; and
 - Editorial: Leniency over animal cruelty perplexing, *Townsville Bulletin*, 18 March 2011.

¹⁷ [Ministerial Media Statement](#), p 2.

¹⁸ [Ministerial Media Statement](#), p 2.

¹⁹ [Ministerial Media Statement](#), p 2.

²⁰ Be cruel and now you will pay dearly, *News Mail (Bundaberg)*, 16 March 2011, p 4.

²¹ Sentence hikes applauded, *The Satellite*, 21 March 2011.

²² Animal cruelty laws get tougher, *City News*, 18 March 2011, p 5.

²³ Triple punishment ‘still not enough’, *North West Star*, 16 March 2011, p 5.

²⁴ Earsay: Animal cruelty laws with bite, *Courier Mail*, 18 March 2011, p 26.

²⁵ Animal cruelty laws get tougher, *City News*, 18 March 2011, p 5.

²⁶ Animal cruelty laws get tougher, *City News*, 18 March 2011, p 5. Note that the article states that Ms Geysen was a partner of a Brisbane law firm, Couper Geysen Family and Animal Law, at the time she made these comments.

²⁷ Katrina Sharman, [Animal Law in Australia](#), Animal Legal and Historical Web Center, 2004, p 4.

²⁸ Steven White and Tracy-Lynne Geysen, ‘Fight for Their Rights’, *The Verdict*, vol 3, 2009, p 9.

- 29 Steven White and Tracy-Lynne Geysen, p 9.
- 30 Steven White and Tracy-Lynne Geysen, p 9. For more details on Codes of Practice in Australia see Chapter 3 of Malcolm Caulfield, *Handbook of Australian Animal Cruelty Law*, Animals Australia, 2008.
- 31 Katrina Sharman, p 4.
- 32 This fine may be payable either in addition to or instead of a prison term (see s 468(4) of the [Queensland Criminal Code](#)).
- 33 Under the ACT legislation, it is possible for both a penalty and a prison term to be imposed (see ss 7 and 7A of the [Animal Welfare Act 1992 \(ACT\)](#)).
- 34 Under the NSW legislation, it is possible for both a penalty and a prison term to be imposed (see ss 5 and 6 of the [Prevention of Cruelty to Animals Act 1979 \(NSW\)](#)).
- 35 Under the Tasmanian legislation, it is possible for both a penalty and a prison term to be imposed (see ss 8(1) and 9 of the [Animal Welfare Act 1993 \(Tas\)](#)).
- 36 Note that a person who is guilty of an offence under the aggravated cruelty provisions may be liable to the penalty for that offence in addition to or instead of any other penalty to which the person is liable under the cruelty provisions (see s 10(2) of the [Prevention of Cruelty to Animals Act 1986 \(Vic\)](#)).
- 37 [Animal Cruelty – Crime and Punishment](#), Dogs Life, March/April, 2008.
- 38 [Animal Cruelty – Crime and Punishment](#), Dogs Life, March/April, 2008.
- 39 Christine Jackman, “The Claws Come Out”, *Weekend Australian Magazine*, 15-16 January 2011, p 14.
- 40 Christine Jackman, “The Claws Come Out”, *Weekend Australian Magazine*, 15-16 January 2011, p 14. For a description of what BLEATS does, see also T Reid, ‘Animal Instinct’, *Brisbane Legal*, February 2011, 5(1), pp 12-14.
- 41 See BLEATS website at “[About Us](#)”.
- 42 See BLEATS website at “[About Us](#)”.
- 43 While the judge in [Hudson v Miskell; Miskell v Hudson \[2011\] QDC 44 \(8 April 2011\)](#) at paragraph [15] did overturn the Magistrates Court’s decision of two months imprisonment with a parole release date after two weeks on the basis that it was “manifestly inadequate” and replaced it with a sentence of three months imprisonment, his Honour also referred to existing judicial precedent which supported his decision that the offender did not have to serve his sentence in prison but could do so by way of parole:
- It is also clear that even a short period in custody for a mature man, employed with family commitments and no previous experience of prison, would be significantly (and arguably unduly) excessive.
- In making the above statement at paragraph [14] of his judgement in [Hudson v Miskell; Miskell v Hudson \[2011\] QDC 44 \(8 April 2011\)](#), Dearden DCJ relied on [R v Solway \[1995\] QCA 374 per Pincus JA, p 8](#). See also Mark Oberhardt, No time in prison for kitty killer, *Courier Mail*, 13 April 2011.
- 44 See footnotes 5 and 6 of [Hudson v Miskell; Miskell v Hudson \[2011\] QDC 44 \(8 April 2011\)](#).

- ⁴⁵ Father, son freed over pony drag, *Courier Mail*, 16 March 2011. See also: the Justice for Animals ([Elf the Shetland Pony](#)) page of the RSPCA (Queensland) website.
- ⁴⁶ [Hudson v Miskell; Miskell v Hudson \[2011\] QDC 44 \(8 April 2011\)](#). See also: the Justice for Animals ([Sox the Cat](#)) page of the RSPCA (Queensland) website.
- ⁴⁷ Man accused of gluing puppy's eyes shut, *ABC News Online – Qld Regional*, 17 September 2010. See also: the Justice for Animals ([Sticky the Puppy](#)) page of the RSPCA (Queensland) website.
- ⁴⁸ Editorial: Leniency over animal cruelty perplexing, *Townsville Bulletin*, 18 March 2011.
- ⁴⁹ Consequently, the Queensland State Member for Kawana, the Hon [Jarrod Bleijie](#) MP, called for strong sentencing guidelines for offenders who “brutally bash and kill animals” (Bleijie demands tougher penalties, *Sunshine Coast Daily*, 23 March 2011) (Brisbane man fined for drowning cat in bin, *Brisbane Times*, 21 March 2011).