Investigating the Gap Between the Ambitious Goals and Practical Reality of Animal Welfare Law: Understanding the Contributors of the Enforcement Gap in Australia

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Abstract

Recent decades have seen increased public concern regarding animal welfare. With this growing concern, the role of law in the regulation and promotion of animal welfare has been questioned. A number of shortcomings have been theorised which purport to create a gap between the intentions or goals of written law and the outcomes of the enforcement process. Chapter 2 discusses this gap; the 'enforcement gap'. With a primary focus on the Australian jurisdiction and extrapolation to other common law countries, this multidisciplinary thesis investigates this concept further, through analysing the contributors of this enforcement gap.

In order to understand the foundation of Australian animal welfare law, a comprehensive statutory comparison was undertaken in Chapter 3. Animal welfare is regulated at the Australian state and territory level resulting in eight different animal welfare statutes. To assess the uniformity between the jurisdictions, all statutory provisions pertaining to animal welfare protection were compared cross-jurisdictionally. Chapter 4 adopted similar methodologies to compare the subordinate legislation, being regulations and codes of practices, that are enabled by the state and territory-based animal welfare statutes. Collectively, it is established that whilst the statutes are generally uniform across jurisdictions, each state and territory utilise different subordinate legislation relevant to their demographics. Chapter 5 focuses specifically on the State of South Australia and investigates the changes to penalties sentenced in court for animal welfare offences after parliament increased the maximum penalties.

In recognition of the link between public opinion and law reform around animal welfare, Chapter 6 focuses on news reports, as a major public source of information on animal law. A thematic analysis was applied to news articles to understand how animal welfare law is portrayed to the public. Additionally, any subsequent social media posts from news agencies

sharing those articles were utilised in Chapter 7, where a content analysis of Facebook comments was performed to examine social media discourse surrounding animal welfare law. The findings suggest the information dispersed through the media and discussed on social media are likely having a negative impact on community perceptions due to negative portrayals.

Finally, animal welfare law reform efforts in Australia have commonly been attributed to addressing the 'community expectations', however, parliamentarians have not publicly disclosed the nature of such public 'expectations'. Chapter 8 addresses this knowledge gap through a representative survey of the Australian public to examine current community opinions of animal law enforcement. Chapter 9 delves deeper into the reasons for the viewpoints propounded in the previous survey, through a three-day online discussion group. A shift in community opinions was identified from the common support for harsher sentences to a more proactive approach to enhancing the strength of the current enforcement model.

In summary, this thesis investigates the novel concept of an 'enforcement gap' in Australian animal welfare law through identifying its potential contributors. This research provides empirical data to better inform policy makers and legislative reform debates and enables future research to be targeted towards isolated issues to reduce the enforcement gap.

Declaration

I certify that this work contains no material which has been accepted for the award of any other degree or diploma in my name in any university or other tertiary institution (chapter five is a supplementary chapter to this thesis as it formed a component of my Honours degree) and, to the best of my knowledge and belief, contains no material previously published or written by another person, except where due reference has been made in the text. In addition, I certify that no part of this work will, in the future, be used in a submission in my name for any other degree or diploma in any university or other tertiary institution without the prior approval of the University of Adelaide and where applicable, any partner institution responsible for the joint award of this degree.

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List of Publications

Published Journal Articles

Morton, R., Ngai, K. & Whittaker, A.L. (2023) ‘‘Commenting’ on Animal Cruelty: A Content Analysis of Social Media Discourse on Animal Law Enforcement in Australia’, *Anthrozoos.* https://doi.org/10.1080/08927936.2023.2187137

Morton, R., Hebart M.L., Ankeny, R.A. & Whittaker, A.L. (2022) ‘An Investigation into ‘Community Expectations’ Surrounding Animal Welfare Law Enforcement in Australia’, *Frontiers in Animal Science*, 3, https://doi.org/10.3389/fanim.2022.991042

Morton, R., Hebart, M.L., Ankeny, R.A. & Whittaker, A.L. (2022) ‘Portraying Animal Cruelty: A Thematic Analysis of Australian News Media Reports on Penalties for Animal Cruelty’, *Animals*, 12(21), https://doi.org/10.3390/ani12212918

Morton, R. & Whittaker, A.L. (2022) ‘Understanding Subordinate Animal Welfare Legislation in Australia: Assembling the Regulations and Codes of Practice’, *Animal*, 12(8), https://doi.org/10.3390/ani12182437

Morton, R., Hebart, M.L., Ankeny, R.A. & Whittaker, A.L. (2021) ‘Assessing the Uniformity in Australian Animal Protection Law: A Statutory Comparison’, *Animals*, 11(35), https://doi.org/10.3390/ani11010035

Morton, R., Hebart, M.L. & Whittaker, A.L. (2020) ‘Explaining the Gap Between the Ambitious Goals and Practical Reality of Animal Welfare Law Enforcement: A Review of the Enforcement Gap in Australia’, *Animals*, 10(3), http://doi.org/10.3390/ani10030482

Morton, R., Hebart, M.L. & Whittaker, A.L. (2018) 'Increasing Maximum Penalties for Animal Welfare Offences in South Australia – Has it Caused Penal Change?', *Animals,* 8(12), https://doi.org/10.3390/ani8120236

Unpublished Journal Articles

Morton, R., Hebart, M.L., Ankeny, R.A. & Whittaker, A.L. 'The Drivers of 'Community Expectations' Surrounding Punishment for Animal Welfare Offences: Findings from Online Focus Group Discussions'. (Written for submission to *Anthrozoos*).

Chapter 1: General Introduction

Australian Animal Welfare Law Summary

In order to understand the animal welfare laws discussed throughout this thesis, it is important to put them in the context of the Australian legal system. Australia is a federation comprising six states and two territories. Within this system, there are a total of nine governments operating – one at the federal level, and eight at the state and territory level. A written constitution (*Commonwealth of Australia Constitution Act* ('*Constitution*')) dictates the relationship between the federal government and the individual states and territories and distributes areas of governance and law-making between each system. The powers of the federal government are listed in s 51 of the *Constitution*, meaning those areas of governance which are not listed are within the legislative capacity of the states and territories. Animal welfare is an example of this. Therefore, in Australia there are eight separate Animal Welfare Acts ('AWA') individualised for each state and territory, and each AWA has accompanying subordinate laws in the form of regulations and codes of practice, which are lower-ranking laws that are enabled by the AWAs. Additionally, like many countries subjected to English colonisation, Australia is a common law country. Therefore, court decisions form their own body of law known as 'common law' or 'case law', which may act as a precedent for determining outcomes of future similar cases, as courts are bound to follow the decisions made by higher courts.

Enforcement of AWAs is carried out at the state and territory level, with the bulk of the enforcement burden held by non-government organisations ('NGO'). This contrasts with the enforcement model for the vast majority of criminal law, as generally individual government agencies, such as state police forces, are tasked with enforcement of criminal legislation. Animal welfare cases are initiated in the state and territory-based magistrates courts. Being a lower court, any decisions made are not binding to future cases which causes a lack of

precedents, hence the progression of animal welfare law in Australia relies heavily on statutory law reform.

Thesis Aims

Throughout the literature, a number of shortcomings relating to the operation of AWAs have been suggested, from issues with the legislation, the enforcement of the legislation and its penalties, to public opinion regarding matters of animal welfare law. These shortcomings create a gap between the intentions of the written law and the outcomes of the enforcement process, as the intentions are not meeting the expected outcomes. This thesis discusses this gap as an 'enforcement gap'. However, the nature and extent of how these various elements contribute towards the enforcement gap are unknown or only speculated. Thus, this thesis aimed to investigate the 'enforcement gap' concept further through identifying the potential contributors based on empirical data.

The research presented herein addressed the following aims:

1. To compare the animal welfare legislation across the Australian states and territories to determine nature of uniformity for both statutes (Chapter 3) and subordinate legislation (Chapter 4).
2. To quantify the average penalties handed down by courts before and after the legislative maximum penalties for animal welfare offences were increased in one jurisdiction (SA) to assess whether legislative intent behind the increase is being reflected in court decisions (Chapter 5).
3. To investigate how animal welfare law is portrayed to the public by a key information source (the media). This was achieved through qualifying the themes present in news media articles (Chapter 6) and social media comment threads (Chapter 7).

4. To understand 'community expectations' surrounding animal law enforcement (Chapter 8) and the drivers of public opinion underpinning those expectations (Chapter 9).

Thesis Structure

This thesis contains ten chapters comprising a general thesis introduction (Chapter 1), a review of the literature (Chapter 2), seven research chapters written in publication format (Chapters 3 – 9), and a final general thesis discussion (Chapter 10). A schematic overview of the thesis structure is depicted in Figure 1.

Literature Review: Chapter 2

While the literature review chapter (Chapter 2) aims to introduce the concept of the 'enforcement gap' within the context of Australian animal welfare law, it also provides a rationale for this body of work and introduces the structure for the subsequent research chapters, which can be subdivided into three categories – legislation, enforcement, and public opinion.

Legislation: Chapters 3 and 4

The initial research chapters introduce the current legislative framework of Australian animal welfare law. Chapter 3 collates all statutes which include provisions for animal welfare protection in Australia and compares the cross-jurisdictional differences between the states and territories. This chapter aimed to assess the uniformity of animal protection laws, given that the literature speculates a uniform approach would be beneficial. The results suggest that the laws are generally consistent and have similar shortcomings potentially contributing to the enforcement gap. However, I pose that in order to address these shortcomings a federal uniform

approach is not needed. Chapter 4 adopted similar methodologies to compare the subordinate legislation enabled by the state and territory based AWAs, being regulations and codes of practices. This chapter identified substantial differences between the subordinate laws adopted in each jurisdiction, however, I speculate that the differences are a reflection of the geographic and demographic variation across the Australian states and territories. Similarly, a number of shortcomings were identified, all which likely could be managed through a mechanism of national data collection.

Enforcement: Chapter 5

The enforcement of the AWAs is reviewed in Chapter 5, by understanding how cases are sentenced in court. This chapter focuses specifically on the South Australian jurisdiction and investigates the changes to the average penalties sentenced in court for animal welfare offences after parliament increased the maximum penalties. Results showed that although the sentenced penalties doubled in magnitude, when comparing them as a percentage of the maximum there is no change observed. On average, less than 10% of the maximum penalties are being used in court. This research forms a supplementary chapter of this thesis, as this study was completed as a component of my BSc (Hons) degree.

Public Opinion: Chapters 6-9

Investigation of public opinion surrounding animal welfare law enforcement forms the final component of this thesis, as animal welfare law reform efforts have commonly been attributed to addressing the 'community expectations'. Firstly, focus is on the information disseminated to the public through the news media (Chapter 6) and social media (Chapter 7), in recognition that the portrayals of information shared can influence public opinion and perceptions of animal welfare law. Chapter 6 applies a thematic analysis to news articles to understand how

animal welfare law is portrayed to the public, and proposes a relationship between public opinion, media reporting and law reform efforts called the 'penalty reform cycle' which likely contributes to elevated public expectations. Additionally, any subsequent social media posts from news agencies sharing those articles were utilised in Chapter 7, where a content analysis of Facebook comments was performed to examine social media discourse surrounding animal welfare law. It was established that information dispersed through the media and discussed on social media are likely having a negative impact on community perceptions due to negative portrayals.

Finally, Chapter 8 quantifies the Australian publics current expectations surrounding animal welfare law enforcement through a representative survey, and Chapter 9 qualifies the influences and drivers of those expectations surrounding punishment for animal welfare offences through an online focus group discussion. These two chapters identify a shift in public opinion from the commonly cited support for harsher sentences to a more proactive approach through enhancing the strength of the current enforcement model.

General Discussion: Chapter 10

The final chapter (Chapter 10) summarises the potential contributors of the enforcement gap identified throughout this thesis and suggests future directions to reduce the gap between the intentions of AWAs and the realities of enforcement.

Figure 1: Schematic overview of thesis structure.

Chapter 2: Literature Review

Contextual Statement

Animal cruelty is a complex issue which affects animal globally. Whilst public concern for matters of animal welfare have increased, the efficacy and role of law in the regulation of animal welfare has been questioned. Several shortcomings have been theorised in the literature, all of which purport to create a gap between the intentions of written law and the outcomes of the enforcement process. This chapter refers this gap as the 'enforcement gap'. Through a summary of the current shortcomings expressed in the literature, this chapter explains the basis of the 'enforcement gap' concept within the context of Australian animal welfare law and argues that the contributors to the gap are multifactorial, derived from all stages of the enforcement process.

Statement of Authorship

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Overall percentage (%)	80%		
Certification:	This paper reports on original research I conducted during the period of my Higher Degree by Research candidature and is not subject to any obligations or contractual agreements with a third party that would constrain its inclusion in this thesis. I am the primary author of this paper.		
Signature		Date	23.01.23

Co-Author Contributions

By signing the Statement of Authorship, each author certifies that:

i. the candidate's stated contribution to the publication is accurate (as detailed above);
ii. permission is granted for the candidate in include the publication in the thesis; and
iii. the sum of all co-author contributions is equal to 100% less the candidate's stated contribution.

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animals

MDPI

Review

Explaining the Gap Between the Ambitious Goals and Practical Reality of Animal Welfare Law Enforcement: A Review of the Enforcement Gap in Australia

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Simple Summary: Animal cruelty or neglect is an emotive social issue. Animal welfare legislation is the primary tool for defining, penalizing and hopefully deterring animal cruelty. A number of issues arising at all stages of the animal law enforcement process have been previously identified. These issues contribute to a discrepancy between the written law and the realities of the animal law enforcement process: the 'enforcement gap'. This paper reviews the available resources to identify the causes of this 'gap'. It is argued that the 'gap' is caused by numerous factors derived from all stages of the enforcement process: (1) reporting acts of animal cruelty, (2) ambiguity and shortcomings derived from the language used in animal welfare legislation (3) the nature of enforcement authorities, and (4) court determination on the matter. In order to reduce the enforcement gap and bring the expectations closer to reality, further research is needed.

Abstract: Previous research has identified a number of issues arising at all stages of the animal law enforcement process. These issues contribute to an enforcement gap between the written law, as it relates to the penalties laid out in statutes, and the reality of the animal law justice system. This paper identifies and investigates the contributors to this gap. The identified factors discussed are (1) the role of the public in reporting animal cruelty, (2) the ambiguity of the language used in animal welfare legislation, (3) the nature of enforcement authorities, and (4) the role of the courts. Thus, the causes of the enforcement gap are multifactorial, derived from all stages of the enforcement process. Further research on the enforcement model and public education, in addition to debate on legislative reforms, will be needed to address this gap.

Keywords: animal welfare legislation; animal cruelty; law enforcement; Australia; enforcement gap

1. Introduction

Animal cruelty is a multiplex issue that affects animals globally [1]. In the last two decades, there has been an increase in public concern regarding issues of animal welfare [2,3]. With this growing concern, researchers have started to question the role and efficacy of the law in the regulation and promotion of animal welfare [2,4–11]. These authors have identified several weaknesses in the animal protection legal process in the Australian context, from the ambiguity of the language used in legislation [7] and the unorthodox use of non-government organizations (NGO) for enforcement of this branch of criminal law [7,9,12], to the severity of the penalties imposed for offences [8,10]. These weaknesses create a gap between the ambitious goals of animal law enforcement and the practical reality of the animal law justice system. Such a gap has been previously acknowledged and defined as an 'enforcement gap' in environmental law [13,14]. Lo, Fryxell, van Rooij, Wang and Li [13] defined

this gap as a disparity between the practices laid out in the regulations and the actual practices of the regulations. To put it simply, there is an identified gap between the intentions or goals of written law and the outcomes of the enforcement process, as the goals are not meeting the expected outcomes. This 'enforcement gap' has not been defined or investigated in the animal law context and may be an issue experienced in many common law countries. However, this review will focus on Australian animal law.

The 'enforcement gap' is a phenomenon that seeks to explain the reason why many well-intended laws fail [14], in terms of the expected outcomes not meeting the realities of enforcement. Qualifying the 'expected outcomes' of animal law enforcement can be challenging due to the subjectivity surrounding peoples 'expectations. However, arguably the most objective way to qualify the 'expectations' is through understanding the intentions of the legislature at the time of bill drafting. Legislative intent refers to the interpretation and understanding of the reason behind the legislature's enaction [15]. This can be done by analyzing the objectives as laid out in the legislation. In the case of animal protection legislation, this objective is to prevent animal cruelty by promoting animal welfare [16–23]. Another way to understand the scope of legislative intent is by examining the maximum penalties for offences, as the maximums provide a benchmark against which the gravity of an offence should be measured [24]. Maximum penalties have been the subject of several legislative reforms in Australia cross-jurisdictionally, with the states of Queensland (QLD) increasing maximum penalties in 2001 [25], South Australia (SA) in 2008 [26], Victoria in 2012 [27] and Northern Territory (NT) proposing to increase penalties in 2020 [28]. These amendments indicate the intention of Parliament to "get tough" on animal welfare offenders, by sending a message that animal cruelty will not be tolerated [29,30]. However, studies have shown that this movement to "get tough" on animal abusers is not being reflected by the Magistrates' Courts in sentencing [9,10,24,31], as less than 10% of the maximum penalties are being used in court [10]. This implies, based on this definition, that legislative intent is not being achieved.

Public sentiment has been the catalyst for legislative reform. This was noted from statements made during consultations on the bill proposing the penal increases in SA. The Honorable Russell Wortley stated that "the proposed changes to this bill reflect the public's concerns" [32]. However, sociological studies have indicated that the public regard the current penalties as too lenient [2,6]. As well as a desire for the criminal justice system to take crimes against animals more seriously [2,33], the Australian public are largely in favor of harsher penalties, such as imprisonment [2], for deliberate acts of animal cruelty. Whereas, in reality, terms of imprisonment are rarely handed down for animal welfare offences [9,10]. This poor use of statutory maximums, especially after they were the subject of substantial increases, arguably provides evidence that the enforcement of animal protection legislation is failing to meet the legislatures' intentions, and, as a result, fails to act on the 'public's concern'. This creates the enforcement gap, as there is a discrepancy between the expectations of animal law enforcement and the current reality of the criminal justice system.

This paper seeks, through a literature analysis, to investigate this enforcement gap concept further, both identifying and describing the causes of the gap. The entire process, starting with reporting cruelty and ending with sentencing in court, as depictured in Figure 1, will be discussed. Theorized causes to be discussed include: (1) the inconsistencies and ambiguity of language used in animal welfare legislation, (2) the impact the public can have on reporting animal cruelty, (3) the reliance on NGO's as enforcement bodies, and their unusual relationship with the Australian State and Territory governments and (4) the role of the courts. This review will discuss these topics, with a primary focus on the SA jurisdiction, with comparisons drawn to other Australian, and overseas states and territories. Throughout this article, the term 'animal law' is used to refer to statutes with the object of animal protection by the prevention of cruelty and promotion of welfare.

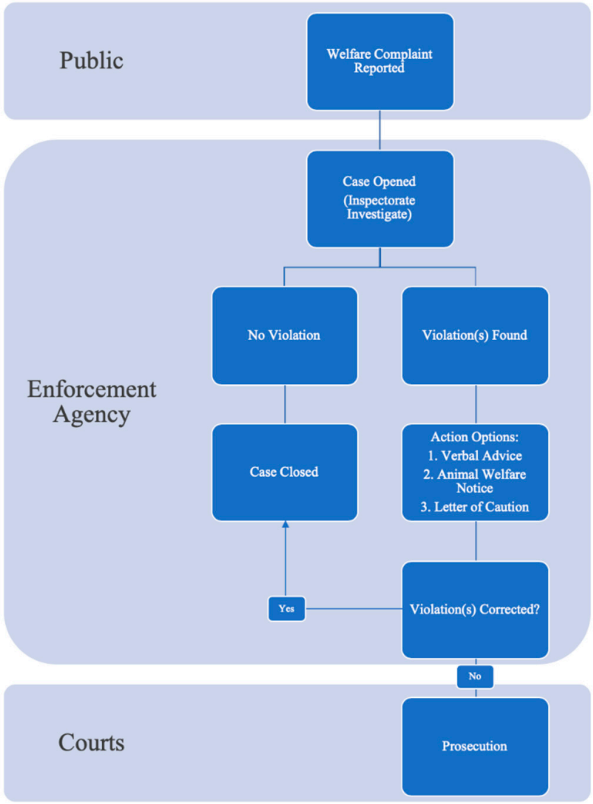

Figure 1. Flowchart of the Australian animal law enforcement process, indicating the parts where the public, enforcement agencies or the courts have the predominant power.

2. Animal Welfare Legislation

2.1. Criminal Law

Animal law is a branch of criminal law. It serves to regulate the human treatment of, and behavior towards, animals in different contexts [12]. The law achieves this by outlining the basic duty of care that humans are legally required to provide to animals, and specifying what constitutes an offence against animals, through either commission of cruelty or a breach of the duty of care [12]. Offences are tried at the Magistrates Courts [12]. As criminal law, the prosecution must establish the elements of the case to a high standard of proof, that of 'beyond reasonable doubt', to secure a guilty finding. Generally, all animals are protected under the legislation, whether they are kept as pets, used for profit or declared as a pest [12].

There is no single overarching federal animal protection legislation in Australia, since there is no 'head of power' for animal welfare in the *Commonwealth of Australia Constitution Act* ('Constitution') [34]. Thus, animal welfare is a residual power, within the domain of the Australian states and territories [34]. Consequently, there are eight pieces of animal welfare legislation at the state and territory level in Australia (Table 1), hereafter termed 'the Acts'.

Table 1. Each state and territory's relevant animal welfare legislation in Australia.

State/Territory	Animal Welfare Legislation
Australian Capital Territory	*Animal Welfare Act 1992* [35]
New South Wales	*Prevention of Cruelty to Animals Act 1979* [36]
Northern Territory	*Animal Welfare Act 1999* [37]
Queensland	*Animal Care and Protection Act 2001* [38]
South Australia	*Animal Welfare Act 1985* [39]
Tasmania	*Animal Welfare Act 1993* [40]
Victoria	*Prevention of Cruelty to Animals Act 1986* [41]
Western Australia	*Animal Welfare Act 2002* [42]

2.2. Inconsistency Issues

Animal welfare legislation differs between each state and territory in Australia [35–42]. The definition of an 'animal' is a key element in animal protection legislation. It is defined in each Act in a generally consistent manner. The term 'animal' is often any member of the vertebrate species, excluding human beings [12]. However, there is an inconsistency between the Acts. In the SA and Western Australian (WA) Acts, the definition of 'animal' does not include fish, whereas all other state and territory legislation includes fish as protected species. Another inconsistency is the type of offence. Some states and territories have aggravated cruelty offences, where intention (or recklessness) needs to be demonstrated as an element of the offence; the *mens rea*. This is in addition to duty of care offences, requiring persons to provide basic standards of care to animals. However, QLD, Tasmania and NT only include duty of care breaches [12]. Since the aggravated cruelty offences attract increased penalties, this leads to discrepancies between the maximum penalties for offences. Additionally, some states, such as New South Wales (NSW), use 'penalty units' to calculate monetary fines [36], whereas SA has set dollar amounts for the maximum monetary fines [39].

2.3. Problematic Definitions

Focusing on the SA *Animal Welfare Act 1985*, there are some issues surrounding specific terms and definitions in the Act. 'Harm', by definition, is "any form of damage, pain, suffering or distress (including unconsciousness), whether arising from injury, disease or any other condition" [43]. The issue then is the need for harm to have occurred before any legal action can be taken. An example of a provision where harm is required to be shown is in section 13(3)(b)(iv) of the *Animal Welfare Act 2985* (SA) below:

(3) Without limiting the generality of subsection (1) or (2), a person ill treats an animal if the person—

(b) being the owner of the animal—

(iv) neglects the animal so as to *cause it harm*; [44]

The fact that a person's actions must "cause it harm" means that harm has had to happen and must be proven beyond reasonable doubt in court to secure a finding of guilt. This prevents the enforcement agency from intervening in potential animal abuse situations, as harm must occur to constitute an offence. If harm has not occurred yet, or there is dispute amongst experts as to the presence of harm, or insufficient evidence of that harm, then prosecution cannot be pursued. Therefore, it could be argued that the *Animal Welfare Act 1985 (SA)*, does not allow for the prevention of cruelty, it only allows the prosecution thereof. This appears to be in direct contradiction with the objective of the Act [16], which is the *promotion* of animal welfare.

The WA legislature does not have this issue, as the *Animal Welfare Act 2002* includes the words "likely to cause harm" [45] instead of a singular "harm". An example of the application of harm from Section 19(3) of the amended *Animal Welfare Act 2002* (WA) is below:

(3) Without limiting subsection (1) a person in charge of an animal is cruel to an animal if the animal —

(a) is transported in a way that causes, *or is likely to cause*, it unnecessary harm; or
(b) is confined, restrained or caught in a manner that —
(i) is prescribed; or
(ii) causes, *or is likely to cause*, it unnecessary harm; [45]

This allows the enforcement agencies in WA to intervene before harm has occurred, thus protecting animals by promoting their welfare. According to an update on the WA Government website, the Department of Agriculture and Food have successfully prosecuted a person transporting livestock in a way that was likely to cause harm [46]. This provides some measure of success associated with the new wording. However, the effect of the amendment on prosecution rates has not been reported. Accordingly, it may be too early to draw firm conclusions on both the impact on animals, and any consequent increased evidential burden on the enforcement agency and difficulties meeting this burden.

The discussed issues in Australian animal welfare legislation require further investigation and consideration. However, it is hypothesized that they contribute to the enforcement gap by preventing the enforcement agencies from carrying out their enforcement responsibilities to the full extent of the law.

3. Animal Law Enforcement and the Public

3.1. Non-Government Organizations

Generally, individual government agencies, such as state police forces, are given power under the general criminal law to enforce legislation. In the case of animal law in Australia, an NGO, namely the Royal Society for the Prevention of Cruelty to Animals (RSPCA), has the bulk of the enforcement burden. This is achieved through the inspectorate division [7,47,48]. These inspectors are given power of enforcement after being appointed by the Minister of each state or territory's relevant government department [35–37,39,40]. The relationship between the RSPCA, and Australian state/territory governments has an extensive history, with the SA government entrusting the RSPCA SA to enforce animal welfare laws for more than 100 years [49]. This relationship is a reflection of our colonial past [47]. The English RSPCA began enforcing anti-cruelty laws from its inception (as the SPCA), since a police force was not in existence at that time [47]. It is important to note that the RSPCA in Australia is a federated organization, with member societies in each state and territory, and RSPCA Australia as the national body [50]. RSPCA Australia has no role in enforcing the state and territory animal welfare laws. Instead RSPCA Australia has a role in influencing animal welfare policy, practice and legislation [50]. The enforcement is the responsibility of the state and territory RSPCAs, as independent organizations.

The state and territory-based RSPCAs are involved in animal law enforcement in each state and territory of Australia, with the exception of NT, where a government department (Department of Primary Industries and Resources) enforces the legislation entirely [51]. The enforcement burden is often shared between two agencies in each state and territory (Table 2), through the signing of a memorandum of understanding [48,52,53]. This shared agreement often sees the RSPCA enforcing companion animal matters and government-run departments enforcing livestock cases [48,52–55].

Table 2. Each state and territories' relevant animal welfare legislation and predominant enforcement agencies in Australia.

State/Territory	Enforcement Agency [1]
Australian Capital Territory	RSPCA [2] Australian Capital Territory [56]
New South Wales	RSPCA NSW [57] Animal Welfare League NSW [57]
Northern Territory	Department of Primary Industries and Resources [51]
Queensland	RSPCA Queensland [58] Biosecurity Queensland [59]
South Australia	RSPCA SA [49]
Tasmania	RSPCA Tasmania [60] Department of Primary Industries, Parks, Water and Environment [61]
Victoria	RSPCA Victoria [52] Department of Job, Precincts and Regions [52] Department of Environment, Land, Water and Planning [62]
Western Australia	RSPCA WA [63] Livestock Compliance Unit [64]

[1] All State and Territory police forces are given powers to enforce the animal welfare legislation. [2] RSPCA refers to the Royal Society for the Prevention of Cruelty to Animals.

3.2. Reporting Cruelty

The first step of the enforcement process is reliant on the public. This step involves contacting one of the above enforcement agencies (Table 2) to report the details of an act of animal cruelty. Reporting cruelty as a whole contains several variables that come into play. From previous research it is understood that the propensity to report criminal acts (not exclusively involving animals) involves the following factors: (1) presence or absence of witnesses, (2) financial losses incurred, (3) the seriousness of the crime [65,66], (4) distrust in the relevant enforcement agency, (5) and fear of retaliation [67]. Although these studies are not predominantly animal-crime-orientated, they can be used as a guide to the decision-making process someone undertakes before reporting animal cruelty. An individual's likeliness to report animal abuse was further examined by Taylor and Signal [68]. This study had the major findings that (1) people working within the livestock industry had the lowest propensity to report animal abuse and (2) although people have the intention to report, they do not know whom to report to.

The first major finding of Taylor and Signal [68], that people who work with livestock are less likely to make animal cruelty complaints across all species, was discussed by Kellert [69], where this lower propensity was related to the strong utilitarian views these workers have. That is, they show greater concern for the animal's practical and material value, rather than solely their welfare. This, however, does not imply that those working within the livestock industry condone or engage in acts of animal abuse, they just have a different attitude towards animals, influencing their propensity to report [70], which can be related to their experiences in working within the livestock industry [71]. A further consideration of demographics may also be important. Individuals in rural populations, in comparison to urban populations, may be less likely to report cruelty because livestock ownership is comparatively more 'hidden' than companion animal ownership, especially in the case of intensive industries such as piggeries and poultry farms. It is theorized that, because of the often secluded and geographically dispersed nature of the livestock industry, evidence of abuse is harder to obtain, the cases are expensive to prosecute because of the number of animals involved, and it has been suggested that prosecutors often view them as risky [72]. Furthermore, recent debate or enactment of "ag-gag" laws comes in to play. These laws aim to hinder or 'gag' discussions on more controversial facets of the animal agricultural sector through curbing animal activist and investigative activities [73]. They prevent public oversight and criticism of livestock practices and have the potential to allow animal

cruelty to remain unseen, thus reducing the number of cruelty reports. Although these laws are more prevalent in the US [74], they have been emerging in Australia, as discussed by Englezos [73].

The second major finding of the Taylor and Signal [68] study was that a large proportion of people (27% of their sample) were unaware of how to report acts of cruelty, leading them to either not report, or report to agencies not tasked with the bulk of animal law enforcement. This is a major issue and has recently been validated again in Australia by Glanville, et al. [75], where a survey of the Victorian public found that the majority of participants would not report to the primary enforcement authority (RSCPA Victoria). In fact, a significant number of responses (27%) indicated that the public would take no action if they witnessed animal mistreatment. After investigation into the reasons behind inaction, the authors found that 24% of respondents were uncertain whether animal mistreatment was actually taking place. However, when asked to assess their confidence levels in recognizing animal mistreatment, the majority of participants rated themselves with high confidence. Therefore, it appears that perceived knowledge does not always equate to action.

There is further evidence of public uncertainty as to what constitutes an animal welfare offence. RSPCA Victoria have stated that the community expectations of animal welfare are much higher than the legal standard the RSCPA has to work within [76], implying that the public misunderstand what constitutes an animal welfare offence, and consequently misreport to the RSPCA. Sophie Buchanan, Head of Prevention at RSPCA Victoria, stated:

> "One of the things that we continually observe is that community understanding of what constitutes an offence under the Prevention of Cruelty to Animals Act and the reality of the act are quite separate. Community expectations about welfare are quite high, but the threshold for an offence under the act is quite significant. Even though these are summary offences, the level of harm that has to be proven that an animal has suffered makes the threshold for investigation and prosecution quite significant. So rather than vexatious, the majority of unsubstantiated complaints or reports that we receive relate more to people's misunderstanding of what would constitute an offence" [76]

Thus, even though there is some evidence that the public either do not report animal abuse, or that they report to inappropriate enforcement authorities [68,75], there is still an issue with people reporting acts which do not meet the legal criteria for an offence. Rectification of reporting issues is likely best achieved through public education, focused on the identity of the appropriate enforcement agency and what constitutes an animal welfare offence. Relaying to the public the need for the enforcement agency to establish the elements of the statutory provision, as well as the evidential burden for prosecution, is necessary in advancing public understanding. If the public do not understand this concept, they may become frustrated with the enforcement system. Education of this nature is something the state and territory RSPCAs have begun implementing on their websites, see e.g., [49]. This will allow the enforcement agencies and the public to work towards a relationship that is filled with understanding, and consequently will reduce the numbers of misreports and general underreporting of offences.

4. Animal Law Enforcement Agencies

4.1. Conflicts of Interest

Animal law enforcement is carried out by two different types of enforcement authorities: government-run departments, and NGOs. Government departments in each state and territory, other than the Australian Capital Territory (ACT) and SA, are tasked with farm animal welfare enforcement [77]. This regulatory relationship between government-run agricultural departments and animal welfare enforcement has challenges, specifically the conflict of interest between promoting the livestock industry economically and also regulating it to serve public interest [77]. Sociological research has indicated that public concern regarding issues of farm animal welfare is growing [78–80], shifting from the traditional utilitarian philosophy to a more empathic approach [81–83]. Consequently,

the public expect advancements in farm animal welfare to match their growing expectations. However, it has been suggested that the Agricultural Departments in Australia fail to balance promoting the industry for profit and protecting farm animal welfare to meet public interest [77]. Goodfellow [77] has discussed this topic in depth, arguing that good welfare practices and on-farm productivity do not come hand-in-hand, despite the information from industries suggesting otherwise, see, e.g., [84]. The main point of discourse is that protecting animal welfare is not always the most profitable option, leading to a conflict for the Departments in choosing between the promotion of the industry or protecting animal welfare. Goodfellow [77] argued that the former is the obvious choice for the industry, given previous patterns in history, and concluded that reforms are required to rectify this imbalance.

NGO enforcement is undertaken primarily by Australian state and territory RSPCAs, which are also involved in advocacy campaigns for animal-related issues, as per the organizations' objective "to educate the community with regard to the humane treatment of animals" [85]. However, conflicts of interest arise when advocacy campaigns imitate activism activity [86]. According to the Oxford Dictionary, the definition of advocacy is "public support for, or recommendation of, a particular cause or policy" [87], while activism means "the policy or action of using vigorous campaigning to bring about political or social change" [88]. Although both words refer to creating a change through means of public expression, the differing factor is the way the expression is conducted: activism seems to take a more forceful approach. In the Victorian report on the RSPCA inspectorate division, Comrie [86] discussed the public's difficulty in differentiating between the RSPCA's activism work and law enforcement responsibilities, arguing that there is a conflict of interest since the law fails to align with the RSPCA's core beliefs and values. However, the overarching objective of animal welfare statutes is to prevent animal cruelty by promoting animal welfare [16–23], and the RSPCA Australia's mission is "to prevent cruelty to animals by actively promoting their care and protection" [89]. The RSPCA promotes the concept of 'welfare' as maintaining the 'five freedoms' of animals [90], and it has been suggested that animal welfare legislation in Australia is underpinned by the 'five freedoms' [91]. This indicates that there is no conflict of interest between the legislative objectives and the RSPCA's core values.

Despite this apparent alignment between legislative objectives and RSPCA's values, at face value there could be a conflict of interest between the activism work in which RSPCA is involved, and lawful activities as authorized by animal welfare legislation. An example of this was discussed by the Victorian Legislative Assembly Committee of Economy and Infrastructure on RSPCA Victoria's fitness as an enforcement agency [92]. Representatives of the Sporting Shooters Association of Australia raised concerns about the RSPCA's stance on hunting as a recreational activity [92]. This is a legal activity in Victoria under the Code of Practice for the Welfare of Animals in Hunting (revision no. 1) [93]. The issue of contention was that RSPCA Victoria was campaigning against duck hunting, as per RSPCA Australia's policy of being

> "opposed to the hunting of any animal for sport as it causes unnecessary injury, pain, suffering, distress or death to the animals involved" [94]

However, given the legality of duck hunting in Victoria, RSPCA Victoria were campaigning against lawful activity. This same issue has been noted in campaigns on dairy cows, greyhound racing, layer hens, live exports, meat chickens, pig farming and whips in horse races [95], which are all legal activities under Victorian law [92], and common campaigns run by RSPCAs across Australia. This conflict between the RSPCA's campaigning work and enforcement responsibility has been suggested to not only confuse the public, but also compromise the relationship between RSPCA Victoria, government officials, and members of hunting, sporting and primary production organizations, making them reluctant to engage with the NGO [86]. RSPCA Victoria have since acknowledged this issue and released a response to the Comrie review [86], stating that the organization will "focus on achieving improvements in animal welfare by using trust-based advocacy approaches" [96]. RSPCA Victoria voiced that all public campaigns will be focused exclusively on direct owner care of animals, not advocating against Victorian

laws [76]. RSPCA Victoria or any other state/territory NGO enforcement authorities have had no reported issues with animal welfare campaigns since the review.

In an independent review on animal welfare enforcement in WA, it was recommended that the inspectorate divisions within both NGO and Government Departments (Department of Agriculture and Food WA), were kept separate from the operational areas, to avoid any potential conflicts of interest [97]. Thus, since providing NGO enforcement and campaigning activities work independently from one another as two completely separate entities, the risks of conflict should be diminished.

4.2. Resourcing Issues

Each financial year, state governments fund the individual RSPCAs to cover the costs of enforcement. However, according to the annual reports available on the RSCPA SA's website, the government funding they received for the 2018/2019 financial year only covered 43% of the total cost to enforce SA's relevant animal welfare legislation (*Animal Welfare Act 1985* (SA)) [98], the remainder being funded at their own expense. There is no other branch of criminal law that relies so heavily on charity to ensure the enforcement of what is essentially a public interest law [12,99]. The position of RSPCA Victoria in regard to their enforcement responsibilities was well summarized by Magistrate D.J. Faram during a Victorian animal welfare case in 2015. His Honour said:

> "The RSPCA in particular is a statutory body with prosecutorial powers but without significant support from Parliament. They are also the body charged with rescuing and rehabilitating these animals. This comes at a significant cost for an organization that receives some state funding but otherwise relies on donations and bequests and other fundraising activities" [86]

In the 2018/2019 financial year, the South Australian inspectors responded to 4244 cruelty reports [98]. Of those reports, only 32 were prosecuted in court, meaning only 0.8% of the complaints investigated resulted in charges being laid. These low prosecution rates are not exclusive to South Australia, as the cumulative prosecution rate for Australia also equates to 0.5% (Table 3).

Table 3. Numbers of inspectors, cruelty reports and prosecutions for each state and territory in Australia. All data were gathered from the 2018/2019 RSPCA annual reports. Note, as described in Table 2, that the RSPCA may not be the sole enforcement body for that state or territory. The Northern Territory is not included in Table as RSPCA NT has no role in enforcement.

State/Territory	RSPCA Inspectors	Cruelty Reports	Prosecutions	Prosecution Rate (%)
Australian Capital Territory	3 [86]	1024 [100]	1 [100]	0.1
New South Wales	32 [101]	15,673 [101]	77 [101]	0.5
Queensland	24 [86]	17,810 [102]	154 [102]	0.9
South Australia	9 [98]	4244 [98]	32 [98]	0.8
Tasmania	4 [60]	1900 [100]	10 [100]	0.5
Victoria	26 [103]	11,638 [100]	94 [100]	0.8
Western Australia	15 [86]	6417 [104]	10 [104]	0.2

This small percentage of prosecutions in relation to reports is assumed within the literature to be caused by a lack of resources available to the enforcement agencies, most commonly the state and territory-based RSPCAs [72,105]. The resourcing issue is often referred to in monetary terms [72]. However there is minimal evidence to support this claim, nor the ability to measure the magnitude of its effects; there is only speculation.

Within the literature, it has been suggested that the RSPCA will only prosecute cases of a grievous nature, where evidence is overwhelming, as a way of saving resources [72,105]. That is, the organization will only prosecute cases where guilty verdicts are likely to be assured due to the risk of adverse cost orders in the event of a not guilty finding. If true, this position may preclude the bringing of test

cases and some neglect cases where impact on animal wellbeing may be less easy to characterize. An example of these test cases could include cases of mental suffering experienced by animals, which is not widely recognized in animal law [11], despite the scientific evidence in support of animals experiencing emotion [106–109]. As an example, the issue of obese pets is becoming increasingly prevalent [110] and has been legally tested in 2007 in the UK, see, e.g., [111]. Two brothers were found guilty of causing unnecessary suffering to their dog by allowing the dog to become so obese that he was "effectively crippled" [111]. Cases of this nature appear not to have been tried in Australia. The doctrine of precedent allows the law to develop through case law, since precedents in certain circumstances are legally binding, meaning that judges must follow the determinations and rulings of judges in higher courts. However, if test cases are not initiated to test the boundaries of legal terminologies such as animal "harm" or "suffering", the only opportunity for animal law to progress is through statutory reform [112]. The latter requires a groundswell of support, and is retrospective and often lengthy [112]. These test cases have significant value not only for incrementally progressing animal law, but also in guiding statutory interpretation and safeguarding animal welfare. Therefore, the speculated under-resourcing has the potential to impact on animal law development through impeding the progression of the doctrine of precedent.

Nonetheless, prosecution is only one way to promote animal welfare and it may not be an optimal method. In the WA independent review of animal welfare enforcement, both the RSPCA and the Department of Agriculture and Food WA, who share the enforcement responsibilities, made a submission to the review based on their belief that education was the most appropriate method of achieving compliance with the legislation [97]. Education can either be in the form of widespread community outreach, through campaigns or seminars, or legally sanctioned education in the form of animal welfare notices/directions. Animal welfare notices are essentially 'instructions' given to owners to rectify any duty of care breaches before prosecutorial action is taken. These notices are outlined under the state and territory Acts [113–120] and are given to owners by animal welfare inspectors or officers. It is an offence if the owners fail to comply with the notices, and they can also become further evidence of an offence, to be used later in court.

This suggests that enforcement agencies will use prosecution as a tool only when the education of an individual has failed. Thus, they will only prosecute cases if necessary, as a last resort, not because they are required to prioritize the cases of the worst nature due to resourcing concerns. However, it is possible that the cases of the worst nature are in fact the cases where education would fail, as these animal abusers are often displaying levels of moral numbness [8], rendering education ineffective, and punitive measures more appropriate. It is probable, in reality, that decision-making as pertains to course of action does not follow a clear step-by-step 'trial' of increasingly more punitive measures, instead being more nuanced, based on individual case facts and personal experiences of enforcement personnel. Another point of note, given that both the RSPCA, as a charitable organization, and the Department of Agriculture and Food, as a government department, both gave preference to education over prosecution when they have access to different levels of resourcing, is indicative that the low prosecution rate is not necessarily reflective of resourcing strains experienced by the RSPCA. This focus on education goes back to the RSPCA's mission to prevent cruelty by promoting animal welfare, which is where their name came from: Royal Society for the *Prevention* of Cruelty to Animals [85], not the *'Prosecution'* of Cruelty to Animals.

There is, however, evidence in support of a resourcing issue: in statements made during the consultation on the bill proposing changes to the *Animal Welfare Act 1985 (SA)*, the Honourable Mark Parnell stated:

> "What is the point of increasing penalties if we do not increase the resources that are used to investigate cases of animal cruelty?" [32]

Further evidence in support of this is from the independent review of animal welfare enforcement in both Victoria [86] and WA [97]. Comrie [86] acknowledged the resourcing issue by suggesting

potential alternative resourcing strategies. The main suggestions were to delegate some of the tasks of the inspectorate division to other departments within the NGO, engage more volunteers in inspectorate functions, and work more closely with local government agencies for a greater widespread animal welfare network. Since the Comrie review [86], it has been stated that RSPCA Victoria has made significant improvements in this regard [95], however, the nature of the improvements were not commented on. Thus, no conclusions can be drawn on whether the apparent resourcing issue has improved for RSPCA Victoria. In the WA review, Easton, Warbey, Mezzatesta and Mercy [97] acknowledged the need to allocate additional resources to animal welfare, however the authors noted that they did not have access to any statistical data, and derived their conclusions based on the submissions made to the review, which may have been influenced by bias.

The statement made by RSPCA Victoria cited earlier, referencing the public misunderstanding of what constitutes cruelty under law [76], is further evidence disputing the resourcing issue. It can be argued that the alleged resourcing issue, as measured by the substantial gap between reports and prosecutions, is due to the public misreporting acts of animal welfare concerns, rather than an inability to fully investigate due to inadequate resourcing. In order to reduce this issue of misreporting, RSPCA have run campaigns to better educate the public on animal cruelty investigations; an example is RSPCA SA's 'combat cruelty' campaign, see, e.g., [121]. It is likely that both inadequate fund provisions to enforcement agencies, as well as public misunderstanding of what constitutes an animal welfare offence play a part in the low prosecution rates presented in Table 3. However, without the guidance of any statistical support or claims from the enforcement agencies themselves, the existence or extent of a resourcing issue is mere conjecture.

4.3. Alternative Enforcement Models

Other countries have implemented different methods for animal law enforcement. The Auckland SPCA of New Zealand do not receive any government funding for their enforcement work [122]. This organization relies on fundraising and donations to fund their investigation work. However, they have formed a pro bono panel of lawyers who offer their time and experience to prosecute animal welfare offences on behalf of the Auckland SPCA [122]. In Killeen's review [122] of this pro bono panel in 2013, it was reported that the panel have been very successful in securing severe penalties for offences and arguing for legislative reform. An article on New Zealand's Law Society website confirms that this pro bono panel was still in action in March 2017, and comprises approximately 40 lawyers [123]. Recently, the Canadian province of Ontario has removed the SPCA from their enforcement role all together, after concerns over charitable dollars subsidizing a government function [33]. Coulter [33] suggested that Ontario should consider a strategic combination of a government division for enforcement and not-for-profits for support and animal care. This partnership model has been successfully implemented in New York City, where the police force and ASPCA now work symbiotically, with police officers trained for animal cruelty investigations and the ASPCA providing support [33].

In Australia, from the two independent reviews of animal welfare enforcement in Victoria [86] and WA [97], and the Victorian Government's inquiry into RSPCA's fitness as an enforcement agency [95], the final conclusions drawn are that the current model in place, where NGOs enforce animal welfare statutes, is the most appropriate. The assumption that transferring enforcement responsibility to the government will lead to greater transparency may be too simplistic [5]. Currently, in jurisdictions where government agencies are tasked with animal law enforcement, commonly involving cases of farm animal abuse [48,52–55], little to no information on their enforcement activities is made publicly available [55]. In contrast, the RSPCA release figures each financial year detailing their enforcement activities [98,101–104,124].

5. The Court Process

5.1. Court Level

Animal welfare offences are generally initiated in the Magistrates Court in Australia [12]. Being a lower court, any decisions made are not binding to future cases, and are unreported, resulting in a lack of precedents. Decisions are only binding when made in higher courts. This usually only applies to animal law appellate cases presented to the higher courts. As discussed earlier, law develops incrementally through case law [112]. The absence of precedents renders animal law to be somewhat of a 'statutory beast'.

5.2. Maximum Penalties

Penalties for animal welfare offences were the subject of numerous amendments in SA [10], QLD [31] and Victoria [62], where the maximum penalties for offences were increased. Although the maximum penalties for offences are significant, for example, in SA the maximum custodial sentence is 4 years and the monetary fine is $50,000, on average, less than 10% of these maximums are being used in court [10]. This raises questions regarding the purpose of maximum penalties. It is suggested that they are reserved for the worst, most serious examples of an offence [125], but if they are never applied, are they just a symbolic gesture? It has been suggested that terms of imprisonment and fines are not the most effective way to punish animal abusers, and alternative penalties should be considered [8,10]. Such reasoning is derived from the fact that imprisonment as a penalty for criminal offences meets very few of the punishment theory facets, being deterrence, rehabilitation, retribution, restitution and incapacitation [126–129]. When considering animal law, imprisonment only completely satisfies the retribution aspect, as the suffering experienced by the animal harmed is compensated by the suffering experienced by the offender in jail [127]. Other facets of punishment theory seem to be ignored or are not fully satisfied. Alternative penalties, such as court-mandated counselling, should aim to reduce the prevalence of reoffending and prevent the likelihood of later human violence, as there is an established link between animal abuse and human violence [130–137]. However, as noted by Holoyda [138], it is unclear what type of counselling should be imposed, since there are no models for the treatment of animal abuse that have undergone any sort of study or peer review. Despite uncertainty regarding the effectiveness of alternatives penalties, their consideration is still warranted to prevent further acts of cruelty, whether to animals or humans.

5.3. Prohibition Orders

Enforcement agencies commonly apply to the court for prohibition orders as a mechanism to further protect animals [139], as stated by RSPCA QLD's Prosecutions Officer, Tracey Jackson:

> "In many cases, the best way to protect animals, is to use prohibition orders to limit or regulate animals owned by offenders. Many times people offend due to their current circumstances, and they simply need a break from having animals, or from having so many animals". [139]

A prohibition or supervision order is a direction issued by the court to an offender found guilty of an offence, the provisions of which are outlined in the state and territory Acts [140–147]. These orders either prevent offenders from owning animals for a set period or until a further order is approved by the courts, or limit the number of animals to be owned [140–147]. Supervision orders work similarly to prohibition orders. The difference is that the offender is not prohibited from owning animals; they are under the supervision of an enforcement agency, who can regularly check on the welfare of the offender's animals [148].

The issue with these court orders is that they are not cross-jurisdictionally recognized, allowing people who have been prosecuted and placed under a prohibition order for animal welfare offences in one state to cross the border and be free of the provisions therein. In a recent scenario, dog breeders pleaded guilty to animal welfare offences in Victoria and were placed under a nine-year

prohibition order from owning animals [149]. The breeders entered SA and continued to breed dogs, since the Victorian prohibition order no longer had effect. The breeders have since been alleged to have committed offences under the *Animal Welfare Act 1985* (SA) and have had animals seized from them [150]. They are currently undergoing prosecution in the SA Magistrates' Court [149]. In an opinion piece to the South Australian Law Society, the Chief Executive Officer for RSPCA SA, argued for the recognition of interstate prohibition orders, as it would discourage people with prohibition orders from relocating to another state and continuing the ownership of animals [151]. Currently, in Australia, the recognition of interstate orders has been achieved for domestic violence orders [152] and is undergoing debate by members of the QLD Parliament for firearm prohibition orders [153]. Thus, there is a legal precedent for making such a change in relation to animal welfare offences.

5.4. Case Sentencing

Currently fines, generally considered as the least severe option, are the most common penalty given, while imprisonment, being the most severe option, is the least common [9,10,24,154]. This is in contradiction to public expectations, since they appear to largely favor prison sentences [2,155]. However, case sentencing is a complex process and, as Markham [24] noted, analysis of sentencing data would be a difficult task. There is no strict formula for sentencing cases; there is human (judicial) input, as well as any factors that the court will take into account. For this reason, the remaining discussion on case sentencing does not proclaim to be a comprehensive analysis of the entirety of the process, nor does it intend to undermine the current processes in place or underestimate the complexities of the criminal justice system. This discussion is simply a review of the available literature in relation to case sentencing and the ways in which it may contribute to the enforcement gap concept.

In court, the judge will use the maximum penalty as a guide and decide the sentence they see fit in accordance with the relevant sentencing legislation, taking into account aggravating and mitigating factors. In SA, the sentencing legislation in place is the *Sentencing Act 2017* [156]. This piece of legislation provides guidance to the courts when sentencing offenders for criminal offences [157]. For example, section 10 of the *Sentencing Act 2017* outlines the use of imprisonment sentences, stating:

(2) Subject to this Act or any other Act, a court must not impose a sentence of imprisonment on a defendant unless the court decides that—

(a) the seriousness of the offence is such that the only penalty that can be justified is imprisonment; or

(b) it is required for the purpose of protecting the safety of the community (whether as individuals or in general) [158]

This specifies that, in SA, terms of imprisonment must only be handed out as a last resort, which is in contradiction to public expectations, which largely support prison sentences for animal welfare offences [2,155]. Public support for prison sentences is not unique to animal law; general community opinions on sentencing in criminal law are that courts are 'too lenient' and 'not severe enough' [159]. This suggests that the public are not aware of the complexity of case sentencing, and that terms of imprisonment cannot be handed out for any case. Judges have a legal obligation to not misuse prison sentences for a myriad of reasons, one being to not utilize costly prison resources on offenders who do not pose a risk to the community, as costs associated with incarcerating an individual in Australia are high [160]. Misuse of those resources would result in over-stretched prison systems, which would prevent the incarceration of criminal offenders who pose a serious risk to the community. Considering that the majority of animal abuse cases are negligence cases, where the offender has failed to provide an animal with adequate living conditions or veterinary treatment, not aggravated offence cases, where the offender intended to harm the animal [10], this implies that the majority of animal abusers do not pose a risk to the community. Therefore, other rehabilitative forms of penalty are likely to be more appropriate and cost-efficient. Despite the fact that the public are largely in favor of prison sentences, they may not necessarily be warranted for the majority of perpetrators of animal crimes.

Animal law in Australia is enforced by various organizations, including the police, and their case outcome data, and the nature of case files is assumed to be individualized for each organization. Evidence for this can be seen from the review of animal cruelty offences in Victoria, where the authors, McGorrery and Bathy [62], acknowledged six different organizations/departments that supplied the data for their analysis. The lack of any centralized tracking of case information challenges the ability to access and analyze any sentencing trends, operate effectively across agencies, provide recommendations and make use of the doctrine of precedent. It has been reported that the US FBI have begun tracking animal abuse cases [161], which is an idea worth consideration in Australia.

6. Conclusions

The enforcement gap in animal law is created as a result of a range of factors derived from all stages of the enforcement process, from cruelty reports to sentencing. The causes of the enforcement gap are not exclusive to those mentioned in this review and this concept is certainly not isolated to animal law, but this area of law has some unique elements due to the unusual reliance on a charitable organization for policing. There is a dearth of empirical data on contributors to this gap, and further research is needed on the following concepts; (1) the differences between the Australian state/territory animal welfare legislation, (2) education programs to better inform the public on the means of reporting animal cruelty (3) the extent of the resourcing issues experienced by NGOs, and (4) alternative penalties for offences. Without such evidence, it is challenging to suggest solutions to the problem, but it is likely that a combination of changes to the enforcement model, legislative reform and public education is required.

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Chapter 3: Assessing the Uniformity in Australian Animal Protection Law: A Statutory Comparison

Contextual Statement

Animal welfare is not included in the *Australian Constitution*, rendering it a residual power within the domains of the states and territories. This has resulted in eight different pieces of animal welfare legislation across the country. It has been suggested that inconsistencies exist between the state and territory statutes, and that a uniform approach to legislating animal welfare protection would be beneficial in reducing the enforcement gap. However, before such an approach can be considered, the extent of the inconsistencies between the states and territories needs to be assessed. This chapter utilises systematic review methodology to compare every current Australian statute with an enforceable protection provision relating to animal welfare cross-jurisdictionally. A total of 436 statutes were examined, with 42 statutes being included in the detailed analysis. The comparison showed that animal protection laws are generally consistent between each Australian jurisdiction and were found to have similar shortcomings, which likely do not require a federal uniform approach to rectify. Thus, the state-based approach to animal welfare legislation is unlikely a major contributor of the enforcement gap.

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Certification:	This paper reports on original research I conducted during the period of my Higher Degree by Research candidature and is not subject to any obligations or contractual agreements with a third party that would constrain its inclusion in this thesis. I am the primary author of this paper.		
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i. the candidate's stated contribution to the publication is accurate (as detailed above);
ii. permission is granted for the candidate in include the publication in the thesis; and
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Article

Assessing the Uniformity in Australian Animal Protection Law: A Statutory Comparison

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Simple Summary: Australia does not have any federal legislation pertaining to animal welfare; thus, the responsibilities lie with each state and territory. This situation has led to eight different pieces of animal welfare legislation across the country, with potentially distinct content and avenues for interpretation. These differences may create problems for the enforcement of animal welfare law, and hence it has been suggested that a uniform approach is required. However, before such an approach can be considered, the extent of the inconsistencies between the states and territories needs to be assessed. This review compares the differences between state and territory animal welfare laws to determine the presence and nature of any major inconsistencies. A total of 436 primary pieces of legislation were reviewed, with 42 included in the detailed analysis. Animal welfare laws were found to be generally consistent across the states and territories of Australia, but with some important shortcomings that are discussed.

Abstract: Animal welfare is not included in the Australian Constitution, rendering it a residual power of the states and territories. Commentators have suggested that inconsistencies exist between the state and territory statutes, and that a uniform approach would be beneficial. However, there has been no comprehensive assessment of the nature or extent of these purported inconsistencies. This review addresses this gap by providing a state-by-state comparison of animal protection statutes based on key provisions. Utilizing systematic review methodology, every current Australian statute with an enforceable protection provision relating to animal welfare was identified. A total of 436 statutes were examined, with 42 statutes being included in the detailed analysis. The comparison showed that animal protection laws are generally consistent between each Australian jurisdiction and were found to have similar shortcomings, notably including lack of a consistent definition of 'animal' and reliance on forms of legal punishment to promote animal welfare which have questionable effectiveness. It is argued that there is a need for attention to definitions of key terms and future consideration of alternative forms of penalties, but that a uniform federal approach may not be necessary to address these shortcomings.

Keywords: animal welfare legislation; animal cruelty; law enforcement; Australia; enforcement gap

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1. Introduction

In Australia, there is no overarching federal animal protection legislation, as there is no 'head of power' for animal welfare in the *Commonwealth of Australia Constitution Act 1901* ('Constitution') [1]. Due to this lack of Constitutional recognition, animal welfare is a residual power within the domains of the Australian states and territories. Consequently, animal protection laws have been individualized for each state and territory and, as a result, it has been argued that this causes cross-jurisdictional inconsistencies [2–5]. These inconsistencies are thought to create a "fragmented, complex, contradictory, inconsistent

system of regulatory management" [3]. Some of the criticisms of a state-based approach in Australia and elsewhere include that it makes national data collection almost impossible [3], causes public confusion [4], does not allow for cross-jurisdictional recognition of animal prohibition orders [6] and does not present a united front toward animal protection [2].

The shortcomings around lack of harmonization of animal welfare laws have previously been discussed in the Australian context [2,3,5,6] and in Canada [4]. It has been argued that a more uniform approach to animal welfare laws would be beneficial [2–4,6], and that these types of inconsistencies can contribute to an 'enforcement gap' in animal law [6], previously defined as a discrepancy between the intentions of the written law and the outcomes of the enforcement process [6,7], where intentions do not align with outcomes. It is important to identify shortcomings in animal welfare legislation, isolate key issues, and propose targeted reform. However, in spite of the ongoing discourse on this topic, there has not been an extensive assessment of the existence and extent of inconsistencies between current Australian state and territory legislation pertaining to animal welfare.

This paper hence seeks to provide a legislative review relating to governance of animal welfare that can serve as a basis for guiding future discussions around need for a uniform approach to animal welfare law. Utilizing systematic review tools, we examine every current Australian statute which has an enforceable protection provision relating to animal welfare, where 'animal welfare' is defined as promoting duty of care responsibilities towards animals, as well as preventing cruel acts towards them that result in harm or suffering. It is important to note that this study only focuses on statutes. Additionally, delegated legislation such as regulations and codes of practice are not included and should be considered for future review. The resulting analysis is designed to provide easy access to state-by-state comparisons and is not intended to provide full discussion on the pros and cons of all statutory inclusions. Consequently, this review will discuss the legal implications of common definitions, such as 'animal', 'welfare' and 'cruelty', compare the differences between the animal welfare provisions cross-jurisdictionally and conclude with potential avenues for reform.

2. Materials and Methods

2.1. Data Sources and Search Strategy

The legislation search was conducted in the LawOne by TimeBase electronic database, in February 2020. The search was limited to current Australian statutes, including both national (Commonwealth) statutes, and state and territory-based statutes. Thus, any repealed acts, bills, regulations or codes of practices were not included in the search. The search strategy was developed in consultation with a legal information specialist. Common terms used in animal protection statutes were identified and used to create the search terms. The search criteria were as follows: animal OR livestock OR wildlife OR fish AND welfare OR protection OR cruelty OR bestiality OR harm OR injury.

2.2. Eligibility Criteria

Statutes accepted for analysis included any with provisions for the protection of animal welfare or prevention of animal cruelty as defined by promoting duty of care responsibilities towards animals or preventing cruel acts towards them that result in harm or suffering, and that were enforceable by penalty. Penalty was defined broadly to include monetary fine, custodial sentence, animal welfare directions or notices, court-mandated prohibitions or animal seizures. Each statute was reviewed manually using key search terms of the inclusion criteria. For inclusion, provisions had to have the protection of animal welfare as their primary object, rather than animal welfare protection that arises as a result of achieving the primary purpose (see below).

Statutes were excluded from the analysis if they made reference to animal welfare in the absence of an associated penalty. Examples include referral in object clauses of statutes, reference to relevant delegated legislation, and references to other statutes (most commonly state and territory-based animal welfare statutes). Statements that animal welfare

experts should be included on committees were also excluded, as were any statutes put in place for the management of animals largely for public health purposes (e.g., dog and cat management acts), and any statute controlling humane killing methods (e.g., biosecurity acts). Provisions that included stealing or killing animals with the intention to steal were excluded (sections of crimes acts), because they relate to damaging personal property and are not focused on animal welfare. Statutes in force to regulate professions, such as the veterinary industry or research involving animal use, were excluded as they are largely administrative in nature (e.g., controlling licensing) and lack any enforceable animal welfare provisions. Similarly, emergency management statutes that could make reference to managing animals in natural disasters (see [8] for further commentary) were excluded for the same reasons. Finally, any statutes that discussed the human effects of animal abuse were excluded (e.g., domestic violence acts), as these acts are in place to protect human suffering resulting from emotional abuse caused by animal cruelty.

2.3. Data Extraction

This paper does not review the statutes in their entirety but focuses on the provisions in those with an animal welfare component. Variables of interest included definitions of common terms, such as 'animal', and welfare provisions, such as offences and their corresponding penalties, as well as court orders and animal welfare directions.

3. Results

A broader search using the term "animal" identified 3529 potentially relevant statutes. The search was then limited to current acts, resulting in 3093 regulations, bills, assented, amending and repealed acts being excluded. A manual full-text review of the 436 remaining statutes was conducted and a further 394 acts were excluded as they did not include enforceable provisions for animal welfare. Thus, a total of 42 statutes (refer to Appendix A for list) were included in the statutory analysis (Figure 1).

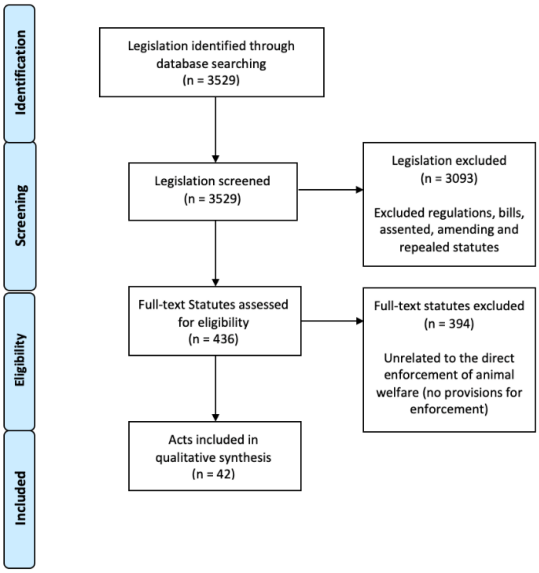

Figure 1. PRISMA [9] flow diagram showing the data selection process of animal protection statutes.

3.1. Type of Statutes

The 42 statutes from nine Australian jurisdictions included in the analysis can be broken down into eight different types of animal protection categories (Table 1). Each act has specific categories of animal use that it protects. Each state and territory has an 'animal welfare act', where the focus is to protect all categories of animals as per the specific

definition outlined in the act. Each state and territory also has 'crimes acts' which include specific offences relating to animals. The only Commonwealth acts included in the analysis are wildlife acts, which include protection provisions for specific types of Australian wildlife. The majority of states and territories have fisheries acts that are in place for fishery management. The remaining statutes occur non-uniformly across the states and territories and include two livestock acts with protection provisions, two animal sporting acts, one exhibited animals act and a variety of miscellaneous acts. The miscellaneous acts include those for chemical use, summary offences and police powers, which all have at least one offence relating to protection of animal welfare (refer to Appendix A).

Table 1. Statutes which include provisions for animal welfare protection in various Australian jurisdictions. 'Other' categories include chemical use statutes, racing statutes, a summary offences statute and a police powers statute. For a detailed list of all 42 statutes, refer to Appendix A.

Jurisdiction	Animal Welfare	Crimes	Wildlife/ Environment	Fish	Livestock	Sports	Zoo	Other	Total
Commonwealth (CTH)			✓✓						2
Australian Capital Territory (ACT)	✓	✓	✓	✓					4
New South Wales (NSW)	✓	✓	✓✓	✓				✓	6
Northern Territory (NT)	✓	✓	✓	✓				✓	5
Queensland (QLD)	✓	✓	✓			✓	✓	✓	6
South Australia (SA)	✓	✓	✓	✓				✓	5
Tasmania (TAS)	✓	✓	✓	✓	✓				5
Victoria (VIC)	✓	✓	✓	✓	✓	✓			6
Western Australia (WA)	✓	✓	✓						3

3.2. Animal Welfare Statutes

There are eight separate animal welfare statutes in place at the state and territory level in Australia (Table 2). The overarching objective of these statutes is to prevent animal cruelty by promoting animal welfare [10–17]. They are the primary pieces of legislation in place to define, penalize and deter acts of animal cruelty [6]. The following discussion concentrates on provisions deemed by the authors to be of central importance for discussions about uniformity and harmonization.

Table 2. Animal welfare statutes for each Australian state and territory.

Jurisdiction	Statute
ACT	*Animal Welfare Act 1992* [18]
NSW	*Prevention of Cruelty to Animals Act 1979* [19]
NT	*Animal Welfare Act 1999* [20]
QLD	*Animal Care and Protection Act 2001* [21]
SA	*Animal Welfare Act 1985* [22]
TAS	*Animal Welfare Act 1993* [23]
VIC	*Prevention of Cruelty to Animals Act 1986* [24]
WA	*Animal Welfare Act 2002* [25]

3.2.1. Definition of 'Animal'

Definition of the term 'animal' in animal welfare statutes is generally consistent; however, there are some differences between each state and territory statute based on animal subgroups (orders and classes, see Table 3). All states and territories include mammals, reptiles, amphibians and birds in their definitions of an 'animal'. Inconsistencies arise for aquatic species, such as fish, crustaceans and cephalopods, as many states and territories do not include them under the definition of an 'animal'. In some states and territories (ACT, NSW and NT), there are specific provisions in place to include certain fish or crustaceans based on their use by humans, namely as captive fish (NT) or crustacea used

for human consumption (ACT and NSW). All states and territories, aside from VIC [26] and QLD [27], make no mention of animals in prenatal forms in their definitions.

Table 3. Statutory definition of 'animal' in each state and territories' animal welfare act. References as follows: ACT [28], NSW [29], NT [30], QLD [27], SA [31], TAS [32], VIC [26], and WA [33].

Jurisdiction	Mammals	Reptile	Amphibian	Birds	Fish	Crustacean	Cephalopod
ACT	✓	✓	✓	✓	✓	✓ *	✓
NSW	✓	✓	✓	✓	✓	✓ *	
NT	✓	✓	✓	✓	✓ **	✓	
QLD	✓	✓	✓	✓	✓	✓	✓
SA	✓	✓	✓	✓			
TAS	✓	✓	✓	✓	✓		
VIC	✓	✓	✓	✓	✓	✓	
WA	✓	✓	✓	✓			

* Only if used for human consumption. ** Captive fish only.

3.2.2. Definition of 'Owner/Person in Charge'

The definition of who is deemed to be in charge of an animal is important for animal law enforcement. The terms 'owner' or 'person in charge' are used throughout state and territory animal welfare acts. The terms 'custody' and 'control' are 'used consistently across jurisdictions (Table 4), whereas other less common terms include 'care' and 'proprietary interests' (the latter only included in the QLD definition).

Table 4. Statutory definition of 'owner/person in charge' in each state and territories' animal welfare Act.

Jurisdiction	Owner/Person in Charge
ACT	"custody or control" [28].
NSW	"possession or custody" or "care, control or supervision" [29].
NT	"possession" where possession includes custody, care, control or supervision [30].
QLD	"custody" where custody includes care and control, or "proprietary interests" [34].
SA	"custody and control" [31].
TAS	"control, possession or custody" [35].
VIC	"possession or custody" or "care, control or supervision" [36].
WA	"actual physical custody or control" [33].

3.2.3. Animal Welfare Offences

Each animal welfare act has varying offences relating to protecting animal welfare and preventing animal cruelty (Table 5). There are three main offence types, being 'duty of care breaches', 'basic cruelty' and 'aggravated cruelty'. The aggravated offence is more serious since it results in serious harm to, or death of the animal. Some statutes also include the need to prove *mens rea* (the mental element) in the aggravated offence [37], whereas others have no inclusion of *mens rea*, such in the case of Victoria [38] and NSW [39], making them strict liability offences [40]. In the former there is a need to prove that the defendant intended to, or was reckless about, causing a high degree of suffering or death of an animal, where all elements of the offence can be proven beyond reasonable doubt. In contrast, strict liability offences, such as basic cruelty offences, do not require proof of intent or recklessness. They are determined by the court based on an objective standard, where the court will consider whether the 'ordinary, reasonable person in the defendants circumstances' would have acted similarly [41]. It is recognized that animal welfare offences can occur from either an omission to act (e.g., animal neglect such as failure to provide veterinary care) or commission of an act (e.g., animal abandonment).

Each of the offences are described in terms of culpability and severity of harm caused to the animal, and consequently have different maximum penalties. Penalties are generally listed as custodial terms or monetary fines. Duty of care breaches generally attract lower

maximum penalties compared to aggravated offences. Not all states and territories distinguish all three types of offences in their legislation. For example, QLD does not outline an aggravated offence in their *Animal Care and Protection Act 2001*, and SA includes both duty of care breaches and basic cruelty offences under the singular Section 13(2) of their *Animal Welfare Act 1985.* Some states and territories also have sections in their acts that outline specific offences, such as ACT where ss6B-G of the *Animal Welfare Act 1992* outlines specific duty of care breaches, and NSW in ss8-11 of the *Prevention of Cruelty to Animals Act 1979.* Every state and territory aside from SA use penalty units to describe fines, whereas SA uses dollar amounts. Penalty units have been implemented as a simple way to increase the dollar value of a fine in line with public policy or inflation. A separate sentencing act defines the monetary value of a penalty unit, hence only a single amendment to the sentencing act is required to increase dollar amounts across a breadth of legislation [42]. Only WA includes minimum monetary penalties totaling $2000 for the basic animal welfare offence under Section 19(1) of the *Animal Welfare Act 2002.* All states include maximum custodial sentences in offence provisions.

Table 5. Each animal welfare offence and the corresponding maximum penalties per each state and territory's animal welfare act. Penalties are applicable to natural persons; separate penalties apply for body corporates.

Jurisdiction	Duty of Care Breach	Basic Cruelty	Aggravated Cruelty
ACT	Sections 6B-G [43] Monetary: varies between 25 and 100 penalty units Custodial: 1 year (s6B and 6G)	Section 7 [44] Monetary: 200 penalty units Custodial: 2 years	Section 7A(1) and (2) [45] Monetary: 300 penalty units Custodial: 3 years
NSW	Sections 8–11 [46] Monetary: 50 penalty units Custodial: 6 months	Section 5 [47] Monetary: 50 penalty units Custodial: 6 months	Section 6(1) [39] Monetary: 200 penalty units Custodial: 2 years
NT	Section 8(2) [48] Monetary: 100 penalty units Custodial: 1 year	Section 9(1) [49] Monetary: 150 penalty units Custodial: 18 months	Section 10(1) [50] Monetary: 200 penalty units Custodial: 2 years
QLD	Section 17(2) [51] Monetary: 300 penalty units Custodial: 1 year	Section 18(1) [52] Monetary: 2000 penalty units Custodial: 3 years	Not included
SA	Included in Section 13(2) under definition of s13(3)(b)	Section 13(2) [53] Monetary: $20,000.00 Custodial: 2 years	Section 13(1) [54] Monetary: $50,000.00 Custodial: 5 years
TAS	Section 6 [55] No penalties included	Section 8(1) [56] Monetary: 100 penalty units Custodial: 1 year	Section 9(1) [57] Monetary: 200 penalty units Custodial: 5 years
VIC	Included in Section 9(1)	Section 9(1) [58] Monetary: 250 penalty units Custodial: 1 year	Section 10(1) [38] Monetary: 500 penalty units Custodial: 2 years
WA	Included in Section 19(1) under definition of s19(3)	Section 19(1) [59] Monetary: $50,000 Custodial: 5 years	Not included

Each animal welfare statute prescribes a range of prohibited activities, such as animal fighting, as well as use of prohibited items, such as traps and electrical devices (Table 6). These offences are presented in a generally consistent manner. However, there are inconsistencies apparent within the types of activities and items prohibited in each jurisdiction. This is likely due to the relationship between the statutes relevant delegated legislation, in the forms of regulations and codes of practices.

Table 6. Each offence pertaining to participating in prohibited activities and using prohibited items on animals, and the corresponding maximum penalties per each state and territory's animal welfare act. Penalties are applicable to natural persons; separate penalties apply for body corporates. Note: In a number of jurisdictions, there is referral to associated regulations for specific conditions, which are not listed here.

Jurisdiction	Provisions (Activities)	Activities Prohibited	Provisions (Items)	Items Prohibited
ACT	Sections 17–18A [60] Monetary: 300 penalty units Custodial: 3 years	Violent animal activities Rodeos and game parks Greyhound racing	Sections 13–14 [61] Monetary: 100 units Custodial: 1 year	Electrical devices
NSW	Sections 18–21C * [62] Monetary: 50 penalty units Custodial: 6 months	Animal baiting and fighting Trap shooting Game parks Certain animal catching activities Coursing Firing Tail nicking Steeple chasing and hurdling	Sections 16–17 [63] Monetary: 50 penalty units Custodial: 6 months	Electrical devices Certain spurs
NT	Section 21 [64] No penalties included	Animal competitions Release of animal for purpose of hunting Animal fighting and baiting	Sections 18–20 [65] Monetary: 10 penalty units Custodial: N/A	Traps Electrical devices Spurs
QLD	Section 21(1) [66] Monetary: 300 penalty units Custodial: 1 year	Animal fighting Hunting (under certain conditions) Coursing	Section 35 [67] Monetary: 300 penalty units Custodial: 1 year	Trap or spur as prescribed in Regulations
SA	Section 14(1) [68] Monetary: $50,000 Custodial: 4 years	Animal fighting Live baiting Release of animal for purpose of hunting	Section 14A(1) [69] Monetary: $20,000.00 Custodial: 2 years	Cock-fighting spur Lures or bait Items used in animal fighting
TAS	Section 10(1) [70] Monetary: 200 penalty units Custodial: 1 year	Animal fighting Release of animal for purpose of hunting Live baiting	Section 12(1) [71] Monetary: 100 penalty units Custodial: 1 year	Certain traps
VIC	Sections 13–14 [72] Monetary: 500 penalty units Custodial: 2 years	Baiting and luring Animal fighting Trap shooting Inciting dog to chase other animal	Section 15AB(1) [73] Monetary: 240 penalty units Custodial: 2 years	Certain traps
WA	Section 32(1) [74] Monetary: $50,000 Custodial: 5 years	Release of animal for purpose of hunting Animal fighting	Section 31(1) [75] Monetary: $20,000 Custodial: 1 year	Things intended to inflict cruelty

* Section 20 of NSW Prevention of Cruelty to Animals Act 1979 has a maximum penalty of 200 penalty units or 2 years imprisonment, or both.

3.2.4. What Constitutes Cruelty?

The definition of 'cruelty' is relatively consistent between jurisdictions (Table 7). Most states and territories define cruelty variously as causing an animal unnecessary, unreasonable or unjustifiable pain, harm or suffering, where pain, harm or suffering is defined as forms of distress and injury to animals. However, all statutes have subtle differences in presenting the definition. To further explain, states such as ACT define cruelty specifically under a definitions clause [76], whereas QLD includes examples of behaviors which constitute cruelty under the cruelty offence [52]. All jurisdictions, aside from Victoria, follow this same mechanism of either defining cruelty specifically or including examples that would meet the definition of cruelty. Conversely, Victoria only includes examples of what constitutes an offence and lacks any cruelty definition. However, in a 2019 report

on animal cruelty offences, the Victorian Sentencing Advisory Council interpreted the definition of cruelty under the Victorian Act as "any act or omission that contributes to an animal experiencing, or being likely to experience, unreasonable or unnecessary pain or suffering" [77], which is consistent with the other jurisdictions. Recently the Victorian Government have proposed a series of amendments to their current *Prevention of Cruelty to Animals Act 1986*, in which they have stated "listing specific actions or behaviors can be limiting, as not every specific example is clearly covered" [78] in regard to their current approach of outlining 'cruelty'. Thus, it is probable that Victoria may take a similar approach to defining cruelty as the other jurisdictions. Based on these definitions, it is likely that there is a significant role for the courts in applying statutory interpretation principles, relying on precedent, and interpreting expert evidence in these matters.

Table 7. Definition of cruelty in the corresponding state and territory animal welfare statute.

Jurisdiction	Definition
ACT	doing, or not doing, something to an animal that causes, or is likely to cause, injury, pain, stress or death to the animal that is unjustifiable, unnecessary or unreasonable in the circumstances [76].
NSW	any act or omission as a consequence of which the animal is unreasonably, unnecessarily or unjustifiably inflicted with pain [29]. *
NT	causes the animal unnecessary suffering [49]. *
QLD	causes [the animal] pain that, in the circumstances, is unjustifiable, unnecessary or unreasonable [52]. *
SA **	intentionally, unreasonably or recklessly causes the animal unnecessary harm [79]. *
TAS	any act, or omit to do any duty, which causes or is likely to cause unreasonable and unjustifiable pain or suffering to an animal [56].
VIC	No definition included. ***
WA	in any way causes the animal unnecessary harm [59]. *

* Other specific definitions are included. ** SA uses the term 'ill treatment' instead of the commonplace 'cruelty' used throughout the remaining jurisdictions. *** VIC uses specific examples of what constitutes 'cruelty' under Section 9, but there is no strict definition [77].

3.2.5. Court Orders

Animal welfare acts outline the types of court orders specific to animals that can be issued for an animal welfare offence (Table 8). Courts additionally have broad powers to issue other relevant orders by virtue of the relevant legislation. There are four types of orders: prohibition, supervision, interim and recognition of interstate orders. Prohibition orders prohibit offenders from owning animals for a set period or until a further order is approved by the courts, or limit the number of animals to be owned [80–87]. Each state and territory's act grants the power to issue prohibition orders, but the remaining three orders are only provided for sporadically in the acts between the states and territories. Supervision orders, which are enforceable in SA [88] and VIC [89], work in a similar way to prohibition orders. However, instead of offenders being prohibited from owning animals, they are placed under the supervision of an enforcement authority who is empowered to regularly check on the welfare of offenders' animals. Interim orders are in place in ACT [90] and QLD [91] and can be issued during case investigation to restrict animal ownership. The jurisdictions of NT [92], TAS [93] and VIC [94] also recognize orders made by interstate courts.

3.3. Crime Statutes

Unlike animal welfare acts where the focus of the statute is entirely on promoting animal welfare and preventing animal cruelty, crimes acts focus on a wide array of criminal activities and some include serious offences against animals. These acts were enacted to

consolidate the common law relating to crimes and criminal offenders [95–102]. There are eight separate crimes acts in place at the state and territory levels (Table 9).

Table 8. Different types of court issued orders outlined in each states and territories' animal welfare Acts.

Jurisdiction	Prohibition	Supervision	Interim	Interstate
ACT	Section 101A [80]		Section 100A [90]	
NSW	Section 31 [81]			Section 31AA [92]
NT	Section 76A [82]			
QLD	Section 183 [83]		Section 181A [91]	
SA	Section 32A(1)(d) [84]	Section 32A(1)(aa) [88]		
TAS	Section 43 [85]			Section 43AAB [93]
VIC	Section 12(1)(a) [86]	Section 12(1)(b) [89]		Section 12A [94]
WA	Section 55 [87]			

Table 9. Crime statutes per each Australian state and territory.

Jurisdiction	Statute
ACT	*Crimes Act 1900* [103]
NSW	*Crimes Act 1900* [104]
NT	*Criminal Code Act 1983* [105]
QLD	*Criminal Code Act 1899* [106]
SA	*Criminal Law Consolidation Act 1935* [107]
TAS	*Criminal Code Act 1924* [108]
VIC	*Crimes Act 1958* [109]
WA	*Criminal Code Act Compilation Act 1913* [110]

Crimes acts often include the most serious animal welfare offences and attract higher maximum penalties as they are indictable offences, in comparison to animal welfare acts, where commonly (although not exclusively) offences are described as summary (Table 10). As they are more serious in nature, indictable offences may be tried before a jury and may be heard in a higher court. Summary offences are minor offences and are heard in the Magistrates Court [111]. These indictable offences can be categorized as 'aggravated cruelty', acts of 'bestiality' or offences specific to 'working animals'. The nature of aggravated offences in the aforementioned animal welfare acts are similar to those in the crime acts. Further, if an animal welfare act does not specifically outline an aggravated offence (e.g., in the case of QLD, see Table 5), an aggravated offence is included in the crimes act (Table 10). However, in WA, there is no specific inclusion of an aggravated offence in either animal welfare or crimes acts. Factors of aggravation which increase culpability, such as committing the offence in company, may however be taken into account when sentencing via provisions of the *Sentencing Act 1995 (WA)* [112]. Maximum penalties for aggravated offences in some jurisdictions can be dependent on specific elements, such as the species or utility of the animals affected in the case of QLD [113], or the mental element (such as intent) of the defendant in NSW [114].

Bestiality is an offence included in all state and territories crimes acts and has the highest maximum penalty of all the offences examined, ranging from three years imprisonment (NT) to 14 years imprisonment (NSW), with no potential for monetary penalties in lieu of custodial sentences. Protection for working animals is included in NSW and SA crimes acts, where working animals are defined as animals used for law enforcement (NSW) [115], and police dogs, police horses, correctional services dogs or accredited assistance dogs (SA) [116]. These offences attract similar maximum penalties (5 years imprisonment) to the closely related aggravated offences in both the crimes acts and animal welfare acts.

Table 10. Each offence relating to animal protection included in the Australian state and territories' crimes acts. Offences are broken down into acts of aggravated animal cruelty, bestiality and provisions to protect working animals. Offences have been paraphrased. Penalties are applicable to natural persons; separate penalties apply for body corporates.

Jurisdiction	Aggravated Cruelty	Bestiality	Working Animals *
ACT		Section 63A [117]—offence to commit bestiality. Max penalty: 10 years imprisonment.	
NSW	Section 530 [114]—offence to intend to (s530(1)) or be reckless about (s530(1A)) harming an animal. Max penalty: (1) 5 years and (1A) 3 years imprisonment.	Section 79 [118]—offence to commit bestiality. Max penalty: 14 years imprisonment. Section 80—offence to attempt to commit bestiality. Max penalty: 5 years imprisonment.	Section 531(1) [115]—offence to intentionally kill or seriously injure an animal used for law enforcement. Max penalty: 5 years imprisonment.
NT		Section 138 [119]—offence to commit bestiality. Max penalty: 3 years imprisonment.	
QLD	Section 242(1) [120]—offence to intend to kill or inflict severe pain on an animal. Max penalty: 7 years imprisonment. Section 468(1) [113]—offence to intentionally wound or kill an animal. Max penalty: 7 years imprisonment if committed on stock animals. Max penalty: 2 years for any other animals or 3 years imprisonment if committed at night.	Section 211 [121]—offence to have carnal knowledge with or of an animal. Max penalty: 7 years imprisonment.	
SA		Section 69 [122]—offence to commit bestiality. Max penalty: 10 years imprisonment.	Section 83I(1) [123]—offence to intentionally cause death or serious harm to a working animal. * Max penalty: 5 years imprisonment.
TAS		Section 122 [124]—offence to engage in an act of bestiality. Max penalty: not included.	
VIC		Section 54A(1) [125]—offence to commit bestiality. Max penalty: 5 years imprisonment.	
WA		Section 181 [126]—offence to have carnal knowledge of an animal. Max penalty: 7 years imprisonment.	

* Definition of working animals includes animals used for law enforcement (NSW) [115] and police dogs, police horse, correctional services dog or accredited assistance dogs (SA) [116].

3.4. Wildlife Statutes

Wildlife statutes have conserving and protecting environments as their primary objective [127–137], and include native Australian animals. Eleven statutes with animal protection provisions for native Australian wildlife were sourced for this analysis (Table 11), two of which are Commonwealth acts (national laws governing the entirety of Australia) and the remaining nine are from the eight state and territory governments, with two statutes included in NSW. Some wildlife protection provisions are included in the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999 (CTH)*, which ratifies the CITES convention domestically [138], and prevails over the state and territorial statutes where there is inconsistency [139].

Table 11. Each wildlife protection statute and the corresponding animal protection provisions per each Australian state and territory. Statutes only award protection to native wildlife species in Australia. Offences have been paraphrased.

Jurisdiction	Statute	Animal Protection
CTH	*Environment Protection and Biodiversity Conservation Act 1999* [150]	Section 196(1) [141]—offence to kill or injure threatened species. Section 211(1) [151]—offence to kill or injure migratory species. Section 229(1) [152]—offence to kill or injure a cetacean. Section 254(1) [153]—offence to kill or injure listed marine species. Section 303GP(1) [154]—offence to treat export or import animals in a cruel manner.
	Great Barrier Reef Marine Park Act 1975 [155]	Section 38GA(1)(c)(i) [156]—offence to take or injure a protected animal species.
ACT	*Nature Conservation Act 2014* [157]	Section 130(1) [140]—offence to kill a native animal. Section 131(1) and (2) [158]—offence to (1) injure or (2) endanger native animals.
NSW	*National Parks and Wildlife Act 1974* [159]	Section 45(1)(a) [160]—cannot harm any animal within a national park. Section 56(1) [161]—cannot harm any animal within a nature reserve. Section 70(1) [162]—cannot harm any fauna within a wildlife refuge, conservation area or wilderness area.
	Biodiversity Conservation Act 2016 [163]	Section 2.1(1) [142]—offence to harm threatened or protected species. Section 11.32 [164]—animal welfare directions to people who keep protected animals in confinement. Section 11.36 [165]—offence to contravene animal protection direction.
NT	*Territory Parks and Wildlife Conservation Act 1976* [166]	Section 66(1) [143]—offence to interfere with protected wildlife (where interfere with includes harm or disturb). Section 67 [167]—offence to interfere with unprotected wildlife.
QLD	*Nature Conservation Act 1992* [168]	Section 88(a) [144]—cannot take protected animals (where take includes injure or disturb).
SA	*National Parks and Wildlife Act 1972* [169]	Section 45(1) [145]—cannot take an animal within a sanctuary. Section 51(1) [170]—cannot take a protected animal (where take includes injuring). Section 65(1) [171]—cannot poison animals with the intent of taking them. Section 68(1)(a) [146]—cannot harass or molest protected animals.
TAS	*Threatened Species Protection Act 1995* [172]	Section 51(a) [173]—offence to take fauna (where take includes injure).
VIC	*Wildlife Act 1975* [174]	Section 21(3) [175]—cannot take, destroy, disturb or injure wildlife. Section 54(1) [176]—cannot poison animals with the intent to injure them. Section 58(a) and (b) [177]—cannot (a) molest or injure, or (b) disturb protected wildlife. Section 76(1)(a) [178]—cannot injure, kill or take whales.
WA	*Biodiversity Conservation Act 2016* [179]	Section 149(1) [147]—offence to take fauna (where take includes injuring). Section 150(1) [148]—offence to take threatened fauna. Section 153(1) [149]—offence to disturb fauna.

In total, there are 29 offences described in the 11 statutes relating to animal protection, with a majority of the offences including injuring or harming protected species as defined by the statutes. There are separate offences and maximum penalties for different categories of wildlife: offences against endangered species attract higher penalties than those against vulnerable or unclassified species [140–149]. As wildlife acts primarily focus on native Australian wildlife, pest species are generally not protected.

3.5. Fisheries Statutes

Fishery acts are in force for the conservation of native fish species and habitats, as well as management of commercial fisheries and recreational fishing [180–185]. There are only six fishery acts that include protection provisions across six of the states and territories (Table 12). QLD and WA do not provide any protection provisions based on the definition in their relevant fisheries acts. Offences mostly relate to preventing the disturbance of fish and regulating the use of fishing systems that may be detrimental to welfare.

Table 12. Fish statutes and the corresponding animal protection provisions per each Australian state and territory excluding QLD and WA, as there is no animal protection awarded in those statutes. Offences have been paraphrased for brevity.

Jurisdiction	Statute	Animal Protection
ACT	*Fisheries Act 2000* [186]	Section 88A(1)(a) [187]—offence to disturb spawning fish in public waters.
NSW	*Fisheries Management Act 1994* [188]	Section 207(2) [189]—offence to disturb spawning fish.
NT	*Fisheries Act 1988* [190]	Section 11(4) [191]—offence to intentionally use shock systems that detrimentally affects fish life.
SA	*Fisheries Management Act 2007* [192]	Section 71(1)(b) and (2)(a) [193]—offence to injure (1)(b) or harass (2)(a) protected aquatic mammals or fish.
TAS	*Living Marine Resources Management Act 1995* [194]	Section 255(1)(c) [195]—offence to use shock systems that are likely to injure or detrimentally affect fish life.
VIC	*Fisheries Act 1995* [196]	Section 71(1) [197]—offence to injure protected aquatic biota without permit.

3.6. Miscellaneous Statutes

Nine statutes from six states and territories have animal protection provisions that do not fit in any of the aforementioned categories. These statutes range from livestock acts, racing acts, chemical use acts, exhibited animal acts and police powers and summary offences acts (Table 13). Each of these acts have a specific section relating to protecting animals, despite this not being the main objective of the act.

The Tasmanian *Animal Farming (Registration) Act 1994* and Victorian *Livestock Management Act 2010* both have a single animal protection offence, relating to injuring of prescribed species in the former and acting in a way that causes serious risks to animal welfare in the latter. The two animal racing acts are the *Racing Integrity Act 2016* (QLD) and *Racing Act 1958* (VIC). These Acts provide protection to racing animals as well as deterring the use of live animals as lures. Other acts identified as having animal protection provisions were the *Radiation Control Act 1990* (NSW) and the *Agricultural and Veterinary Chemicals (Control of Use) Act 2004* (NT) (see details in Table 13). The QLD *Exhibited Animals Act 2015* allows inspectors to seize any exhibited animal (such as zoo animals) if it is in the best interest of the animal's welfare. Finally, the *Police Powers and Responsibilities Act 2000* (QLD) provides police officers with greater power to protect animal welfare, and the *Summary Offences Act 1953* (SA), outlines the offence of trespassing and disturbing animals used for primary production.

Table 13. Miscellaneous statutes with inclusions of animal protection provisions. These statutes can be further categorized into livestock, racing/sports, exhibited animals, chemical use, police powers and summary offences. ACT and WA are not included as no additional statutes that fit into this category were not sourced. Offences have been paraphrased for brevity.

Jurisdiction	Statute	Animal Protection
NSW	*Radiation Control Act 1990* [198]	Section 24(1) [199]—if the perpetrator of any offence committed under the Act was reckless about causing serious harm to a human, animal or the environment then the maximum penalty can be increased to 1500 units or 2 years imprisonment, or both.
NT	*Agricultural and Veterinary Chemicals (Control of Use) Act 2004* [200]	Section 13(b) [201]—A person who uses a chemical product, fertilizer or stock food must take all measures that are reasonable and practicable to ensure the use does not result in harm to humans, animals or the environment.
QLD	*Exhibited Animals Act 2015* [202]	Section 192(2)(d)(i) and (ii) [203]—The inspector may seize an exhibited animal or other thing at the place if the inspector reasonably believes the interests of the welfare of the animal require its immediate seizure.
	Police Powers and Responsibilities Act 2000 [204]	Section 143 [205]—police officers can give animal welfare directions. Section 146 [206] and 147 [207]—outlines powers given to police officers to alleviate any suffering experienced by animals. Section 689(2)(a) [208]—animals in the police service must be kept in a way that maintains the animals' welfare and the welfare of other animals.
	Racing Integrity Act 2016 [209]	Section 193(1) [210]—authorized officers under the Act may give animal welfare directions. Section 218(1)(a) and (b) [211]—offence to use (a) prohibited items or (b) interfere with licensed animals (where "interfere with" includes injure or detrimentally affect the licensed animals and "licensed animal" means any animal that is licensed for racing purposes or undergoing a trial to become a licensed animal at a licensed venue).
SA	*Summary Offences Act 1953* [212]	Section 17C(1) [213]—A person who, while trespassing on land on which animals are kept in the course of primary production, disturbs any animal and thus causes harm to the animal, or loss or inconvenience to the owner of the animals, is guilty of an offence.
TAS	*Animal Farming (Registration) Act 1994* [214]	Section 24(1) [215]—A person must not unlawfully kill or injure a prescribed animal that is being farmed in accordance with the Act, where prescribed animals are outlined in schedule 1 in the corresponding regulations (emu and sheep species).
VIC	*Livestock Management Act 2010* [216]	Section 50(1)(b) [217]—offence to act or fail to act in a manner that results in serious risk to animal welfare.
	Racing Act 1958 [218]	Section 55(1) [219]—offence to be present at a greyhound race where an animal is being used as a lure.

4. Discussion

This review outlines key provisions in Australian law relating to animal protection. This analysis is intended to provide the basis for future discussion on the potential rationale for and desirability of reforms to increase uniformity of animal protection legislation, as is frequently proposed by commentators [2–5]. We used a restricted definition of animal welfare/protection, namely legislation that seeks to promote duty of care responsibilities towards animals or prevent cruel acts towards them that result in harm or suffering.

It should be noted that this review singularly focused on statutes and excluded delegated legislation. Statutes do not work independently [220], instead they rely on a symbiotic relationship between delegated legislation in the forms of regulations and codes of practices, as well as common law principles such as the doctrine of precedent. Without the inclusions of such principles, this review only provides a limited viewpoint and this should be acknowledged as a limitation. Further analysis is required into each component of the legal framework in order to achieve a comprehensive understanding of these shortcomings, this review is the beginning of this process. The remainder of this paper will discuss selected aspects of our analysis with a focus on the implications of the legal framework and potential avenues for reform.

4.1. What Is an 'Animal'?

4.1.1. Defining the Term

The definition of 'animal' is a key element in animal protection legislation, as it determines the applicability of the legislation [37]. It could be expected that this definition is underpinned by available scientific evidence, particularly about various animal species' sentient abilities [221–224]. It is therefore surprising that there are notable differences between the states and territories (Table 3). The term 'animal' is often defined in animal welfare statutes as any member of the vertebrate species, excluding human beings [37]. However, inconsistencies between jurisdictions arise for fish, crustaceans, cephalopods and unborn animals. These inconsistencies suggest that established scientific principles and evidence are not guiding black letter law.

Science can provide information on animals' sentient abilities [222–226], where 'sentient' refers to experiencing an array of feelings from both negative states (pain and suffering) to positive states (pleasure and joy) [227]. It has been claimed by some scholars that an animal's capacity to experience both negative and positive emotions has been the driving factor for the animal welfare movement and consequential animal protection legislation [222,223]. Thus, it is notable that many laws neglect to acknowledge or discuss animal sentience when defining 'animals'. The relationship between science and law is important, as science can influence the formation of legislative objectives [228] and provide models for delegated legislation [229,230], and scientific evidence can be critical in court proceedings [231]. As stated by Proctor, Carder and Cornish [224] there is "overwhelming evidence of animal sentience", with confidence that most vertebrates have sentient abilities [222–224], but there is lack of consensus associated with fish [232,233], invertebrates [234–236] and fetal or immature forms of various animals [237–240]. This statement roughly aligns with the position taken at law, as only some jurisdictions recognize fish, crustacea, cephalopods and fetuses as animals (Table 3). However, there is growing evidence in support of fish sentience [241–243], and consequently increasing international support for their recognition and protection under animal welfare statutes [244]. Furthermore, fetuses whose age is beyond half the gestation period have also been acknowledged as having sentient abilities and awarded protection under the delegated legislation for animal research, the Australian Code for the Care and Use of Animals for Scientific Purposes [245]. It is postulated that enforcement of animal welfare offences for certain species may be affected by a pragmatic approach related to the ability to enforce provisions, rather than a strict grounding in scientific evidence alone, which creates inconsistencies. For example, enforcing welfare provisions for aquatic species outside of captivity is difficult to achieve due to the vastness of their natural habitats, and the pervasiveness of certain activities such as recreational fishing [246,247]. Thus, this causes the states and territories, such as ACT, NSW and NT, to set parameters in place where fish or crustacea are only included as 'animals' if they are captive (NT) [30] or used for human consumption (ACT and NSW) [28,29].

It should be noted that legal definitions are not, and should not, be entirely dictated by scientific evidence, but there will also be a dependence on the corresponding legislature's objective and the broader social and cultural context in which they occur. For this reason, differences between definitions will be observed between legislation in different subject

domains, such as animal welfare and wildlife statutes, as these statutes have been drafted for different purposes. Whilst animal welfare statutes are enacted to promote welfare and prevent cruelty [10–17], wildlife statutes are in force to conserve and protect Australian fauna and flora [127–137]. Thus, although animal welfare statutes define 'animals' as any member of the vertebrate species excluding human beings [37], wildlife statutes have a different definition, namely, 'any member, alive or dead, of the animal kingdom (other than a human being)' [248]. Deceased animals are included in this definition as their genetics can still be conserved. Based on the wildlife acts, there are some inconsistencies between this definition in jurisdictions, such as the exclusion of invertebrates in ACT [249] despite being a part of the Kingdom Animalia [250], whilst NSW includes invertebrates but excludes fish [251], despite including fish in their definition under the animal welfare statute [29]. Finally, there is a single inclusion of protistans in NT [252], which is a group of organisms not included in the animal kingdom, and thus strictly speaking are not 'animals' [250]. Some definitions also include deceased animals as well as unborn animals and reproductive material (eggs) in addition to intact organisms [248,249,251–257].

The definition of 'animal', particularly in animal welfare statutes, requires some revision given the inconsistencies with regard to evidence about animal sentience. Arguably if an animal has sentient abilities it should be awarded protection by law as it can experience suffering. However, it is noted that legal definitions are multifaceted and simply amending the definition to reflect the available scientific evidence is not possible in the sense that it must coincide with the legislative objective and take into account the consequential enforcement.

4.1.2. Legally Recognizing Animal Sentience

Animal sentience can be formally recognized in law. The Australian Capital Territory (ACT) has the most inclusive definition of an 'animal' and was the first Australian territory (or state) to reform legislation to formally acknowledge animal sentience through its amendment in 2019 [258] of Section 4A the Animal Welfare Act 1992 to include the following statement:

(1) The main objects of this Act are to recognize that—
   (a) animals are sentient beings that are able to subjectively feel and perceive the world around them; and
   (b) animals have intrinsic value and deserve to be treated with compassion and have a quality of life that reflects their intrinsic value; and
   (c) people have a duty to care for the physical and mental welfare of animals [10].

However, in this context, legally recognizing animal sentience appears somewhat of a symbolic gesture [259], given that the nature of animal welfare offences and accordance with Australian codes of practices does not significantly change as a result. Codes of practices take the form of detailed guides made, or adopted under, animal protection statutes [260]. Codes are controversial in animal law jurisprudence with commentators asserting that they allow the exploitation of animals by providing exemptions to animal welfare offences for industries such as animal farming and research [260–262]. However, recognition of sentience in law may still have some positive impacts. The European Union has acknowledged animals as 'sentient beings' since the enactment of the Treaty of Lisbon in 2007 [263], and it has been reported that this formal status has assisted in legislative interpretation [264] as well as motivating further legislative protections for animals [265]. Such impacts may occur in ACT, guided by Australian common law, and statutory interpretation principles [220,266], but outcomes of this change are likely to take years to become apparent. Recently, legally recognizing animal sentience was included in the proposal released by the Victorian Government for the amendments to the *Prevention of Cruelty to Animals Act 1986*, where they stated "science tells us that animals are sentient" and "many other jurisdiction recognize animal sentience in their legislation" [78].

4.1.3. Animal Speciesism?

Drawing on the philosopher Peter Singer's original definition of 'speciesism' as "a prejudice or attitude of bias in favor of the interests of members of one's own species and against those of members of other species" [267], speciesism more generally has been defined as "the unjustified disadvantageous consideration or treatment of certain individuals because they are not members of a given species" [268]. In relation to animal protection legislation, the variations in protection of particular animal species could potentially be argued to be a form of speciesism. Animal protection legislation is intended to ensure that animals are treated humanely [260] by prohibiting unnecessary, unjustifiable or unreasonable suffering [262]. However, as discussed by White [260], there is a point at which animal protection tends to cease when it is in conflict with human interests, and this point is vastly dependent on the context of animal use: consider for instance animals used as pets as compared to in the context of for-profit enterprises such as farming or when classified as pests. Thus, the legal protections awarded to animals typically are based on their utility to humans and their extrinsic value (worth to humans) rather than their sentient abilities or intrinsic or moral value [269]. Thus, the animals that we keep as pets are awarded far more protection in comparison to those we think of as pests or food-producing animals, regardless of their sentient abilities. Due to exemptions for compliance with delegated legislation and codes of practices, the level of suffering that a person can cause livestock, research or pest animals is much greater than that accepted in relation to animals in a companion context [261]. For example, tail docking can be performed on piglets without pain relief under the Pig Model Code of Practice for the Welfare of Animals [270]. However, if that same procedure were performed on a dog without pain relief, it would be classified as 'unnecessary suffering' and constitute an offence under the animal welfare acts. It has been claimed that laws are constructed to reflect the public's concern [5], and sociological research has shown that the public have higher regard for companion animal welfare as compared to farm or feral animal welfare [269,271,272]: thus, perhaps it is unsurprising that the law does not protect all animals in the same way. However, these topics warrant much greater consideration and scrutiny, including about whether the applicability of various types of animal welfare legislation in Australia is unjustifiably limited to certain species of animals and how public opinion is evolving with regard to these issues.

4.2. What Is 'Animal Welfare'?

4.2.1. The Scientific Viewpoint

Within the scientific community there is no exact or universal definition of 'animal welfare' [273], but instead there are many different definitions and interpretations [274]. The main approaches to welfare focus on either the biological functioning of an animal where welfare equates to physiological stress responses and good physical health, or the animal's affective state, where welfare focuses on how the animal feels [275] and its attempt to cope with its environment [276]. The World Organization for Animal Health (OIE) is an inter-governmental organization that has created an international definition of animal welfare, in an attempt to provide an accepted, baseline standard for countries to adhere to in their commercial relationships with animals. Countries can choose to become members and adopt the guidelines [277]. Australia, along with 182 other countries, is a member [278]. The OIE has defined animal welfare as "the physical and mental state of an animal in relation to the conditions in which it lives and dies" [277] and makes direct reference to the 'Five Freedoms' (refer to [279] for Freedoms). Similarly, at a more local level, it has been suggested that domestic animal welfare statutes are also underpinned by the Five Freedoms [280]. However, as Webster [281] notes, the Freedoms were never intended to represent the overall status of an animal's mental state, and with the emerging scientific acknowledgement of animal sentience, animal's mental or affective states have been the primary focus in defining welfare [282–285] This is apparent with the development and refinement of the 'Five Domains' model (see, e.g., [286]). Nowadays, animal welfare is generally defined as the minimization of negative experiences and affective states,

whilst also promoting positive experiences and affective states [283,287,288]. In Mellor [284] words, "the overall objective is to provide opportunities for animals to 'thrive', not simply 'survive'", which is achievable through measures that go beyond merely meeting animals' basic needs for food, water, husbandry requirements and disease prevention [283].

4.2.2. Legislative Interpretation

A surprising finding of this review is that despite the almost universal naming of the state animal protection acts as 'Animal Welfare Acts', there was no definition of 'animal welfare' within any of those Acts. This absence is especially concerning given that one of the legislative objectives is to promote welfare [10–17]. It is questionable whether the acts can effectively promote a concept that they have not formally defined. However, it is challenging to translate the positive aspects of welfare into enforceable provisions that can help to achieve the legislative objective of promoting welfare, especially given that scientists do not yet have effective methods for assessing positive welfare across all species [289]. Instead of defining 'welfare', the acts have only defined 'cruelty', which is essentially any form of unnecessary, unreasonable or unjustifiable pain, harm or suffering experienced by an animal (Table 7). However, these terminologies are vague and difficult to interpret and have been criticized for weakening the scope of protection awarded to animals [290]. It has been stated in the US context that defining 'unnecessary suffering' is individualized for each person based upon variables such as personal experiences, cultural standards and spiritual beliefs [291]. Thus, despite two centuries of statutory language reforms and case law precedents, criminal justice systems throughout western countries still struggle to balance legal, academic, cultural and public opinions when it comes to defining animal cruelty [292]. It is therefore perhaps unsurprising that a progressive interpretation of 'welfare' to include positive aspects, has not yet made its way into statutes given the longstanding definition of 'cruelty' is still open to interpretation.

The current approach is to impose obligations on persons in charge of animals to provide them with their basic needs [260], including appropriate living conditions, nutrition, disease prevention and veterinary treatment [37]. Note that this approach differs from many descriptions of welfare by focusing solely on survival without any attention to thriving or other positive experiences [284]. Perhaps such a focus is not surprising, given that the legal process is mostly focused on punishment [293–296], and hence has limited leverage for promoting positive aspects of welfare. Hence, as in many other contexts, we can see that law is essentially the minimum standard for ensuring basic animal welfare, and not the gold standard for promoting higher levels of animal welfare. Perhaps this latter ideal is better achieved through voluntary audit or accreditation schemes which could be specifically tailored for each species and provide market incentives to conform.

4.3. Animal Welfare Provisions

4.3.1. Protecting Welfare in Law

Laws are only as good as their enforcement, and the ability of animal protection statutes to provide punishment where welfare is threatened or diminished (and to a more limited extent to promote positive aspects of welfare) is dependent on how the legislative model defines welfare. The wording of the acts provides recognition of the ability for animals to be harmed or experience suffering as a result of either acts or omissions, where terms such as 'harm' and 'suffering' have statutory definitions. Those definitions often include forms of distress and injury to animals, and there is an evidential burden of proving in court that distress or injury has occurred [37]. In other words, animals must endure some degree of suffering before animal cruelty provisions can be applied and enforced. It has been argued that this phraseology directly contradicts the objectives of animal welfare acts, as prosecution only occurs to punish cruelty, and not prevent it [6]. This model hence regularly results in negative outcomes for animals [297]. The WA, TAS and VIC legislatures have gone some way in addressing this issue by including the words "likely to cause harm" [58,298], in addition to the more common usage of "harm" for

some offences under their acts. This provides additional options for intervention before an animal has been subjected to any form of harm, and thus more adequately protects animal welfare. It is contended that this concept is worthy of consideration by the remaining Australian jurisdictions.

It should be noted that although not included in this review, animal welfare laws have further mechanisms of protection other than welfare provisions. Such an example is 'animal welfare directions' included in each jurisdiction's animal welfare act [299–306]. These directions utilize a compliance strategy where appointed animal welfare inspectors can issue statutory directions to persons responsible to provide for an animal's welfare [307]. This mechanism allows for the prevention of cruelty and suffering before it occurs, and failure to comply with these directions often results in the imposition of punitive sanctions, and possible seizure of the animals concerned [307]. This approach to protecting animal welfare is consistent with the objectives of the statutes cross-jurisdictionally.

However, laws also have an impact on offending by providing social deterrence. Such functions have been noted in the literature on drink driving statutes for drinking under the influence (DUI) offences [308–311], which are similar to many animal welfare offences in being summary offences [312]. Deterrence theory focuses on the ability of laws to deter members of society from committing illegal acts, as they believe that offenders will be caught and punished [311]. However, this type of deterrence works primarily for individuals who are least likely to commit offences: as research on DUI enforcement has indicated, individuals who are "extreme drink drivers" are not deterred by the possibility of punishment [308–310], as visceral and other factors influence the committing of crimes rather than intellect or rational decision-making [309]. Hence animal protection laws protect welfare through a two-pronged approach: (1) via deterrence which promotes good treatment of animals (because of knowledge that it is illegal to mistreat them), and (2) via punishment of those who act outside of legal norms [308–310,313].

4.3.2. Whose Responsibility?

The primary responsibility for protecting animals from cruelty and maintaining their welfare lies with the 'person in charge' or the 'owner' of an animal. All animal welfare statues impose liability on 'persons in charge' of an animal in relation to animal welfare offences. An owner/person in charge under animal welfare statutes is not necessarily the person to whom the animal is registered or has proprietary interests. Instead, it is the person who has 'custody and control' [28–31,33–36] of the animal at the point of time of an offence. This definition is consistent throughout each jurisdiction (Table 4) and is flexible as it can be adapted to the particular circumstances of a case. Case law plays a particular role in this regard through informing statutory interpretation. The doctrine of precedent allows for the development and progression of law through case law, as judges must follow precedents made in higher courts [314]. An important precedent in this area is *RSPCA SA v Evitts*, where a dog handler employed by a security firm was found to be the 'owner' of the dog as the employee had 'custody and control' of the animal at the time it required veterinary attention [315]. Cases of this nature, where the boundaries of legal definitions can be tested, allow the law to progress without the need for statutory reform [314]. Thus, statutory harmonization is not required for the owner/person in charge definition.

4.3.3. Offences against Animals

As documented in our review, there are a range of offences designed to protect animals from cruelty that are outlined under the animal welfare acts. These statutes commonly describe aggravated and basic cruelty offences, and duty of care breaches. The distinguishing features between these offences commonly hinge on the seriousness of consequences to the animal, and the intent behind the defendant's actions [37]. For the prosecution, the evidential burden is reduced in establishing a strict liability offence of animal cruelty since they do not have to establish the subjective element of *mens rea*, or intent [37]. In modern law, the attendant circumstances around the offence often replace

traditional *mens rea*, indicating the level of culpability. Aggravated offences recognize that some acts are carried out with a greater degree of culpability and the offender therefore poses a greater danger to society. As a result, a greater penalty is prescribed [316]. However, not all statutes include an aggravated offence, which makes them non-uniform based on the research question. In spite of this, aggravating factors contributing to culpability, such as lack of remorse by the defendant or acting with others, are outlined under the states and territories sentencing statutes [112,317–321]. However, the inclusion of aggravation in animal welfare statutes acknowledges that not all cruelty is the same, and that acts causing high degrees of animal suffering should result in an increased punitive response. This can also be said for those animal welfare offences included in crimes statutes (Table 10). Crimes statutes mainly include offences against animals that go against human morals, such as bestiality [322]. Consequently, these offences attract the highest maximum penalties in comparison to all other protection provisions reviewed in this paper, implying that crimes statutes include the most serious offences involving animals with the highest level of culpability.

Animal protection provisions in wildlife statutes are generally consistent, as they all pertain to the prevention of injuring, harassing or killing wildlife (Table 11). There are different maximum penalties dependent on the status of a certain species (e.g., endangered, critical or vulnerable) [140–149]. The severity of the outcome resulting from injuring or killing an endangered species is much higher due to the harm not only to the individual animal but also the risk of or contribution to genetic loss, and consequently attracts a higher maximum penalty [323]. However, this implies that these 'protected species' are viewed primarily from a conservation perspective in that their genetics have value, rather than a welfare perspective acknowledging their sentient abilities. Further evidence in support of this is that nature conservation often fails to distinguish between fauna (animals) and flora (plants) [37], which overlooks the central distinction between the two groups, animals are sentient. This makes for a legal regime that pays little regard to wild animals' sentient abilities [37], instead focusing primarily on their genetic diversity and value to conservation.

4.3.4. Penalties and Punishment

Animal welfare offences and their corresponding maximum penalties have been the subject of numerous amendments cross-jurisdictionally, with reforms occurring over the last 20 years in QLD [324], SA [325], Victoria [326] and most recently NT [327]. The maximum penalties have been argued to represent parliamentary intent with regards to animal welfare [6], as they provide a benchmark against which the gravity of an offence should be measured [328] and are reserved for the worst, most serious examples of an offence [329,330]. It has been claimed that these amendments have signaled the intention of parliaments to "get tough" on animal welfare offenders, by sending a message that animal cruelty will not be tolerated [331,332]. Although the maximum penalties for offences are significant (Table 5), less than 10% of the maximum penalty is typically used in court proceedings [333], which raises questions about the role of statutory maximums. Hence it could be argued that maximum penalties are primarily intended as a symbolic gesture to show society the seriousness of the offence rather than being actual tools to improve animal welfare.

Promotion of animal welfare in the acts is primarily achieved by discouraging duty of care breaches through imposition of obligations on persons in charge of animals to provide for the basic needs of animals [260]. However, when deterrence fails, intervention and punishment is required [309,310]. Deterrence is, however, only one facet of punishment theory, with the other facets being rehabilitation, retribution, restitution and incapacitation [293–296]. Previous research into other summary offences has suggested that without legal intervention, including punishment, offenders will continue to push the limits of laws [310]. However, it has been suggested that the commonly imposed forms of penalty, namely imprisonment and fines, are not the most effective ways to punish animal welfare offenders. Consideration should instead be given to alternative and more rehabil-

itative forms of penalties [6,313,333]. Such a conclusion was found from Ghasemi [309] research into criminal penalties, where it was suggested that legal systems should consider the fundamentals of criminal acts and attempt to reduce them with strategies other than punishment. It was noted that punishment may not "solve the problem" for criminal offenders [309] and may be ineffective in reducing recidivism. Alternative penalties for animal welfare offences include court mandated counselling and non-violent-conflict resolution training [313]. These mechanisms are more likely to tackle the root of the problem and actually help the offender [333], which would in turn reduce the likelihood of reoffending. Consideration of such penalties is especially important given the established link between animal abuse and human violence [334–341].

4.3.5. Court Orders

Court orders are directions issued by courts to an offender found guilty of an offence (prohibition or supervision orders) or alleged offenders undergoing investigation (interim orders), the provisions of which are outlined in the state and territory acts [80–87]. Enforcement authorities commonly apply to the court for orders as a mechanism to further protect animals [342]. The main issue with these court orders is that they are not cross-jurisdictionally recognized in most states and territories, exceptions being NSW [92], Tas [93] and VIC [94]. This lack of interstate recognition allows offenders who have been prosecuted and placed under a court order in one jurisdiction to cross the border and be free of the provisions therein [297] (see, e.g., [343]). Recognition of interstate orders could provide tangible welfare benefits by preventing known offenders from having animals, and is an area worth considering for legal reform [297]. Currently in Australia, recognition of interstate orders has been achieved for other types of offending, such as in the case of domestic violence orders [344]. Given this, as well as the three of the eight Australian jurisdictions already implementing such provisions into their animal protection legislation (Table 8), there is legal precedent for making such a change in relation to animal welfare court orders.

There are three jurisdictions that have extra provisions attached to their court orders. Generally, court orders can only be handed down once an offender has been either convicted or found guilty of an offence [80–85,87]. However, Section 12(1) of the *Prevention of Cruelty to Animal Act 1986 (VIC)* [345] and Section 32A(1) of the *Animal Welfare Act 1985 (SA)* [346] allows court orders to be issued to persons found not guilty due to mental impairment, which is an important provision particularly in relation to supervising and restricting animal hoarders. Animal hoarding is a mental illness [347,348], and thus prosecuting and penalizing people who suffer from that illness may not be the most effective intervention for either the offender or the animals. Prosecutions are lengthy and animals are often kept in shelters whilst the case is underway [349], for evidentiary purposes [350]. Thus, if prohibition orders can be given for persons hoarding animals without a guilty finding, it would prevent animals being held in a legal limbo, and the persons being punished with a penalty that may not deter them from reoffending in the future. Another provision from Section 104A(3) of the *Animal Welfare Act 1992 (ACT)* allows the courts to issue a mandated counselling order [351], which provides a more rehabilitative strategy that may 'better fit the crime' [6,313,333]. Although it is not possible to assess the enforceability of these mechanisms, these provisions in the ACT, SA and VIC animal welfare statutes appear to be attempting to utilize alternative forms of penalties in special cases, and other jurisdictions in Australia would benefit from considering these options.

4.4. Avenues for Reform

4.4.1. Harmonizing Laws

In spite of Constitutional restrictions, the harmonization of animal welfare statutes could be achieved through the creation of Uniform Acts adopted independently by each state and territory. Uniform Acts are prepared and adopted voluntarily in whole or substantially by each state and territory [352]. An example of such an approach in Australia

is the Uniform Evidence Acts, which have been adopted by NSW [353], VIC [354], TAS [355], ACT [356], NT [357]; Parliaments in SA, QLD and WA are yet to follow. Although a uniform approach to state and territory-based legislation would appear in theory to be beneficial, it still comes with its challenges. Firstly, the harmonization of the evidence acts began in 1995, and two decades later all states are yet to comply [358], indicating that a uniform approach is a slow process and that beneficial results may take years to be realized. Secondly, the application of this uniform approach has been suggested to be more dis-uniform in practice [358] than first might be thought. Priest [358] has discussed numerous occasions extending over a decade of differences in application of the Uniform Evidence Acts across states. Thus, even if a uniform approach were to be adopted for animal protection statues, there is no guarantee that it would be applied similarly and consistently across jurisdictions, given the potential differences between enforcement agencies across the states.

4.4.2. Use of Delegated Legislation

One thing noted from this review was the lack of consistency between welfare provisions included in, as well as the legislative subject domains of, the miscellaneous acts (Table 13). For example, the QLD *Exhibited Animals Act 2015* [202] was included in this review as it allows inspectors to seize any exhibited animal for welfare reasons. However, the NSW *Exhibited Animals Protection Act 1986* [359] was excluded as it included no welfare provisions and is largely administrative based. It is surprising that two acts within the same subject domain, lack this degree of uniformity when it comes to animal welfare. This same trend was observed for the majority of the included miscellaneous statutes and has since been acknowledged as an issue in the Victorian Government's proposal for animal welfare reforms. It was stated that "while the POCTA Act is currently the primary legislation for managing animal welfare in Victoria, the Act does not apply in all situations where an animal is being used, handled or managed. This is one of the more confusing aspects for the community and can create challenges for regulators and those who are trying to comply with the rules" [78]. Without a clear map or explanation depicting the relationship between the miscellaneous statutes at the state-level, it is hard to critique their effectiveness in maintaining animal welfare. This issue mostly arises due to the use of delegated legislation, where animal welfare provisions are often included in the statute's corresponding regulations instead of the statute itself. Parliament will lay down principles of new laws through statutes, whilst delegated legislation will establish the application of those new laws in greater detail, making it flexible in matters subject to frequent changes [360]. However, in the animal law context, the inconsistent use, and in some cases the potential overuse, of delegated legislation can lead to uncertainty around the importance of animal welfare as a policy consideration, given that delegated legislation lacks parliamentary oversight [361]. Without a comprehensive assessment of delegated legislation, it is difficult to say the extent to which it contributes to dis-uniformity between the states and territories. A potential avenue for reform could involve bringing important provisions currently placed in the delegated legislation, into the enabling statute, to increase their weight. Exclusion of delegated legislation in the forms of regulations and codes of practice is a limitation to this study, as statutes do not work independently [220]. In Australia, as a common law country, statutes, regulations, codes of practice and the doctrine of precedent work symbiotically to form a coherent corpus of law [220]. Therefore, it should be noted that a further review of these excluded components is required to form a comprehensive understanding of the shortcomings of animal protection legislation, and that this review alone only examines a single facet of animal protection law.

4.4.3. National Oversight

This review was limited to black letter law. The actual outcomes resulting from law are influenced by a myriad of factors, including enforcement and resourcing, and thus there may be better ways to achieve a more coherent approach to animal welfare law rather than statutory harmonization. One strategy would be to appoint a single body to represent and

oversee animal protection legislation. Such an approach has previously been attempted in Australia. The Australian Animal Welfare Strategy (AAWS), led by the Federal Government, was developed to establish a national approach to standard setting in an attempt to bring the states and territories together [3,260]. The AAWS aimed to improve coordination and deliver a more effective approach to improving animal welfare [362]. However, funding for the AAWS ceased as part of the Australian Liberal Party's 2014–2015 budget measures [3], and there has been little progress in furthering the AAWS's aims since. There have been ongoing discussions about the need for national oversight for animal welfare. For instance, when the Greens party attempted to introduce a bill for the establishment of an independent authority in 2015, and the Australian Labour Party made a promise to create such an office in 2016. The Coalition, however, elected not to support the national body due to cost concerns [363]. In addition, there have been numerous independent reviews and inquiries into animal welfare enforcement in both Australia [364–366] and internationally [367,368], with the Canadian province of Ontario changing their enforcement model as a result [369], and recent proposals have been made for New Zealand to establish an independent authority to oversee animal welfare at a national level [368]. However, in Australia, the conclusions drawn from the two reviews conducted in Victoria [364] and WA [365] was that the current enforcement models are appropriate and an independent authority is not required (see [6] for further commentary). Nevertheless, these discussions and reviews show that Parliamentarians and policy makers continue to consider a national independent body for animal welfare in Australia. It could be likely in the future that Australia will follow the emerging international trends of developing such a body, given the potential benefits that it would provide such as capabilities for national data collection [3] and enforcement training, consolidation of resourcing and more control over conflicts of interest including policy being driven by industries [370]. Such an approach would likely be more effective in improving animal law enforcement than statutory harmonization.

5. Conclusions

Animal protection provisions in Australian law are more extensive than many might think. Animal welfare acts clearly make major contributions to animal protection from a legal standpoint, but other acts play roles in more targeted manners through their focus on particular species or classes of animals. Animal protection laws are broadly consistent throughout Australian jurisdictions but were found in this analysis to have some shortcomings, including lack of clear and coherent definitions of 'animal' and other key terms. The enforcement mechanisms associated with animal welfare warrant much more attention, given the questionable effectiveness of using legal punishment to promote welfare and prevent cruelty; greater consideration should be given to alternative forms of penalties particularly rehabilitation. Theoretically, a generally uniform approach to animal protection would be beneficial. However, given the Constitutional restrictions in Australia, uniformity it is not likely to be feasible, especially without the addition of a national oversight scheme or body. In the absence of such a body, a relatively efficient approach would be for jurisdictions to take note of reform efforts made by other jurisdictions, such the ACT's recent recognition of animal sentience or the interstate prohibition orders in NSW, TAS and VIC. Finally, as this review was only limited to statutory written law, in-depth research is required on delegated legislation as well as enforcement statistics in order to fully assess the effectiveness of current legal regimes for animal welfare, as laws are only as good as their enforcement.

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Appendix A

Table A1. Statutes with animal welfare provisions included for analysis.

Jurisdiction	Statute
CTH	Environment Protection and Biodiversity Conservation Act 1999
	Great Barrier Reef Marine Park Act 1975
ACT	Animal Welfare Act 1992
	Nature Conservation Act 2014
	Crimes Act 1900
	Fisheries Act 2000
NSW	Prevention of Cruelty to Animals Act 1979
	Crimes Act 1900
	Biodiversity Conversation Act 2016
	Radiation Control Act 1990
	Fisheries Management Act 1994
	National Parks and Wildlife Act 1974
NT	Animal Welfare Act 1999
	Criminal Code Act 1983
	Territory Parks and Wildlife Conservation Act 1976
	Agricultural and Veterinary Chemicals (Control of Use) Act 2004
	Fisheries Act 1988
QLD	Animal Care and Protection Act 2001
	Racing Integrity Act 2016
	Police Powers and Responsibilities Act 2000
	Exhibited Animals Act 2015
	Criminal Code Act 1899
	Nature Conservation Act 1992
SA	Animal Welfare Act 1985
	National Parks and Wildlife Act 1972
	Criminal Law Consolidation Act 1935
	Fisheries Management Act 2007
	Summary Offences Act 1953
TAS	Animal Welfare Act 1993
	Criminal Code Act 1924
	Living Marine Resources Management Act 1995
	Animal Farming (Registration) Act 1994
	Threatened Species Protection Act 1995

Table A1. *Cont.*

Jurisdiction	Statute
VIC	Prevention of Cruelty to Animals Act 1986
	Wildlife Act 1975
	Racing Act 1958
	Crimes Act 1958
	Livestock Management Act 2010
	Fisheries Act 1995
WA	Animal Welfare Act 2002
	Criminal Code Act Compilation Act 1913
	Biodiversity Conservation Act 2016

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Chapter 4: Understanding Subordinate Animal Welfare Legislation in Australia: Assembling the Regulations and Codes of Practice

Contextual Statement

Australian animal welfare legislation is made up of a primary statute and subordinate legislation, in the forms of regulations and codes of practices. These subordinate laws are lower ranking as they are given power under the jurisdiction's specific animal welfare statute. Similar to animal welfare statutes, subordinate laws often come under scrutiny for their contribution to the inconsistent and contradictory framework of animal welfare legislation. This chapter is intended to be complementary to the previous statutory comparison chapter, by collating the subordinate legislation to provide a more comprehensive understanding of animal welfare laws in Australia. Using targeted search strategies stemming from the eight enabling animal welfare statutes, this chapter identified 201 pieces of subordinate legislation. Results showed that whilst subordinate legislation differed between the jurisdictions, it was common for similar welfare concerns or topic areas to be protected in higher-order legislation (statutes or regulations). Additionally, many jurisdictions were found to have similar shortcomings, all which likely could be managed through a mechanism of national data collection. Hence, the cross-jurisdictional differences between subordinate laws are unlikely to be a major contributor of the enforcement gap.

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Certification:	This paper reports on original research I conducted during the period of my Higher Degree by Research candidature and is not subject to any obligations or contractual agreements with a third party that would constrain its inclusion in this thesis. I am the primary author of this paper.		
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By signing the Statement of Authorship, each author certifies that:

i. the candidate's stated contribution to the publication is accurate (as detailed above);

ii. permission is granted for the candidate in include the publication in the thesis; and

iii. the sum of all co-author contributions is equal to 100% less the candidate's stated contribution.

Name of Co-Author	Dr Alexandra Whittaker		
Contribution to the Paper	Conceptualisation and methodology, writing (reviewing and editing) and supervision.		
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Article

Understanding Subordinate Animal Welfare Legislation in Australia: Assembling the Regulations and Codes of Practice

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Simple Summary: In Australia, animal welfare protection is a state and territory responsibility. Having eight separate state and territories results in eight separate animal welfare legal frameworks, all which contain a primary piece of legislation and secondary or subordinate forms of legislation. These subordinate forms are known as regulations and codes of practice and are lower-ranking laws that are given powers under the primary legislation. Subordinate laws contain crucial details that govern everyday human–animal interactions and industry practices, for example companion animals used for breeding. There has been no review of the animal welfare-focused subordinate laws in Australia. This study has assembled each animal welfare regulation and code of practice in force in Australia as a reference for practitioners working in specific animal-related areas to easily identify relevant documents pertaining to welfare and understand the nature of their responsibilities in terms of compliance with these documents. A total of 201 pieces of subordinate legislation were identified and presented through the following utility categories of animals: companion, production, wild/exotic, entertainment. The benefits of housing the information identified from this study on an online database for animal industries to use are discussed.

Abstract: The state-based approach to regulating animal welfare in Australia is thought to create national dis-uniformity in that each state and territory legislates and operates inconsistently. The animal welfare legal framework in each of the eight Australian jurisdictions is made up of a primary statute and subordinate legislation, where subordinate animal welfare legislation, in the forms of regulations and codes of practices, are lower-ranking laws that are given power under the jurisdiction's specific animal welfare statute. Since a review of animal welfare statutes identified broad patterns between the jurisdictions, this study is intended to be complementary by collating the subordinate legislation to provide a more comprehensive understanding of animal welfare laws in Australia. Using targeted search strategies stemming from the eight enabling animal welfare statutes, this study identified 201 pieces of subordinate legislation in force between 28 March 2022 and 5 April 2022. The scope of subordinate legislation is depicted through the following utility categories of animals: companion, production, wild/exotic, entertainment. Whilst subordinate legislation differed between the jurisdictions, it was common for similar welfare concerns or topic areas to be protected in higher-order legislation (statutes or regulations). Additionally, many jurisdictions were found to have similar shortcomings, all which likely could be managed through a mechanism of national data collection.

Keywords: animal welfare legislation; animal cruelty; regulations; codes of practice; delegated legislation; animal welfare; Australia

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1. Introduction

National animal welfare legislation is restricted in scope in Australia, as the *Commonwealth of Australia Constitution Act 1901* ('Constitution') [1] does not include a 'head of power' for animal welfare. Consequently, animal welfare protection is a residual power within the domains of the Australian states and territories, which have taken different approaches to legislating the issue [2–6]. As a result, the primary legal source of animal

protection in Australia stems from eight individual animal welfare statutes made at the state level. This state-based approach has been argued to create a 'fragmented, complex, contradictory, inconsistent system of regulatory management' [3], on the basis that it causes public confusion [7], makes national data collection almost impossible [3], and does not present a united front toward animal protection [6]. For this reason, scholarly support for a more uniform approach to animal welfare legislation is commonplace [3,6–8] as in theory it should overcome such issues. There is, however, an argument proposed by Morton et al. [5] that national uniformity of written law is not necessary since animal welfare statutes have been shown to be broadly consistent between the jurisdictions, and to share similar shortcomings. Further, these identified shortcomings could likely be addressed without resort to a single overarching piece of national legislation [5]. However, that review was limited only to statutes, which do not work independently [9]; rather, they rely on a symbiotic relationship between subordinate legislation in the forms of regulations and codes of practices, in addition to common law principles. Morton et al. [5] stated that subsequent analyses of subordinate animal welfare laws are required to provide a comprehensive understanding on the extent of the cross-jurisdictional differences to animal welfare legislation.

Subordinate laws are lower-ranking laws, meaning they are enabled by a statute. They are often referred to as 'delegated legislation', as Parliament 'delegates' the authority of creating such legislation (i.e., regulations) to the executive arm of government [10]. Although they sit under statute, they still have the full force of the law just as a statute would [11]. Recent years have seen a significant shift from parliamentary law-making (i.e., statutes) to executive law-making (i.e., regulations), with 88% of new laws in 2020 being delegated laws just in the state of South Australia [12]. This gives some indication of the substantial mass of subordinate legislation in modern government today. The process of creating a statute requires substantial parliamentary oversight and debate, making it time-consuming and lengthy [10]. In contrast, as parliament delegates the authority to create regulations to the executive government, it eliminates the need for parliamentary oversight, making the process of creating and amending subordinate laws much quicker [13]. However, in order to avoid sole reliance on non-parliamentary law-making, a mechanism known as 'disallowance' has been developed to keep executive lawmakers in check, where parliament is notified of the delegated legislation and given the opportunity to disallow it [13]. Regulations are often used for more technical matters or matters of detail that are subjected to rapid changes, as it is more appropriate to house them in a form of legislation that can be changed with relative ease [14]. Additionally, regulations often house large amounts of detail to ensure that enabling statutes remain concise with clear provisions. In the case of animal welfare laws, regulations often detail provisions specific to the use of restricted equipment (electrical devices, traps), restricted surgical procedures (debarking, declawing) and detail minimum standards for specific industries (poultry, pigs) as just some examples.

Codes of practices ('codes') are another form of subordinate legislation. They are known as 'quasi-delegated legislation' or 'soft law' [10], a partial form of delegated legislation as they are often not drawn to the attention of parliament or subject to any form of disallowance [13]. Codes are guidance documents written for specific animal industries or utilities (commonly farming industries) that details the forms of 'acceptable' uses of animals [2] rather than solely relying on the 'unacceptable' forms detailed in statute [5]. They provide guidance to animal industries and allow 'cruelty' to be defined by specialists within industry in line with advancement in animal welfare science rather than relying on the sometimes-inconsistent interpretations of the judiciary [2,15].

Whilst regulations sit directly under their enabling statute (i.e., the statute that has authorized/enabled the delegation of legislative law-making power to the executive arm of government), codes are found lower in the hierarchy (Figure 1). This means that provisions kept in codes are often thought to be of lower weight than those in regulations, likewise for provisions found in regulations compared with statutes. Codes can either be compulsory or voluntary; those that are compulsory are legally enforceable, of a higher weight, and

adopted under regulations through a direct reference, licensing requirements or inclusion in schedules. On the other hand, voluntary codes are lowest in the hierarchy (hence the lowest in weight) as they are not incorporated under regulations, giving industries discretion over whether they adopt them or not. As briefly mentioned, the enforceability of these forms of subordinate legislation can differ. Regulations are legally enforceable documents that have multiple offences detailed within the regulations for when breaches of various parts occur. In comparison, noncompliance with a code of practice is only punishable if the prescribing legislation (i.e., legislation higher in the hierarchy) includes an offence for noncompliance. In jurisdictions with any such offence, it only applies for a breach of provisions of compulsory codes, not voluntary codes. Voluntary codes are often only admissible in court, meaning they can only be used as a form of evidence in support or in defence of an animal welfare offence.

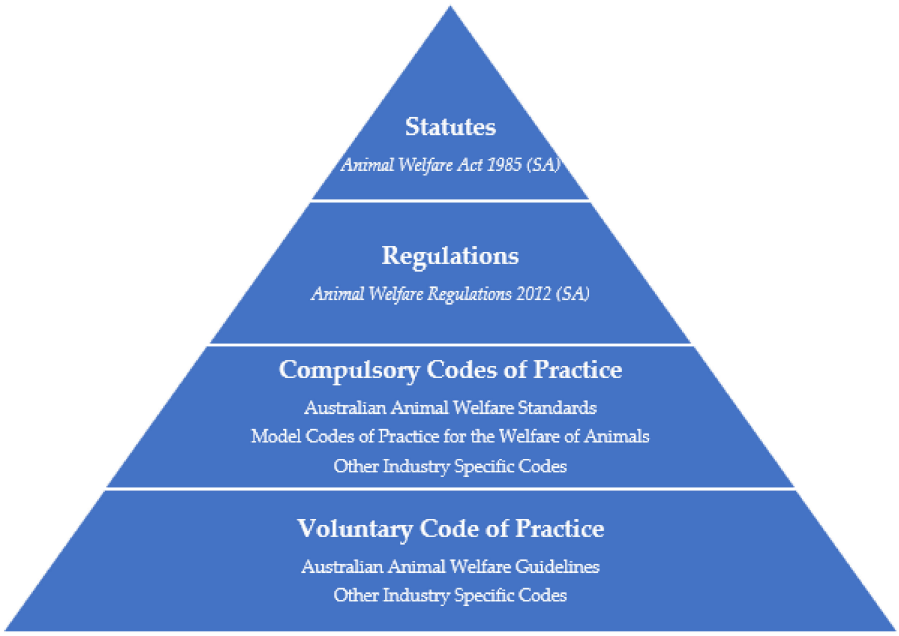

Figure 1. Hierarchy of state and territory legislation in relation to animal welfare protection. Note that the legislation listed use South Australia (SA) as an example and do not represent a comprehensive list.

Subordinate legislation plays an important part in modern government in all common law countries, yet in a similar vein to animal welfare statutes, subordinate laws often come under scrutiny for their contribution to the inconsistent and contradictory framework of animal welfare legislation [2,6,13,16,17]. As summarized by Boom and Ellis [16], 'the wide range of other legislative provisions and codes means the law lacks coherence and certainty'. This is because the Australian state and territory governments have discretion over their subordinate laws, resulting in large variation across the jurisdictions as to the animal species and practices addressed through regulations and codes [2]. Originally this was not the intention, as the Model Codes of Practice [18] for animal welfare were developed in the early 1980s to introduce some form of national consistency to farm animal practices [2]. However, each jurisdiction adopted the Model Codes differently; some adopted the codes in their entirety, others modified them, whilst some chose to ignore them completely [17]. Only after a federal report in 2005 shed light on the extent of the jurisdictional inconsistencies in animal welfare codes [19] did the federal government action a second attempt at national uniformity (amongst other issues identified in the report) with the development of the Australian Animal Welfare Standards and Guidelines [20]. As stated in 2013 by Dale and White [2], 'it is likely to be many years before all existing Model Codes of Practice have

been converted [to the standards and guidelines]', and now almost a decade later, it would appear that Australia is no closer to this goal of national uniformity in animal welfare subordinate legislation. However, there is currently no cross-jurisdictional comparison of delegated legislation to provide evidence for this assertion.

Hence, this paper aims to assemble all subordinate laws given authority under the eight state and territory-based animal welfare statutes to understand the extent of the cross-jurisdictional differences. This study follows on the previous statutory comparison [5], by collating the subordinate legislation to provide a more comprehensive understanding of animal welfare laws in Australia, which will help guide future discussions around need for uniformity. Being grounded in law, the detail of this paper is focused only on Australia; however, as a common law country, any discussion points raised throughout the paper are likely relevant to other common law systems that utilize subordinate laws. This paper is designed to provide a state-by-state comparison of the scope of subordinate legislation, adoption of national documents and methods of incorporation into law. It is designed as a reference source for practitioners working in specific areas or with named species to be able to easily identify relevant documents pertaining to welfare and understand the nature of their responsibilities in terms of compliance with these documents. It is not intended to provide a full review on the details of each regulation and code included for analysis. Thus, this review will discuss the different approaches in Australian jurisdictions, disparities between level of protection across states, and potential avenues for reform.

2. Materials and Methods

2.1. Data Sources

Subordinate legislation in the form of regulations and codes of practice was identified directly from the eight Australian state and territory-based animal welfare statutes (enabling acts) in force between 28 March 2022 and 5 April 2022 (Table 1). Federal legislation was not included as animal welfare is a residual power in Australia, meaning it is in the domain of the states and territories to enact individual legislation [1]. Subordinate legislation accepted for analysis included regulations that were delegated to a Minister by an animal welfare statute (making them enabling acts). Any regulations merely referenced in statute were not included in the analysis. Additionally, codes of practices that were prescribed in an enabling act or regulation or detailed through the relevant government website were included for analysis. Codes are defined as either being compulsory, meaning they are legally enforceable (i.e., noncompliance is an offence), or voluntary, meaning they act as guidance documents (i.e., noncompliance is not an offence).

Table 1. Enabling acts for each animal welfare subordinate legislation included for analysis.

Jurisdiction	Enabling Act
Australian Capital Territory (ACT)	*Animal Welfare Act 1992* [21]
New South Wales (NSW)	*Prevention of Cruelty to Animals Act 1979* [22]
Northern Territory (NT)	*Animal Welfare Act 1999* [23]
Queensland (QLD)	*Animal Care and Protection Act 2001* [24]
South Australia (SA)	*Animal Welfare Act 1985* [25]
Tasmania (TAS)	*Animal Welfare Act 1993* [26]
Victoria (VIC)	*Prevention of Cruelty to Animals Act 1986* [27]
Western Australia (WA)	*Animal Welfare Act 2002* [28]

2.2. Eligibility Criteria

All identified subordinate legislation adopted or prescribed (incorporated under a provision in the enabling statute) under the eight state and territory-based animal welfare enabling acts (Table 1) was accepted for analysis. Subordinate legislation had to either be referred to in statute (or corresponding regulation in the case of some codes) or published on a government website (URL ending in 'gov.au') for reliability. This paper does not intend to provide a comprehensive review of all subordinate laws pertaining to animals

and their welfare, only those the state and territory-based governments have deemed to be appropriate to prescribe under the eight animal welfare statutes. For this reason, some subordinate laws relating to livestock management, pest control, fisheries, domestic animal management, veterinary practice, animals used in research, wildlife conservation and exhibited animal management are not included in this paper as they fall out of the scope of animal welfare statutes and are prescribed under different legislative frameworks.

2.3. Data Extraction

Due to the breadth of subordinate legislation, this paper does not review the entirety of each regulation and code; rather, it focuses on the scope or area of protection it awards to animals. Regulations were manually reviewed to extract the type of animal use it pertains to (e.g., breeding animals, cattle management, animals in rodeos) or the process it controls (e.g., surgical procedures, use of electrical devices or traps, culling procedures). Codes were manually reviewed similarly. However, in some cases, this information was not publicly available. In this case, the title of the code and the accompanying explanatory statement with the relevant Minister's signature at the time were used to confirm the codes scope of protection. Each Australian jurisdiction operates differently; therefore, when areas of animal use are not included in this paper, it should be assumed that their protection does not fall under animal welfare statute rather than that they do not receive any protection whatsoever.

3. Results

Using the search strategies stemming from the eight enabling acts, this study identified 18 regulations (Table 2), 79 compulsory codes (see Appendix A) and 104 voluntary codes (see Appendix B) in force. Each piece of subordinate legislation was included for review and allocated into the following utility categories: companion animals, production animals, wild/exotic animals, or animals used in entertainment. The areas of welfare protection discussed in the results are not intended to be an exhaustive list of all areas relating to each area of animal use, as it is recognized that some areas would be regulated under different statutes. However, these are the areas that each Australian jurisdiction has chosen to regulate under the animal welfare legislative framework.

Table 2. Subordinate legislation in the form of regulations made under animal welfare statutes for each Australian state and territory.

Jurisdiction	Regulation
ACT	*Animal Welfare Regulation 2001* [29]
NSW	*Prevention of Cruelty to Animals Regulation 2012* [30]
NT	*Animal Welfare Regulations 2000* [31]
QLD	*Animal Care and Protection Regulation 2012* [32]
SA	*Animal Welfare Regulations 2012* [33]
TAS	*Animal Welfare (Dogs) Regulations 2016* [34] *Animal Welfare (Domestic Poultry) Regulations 2013* [35] *Animal Welfare (General) Regulations 2013* [36] *Animal Welfare (Land Transport of Livestock) Regulations 2013* [37] *Animal Welfare (Pigs) Regulations 2013* [38]
VIC	*Prevention of Cruelty to Animals Regulations 2019* [39] *Prevention of Cruelty to Animals (Domestic Fowl) Regulations 2016* [40]
WA	*Animal Welfare (Commercial Poultry) Regulations 2008* [41] *Animal Welfare (General) Regulations 2003* [42] *Animal Welfare (Pig Industry) Regulations 2010* [43] *Animal Welfare (Scientific Purposes) Regulations 2003* [44] *Animal Welfare (Transport, Saleyards and Depots) (Cattle and Sheep) Regulations 2020* [45]

3.1. Companion Animal Protection

The use of subordinate legislation for companion animal protection differs between each jurisdiction (Table 3). Whilst ACT is the most comprehensive based on having the most welfare inclusions, NSW arguably has the greatest enforceability through the adoption of compulsory codes, unlike the voluntary codes used in ACT. Additionally, TAS has the inclusion of specialty regulations specific to dog welfare, and therefore, the majority of their companion animal protections (at least pertaining to dogs) are given more weight through their incorporation into regulations rather than codes. On this note, the use of electrical devices and administration of surgical procedures are consistently regulated through statutes or regulations in each jurisdiction; thus, we can assume by their positioning in the regulatory framework that these are the issues to which the states and territories assign the greatest importance. These are closely followed by breeding standards regulation. Due to the systematic approach of reviewing subordinate laws enabled under animal welfare statutes, it should be noted that aspects of companion animal protection are likely contained in the state and territory animal management statutes, which are not depicted below.

Table 3. Areas of welfare protection assigned to companion animals via subordinate legislation in each Australian jurisdiction. The terms 'compulsory' and 'voluntary' refer to the status of the code of practice. For a detailed list of all compulsory and voluntary codes, refer to, Appendices A and B respectively. This table is not intended to be an exhaustive list of all areas of companion animal protection, just of those areas that were identified from the search strategies.

Welfare Protection	Jurisdiction							
	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Boarding	Compulsory	Compulsory				Regulations (dog)		
Breeding	***	Compulsory		Compulsory	Compulsory	Regulations (dog)	Compulsory	
Dog daycare	Compulsory					Regulations (dog) *		
Electrical devices	Regulationsreg 5A	Regulations reg 35	***		Regulationsreg 8(1)(a)	Regulationsreg 8 ***	Regulations reg 14(1) & Compulsory	Regulations (general) reg 3(a)
Grooming	Voluntary	Compulsory						
Keeping birds	Voluntary	Compulsory	Voluntary		Compulsory		Voluntary	
Keeping cats	Voluntary						Voluntary	
Keeping dogs	Voluntary					Regulations (dog)	Voluntary	Compulsory
Pet shops	Compulsory	Compulsory	Voluntary		Compulsory			
Sale of animals	Compulsory***				Compulsory			
Shelters/pounds	Voluntary				Compulsory	Regulations (dog)		
Surgical procedures	***	Regulations Part 3		Regulations Part 4 ***	Regulations reg 6(1)(a)		***	***
Transport	Regulation reg 15A	Compulsory				Regulations (dog) reg 14	Regulations reg 6	
Working dogs		Compulsory & Voluntary **						

* Does not explicitly state daycare; however, likely daycare would fall under the definition of 'facility'. ** Security dogs are compulsory; assistance and farm working dogs are voluntary. *** Included in animal welfare statute.

3.2. Production Animal Protection

Subordinate legislation specific to production animals was generally consistent between the jurisdictions (Table 4), as most states have chosen to regulate through codes (often the CSIRO National Model Codes of Practice [18] or newly formed Australian Animal Welfare Standards and Guidelines when available [20]). However, each jurisdiction has discretion when deciding whether to make the national codes compulsory or voluntary, and thus, each jurisdiction differs in this aspect. New South Wales, SA and WA have the

most compulsory codes, providing greater weight to the provisions therein, whilst ACT, NT and VIC have a greater number of voluntary codes. Aspects of production animal protection that are given the most weight under subordinate legislation are pig and poultry farming and livestock transportation, as these areas are regularly incorporated into regulations rather than codes, providing direct enforceability. Each state and territory also regulates production animal management under livestock statutes, which could contain animal welfare provisions that are not depicted below.

Table 4. Areas of welfare protection assigned to animals used for farming purposes via subordinate legislation in each Australian jurisdiction. The terms 'compulsory' and 'voluntary' refer to the status of the code of practice. For a detailed list of all compulsory and voluntary codes, refer to, Appendices A and B respectively. This table is not intended to be an exhaustive list of all areas of production animal protection, just of those areas that were identified from the search strategies.

Welfare Protection	Jurisdiction							
	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Buffalo		Compulsory	Voluntary	Voluntary	Compulsory			Compulsory
Captive bred emus		Voluntary	Voluntary	Voluntary	Compulsory	Voluntary	Voluntary	Compulsory
Cattle	Voluntary	Compulsory		Compulsory	Regulations Part 8	Voluntary	Voluntary	Compulsory
Cattle feedlots		Compulsory	Voluntary	Voluntary	Regulations reg 72		Voluntary	
Deer	Voluntary	Compulsory	Voluntary	Voluntary	Compulsory	Voluntary	Voluntary	Compulsory
Goats	Voluntary	Compulsory	Voluntary	Voluntary	Compulsory	Voluntary	Voluntary	Compulsory
Horses	Voluntary					Voluntary	Voluntary	
Ostriches		Voluntary	Voluntary	Voluntary	Compulsory			
Pigs	****	Compulsory & Voluntary	Voluntary	Compulsory	Regulations Part 6	Regulations (pigs) & Voluntary		Regulations (pigs) & Compulsory
Poultry	Regulations Part 6 * & Voluntary	RegulationsPart 2 & Compulsory	Voluntary	Compulsory	Regulations Part 5	Regulations (poultry) & Voluntary	Regulations (fowl) & Voluntary	Regulations (poultry) & Compulsory
Rabbits		Voluntary	Voluntary	Voluntary	Compulsory	Voluntary	Voluntary	Compulsory
Saleyards/depots	Voluntary	Compulsory	Voluntary	Compulsory	Compulsory	Voluntary	Voluntary	Regulations (saleyards) & Compulsory
Sheep	Voluntary	Compulsory		Compulsory	Regulations Part 9	Voluntary	Regulations r 8 & Voluntary	Compulsory
Slaughtering establishments	Voluntary	Voluntary	Voluntary	Voluntary	Compulsory			Compulsory
Transport	Compulsory	Compulsory		Compulsory	RegulationsPart 7 **	Regulations (transport) ***	Compulsory	Regulations (transport) & Compulsory

* Only for egg production; ** SA has additional codes for air and sea transport; *** VIC has a voluntary code for sea transport; **** Included in animal welfare statute.

3.3. Wild/Exotic Animal Protection

Animal welfare subordinate legislation used for the protection of wild animals or exotic species kept in captivity differs substantially throughout the jurisdictions (Table 5). The most regulated area across the states and territories relates to the trapping of animals. Further, these are consistently given the most legal weight through their inclusion in regulations, and in statutes in the case of NSW and TAS. As these results only focused on the animal welfare legislative framework in Australia (not the national parks and wildlife legislative framework), it is likely that many of these provisions are also regulated under wildlife-based statutes.

Table 5. Areas of welfare protection assigned to wild and exotic animals in captivity via subordinate legislation in each Australian jurisdiction. The terms 'compulsory' and 'voluntary' refer to the status of the code of practice. For a detailed list of all compulsory and voluntary codes, refer to, Appendices A and B respectively. This table is not intended to be an exhaustive list of all areas of wild animal protection, just of those areas that were identified from the search strategies.

Welfare Protection	Jurisdiction							
	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Amphibians/Reptiles	Voluntary						Voluntary	
Camels		Voluntary	Voluntary	Voluntary	Compulsory			Compulsory
Crocodiles			Voluntary					
Feral livestock animals (culling)			Voluntary	Voluntary	Compulsory			Compulsory
Humane pest control	Voluntary		Voluntary			Voluntary		
Hunting/game parks		*				Voluntary	Voluntary	
Recreational fishing	Voluntary							
Rehabilitation							Voluntary	
Traps	Regulations reg 5A & 7C	*			Regulations reg 9(1)	*	Regulations Part 3	Regulations (general) reg 3B

* Included in animal welfare statute.

3.4. Animals used for Entertainment

Subordinate legislation used to protect animals used for entertainment purposes shows a lack of consistency across the jurisdictions (Table 6). However, rodeos are almost universally regulated across the states and territories through incorporation into regulations or via a compulsory code. Similarly to the wildlife provisions, many states and territories regulate animals used for entertainment within different statutes (other than the animal welfare statutes), meaning that the gaps in the below table should not be taken to indicate that there is no regulation for those provisions; rather, it shows that those provisions are not regulated by animal welfare laws. Many states have exhibited animal statutes that likely house such provisions.

Table 6. Areas of welfare protection assigned to animals used for human entertainment via subordinate legislation in each Australian jurisdiction. The terms 'compulsory' and 'voluntary' refer to the status of the code of practice. For a detailed list of all compulsory and voluntary codes, refer to, Appendices A and B respectively. This table is not intended to be an exhaustive list of all areas of entertainment animal protection, just of those areas that were identified from the search strategies.

Welfare Protection	Jurisdiction							
	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Circuses	Regulations Part 4				Compulsory		Voluntary	Compulsory
Exhibited animals							Voluntary	Compulsory
Films/Theatrical performances	Voluntary	Compulsory					Voluntary	
Greyhounds	Compulsory & Voluntary							
Horse riding/racing	Voluntary	Compulsory					Voluntary	Compulsory
Rodeos		Compulsory		Compulsory	Regulations Part 4	Compulsory	Regulations Part 4	Compulsory

3.5. Offences for Noncompliance with Compulsory Codes

All jurisdictions list their offences for failure to comply with a compulsory code in statute except for SA, which uses regulations (Table 7). Each offence has a monetary maximum penalty attached that is applicable to natural persons. Every jurisdiction aside

from SA uses penalty units to describe fines, which are standard units used to calculate the dollar amount of a fine. A separate sentencing statute defines the monetary value of a penalty unit to ensure the value of a fine is in line with public policy and inflation. Each dollar estimate was calculated based on the penalty unit defined as on 6 September 2022, and these should be taken as estimated only and are not reflective of the amounts long term. No jurisdictions list imprisonment as a penalty option for code breach. Whilst NSW has an offence for noncompliance with compulsory codes prescribed in schedule 1 of the *Prevention of Cruelty to Animals Regulation 2012* (NSW), this offence does not apply to the compulsory codes listed under reg 33 as those are only admissible in court, meaning they can only be used as evidence in the circumstances where a defendant was charged with an offence under the enabling animal welfare statute. Similarly, WA compulsory codes are only admissible in court and there are no offences included for noncompliance. Finally, the statutory wording of the Victorian *Prevention of Cruelty to Animals Act 1986* (Vic) suggests that compliance with codes (both compulsory and voluntary) can be used as a defence to an animal welfare offence; thus, there are no direct offences for noncompliance with a code.

Table 7. Each statutory offence for noncompliance with compulsory codes of practice and the corresponding maximum penalties per each jurisdiction's animal welfare statute. Penalties are applicable to natural persons. Penalty units refer to a standard unit used to calculate the dollar amount of a fine in line with inflation. Each dollar estimate is based on the penalty units detailed in the crime/sentencing statutes in each jurisdiction as of 6 September 2022. They should be taken as estimates only and will be subject to frequent changes.

Jurisdiction	Offence for Noncompliance	Maximum Penalty
ACT	Animal Welfare Act 1992 Sections 24A-D	100 penalty units (AUD 22,200 estimate)
NSW	Prevention of Cruelty to Animals Act 1979 Section 26(3)(i) *	50 penalty units (AUD 5500 estimate)
NT	None included	
QLD	Animal Care and Protection Act 2001 Section 15(3)	300 penalty units (AUD 43,125 estimate)
SA	Animal Welfare Regulations 2012 Section 5	AUD 2500
TAS	Animal Welfare Act 1993 Section 11A	50 penalty units (AUD 9050 estimate)
VIC	None included **	
WA	None included ***	

* Compulsory codes prescribed under s 34A(1) are only admissible in court; ** Vic does not have offences for noncompliance but rather has basic cruelty offences listed in statute with a statement that by following the compulsory code, a person will not breach a cruelty offence; *** WA compulsory codes are only admissible in court.

3.6. Jurisdictional Code of Practice Framework

Every jurisdiction has discretion when deciding which codes are compulsory or voluntary, resulting in differences between the frameworks in each state and territory (Figure 2). Each jurisdiction has variations in how (and which) codes of practices were adopted, and there were no clear observable patterns between jurisdictions. Whilst SA and WA have only compulsory codes prescribed under their animal welfare statute, NT differs by only listing voluntary codes, and the remainder use a combination of both compulsory and voluntary. All jurisdictions (aside from NSW) have a greater number of voluntary codes in force than compulsory codes.

Figure 2. Sunburst diagram of the relative number of compulsory and voluntary codes per each Australian jurisdiction, per utility group. Each color represents a different jurisdiction, with the number of compulsory and voluntary codes prescribed under animal welfare statutes in that jurisdiction. This is broken down further to show use of compulsory or voluntary codes across each animal utility group (companion, production, wild and entertainment).

Of all codes included for analysis, those related to production animals were most common (58.3%). Within those production animal codes, the majority were adopted as voluntary (59.8%), whilst the remainder were compulsory (40.2%). Companion animal codes (equating to 16% of all codes) were evenly split between compulsory (53.6%) and voluntary (46.4%), whilst wild/exotic animal codes equated to 16.6% of all codes (compulsory 20.7%; voluntary 79.3%), and codes used for animals in entertainment amounted to 9.2% of all codes (compulsory 68.8%; voluntary 31.2%).

3.7. Jurisdictional Acceptance of Animal Welfare Standards

The four currently available animal welfare standards as of 6 September 2022 [20] (transport, cattle, sheep and saleyards/depots) have been variably adopted by the states and territories (Figure 3). It is worth noting that although the majority of jurisdictions have incorporated the standards under the animal welfare legislative framework, NT

and VIC have incorporated them under their livestock management legislation. Thus, in order to accurately depict the acceptance rates, these were not excluded from the analysis for the purposes of Figure 3. Whilst the transport standards have been adopted by each jurisdiction, the cattle standards have been adopted by four jurisdictions (50%; NSW, QLD, SA, WA). Similarly, the sheep standards are currently adopted in three jurisdictions (37.5%; NSW, QLD, SA) and the saleyard and depot standards have a 25% acceptance rate with only two states adopting them under legislation (QLD, WA). These acceptance rates are in accordance with the date of finalization for each of the standards, with the transport standards released in 2013 [46], cattle and sheep in 2016 [47,48] and saleyards and depot most recently released in 2018 [49].

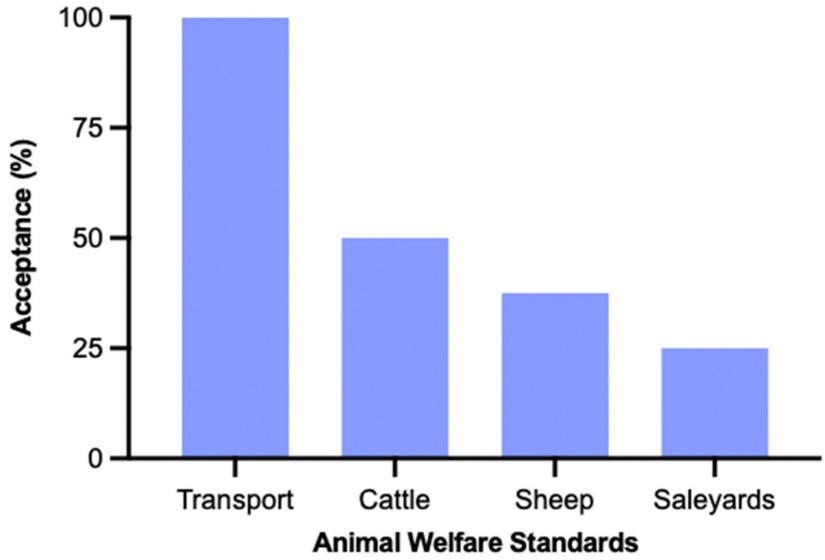

Figure 3. Acceptance rates of the animal welfare standards [20] currently available across the Australian jurisdictions. Acceptance is measured by their incorporation under any legislation (not exclusive to animal welfare legislation), in primary or secondary form. Transport standards have been accepted by all jurisdictions (100%); cattle standards accepted by NSW, QLD, SA, WA (50%); sheep standards accepted by NSW, QLD, SA (37.5%); saleyard and depot standards accepted by QLD, WA (25%).

4. Discussion

This paper outlines the scope of animal welfare protection detailed in subordinate legislation enabled under the state-based animal welfare statutes in Australia. Following from our previous cross-jurisdictional comparison of animal welfare statutes [5], this analysis is intended to be complementary and to provide a more complete picture of the animal welfare law framework by including subordinate laws in that paradigm. Although grounded in Australia's domestic law, the findings from this study likely have relevance to other countries that adopt a common law system, which could be the subject of broader international research. Firstly, the differences in quantity of primary (statute) and secondary (subordinate) legislation are substantial, with the 201 subordinate laws identified from this study equating to 96.2% of all sources of laws within the animal welfare law framework. Although animal welfare statutes are crucial, as they commonly deal with issues of animal cruelty or duty of care breaches [50], subordinate laws provide the detail on the range of human–animal interactions that occur in everyday life, arguably encompassing the more prevalent animal welfare issues in society since they relate to everyday husbandry practices and procedures. Recognizing this importance, the remainder of this paper will

discuss selected aspects of our analysis with a focus on the current extent of uniformity, and potential avenues for reform.

4.1. The Current State of Uniformity

4.1.1. The Extent of Uniformity

Although this paper has identified some cross-jurisdictional differences between the areas of welfare protection covered by subordinate legislation, there were also striking similarities. For example, the states and territories are fairly consistent in giving the most legal weight (determined based on their regulation of the area using documents sitting higher in the legal hierarchy) to similar issues of welfare concern. This was observed for the use of electrical devices and the performance of surgical procedures in companion animals, pig and poultry farming and livestock transportation. Whilst we cannot know the reasoning behind legislators' and government officials' decisions to place these provisions in higher-order legislative instruments, we can reason that it may relate to perception of threat to welfare, thus requiring increased enforceability. It is noteworthy that these are often the areas that have come under public scrutiny both domestically and globally, such as the welfare movement to ban battery cages for poultry farming [51–54] and farrowing crates in piggeries [55–57]. This implies that jurisdictions may be prepared to respond to public pressure and global animal welfare trends, although this would likely only come after some form of regulatory impact assessment considering economic impacts amongst other considerations. The fact that each jurisdiction has uniformly adopted the Land Transport of Livestock Standards [58] implies regulators are cognisant of the difficulties in complying with different standards when travelling between jurisdictions [59], which suggest the states and territories will take a pragmatic approach towards uniformity when it makes sense to do so.

Australia is a vast and diverse country, with environmental, economic and social conditions varying across the jurisdictions [60]. Animal welfare legislative frameworks will be a product of the jurisdiction's locality and associated geography of their land. As one example, livestock production in Australia differs vastly across the states and territories, with NSW, QLD, VIC and WA being the highest producers of red meat [61], poultry [62] and pork [63], whereas ACT and NT are rarely reported in those statistics. Thus, it is not surprising that ACT and NT had the least comprehensive scope of subordinate legislation protecting these industries. The states and territories will only adopt subordinate laws that are relevant for their locality, as this is grounded in the theory of federalism in Australia and the subsequent 'principle of subsidiarity' [64]. Subsidiarity is the idea that a decision should be made at the most local level of government where there is shared community interest [65]. Thus, giving the states and territories of Australia discretion to make policy decisions that reflect their own societal pressures and circumstances, allowing for policy to meet local preferences and needs [64]. The theory of federalism specifically warns against unnecessary uniformity between the states [64], as a 'one size fits all' approach would ignore the extent of diversity within Australia, reduce response rates to local issues and cause competition with national concerns [60]. Thus, it is likely that a uniform approach might not be necessary for some areas of animal welfare protection when considering the states' locality.

Conversely, given this observation in low livestock rearing states, it is somewhat surprising that QLD and VIC have the highest proportion of voluntary codes considering they are some of the highest livestock producers. This leaves the details of husbandry and management in these industries outside the bounds of subordinate legislation and in the realms of judicial interpretation via interpretations of 'cruelty' as expounded in animal welfare statutes. Thus, although the locality can cause justified inconsistencies based on the state's locality, there still appears to be a dis-uniform approach to some areas that locality cannot explain, and perhaps political decisions are at play. However, it should be noted that both QLD and VIC are in the processes of reforming their animal welfare legislation, with both jurisdictions proposing to improve the welfare standards of production animals

(QLD [66]; VIC [67]). As the bills still require parliamentary debates, at this stage the outcome remains unknown.

4.1.2. Uniform Licensing of Animal Research

An area not depicted in the results of this study was the approach the jurisdictions have taken to regulating the welfare of animals used for scientific purposes. Each jurisdiction has uniformly adopted the latest edition of the Australian Code for the Care and Use of Animals for Scientific Purposes ('Research Code') [68]. The incorporation of this code into law generally differs from other Codes (as depicted in Table 7).

Code compliance is generally a license condition rather than a direct provision laid out within the Act. State-based statutes authorize Ministers to issue licenses to institutions for the use of animals in research. In general, these licenses are expected to refer to compliance with the code as being a license condition but noting that some states have maintained some discretionary power in this regard through the act wording, for example in the *Animal Welfare Act 1985* (SA) s 19(2)(f) 'The Minister *may* impose conditions requiring the holder of the license to comply with *such provisions* of the Code as *may be* specified in the conditions'. Whilst it is suspected that in reality most issued licenses refer to the Code in its entirety, it is clear that there is at least the *potential* for dis-uniformity in Code usage across the states and territories. Research institutions monitor compliance with the code internally through the nomination of an animal ethics committee that approves animal research in accordance with the Research Code. Any research carried out in breach of the Research Code will result in the potential loss of license by the institution and attract higher penalties, sometimes upwards of $10,000 [69].

There is also the niggling question of whether all aspects of the Code are actually enforceable in some states due to lack of coverage in the overarching enabling statute. For example, the Code covers all living vertebrates except human beings and includes fish. However, if fish are not considered within the definition of animals in the primary act enabling the Code, do they fall outside of the scope of protection? Alternatively, by referring to the Code in license provisions, perhaps they can legitimately be protected in research since any Code breach is then technically a license breach, signaling an act breach. This question likely needs further legal examination and judicial interpretation but again serves to highlight issues of dis-uniformity across the states.

Additionally, whilst there may be almost uniform adoption of the Code across the jurisdictions, the mode of adoption does differ. For example, seven jurisdictions (ACT, QLD, SA, TAS, VIC, WA, NT) incorporate compliance with the Research Code through licensing under their animal welfare statute, however NSW differs as they have incorporated it under the *Animal Research Act 1985* (NSW). This raises questions around the interpretation of 'uniformity' within this context, as although the animal research code is uniformly functioning with its intended purpose in each jurisdiction (at least based on what the legislation implies), the framework applied is still dis-uniform. This is a common occurrence within animal welfare legislation, as often the scope of animal welfare protection is balanced against other legislative frameworks involving animals.

4.1.3. Uniform Function or Uniform Framework?

The nature of human–animal interactions is diverse and often based on individual and species-based considerations. They vary from our relationships with companion animals, which are often intrinsic in nature [70–72], to the utilitarian relationships underpinning the livestock industry [73] as well as management strategies for wildlife conservation [3] and pest control [15], amongst others. Each type of interaction is grounded within different legislative frameworks [5], resulting in a substantial mass of overlapping animal-related legislation. This creates inconsistencies in the animal welfare legislation between the jurisdictions, as is apparent in these results. The question of whether uniformity is required in just function, or within both function and framework is difficult. Arguably the states and territories have already taken a 'broadly' uniform approach to legislating the issue of

animal welfare functionally [5]; 'broadly' in that the majority of the inconsistencies are likely due to local pressures and circumstances. Therefore, although the legal frameworks of animal welfare protection may differ, the mandated provisions are likely similar. However, this cannot be proven without a national understanding of enforcement statistics, but as academic commentary suggests, national data collection is almost impossible without a uniform framework [3]. Hence, an impasse has been reached.

The interpretation that a uniform framework will result in uniform function is too simplistic, as previous research has established that even with uniform statute application dis-uniformity may remain though differences in enforcement [74]. That is, even if a uniform approach were adopted in framework, there is no guarantee that it would be applied similarly and consistently across jurisdictions given the differences between enforcement agencies across the states [8]. The lack of a national data collation system is still a substantial shortcoming within Australian animal welfare law and likely requires some form of national oversight to manage and monitor. This can likely be achieved without any form of uniform legislative framework. However, it would require animal management (which would include animal welfare in that paradigm) to be incorporated under a current federal office (e.g., Department of Agriculture, Fisheries and Forestry/Department of Climate Change, Energy, the Environment and Water) or as Mundt [75] suggested, the development of a new office for animal management. Although this would be a burden on the federal executive arm of government to develop, it could be less burdensome than reshaping the current jurisdictional frameworks to achieve uniformity. With national data collection, the function of the states can be monitored to ensure that Australia as a nation is upholding uniform standards of animal welfare whilst accounting for any cross-jurisdictional differences due to local societal pressures and circumstances. In addition, it would also provide greater transparency within the function of the executive arm of government and their development of subordinate laws, something that is currently very secretive in nature [12].

4.2. Outdated, Underused and Conflicting Systems

4.2.1. Subordinate Legislation Is Amended 'Quickly' and 'Easily'

One of the key features of subordinate legislation is how easily and quickly it can be amended to keep in line with public concerns and scientific advancements [12,13]. To be formed, subordinate laws must comply with a process set out in state-based subordinate legislation statutes. However, this process does not require any of the accountability and transparency measures required by the parliamentary law-making process, resulting in little to no available information documenting the consultation process or explaining why the change in subordinate law was necessary [12]. This means although the process is far quicker than statutory changes, it is ultimately much more secret and hidden behind closed doors. There is no way of understanding the types of information the executive government relied on or what influenced their decisions, something that is rather concerning in the context of animal welfare, where decisions often need to be balanced against the profitability of animal industries [76]. Although parliament are given the opportunity to disallow subordinate legislation, the sheer volume of it entering the system detracts from the efficacy of this form of oversight [12,13], meaning that the executive are essentially making laws that govern every day human-animal interactions with minimal, if any, parliamentary oversight.

Furthermore, subordinate laws often date further back than statutes. For example, a majority of the animal welfare codes still in force are underpinned by the Model Codes of Practice that were introduced in the 1980s, whilst the last two decades have seen somewhat frequent amendments to animal welfare statutes throughout the jurisdictions [77–82]. Hence, although in theory, amendments to subordinate laws may be quicker and easier, in practice, they appear to be rarely instigated. This raises concerns about their use considering that the dated nature of the codes means they are likely not representing current best animal welfare practice [2].

4.2.2. Conflicts of Interest

A point briefly touched on above is the need for balance between the protection of animal welfare and the profitability of animal-related industries. This is an area that subordinate laws neatly fall within as the Ministers who are delegated authority to create subordinate laws are often those involved in government agricultural departments. This creates a conflict of interest between promoting the profitability of the livestock industry and regulating it for animal welfare protection [2,76]. The main point of discourse is that protecting animal welfare is not always the most profitable option, and it has been suggested that the profitable option holds more sway over the executive [76], potentially resulting in subordinate laws poorly reflecting animal welfare. Again, as the entire process of creating subordinate laws is undisclosed [12], it is not possible to confirm such concern. Greater transparency from the executive is required to dispel this concern.

On a similar note, the consultation processes involved in the development of codes of practice are also alleged to conflict with animal welfare protection. Ideally, the consultation process brings together all stakeholders involved within the relevant animal industry (often livestock industries) to understand each viewpoint and achieve balance between ethical views and practical working arrangements [59]. However, literature has suggested that industry representatives have a disproportionate influence on the decision-making process, as their input often overwhelms the limited input from organizations committed to improving animal welfare [2,13]. Therefore, there is a point at which codes tend to cease protecting animal welfare when it is in conflict with industries' interests [17]. This suggests that codes are based on an animal's extrinsic value (worth to humans) rather than their sentient abilities [72]. This is especially concerning, as some jurisdictions (such as VIC) will consider compliance with a code as a defence for an animal cruelty offence [83]. However, it should be noted that some literature suggests otherwise: Edge and Barnett [84] found that during the consultation process of the Animal Welfare Transport Standards, all stakeholders (including representatives from science, welfare, industry and government) had similar beliefs regarding animal welfare and were able to come to a consensus. Hence, again this is likely another issue of transparency within subordinate law development.

4.3. Moving Forward with the Current System

Is Uniformity Feasible?

Whilst a national uniform approach to animal welfare might be beneficial, it is likely not feasible within the current legal framework given the constitutional restrictions [5]. This is in recognition of the fact that achieving national uniformity to animal welfare legislation is likely very burdensome, and slow progressing, given learnings from other areas of law such as the experience with the Uniform Evidence Acts [74]. Further, it already has a history of failure in Australia given the resource challenges experienced with the previous Australian Animal Welfare Strategy (AAWS) led by the Federal Government [3,17]. This is not to say that uniformity should not be considered or that success is unlikely in the future. However there are some prominent issues identified from this paper that can be addressed within the current framework that do not require national uniformity of animal welfare legislation.

In lieu of a uniform approach, some form of federal database should be implemented in the interim. As previously discussed, national data collection will confirm Morton et al.'s [5] hypothesis that animal protection laws are broadly functioning uniformly across the jurisdictions with cross-jurisdictional differences likely accounted for by locality, rather than opposing standards of animal welfare. In addition, a federal database will provide transparency and accountability within the development of subordinate legislation, as it would provide an initiative to improve subordinate laws in line with other jurisdictions. Indirectly, this would likely reduce the number of out-of-date codes of practice and create a greater level of uniformity in animal welfare subordinate laws simply through allowing the states to regulate themselves rather than completely reforming the whole framework.

Additionally, such a database should be readily available and accessible to animal-related industries, as this will allow industries to understand their expectations in relation to animal welfare, as well as use the subordinate legislation (as many codes of practice were not readily available online during the data collection stage of this research). The database should contain information similar to this paper but hold further in-depth details on each regulation and code of practice written in lay language with the accompanying formal subordinate law attached. Ideally this would have search functionality to easily source and access these data. This tool could assist in improving the value of subordinate laws for informing and educating persons on their obligations to animals rather than just being used to punish noncompliance or providing defences to cruelty offences.

5. Conclusions

Animal welfare subordinate legislation in Australia, in the forms of regulations and codes of practices, is much more extensive than some may think, making up the vast majority of all sources of laws within the animal welfare legislative framework. These documents house details on the range of human–animal interactions that occur in everyday life. Given that these laws contain provisions relating to everyday husbandry practices and procedures, it is concerning that a majority were often decades old, such as the Model Codes of Practice, and hence, likely not reflecting the current societally accepted standards for animal welfare, and benchmarks for animal welfare science. However, in terms of uniformity, it was identified that each jurisdiction took a fairly consistent approach by giving the most legal weight to similar topics. This was achieved through incorporation in the regulations. Additionally, it is purported that dis-uniformity is likely caused by local societal pressures and circumstances, a concept that is encouraged through the concept of federalism, as well as overlapping animal-related legislative frameworks. Some form of federal data collation is required to confirm such hypotheses and provide some form of accountability in subordinate law-making in animal law in Australia. Such a database is recommended to be available online and written in lay language to enable animal-related industries to better understand their expectations in relation to animal welfare. Coupled with good evidence-based drafting and consultation, subordinate laws may even provide insight into goals for animal caretakers to strive towards for enhanced welfare protection, to shift from a reactive to a proactive approach to animal welfare.

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Appendix A

Table A1. Compulsory codes of practices included for analysis (n = 79).

Jurisdiction	Code of Practice
ACT	Animal Welfare (Animal Day Care Establishments) Mandatory Code of Practice 2021 Animal Welfare (Keeping and Breeding of Racing Greyhounds in the ACT) Mandatory Code of Practice Animal Welfare (Land Transport of Livestock) Mandatory Code of Practice Animal Welfare (Overnight Animal Boarding Establishments) Mandatory Code of Practice 2021 Animal Welfare (Sale of Animals in the ACT other than Stock and Commercial Scale Poultry) Mandatory Code of Practice 2021
NSW	Animal Welfare Code of Practice No 4–Keeping and Trading of Birds Animal Welfare Code of Practice–Animals in Pet Shops Animal Welfare Code of Practice No 5–Dogs and Cats in Animal Boarding Establishments Animal Welfare Code of Practice–Breeding Dogs and Cats Animal Welfare Code of Practice No 1–Companion Animal Transport Agencies Animal Welfare Code of Practice No 8–Animals in Pet Grooming Establishments Animal Welfare Code of Practice No 9–Security Dogs Animal Welfare Code of Practice No 3–Horses in Riding Centers and Boarding Stables Animal Welfare Code of Practice–Commercial Pig Production Prevention of Cruelty to Animals (Land Transport of Livestock) Standards 2013 No 2 Model Code of Practice for the Welfare of Animals: Domestic Poultry Model Code of Practice for the Welfare of Animals: Farmed Buffalo Model Code of Practice for the Welfare of Animals: Animals at Saleyards Model Code of Practice for the Welfare of Animals: The Goat Model Code of Practice for the Welfare of Animals: The Farming of Deer National Guidelines for Beef Cattle Feedlots in Australia Code of Practice for the Welfare of Animals Used in Rodeo Events Code of Practice for the Welfare of Animals in Films and Theatrical Performances Australian Animal Welfare Standards and Guidelines for Cattle Australian Animal Welfare Standards and Guidelines–Sheep
NT	None Identified
QLD	Code of Practice about Cattle Code of Practice about Sheep Code of Practice for Transport of Livestock Code of Practice for Livestock at Depots and Saleyards Code of Practice about Rodeos Code of Practice for Breeding Dogs Code of Practice about Pigs (partial) Code of Practice about Domestic Fowl (partial) The Australian Code for the Care and Use of Animals for Scientific Purposes, 8th Edition
SA	Model Code of Practice for the Welfare of Animals, Air Transport of Livestock Model Code of Practice for the Welfare of Animals, Animals at Saleyards Model Code of Practice for the Welfare of Animals, Farmed Buffalo Model Code of Practice for the Welfare of Animals, Farming of Ostriches Model Code of Practice for the Welfare of Animals, Husbandry of Captive Bred Emus Model Code of Practice for the Welfare of Animals, Intensive Husbandry of Rabbits Model Code of Practice for the Welfare of Animals, Livestock and Poultry at Slaughtering Establishments (Abattoirs, Slaughterhouses and Knackeries) Model Code of Practice for the Welfare of Animals, Sea Transport of Livestock Model Code of Practice for the Welfare of Animals, The Camel Model Code of Practice for the Welfare of Animals, The Destruction or Capture, Handling and Marketing of Feral Livestock Animals Model Code of Practice for the Welfare of Animals, The Farming of Deer Model Code of Practice for the Welfare of Animals, The Goat South Australian Code of Practice for the Husbandry of Captive Birds South Australian Code of Practice for the Welfare of Animals in Circuses South Australian Standard and Guidelines for Breeding and Trading Companion Animals The Australian Code for the Care and Use of Animals for Scientific Purposes, 7th Edition

Table A1. *Cont.*

Jurisdiction	Code of Practice
TAS	Standards for the Care and Treatment of Rodeo Livestock The Australian Code for the Care and Use of Animals for Scientific Purposes, 8th Edition
VIC	Australian Animal Welfare Standards and Guidelines–Land Transport of Livestock Code of Practice for the Responsible Breeding of Animals with Heritable Defects that Cause Disease Code of Practice for the Debarking of Dogs Code of Practice for the Housing and Care of Laboratory Mice, Rats, Guinea Pigs and Rabbits Code of Practice for Training Dogs and Cats to Wear Electronic Collars The Australian Code for the Care and Use of Animals for Scientific Purposes, 8th Edition
WA	Australian Animal Welfare Standards and Guidelines–Land Transport of Livestock Australian Animal Welfare Standards and Guidelines–Livestock at Saleyards and Depots Australian Animal Welfare Standards and Guidelines for Cattle Australian Rules of Racing Code of Practice for Exhibited Animals in Western Australia Code of Practice for Farmed Buffalo in Western Australia Code of Practice for Farming Deer in Western Australia Code of Practice for Goats in Western Australia Code of Practice for Keeping Rabbits in Western Australia Code of Practice for Pigeon Keeping and Racing in Western Australia Code of Practice for Poultry in Western Australia Code of Practice for Sheep in Western Australia Code of Practice for the Capture and Marketing of Feral Animals in Western Australia Code of Practice for the Conduct of Circuses in Western Australia Code of Practice for the Conduct of Rodeos in Western Australia Mode Code of Practice for the Welfare of Animals: The Camel Model Code of Practice for the Welfare of Animals: Husbandry of Captive-Bred Emus Model Code of Practice for the Welfare of Animals: Livestock at Slaughtering Establishments Model Code of Practice for the Welfare of Animals: Pigs Rules of Harness Racing The Australian Code for the Care and Use of Animals for Scientific Purposes, 8th Edition

Appendix B

Table A2. Voluntary codes of practices included for analysis (n = 104).

Jurisdiction	Code of Practice
ACT	Code of Practice for the Welfare of Amphibians in Captivity Animal Welfare (Welfare of Cats in the ACT) Code of Practice Code of Practice for the Welfare of Greyhounds in the ACT Animal Welfare (Welfare of Dogs in the ACT) Code of Practice Code of Practice for the Welfare of the Goat Code of Practice for the Welfare of Animals–Cattle Code of Practice–Animals at Saleyards Code of Practice for the Welfare of Animals–Sheep Code of Practice for the Welfare of Animals Used on Film Sets Code of Practice for the Welfare of Captive Birds in the ACT Code of Practice for the Welfare of Farmed Deer Animal Welfare (Recreational and Sport Fish) Code of Practice Code of Practice for the Welfare of Horses in the ACT Code of Practice for the Welfare of Horses in the ACT (Commercial Horse Riding Establisments) Code of Practice for the Handling of Companion Animals in Pounds and Shelters in the ACT Animal Welfare (Humane Shotting of Kangaroos and Wallabies) Code of Practice Code of Practice for the Welfare of Animals: Domestic Poultry Code of Practice for the Humane Control of the Fox Code of Practice for Livestock and Poultry at Slaughtering Establishments (Abattoirs, Slaughterhouses and Knackeries) Code of Practice for Pet Grooming Establishments Code of Practice for the Welfare of Poultry: Non-Commercial The Australian Code for the Care and Use of Animals for Scientific Purposes, 8th Edition

Table A2. *Cont.*

Jurisdiction	Code of Practice
NSW	NSW Guidelines for the Pinioning of Birds Code of Practice–Care and Training of Assistance Dogs in Correctional Centres Code of Practice–Care and Management of Farm (Working) Dogs Model Code of Practice for the Welfare of Animals: The Camel Model Code of Practice for the Welfare of Animals: Intensive Husbandry of Rabbits Model Code of Practice for the Welfare of Animals: Livestock at Slaughtering Establishments Model Code of Practice for the Welfare of Animals: Pigs Model Code of Practice for the Welfare of Animals: Husbandry of Captive-Bred Emus Model Code of Practice for the Welfare of Animals: Farming of Ostriches Australian Industry Welfare Standards and Guidelines—Goats
NT	Code of Practice on the Humane Treatment of Wild and Farmed Australian Crocodiles Model Code of Practice for the Welfare of Animals: Animals at Saleyards Model Code of Practice for the Welfare of Animals: Domestic Poultry Model Code of Practice for the Welfare of Animals: Farmed Buffalo Model Code of Practice for the Welfare of Animals: Farming of Ostriches Model Code of Practice for the Welfare of Animals: Feral Livestock Animals Model Code of Practice for the Welfare of Animals: Husbandry of Captive-Bred Emus Model Code of Practice for the Welfare of Animals: Intensive Husbandry of Rabbits Model Code of Practice for the Welfare of Animals: Livestock at Slaughtering Establishments Model Code of Practice for the Welfare of Animals: Pigs Model Code of Practice for the Welfare of Animals: The Camel Model Code of Practice for the Welfare of Animals: The Farming of Deer Model Code of Practice for the Welfare of Animals: The Goat Guidelines for the Care and Welfare of Animals in Retail Pet Shops Guidelines for the Care and Welfare of Caged Birds National Guidelines for Beef Cattle Feedlots in Australia National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Commercial Purposes National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Non-Commercial Purposes The Australian Code for the Care and Use of Animals for Scientific Purposes, 8th Edition
QLD	National Guidelines for Beef Cattle Feedlots in Australia Model Code of Practice for the Welfare of Animals–Domestic Poultry Model Code of Practice for the Welfare of Animals–Farmed Buffalo Model Code of Practice for the Welfare of Animals–Feral Livestock Animals: Destruction or Capture Handling and Marketing Model Code of Practice for the Welfare of Animals–Husbandry of Captive-Bred Emus Model Code of Practice for the Welfare of Animals–Intensive Husbandry of Rabbits Model Code of Practice for the Welfare of Animals–Livestock at Slaughtering Establishments Model Code of Practice for the Welfare of Animals–Pigs Model Code of Practice for the Welfare of Animals–The Camel Model Code of Practice for the Welfare of Animals–The Farming of Deer Model Code of Practice for the Welfare of Animals–Farming of Ostriches Model Code of Practice for the Welfare of Animals–The Goat
SA	None Identified
TAS	Model Code of Practice for the Welfare of Animals–Cattle Animal Welfare Guidelines–Deer Animal Welfare Guidelines–Sheep Animal Welfare Guidelines–The Goat Model Code of Practice for the Welfare of Animals–Pigs (partial–some in regs) Model Code of Practice for the Welfare of Animals–Domestic Poultry (partial–some in regs) Tasmanian Equine Welfare Guidelines Animal Welfare Guidelines–Husbandry of Captive Bred Emus Animal Welfare Guidelines–Dogs Guidelines for the Humane Killing of Mutton-birds (Shearwaters) Animal Welfare Guidelines–Animals in Saleyards Model Code of Practice for the Welfare of Animals–Intensive Husbandry of Rabbits Animal Welfare Guidelines–Land Transport of Livestock Animal Welfare Guidelines–Transport of Livestock Across Bass Strait Animal Welfare Guidelines–Trade and Transport of Calves, Including Bobby Calves Code of Practice for the Field Shooting of Brushtail Possums in Tasmania Code of Practice for the Capture, Handling, Transport and Slaughter of Brushtail Possums Animal Welfare Standard for the Hunting of Wallabies in Tasmania Code of Practice for the Hunting of Ducks in Tasmania Code of Practice for the Hunting of Wild Fallow Deer in Tasmania

Table A2. *Cont.*

Jurisdiction	Code of Practice
VIC	Code of Practice for the Welfare of Amphibians in Captivity Code of Practice for the Housing of Caged Birds Code of Practice for the Private Keeping of Cats Code of Accepted Farming Practice for the Welfare of Cattle Code of Accepted Farming Practice for the Welfare of Deer Code of Practice for the Private Keeping of Dogs Code of Practice for the Husbandry of Captive Emus Code of Practice for the Public Display and Exhibition of Animals Code of Practice for the Welfare of Film Animals Code of Practice for the Welfare of Goats Code of Practice for the Welfare of Horses Code of Practice for the Welfare of Horses Competing at Bush Race Meetings Code of Practice for the Welfare of Horses at Horse Hire Establishments Code of Practice for the Welfare of Animals in Hunting Code of Practice for the Welfare of Animals on Private Game Reserves Licensed to Hunt Game Birds Code of Accepted Farming Practice for the Welfare of Poultry Code of Practice for the Intensive Husbandry of Rabbits Code of Practice for the Welfare of Animals at Saleyards Code of Accepted Farming Practice for the Welfare of Sheep Code of Practice for the Tethering of Animals Code of Practice for the Welfare of Wildlife During Rehabilitation
WA	None Identified

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Chapter 5: Increasing Maximum Penalties for Animal Welfare Offences in South Australia – Has it Caused Penal Change?

Contextual Statement

This chapter is a supplementary chapter of this thesis, as this study was completed as a component of my BSc (Hons) degree. It is included as a chapter in this thesis as it provides context around the enforcement of animal welfare legislation and its penalties in Australia.

Animal welfare legislation in South Australia underwent amendments in 2008, where all the maximum penalties for animal welfare offences were doubled. It is argued that this commitment to increased penalties provides evidence of the legislature's intent with respect to penalties, in that the changes intended to increase sentencing outcomes to reflect public concern. However, it is speculated that the legislative intent is not being reflected in the courts. Thus, contributing to the enforcement gap. This chapter quantifies the average custodial sentence and monetary fine from 316 closed case file handed down in court before and after the 2008 amendments in South Australia. Since the amendments, the average penalties have doubled in magnitude. However, when comparing penalties as a percentage of the maximum penalty no changes were observed, with both groups using less than 10% of the maximum penalties available. These findings suggest that the amendments have caused no significant changes to the penalties relative to the maximum and thus likely contributing to the enforcement gap.

Statement of Authorship

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Overall percentage (%)	70%		
Certification:	This paper reports on original research I conducted during the period of my Higher Degree by Research candidature and is not subject to any obligations or contractual agreements with a third party that would constrain its inclusion in this thesis. I am the primary author of this paper.		
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i. the candidate's stated contribution to the publication is accurate (as detailed above);
ii. permission is granted for the candidate in include the publication in the thesis; and
iii. the sum of all co-author contributions is equal to 100% less the candidate's stated contribution.

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Contribution to the Paper	Conceptualisation, methodology, data analysis, writing (review and editing) and supervision.		
Signature		Date	06.02.23

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Article

Increasing Maximum Penalties for Animal Welfare Offences in South Australia—Has It Caused Penal Change?

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Simple Summary: Evidence suggests that the South Australian public regard the penalties handed down in court for animal abuse as too lenient. Parliament responded to this concern when amending the *Animal Welfare Act 1985* (SA), and increased the maximum penalties for animal welfare offences. However, since sentencing information is not readily accessible, it is unknown whether the increases to the maximum penalties in the legislation have caused any changes to the penalties handed down in court. This study investigated this issue by analyzing closed case files gathered from the Royal Society for the Prevention of Cruelty to Animals (SA), to determine the average prison sentence and fine given for animal welfare offences. Fines and prison sentences handed down have doubled in magnitude since Parliament increased the maximum penalties. However, it remains unknown whether these increases to the average penalties are enough to effectively punish animal abusers, and if the general public is content with this outcome.

Abstract: Animal welfare legislation in South Australia underwent amendments in 2008, where all the maximum penalties for animal welfare offences were doubled. This commitment to increased penalties arguably provides evidence of the legislature's intent with respect to penalties. Studies have speculated that the legislative intent behind the increased penalties is not being reflected in the courts. This interdisciplinary research sought to gain evidence to confirm or disprove these speculations, by quantifying the average custodial sentence and monetary fine handed down in court before and after the 2008 amendments. Furthermore, trends relating to the species of animal affected and the demographics of the offender were identified. A total of 314 RSPCA (SA) closed case files from 2006 to 2018 were converted into an electronic form. Since the amendments, the average penalties have doubled in magnitude; fines have increased from $700 to $1535, while prison sentences have increased from 37 days to 77 days. Cases of companion animal abuse were most common (75% of all cases) and the location of the offence was found to influence offending. These findings suggest that the 2008 amendments have caused the average penalties to increase. However, it is debatable whether these increases are enough to effectively punish animal abusers.

Keywords: animal welfare legislation; penalties; animal cruelty; fines; imprisonment; South Australia

1. Introduction

The last few decades have seen increased public concern regarding issues of animal welfare [1]. With this growing interest in animal welfare, academics and the general public have begun questioning the efficacy of animal law in the regulation of animal welfare [1–6]. Studies have identified a number of weaknesses in animal welfare legislation: the ambiguity of the language used [5], the questionable

reliability of using an inadequately resourced charitable body for enforcement [5,7], the efficiency of the penalties imposed for offences [6], and the general public's overall disappointment in the magnitude of those penalties [1–4,8]. The overall consensus is that the general public is largely in favor of harsher penalties, often in the form of jail time. These findings form the basis of the 'public's concern' in relation to the penalties given to animal welfare offenders. This has led the South Australian ('SA') Parliament to amend the animal welfare legislation to reflect the 'public's concerns' [9]. Evidence of this can be seen from statements made during consultation on the bill proposing changes to the SA *Prevention of Cruelty to Animals Act 1985* (now the *Animal Welfare Act 1985* (SA) ('AWA')); the Honorable Russell Wortley stated:

> "Extensive consultation took place with the general public and relevant organizations over the suggested amendments to this bill to ensure that appropriate measures for the welfare of animals were enforced through the proposed legislation. It was evident throughout this consultation period that the community clearly does not accept malicious behavior towards animals, with widespread support for improved measures for the welfare of animals. The irresponsible act of causing harm to an animal is deemed as a serious offence by this community and this government. The proposed changes to this bill reflect the public's concerns".

Parliament listened to the public and introduced several amendments to the AWA in 2008. The amendments awarded greater power to inspectors, introduced an aggravated offence and significantly increased all the maximum penalties for animal welfare offences [10]. This commitment to increased penalties in SA arguably provides evidence of the legislative intent behind the amendments, in that Parliament intended to "get tough" on animal welfare offenders by sending a message that animal abuse would not be tolerated [11,12]. It can be assumed that this idea to "get tough" is somewhat of a theoretical objective behind the increased penalties, and the practical objective is presumably to increase sentences for animal welfare offences, since this is the view taken by commentators in the literature [13–15].

Studies have speculated that legislative intent behind increased penalties are not being reflected in the decisions being handed down in the Magistrates' Courts. Boom and Ellis [13] suggested that the New South Wales criminal justice system might be failing to give effect to the legislature's intent with respect to penalties. Similarly, Geysen, et al. [14] speculated that the penal increases within the Queensland animal welfare legislation were not being reflected in the sentencing outcomes. However, there is a need for extensive empirical research into this issue in order to confirm these speculated concerns. This is difficult to achieve as sentencing data required for this type of research are not only hard to source, but as Markham [15] noted, due to the complexity of case sentencing, the analysis of sentencing data would be a difficult task. Quantifying such a complex process to display the absolute truth is near to impossible. There is no calculation or strict mathematical formula for handing down penalties, there is human (judicial) input, as well as defendant mitigating or aggravating factors that the court will take into account. For this reason, there is minimal research using quantitative data in this area of law. In spite of this, there is value in obtaining such data; providing the limitations are considered, the data would provide a base for further discussion, research or future legislative reform.

Focusing on the South Australian jurisdiction, this interdisciplinary research sought to address this gap, and confirm or dispute current speculation about penalties. This study used a quantitative approach using scientific methods to investigate whether penalties, in the form of custodial sentences (days) and monetary fines ($), have increased over time. The aim was to quantify the average penalty sentenced before, and after the 2008 amendments to the AWA, to assess if legislative intent behind the amendments is being achieved. Furthermore, any relationship between the species of animal affected and the penalties given to animal welfare offenders were analyzed as a measure of speciesism in animal law; to assess if offences against companion animals are treated differently to offences involving farm animal offences in court. Additionally, any demographic trends relating to the offender were documented, to identify any high-risk situations relating to the commission of animal welfare

offences. It was hypothesized that there would be no significant changes in magnitude of sentences given before and after the amendments. Secondary hypotheses were that offenders would receive harsher penalties for offences involving companion animals compared to farm animals, and that trends would be observed within the age and gender of the defendant, and the offence location.

This is the first research of its kind analyzing penal shortcomings in SA, and the first updated analysis of closed animal law case files since the work of Arluke and Luke [16]. This paper does not proclaim to be an exhaustive study of animal welfare law enforcement in SA but to pinpoint trends in sentencing data and identify the matters that merit further research and discussion.

2. Materials and Methods

2.1. Ethical Statement

This research was approved by the Human Research Ethics Committee of the University of Adelaide (H-2018-103) and conducted in accordance with the provisions of the National Statement on Ethical Conduct in Human Research [17]. Data were de-identified before the analysis in the non-identifiable form; rendering personal information listed in case files inaccessible to the researchers.

2.2. Terminology

For the purposes of this paper, 'amendments' refers to the changes made to the South Australian *Prevention of Cruelty to Animals Act 1985* during the formation of the *Animal Welfare Act 1985* (SA) (AWA) in 2008. 'Maximum penalty' refers to the maximum custodial sentences and monetary fines outlined under section 13 of the AWA, and the good behavior bonds that are considered as an agreement under section 97 of the *Sentencing Act 2017 (SA)*, where the defendant must agree to be of good behavior for a specified amount of time. Only these three forms of penalties were of interest in this study as they are most commonly imposed for animal welfare offences in SA [18]. 'Courts' refers to the Magistrates' Courts, which are the lowest level of court in SA. 'Case' refers to the legal process involving the prosecution, being the Royal Society for the Royal Society for the Prevention of Cruelty to Animals, South Australia (RSPCA)(SA), and the defendant, being the person who has been alleged to commit an offence under the AWA. There can be multiple defendants per case. Cases involving youths (under 18) were excluded due to potential differences in sentencing in the Youth Court. 'Closed cases' refers to cases that have been finalized. 'Omission' refers to the failure to act, and 'commission' refers to the *act* of perpetrating an offence. 'Section 13' refers to the section of the AWA that defines the ill treatment of animals and the corresponding charges. 'Charge' refers to the formal accusation made against the defendant; there can be multiple counts of charges per case. Charges under section 13 are broken down into two subsections, section 13(1) and section 13(2), which differ based on severity (Table 1).

Table 1. Differences between the two animal welfare charges under section 13 in the *Animal Welfare Act 1985* (SA) ('AWA').

Offence Characteristics	Section 13(1)	Section 13(2)
Severity	Higher	Lower
Offence Type *	Aggravated	Basic
Max. Monetary Fine	$50,000.00	$20,000.00
Max. Custodial Sentence	4 years	2 years

* Difference between offence types is the addition of mens rea (mental element) attached to the aggravated offence, where the mental element can be most commonly intent, recklessness or knowledge.

Aggravated/section 13(1) offences are reserved for cases where the defendant intended to, or was reckless about causing the suffering of an animal, where all elements of the offence can be proven beyond reasonable doubt in court. Whereas, the basic/section 13(2) offence is reserved for acts of cruelty or neglect where there is either no intent behind the defendant's actions or not enough evidence to prove the intent or recklessness in court. Section 13(1) and section 13(2) currently states the following:

13—Ill treatment of animals

(1) If—

(a) a person ill-treats an animal; and
(b) the ill treatment causes the death of, or serious harm to, the animal; and
(c) the person intends to cause, or is reckless about causing, the death of, or serious harm to, the animal, the person is guilty of an offence. Maximum penalty: $50,000 or imprisonment for 4 years.

(2) A person who ill-treats an animal is guilty of an offence. Maximum penalty: $20,000 or imprisonment for 2 years.

2.3. Amended Changes

Two of the most significant amendments to the AWA were the increases to the maximum penalties and the addition of the aggravated offence (Table 2).

Table 2. Status of the maximum penalties for both aggravated and basic offences before and after the 2008 amendments to the AWA. Aggravated offence was introduced after the amendments.

Offence Type	Pre Amendments	Post Amendments
Aggravated	-	4 years imprisonment $50,000 fine
Basic	1 year imprisonment $10,000 fine	2 years imprisonment $20,000 fine

2.4. Data Collection

This research was conducted in conjunction with the RSPCA (SA), as they are tasked with the bulk of animal law enforcement in SA [9]. An electronic database was created of their prosecuted cases files under the AWA. A total of 314 paper-based case files were converted into electronic form. The cases available were dated from 2006–2018, thus a targeted approach was utilized to collect sufficient amounts of data before and after the 2008 amendments. The cases were defined as either 'pre-amendments' or 'post-amendments' based on the legislation cited on the initiating process (Complaint/Investigation and Summons) filed in the Magistrates' courts. The pre-amendments data were collected from cases finalized in 2006–2009 cases, while the post-amendment data were collected from cases finalized in 2016–2018.

Data were broken down into three categories of information based on the study aims. In quantifying average penalties, data were collected on the type of offence (aggravated or basic), as well as the definition of ill treatment most commonly used in court (serious harm/section 13(3)(a), neglect/section 13(3)(b)(iv), poor living conditions/section 13(3)(b)(i), failure to mitigate harm/section 13(3)(b)(ii)) as per section 13(3) of the AWA. Section 13(3) is stated below:

(3) Without limiting the generality of subsection (1) or (2), a person ill-treats an animal if the person—

(a) intentionally, unreasonably or recklessly causes the animal unnecessary harm; or
(b) being the owner of the animal—

(i) fails to provide it with appropriate, and adequate, food, water, living conditions (whether temporary or permanent) or exercise; or
(ii) fails to take reasonable steps to mitigate harm suffered by the animal; or
(iii) abandons the animal; or
(iv) neglects the animal so as to cause it harm; or

(c) having caused the animal harm (not being an animal of which that person is the owner), fails to take reasonable steps to mitigate the harm; or

(f) causes the animal to be killed or injured by another animal; or
(g) kills the animal in a manner that causes the animal unnecessary pain; or
(h) unless the animal is unconscious, kills the animal by a method that does not cause death to occur as rapidly as possible; or
(i) carries out a medical or surgical procedure on the animal in contravention of the regulations; or
(j) ill-treats the animal in any other manner prescribed by the regulations for the purposes of this section.

Information on the species was used for the secondary aim of documenting any observed penal trends relating to the species of animal affected. Due to the broad range of species involved in cruelty cases, a categorical approach was undertaken. For the purposes of this paper, animals were categorized into companion, farm, exotic, and wild animals, based on the definitions in Table 3.

Table 3. Definitions and example of how species were categorized for the purposes of this study.

Category	Definition	Example Species
Companion	Animals that are under human control, providing companionship to human-owners	Dog, Rabbit, Horse
Farm	Animals commonly used for meat, eggs, milk, fur, or fibre production, providing either companionship or profit to human-owners	Sheep, Cattle
Wild	Animals that reside in the wild and are not under the control of a human-owner	Possum, Kangaroo
Exotic	Animals that are under human control, but do not fit the usual description of a 'companion animal'	Snake, Bird

Information on the defendant was also recorded for the secondary aim of documenting any demographic trends. Data were gathered on their ages, gender and the location of the offence. Ages were calculated based on the date the case was finalized in court. Due to the variability of the locality data, the location of the offence was categorized into the SA council regions.

2.5. Data Processing

Not all cases were deemed as 'useable' for this study and some had to be excluded (Figure 1). A total of 314 cases were converted into an electronic form. From these cases only 264 cases resulted in a finding of guilt (either by plea or judicial determination; 84.1%). The remaining 50 cases were withdrawn (4.8%), resulted in a caution letter (10.2%), or were found to be not guilty (0.9%). The 264 guilty cases were deemed as useable data, as a case must result in guilt, whether it is from a plea or finding, to enable the imposition of a penalty. From these guilty cases, a total of 238 penalties were sentenced with fines, imprisonment or good behavior bonds (90.1%). The remaining 26 guilty cases resulted in an alternative penalty, being community service (2.3%), home detention (0.4%) or no penalty at all (7.2%), as described in the *Sentencing Act 2017* (SA). These alternative penalties were excluded from the dataset, as they were not commonly imposed or the subject of the amended changes in 2008. Focusing only on the 264 cases that resulted in a finding of guilt, a total of 301 defendants were accused across these offences. There were more defendants than cases as some cases had co-defendants (multiple defendants per case). Two defendants were excluded from the 301 total due to the defendants being under the age of 18.

2.6. Data Analysis

All data were entered and analyzed in Excel 2013 (Microsoft Corp., Redmond, WA, USA). For the comparison between pre-amendment penalties and post-amendment penalties, a Chi-Squared Test was used due to the non-parametric nature of the data. Significance was determined at $p < 0.05$. Descriptive statistics were used to identify any trends within the species and demographic datasets. A heat map

was created in Fusion Tables (Google LLC, Mountain View, CA, USA) to display the locality of animal welfare offences across SA.

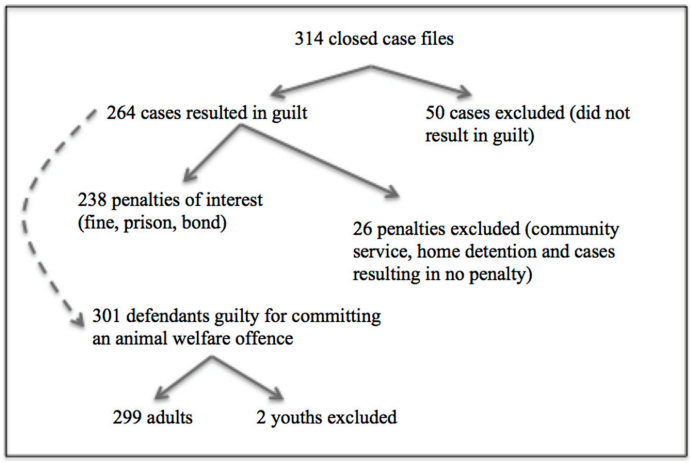

Figure 1. Flow chart of data processing and case exclusion.

3. Results

3.1. Changes to the Type of Penalty Imposed

This study compared the sentencing outcomes under section 13 of the AWA before and after the increases to the maximum penalties in 2008, to assess if the intent behind the increases is being achieved through court sentencing principles. Since fines, prison sentences and good behavior bonds are most commonly used for animal welfare offences, the prevalence of these three penalties were compared before and after the amendments (Figure 2). Prior to the amendments, fines contributed to the majority of penalties, whilst good behavior bonds and prison sentences made up the minority. Since the amendments, the imposition of fines has declined while the imposition of good behavior bonds and prison sentences have both increased (p-value = 9.0×10^{-7}).

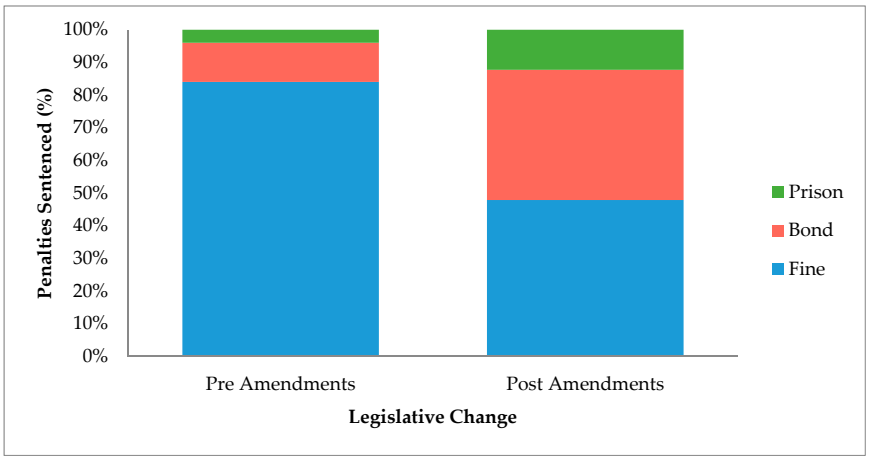

Figure 2. Percentage of penalties sentenced under section 13 of the AWA before and after the 2008 amendments. Pre-amendment data (n = 75) and post-amendment data (n = 163) are broken down into the three most commonly sentence penalties imposed in court: good behavior bonds, imprisonment and fines. Error bars are not included, as the data are presented as percentages; p-value < 0.05.

In order to further understand the decrease in number of cases resulting in fines and the increased number resulting in good behavior bonds and prison sentences, the types of ill treatment defined in the cases were compared before and after the amendments (Figure 3). All definitions of ill treatment are outlined under section 13(3) of the AWA. The most common types reported in the dataset were: serious harm; poor living conditions and failure to provide inadequate food and/or water; and failure to mitigate harm and neglect. The percentage of the categories of ill treatment defined in the cases showed no statistical association with the amendments (p-value = 0.50). This indicates that the type of animal welfare offences charged has remained relatively constant over the last decade.

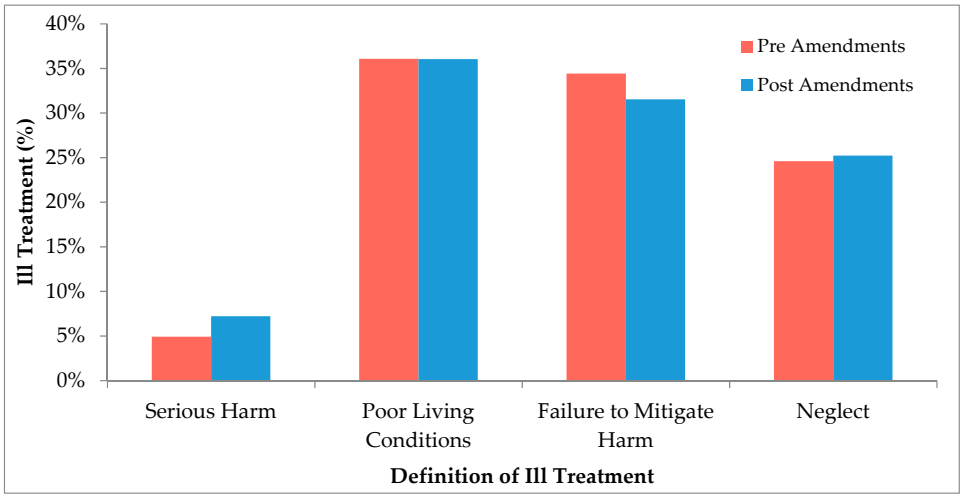

Figure 3. Comparison of the percentage of offences defined under section 13 of the AWA presented in courts before and after the 2008 amendments. Only the four most common definitions were considered and broken into pre-amendments (n = 61) and post-amendments (n = 222). Poor living conditions include failure to provide adequate food and water. Error bars are not included, as the data are presented as percentages; p-value = 0.50.

3.2. Penalties Relative to the Maximum Penalty

Since the amendments, the average penalties have doubled in magnitude; fines have increased from $700 to $1535, whilst prison sentences have increased from 37 days to 77 days (Figure 4). However, when comparing penalties as a percentage of the maximum penalty no changes were observed; on average less than 10% of the maximum penalties were given both pre and post-amendment. Before the amendments, the average fine equated to 7% of the $10,000 maximum and since the amendments the average fine is now 8% of the $20,000 maximum. The average prison sentence before the amendments was 10% of the 1-year maximum sentence and has since changed to 7% of the 4-year maximum sentence.

3.3. Animal Species and Penalties

Average penalties for both companion animals and farm animals were compared per charge of offence (Table 4). There were a greater number of offences committed against companion animals (n = 167) compared to farm animals (n = 55), as indicated by the values in brackets. However, when comparing the average penalty given per charge of ill treatment, offenders committing offences against farm animals received a larger penalty compared to those offending against companion animals. The average fine given for offences against farm animals is $1321.13, which is almost double the $703.71 fine for offences against companion animals. While the average prison sentence for offences against farm animals is 105 days, in comparison to the average 40-day sentence given for companion animal offences. However, the 105-day sentence for farm animal offences is the average from two

charges. Given this low number it is difficult to draw much in the way of a conclusion from these data. The 40-day sentence for companion animal cruelty is the cumulative effect of 35 charges. There were a total of 853 companion animals and 1685 farm animals against which offences were committed.

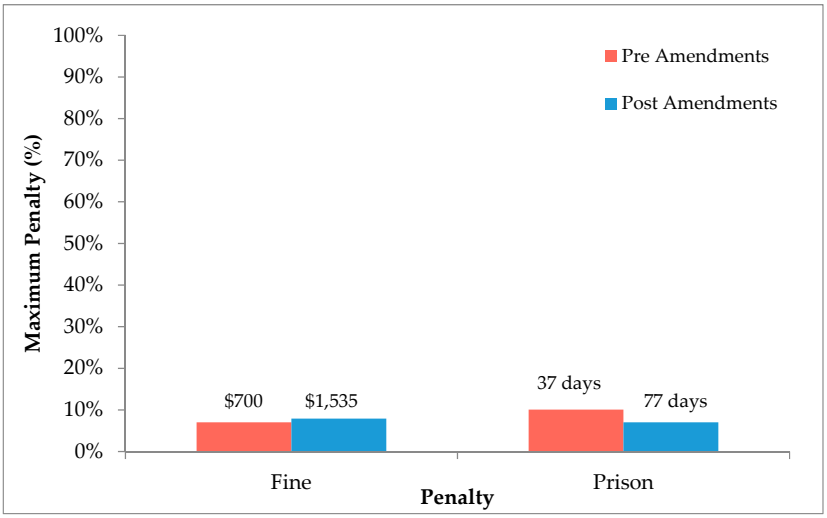

Figure 4. Comparison of the penalties imposed relative to the maximum penalty under section 13 of the AWA before, and after the 2008 amendments. Only prison sentences (n = 23) and fines (n = 130) were considered, as they were the subjects of the 2008 amendments. The average sentences are listed above their corresponding percentage of the maximum penalty for both pre-amendment (n = 62) and post-amendment (n = 91) data. Error bars are not included, as the data are presented as percentages.

Table 4. Average penalties sentenced under section 13 of the AWA. Averages were calculated from the combination of pre and post amendments data and presented per charge of offence. Values in brackets indicate the number of charges.

Species Category	Fine	Prison
Companion	$703.71 (132)	40 days (35)
Farm	$1321.13 (53)	105 days (2)

3.4. Demographic Trends

Trends in gender and age of the defendant, as well as location of the offence in our dataset, were investigated. Out of the 299 defendants involved in the 264 cases resulting in a finding of guilt, 282 defendants were charged with basic offences and 17 were charged with aggravated offences. The association between type of offence (aggravated or basic), and gender was almost significant (p = 0.054), where 56% of defendants committing a basic offence were males, compared to 76% for aggravated offences (Table 5).

Table 5. Percentage of males and females involved in commission of aggravated and basic animal welfare offences. Numbers were derived from the combination of pre and post-amendments data; p-value = 0.054.

Gender	Aggravated	Basic
Male	13 (76%)	159 (56%)
Female	4 (24%)	123 (44%)
Overall	17	282

Regardless of the severity of the offence, the average age of male defendants found guilty was 44 years old, whilst this was 39 years old for females. Taking into account the offence, the overall average age of both genders committing aggravated cruelty was 36 years old, which was younger than the average age for the basic offence, at 43 years old. Males who committed aggravated offences were on average 32 years old, which substantially differed from the female average of 51 years old.

The location of the offence was categorized based on SA metropolitan areas (Figure 5). A much higher percentage of animal welfare offences were recorded in Adelaide's northern suburbs (31%). The north-western suburbs had the second highest prevalence of cruelty (9%), closely followed by the southern suburbs (8%). For a more accurate comparison between the prevalence of animal welfare offences and the locality of the offence, the total numbers of animal owners in each area should be used but these data are not readily accessible.

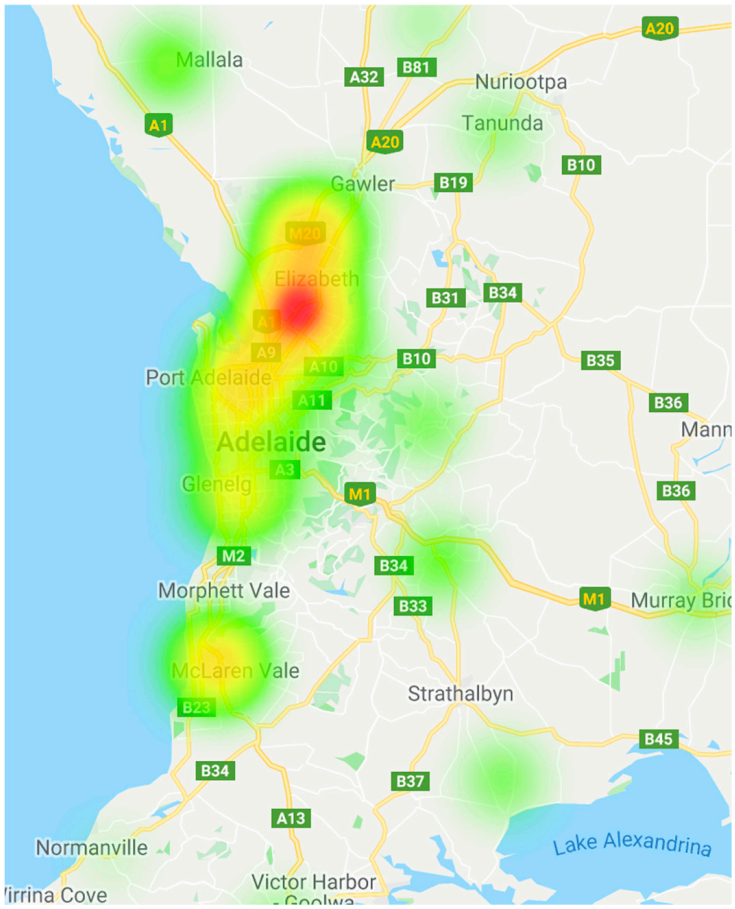

Figure 5. Heat map of the prevalence of animal welfare offences in South Australia's metropolitan areas.

4. Discussion

Since the amendments, the frequency of penalty types imposed has shifted and the average penalties have also doubled in magnitude. However, relative to the maximum penalty no changes were observed; less than 10% of the maximum penalties are being used, regardless of the amendments. This study hypothesized that the amendments to the AWA made in 2008 have caused no significant changes to the sentencing outcomes. This hypothesis can be accepted or refuted depending on interpretation. When considering the increases to the average penalties sentenced, the hypothesis would be disproven as the amendments have doubled the average sentences. However, when considering the average

sentences relative to the maximum penalties, no changes were observed, which confirms the hypothesis. The remainder of this paper will examine these results in the light of available literature, including cross-jurisdictional reports.

4.1. Shifts in Penalties Imposed

The most common penalties handed down for animal welfare offences were fines, good behavior bonds and prison sentences. Fines are generally considered the least severe option; while imprisonment is the most severe option [13,15]. Good behavior bonds can be perceived as a middle ground between fines and imprisonment, as bonds generally have a sum and duration attached to them. Thus, for the purposes of this paper, fines are the least severe option, bonds are intermediate, and imprisonment is the most severe option. Due to the complexity of case sentencing, analyzing penal outcomes is fraught with difficulty. There is no absolute calculation or strict mathematical formula for handing down penalties; human (judicial) decision is determinative, yet defendant factors and circumstances will also be considered by the court. Judicial discretion is a valuable and important component of the criminal justice system, and this study does not seek to undermine this, or in any way suggest that this should not be the status quo. However, we do believe there is value in reporting objective data on animal law sentencing, in spite of the complexities of the sentencing process. For this reason, this study has outlined trends in the sentencing data without considering any factors that contributed to sentencing, such as early pleas, or mitigating or aggravating factors.

The types of penalties handed down in court for animal welfare offences have changed in the last decade, where the proportion of cases resulting in a fine has decreased, and the cases resulting in bonds and prison sentences have increased (Figure 2). This indicates a movement from the assumed (based on definition) less severe penalties, to the more severe penalties. This change could be attributed to two possible causes: either the offences have become more heinous since the amendments and warrant harsher penalties or, that following the amendments courts are imposing harsher penalties for offences of similar severities. In order to better understand this situation, a comparison between the prevalence of types of cruelty committed before and after the amendments was conducted (Figure 3). This analysis demonstrated that there were no differences in offence-subtype. There were more cases of negligent-type acts (omission), rather than the application of actual cruelty (commission). This finding tends to go against our first explanation for the change, and hence indicates that the courts are imposing harsher sentences. Although these results are indicative that the amendments are having an effect, we cannot be confident that these changes are due to the amendments. Changes in law, especially over a long period of time, are often multifactorial, which makes understanding the cause of change difficult. This was discussed by Freiberg and Ross [19] regarding sentencing reform in Victoria, where they stated "attempting to explain changes in the criminal justice system is an exercise fraught with peril . . . The causes of change are complex, and often unknowable". This makes it almost impossible to conclude whether the changes observed in Figure 1 are due to the amendments to the AWA in 2008 or simply due to the criminal justice system changing over time.

An argument supporting the idea that courts are imposing harsher sentences is that the magistrates appeared to be aware of the penal changes, and the intent behind them. This was noted during the 2010 South Australian case of *RSPCA v Crisp* [20], where Magistrate Forrest stated:

> "The usual outcome on a plea of guilty to this offence is the imposition of a fine. The fact that Parliament has set $20,000 as the maximum fine and that was the subject of an amendment within the last few years, I think, where the maximum financial penalty was raised from $10,000 to $20,000, the fact that Parliament did that reflects the concern of the community as to the ill treatment of animals. It is a matter which the community—and in this I include yourself—regard as being something that should be severely punished".

However, this is only an example of one case out of the 165 cases sentenced after the amendments. Without examining all the case sentencing submissions, it remains unknown whether all magistrates

had a similar approach to Magistrate Forrest, making it difficult to conclude that the amendments caused the penal changes. One way to understand this further would be through judicial interviews, to establish if the magistrates understood the intent behind the amendments and implemented it into their penal decisions.

However, when comparing the changes in penal trends observed in this study to the trends observed in other areas of law, similar results have been found. An analysis of New Zealand sentencing trends unrelated to animal law found that the use of fines declined, the use of imprisonment did not change and, as an alternative to imprisonment, the use of periodic detention and community service penalties increased [21]. These same trends are seen in the current study, where fines decreased, imprisonment increased, and, as an alternative penalty to imprisonment, good behavior bonds increased. These trends were also observed in the UK, where imprisonment and community-based sentences increased and fines decreased [22]. Halliday [22] interpreted these changes as a move towards tougher sentencing, which could not be ascribed to changes in the seriousness of an offence [21]. Previously fines would have been imposed for less serious offences, whereas now these offences receive a community-based order, which follows the trends observed in this study.

At the current time with the limited data available it is impossible to discern whether the shifts in penalties imposed are due to general changes within the criminal justice system, the 2008 amendments to the AWA, or a combination of both. Sentencing legislation is the subject of frequent reform [11]. For example, in SA, section 10 of the *Sentencing Act 2017*, states:

> Subject to this Act or any other Act, a court must not impose a sentence of imprisonment on a defendant unless the court decides that:
>
> (a) the seriousness of the offence is such that the only penalty that can be justified is imprisonment; or
> (b) it is required for the purpose of protecting the safety of the community (whether as individuals or in general).

This means that in SA, imprisonment must only be used as a last resort, which contradicts the public's belief, who are largely in favor of prison sentences for animal abuse [1,8]. The small percentage of cases that result in imprisonment (12%) are likely due to seriousness of the offence as described in section 10 of the *Sentencing Act*, and the influence of this section may also explain the increase in good behavior bonds which are given in lieu of custodial sentences.

4.2. Penalties Relative to the Maximum Penalty

Since the most significant amendment to the AWA was the increase to statutory maximums, it is important to assess the change in the average penalty relative to the maximum. The average length of custodial sentence, and value of monetary fines have doubled in magnitude since the amendments, however when taking into account the maximum penalties, which also doubled, there is no change observed (Figure 4). On average, less than 10% of the maximum penalties are being used in court. This has not changed over the last decade regardless of the amendments.

Although there are no empirical data available in other areas of SA law, it was suggested by a former defense lawyer and South Australian police prosecutor that this poor use of statutory maximums is not exclusive to animal law [18]. Of course, it is not realistic to expect every case of animal cruelty to be handed down the maximum penalty. However, maximums do provide the sentencing courts with a guide of the benchmark against which the gravity of that particular offence should be measured [15]. In relation to increasing statutory maximums, the change sends a message that Parliament intended to "get tough" on people who abuse animals [11,12], and it has been assumed that sterner sentences should be imposed to follow through with Parliament's intent [13–15]. However, this raises a number of questions: do we really know Parliament's intention behind increasing the statutory maximums? Was it just a symbolic gesture to signify a movement to "get tough"? Did

they double the maximum penalties knowing that only 10% of the maximums would be used, but believing that it would cause the average penalties to increase? Did they even consider the practical changes that may arise from increasing the statutory maximums? All of these questions have been posed by commentators on this subject [13–15], but no studies have formally investigated 'Parliament's intent'. The likely case is that the 'intent' discussed in the literature is a subjective measure based on an individual's viewpoint as to the change resulting from the amendments. In order to establish Parliamentary intent at the time of introducing the amendments, the best evidence that researchers can likely acquire would be from interviewing those Members of Parliament proposing, supporting and debating the bill as it passed through the Houses.

It could be argued that by only using a small percentage of the maximum penalty, especially after they were the subjects of amendment, sends a message to the public that animal abuse is not considered a serious social problem by the courts [23]. The evidence of the link between animal abuse and human violence suggests otherwise [24–32]. A growing body of literature reveals there is in fact a link between juvenile violence against animals, and later adult violence against humans. In more simplistic terms, the teenagers who actively attack the neighbor's cat often develop into a child abuser [24,31], spouse-beater [24–28], or even a murderer [29,30]. The weight of this link between animal abuse and human violence should be a driver for the criminal justice system to improve sentencing outcomes in order to break this cycle at the animal stage, before it progresses further. However, arguably, increasing maximum penalties is not the most efficient way to make punishments for animal welfare offences more effective; it may be a too simplistic approach.

There is a need to establish penalties that 'better fit the crime' in relation to animal cruelty. A number of researchers have argued that imprisonment for criminal offences satisfies very few of the punishment theory aspects, being deterrence, incapacitation, rehabilitation, retribution, and restitution [33–36]. In the case of animal law, imprisonment only fully satisfies the retribution aspect, as the suffering experienced by the offender in jail compensates the suffering experienced by the animal harmed [34]. Other aspects of punishment seem to be ignored or are not fully met. Livingston [23] suggested that juvenile offenders should undertake psychological evaluation and treatment to reduce the likelihood of later adult violence. Sharman [6] also noted that animal abusers are acting against social norms and demonstrate moral numbness, making them a threat for future criminal activity. For this reason she recommended that more rehabilitative measures are implemented into sentencing, such as counseling and non-violent-conflict resolution training. Although in SA, Parliament had the right intentions when increasing the maximum penalties, it appears that they are not having the intended effect, whether it was to "get tough" or increase sentencing outcomes, and different approaches should be considered when punishing animal abusers. The desired outcome should not be to increase the duration or dollar value of a sentence; it should be to reduce animal cruelty through the most efficient type of penalty. Instead of wanting an animal abuser to rot away in a jail cell for a couple of years or to financially cripple them, maybe if the courts enforced mandated counseling more frequently it may actually help the offender and reduce their likelihood to reoffend. This concept of penalties that 'better fit the crime' has not been extensively analyzed in animal law, but is probably the most important place to start when considering the disappointment in penal outcomes.

It is important to note that punishment itself is not the only way to reduce future offending; the certainty of being caught and punished has been identified as a more effective deterrent than the severity of the punishment [37]. This study primarily focused on the severity of the punishment. This was due to limitations in ability to access data, since cruelty reports go to a national hotline, and thus require accessing a different agency's records. Therefore, no conclusions can be drawn on any relationships between investigations versus actual charges, and incidence of animal cruelty. However, this topic does warrant further research, to understand if more investigations of animal cruelty/neglect are being conducted, and whether this translates to more charges being initiated. This is especially important after a legal reform that symbolizes the movement to "get tough", such as occurred with the 2008 amendments to the AWA.

Just as Freiberg and Ross [19] concluded almost two decades ago, it appears that penal reforms and sentencing outcomes are loosely connected. Although, the 2008 amendments to the AWA have increased the average custodial sentences and monetary fines imposed in court, it is debatable whether this is enough to reduce animal welfare offending and whether this is the effect Parliament intended, in order to "get tough" on animal abusers. Given the evidence of the link between animal and human abuse, and the ability to be more creative in sentencing under the auspices of the sentencing legislation, perhaps different approaches to penalties are now required, with a renewed focus on rehabilitation of the offender.

4.3. Is Animal Law Speciesist?

Speciesism is defined as "the unjustified disadvantageous consideration or treatment of certain individuals because they are not members of a given species" [38]. In relation to this study, speciesism can be viewed as giving harsher penalties, and thus ascribing greater intrinsic value, to one species over the other. For example, it would be speciesist if offenders against companion animals received harsher penalties compared to those committing offences against farm animals, for a similar type of cruelty. This concept was explored in this study, by contrasting the average penalties received by both companion and farm animal offenders. It was anticipated that penalties given for offences against companion animals would be harsher compared to offences against farm animals. However, the opposite was observed, in that average penalties were found to be higher for offences against farm animals (Table 4).

Studies have found that the public perceives companion animals as superior to farm animals [3,4,39]. This is likely due to humans having a greater emotive response to companion animals, often viewing them as having greater intrinsic value (moral value), and farm animals having greater extrinsic value (worth to humans) [39]. As a result, it would be expected that offending against companion animals would be subject to harsher penalties. However, the contrary was observed. This may be explained by the Judge holding farm animal abusers to a higher degree due to the utilitarian nature of the farming industry [39,40]. To further explain, farmers have an ethical responsibility to treat their animals humanely, as it is their employment. In legal terms, the court will apply an objective test which considers whether the 'ordinary, reasonable person in the defendant's circumstances' would have acted similarly [41]. For a professional, such as a farmer, with an expert skill in this area, the test becomes elevated to the standards of 'the reasonable professional' in those circumstances [42].

However, one problem with the preceding analysis is that there were not enough charges involving farm animals in the dataset to make a comprehensive comparison between the average penalties given between the two groups. The total number of farm animal charges (n = 55) was significantly lower than companion animal charges (n = 167). Also when considering this on a per animal basis, more farm animals (n = 1685) were the subject of cruelty charges compared to companion animals (n = 853). Despite the increased number of farm animals affected, less charges relating to them were being commenced via the initiating process. This is due, to the prosecution including multiple farm animals under a single charge of cruelty. This is likely due to the difficult and labor-intensive task of amassing the legal evidence needed to support the charge for each individual animal in a farm environment. Whereas in companion animal cases, generally a small number of animals are affected per case, and charges are brought on a per animal basis. Evidential burden is less since there are fewer animals, and each animal can be identified as an individual, which assists in maintaining the chain of custody. However, in reality this is a resourcing issue rather than a speciesism issue. Taking into account the paucity of data, our findings are not indicative of a speciesist element in animal law sentencing. However, in order to make a confident conclusion more data are required.

4.4. Demographic Trends

Establishing demographic trends in relation to animal cruelty offences will assist in resource allocation, and allow specific interventions to target groups or areas considered high-risk. Current

research on demographic trends in this area either relates to the people who commit animal cruelty offences [25,43–48], or people who have a greater empathic nature towards animals [49–53]. These studies rely heavily on surveys and interviews with either members of the public [43,44,49–53], or people who were incarcerated for reasons other than animal abuse [25,45–47].

Currently it is accepted that males are more commonly involved in animal abuse [25,48,54,55], and that females are more empathic towards animals [48,50,52,53]. Interestingly, the findings in this study contradict these conclusions, as the proportion of males and females charged with animal welfare offences were equivalent (Table 5). However, when considering specific offences, males were charged with aggravated offences more often than females, and were notably younger. We are unable to conclude whether this reflects the actual demographics of offenders in the community, is as a result of reporting/detection differences based on the type of offences, or relates to biases in charging by prosecutors. However, at face value, this suggests that males may rely on aggression more than females, as discussed by Febres, et al. [25] when investigating animal abuse propensity by perpetrators of domestic violence. A more psychological-based research approach would be required to comprehensively understand the motives of animal abusers, and to further explain the observed gender and age effects.

A clear relationship between animal cruelty and the location of the offence was established (Figure 5). Animal cruelty was found to be more prevalent in Adelaide's northern suburbs. This peak in cruelty may be related to the socioeconomics of the area, as Adelaide's northern suburbs were ranked as the most disadvantaged area in SA in the 2016 Australian Census [56]. However, there is a need to establish this relationship further using more updated statistics, as well as documenting the socioeconomic status of each defendant. Interestingly though, the RSPCA (SA) does not target their education programs in the northern suburbs due to a lack of volunteers in that area [57]. It is recommended that a more targeted approach towards youth education in the northern suburbs should be established, to disrupt the high rate of offending in this area.

5. Conclusions

In summary, the 2008 amendments to the South Australian *Animal Welfare Act 1985* have doubled the magnitude of the average penalties handed down in court, through the doubling of the statutory maximums. It is questionable, however, whether this outcome was Parliament's intention, and whether is it enough to "get tough" on animal welfare offenders. Although changes in severity of sentencing have arisen from the 2008 amendments, it is suspected that these changes do not go far enough to effectively deter and punish animal abusers, especially since the strong link between animal abuse and human abuse is now well established. Further research is required to determine the prevalence of animal cruelty, or at least that reported, and hence provide insight into whether the legislative changes have deterred potential offenders. Furthermore, focus should be given to more efficient ways of penalizing animal abusers to deter future offending, and to determine the best ways of preventing offending in the first place, for example through targeted education programs. The interaction between species and penalty also warrants further research, as does the relationship between animal cruelty and socioeconomics.

This is the first research of its kind analyzing penal shortcomings in animal law in South Australia. It has provided much needed information on current issues in animal law from objective data, and contributed to the limited empirical research on animal welfare legislation in Australia.

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Chapter 6: Portraying Animal Cruelty: A Thematic Analysis of Australian News Media Reports on Penalties for Animal Cruelty

Contextual Statement

Over the last few decades, the Australian states and territories have repeatedly increased their maximum penalties for animal cruelty offences to reflect 'community expectations'. However, despite these increases, sociological research shows the Australian public are still displeased with the current penal levels, which arguably pushes the 'expectations' side of the enforcement gap further from the realities of the enforcement outcomes. Given news media portrayals have been shown to influence public perceptions, this chapter aimed to investigate how Australian news media reports of animal cruelty portray penalties to the public. A thematic analysis was applied to 71 news articles. This chapter proposes a link between media reporting, public understanding, and the penal increases in Australia, defined as the 'penalty reform cycle'. Thus, media portrayals of penalties are likely a major contributor of the enforcement gap, through potentially creating unrealistic elevated penal expectations held by the public.

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Overall percentage (%)	85%		
Certification:	This paper reports on original research I conducted during the period of my Higher Degree by Research candidature and is not subject to any obligations or contractual agreements with a third party that would constrain its inclusion in this thesis. I am the primary author of this paper.		
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i. the candidate's stated contribution to the publication is accurate (as detailed above);

ii. permission is granted for the candidate in include the publication in the thesis; and

iii. the sum of all co-author contributions is equal to 100% less the candidate's stated contribution.

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Article

Portraying Animal Cruelty: A Thematic Analysis of Australian News Media Reports on Penalties for Animal Cruelty

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Simple Summary: News media is one of the major sources of publicly available information on animal welfare law enforcement. It has previously been established that the media are strong influences of public perceptions. Therefore, it is possible that news reports on animal cruelty offences are shaping public understanding of penalties for animal cruelty. To understand how penalties are portrayed in the media, we collected 71 Australian news articles which reported on penalties for animal cruelty over a 6-month period from 1 June 2019 to 1 December 2019. Using thematic analysis, three themes were identified: (1) laws are not good enough; (2) laws are improving; and (3) reforms are unnecessary. A connection between public perceptions, media reporting and statutory reform efforts to increase maximum penalties is proposed, which potentially could explain why the Australian public appear displeased with the penalties handed down by courts for animal cruelty offences. Further sociological research is required to confirm this theory.

Abstract: Media portrayals of animal cruelty can shape public understanding and perception of animal welfare law. Given that animal welfare law in Australia is guided partially by 'community expectations', the media might indirectly be influencing recent reform efforts to amend maximum penalties in Australia, through guiding and shaping public opinion. This paper reports on Australian news articles which refer to penalties for animal cruelty published between 1 June 2019 and 1 December 2019. Using the electronic database Newsbank, a total of 71 news articles were included for thematic analysis. Three contrasting themes were identified: (1) laws are not good enough; (2) laws are improving; and (3) reforms are unnecessary. We propose a penalty reform cycle to represent the relationship between themes one and two, and 'community expectations'. The cycle is as follows: media reports on recent amendments imply that 'laws are improving' (theme two). Due to a range of inherent factors in the criminal justice system, harsher sentences are not handed down by the courts, resulting in media report of 'lenient sentencing' (theme one). Hence, the public become displeased with the penal system, forming the 'community expectations', which then fuel future reform efforts. Thus, the cycle continues.

Keywords: animal welfare; animal cruelty; news media; penalties; animal law; Facebook

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1. Introduction

Animal welfare law seeks to regulate human conduct towards animals by codifying what society deems as unacceptable treatment of animals. This jurisprudential model recognizes that animals can experience pain and suffering, and that their interests in avoiding these experiences are considered morally relevant by society [1]. Protection of animals is provided in animal welfare legislation through the provision of offences for cruelty and the establishment of a duty of care. Given that animal welfare is a societally important issue, it is generally accepted that governments will legislate animal welfare in the public interest [2,3], meaning that community expectations can influence the direction and scope of animal welfare legislation. This is evident from recent reform efforts to

state-based Animal Welfare Acts in Australia, where several of these amendments make reference to aligning the legislation with the 'community expectations' [4,5]. However, as Geysen et al. [4] noted, the nature of such 'expectations' are ultimately unknown, and thus their incorporation in legislative reform may involve no more than paying them 'lip service' or surmising their nature.

Given that a major source of public information on crime is news media sources [6], this outlet is a logical starting point in developing an understanding of community expectations of animal cruelty as a crime. As stated by a New South Wales Magistrate regarding sentencing for animal cruelty matters "public confidence in the system of justice administered by the courts is vital to society and is enhanced by informed public debate. This requires responsible media" [7]. News media is the central repository of information that the public use to build their definition of a crime [8]. For example, it has been established that news media can shape public understanding and perceptions of crimes [6], influence public knowledge and attitude towards issues [9], and shape policy implementation and public debate [10–14]. News media inform, whilst providing a platform for discussion, yet also selectively choose issues to report on based on public interest, and have the power to shape public perceptions and attitudes through the way information is presented [15]. Thus, the news media has a substantial role in setting the public policy scene, as it can make some issues salient, whilst marginalizing others [15,16]. This process, of highlighting issues and excluding others to promote a certain mode of thought, is known as agenda-setting [17].

The theory of agenda-setting has two levels. The first level focuses on the level of coverage an issue receives, as issues emphasized by the media will translate into issues the public believe are important [17]. Whereas second level agenda setting focuses not on the prevalence of information, but how that information is discussed in an effort to understand how the public may perceive the issues which have captured their attention [17]. The second level of agenda-setting will be the focus in this paper. It should be noted that agenda-setting is not the result of journalists trying to control public perceptions and attitudes, instead it is caused by the necessity to capture focus, as public attention can only be directed to a few issues in a short period of time [18]. In addition, agenda-setting is most relevant when readers have little direct experience with that issue [19,20]. The majority of the public do not have any direct or indirect exposure to crimes of animal cruelty [21]. Therefore, based on agenda-setting theory, community expectations about the nature of animal cruelty, and its handling by the criminal justice system, could be guided by media portrayals.

In an analysis of media reporting of animal hoarding cases in the United States, Arluke et al. [22] established that whilst factual information was presented in articles, it was often distorted by presenting articles in a way that would generate more public interest. Additionally, there was a tendency to describe severe cases of animal hoarding, which are the minority, making cases of animal hoarding appear substantially worse than they actually are [22]. As stated by Grugan [21] from their analysis of companion animal cruelty reporting, "the media decides which forms of cruelty are worthy of condemnation, which animals are worthy of sympathy, which offences are worthy of dramatic and emotive descriptions, and when it is appropriate to advocate on behalf of animals and when it is not". However, both studies were US-focused with extrapolation to the Australian context being problematic given the domestic nature of animal welfare legislation. Furthermore, a factor that was not extensively analyzed in Arluke et al. [22] and Grugan [21] research on animal cruelty reports was the penalties for offences, in the form of custodial sentences and monetary fines. Maximum penalties, as set by parliaments, are found in Animal Welfare Acts and provide the sentencing courts a benchmark against which the gravity of an offence should be measured when handing down penalties to offenders [23]. Increases to maximum penalties have been a regular focus for reform to state-based animal welfare legislation in Australia, in an attempt to align with 'community expectations' [4,5]. This occurred in Queensland in 2001 [24], South Australia in 2008 [25], Victoria in 2012 [26], Australian Capital Territory in 2019 [27] and Northern Territory introducing their proposal

in 2020 [28]. In the federated Australian system, each state and territory has set different maximum penalties for both duty of care breaches and deliberate cruelty. Considering the more serious (aggravated) offences only the maximum penalty ranges from two years in prison to five years (see Morton et al. [29] for a detailed account of all custodial and monetary maximums for each offence across the Australian states and territories).

The process of setting maximum penalties and handing down penalties to offenders is carried out separately; parliamentarians set the maximum penalties laid out in Acts of parliament, and the court system, through judicial officers, decides the specific penalty for an offence. Judges determine penalties based on a balanced consideration of the details of the crime, the penalties laid out in the Act, as well as individual defendant-related factors. In theory, the two processes should work symbiotically, where the parliamentary intention to 'get tough' on offenders through increasing the maximum penalties [30,31] is translated into harsher sentences imposed by the sentencing courts [4,23,32]. However, despite two decades worth of reforms resulting in maximum penalty increases in Australia, reports on public sentiment around sentencing of animal cruelty suggests that they are still not harsh enough [33,34]. This could imply that parliamentary intent is failing to translate to the court system. There is some limited evidence for this with the finding that only 10% of the maximum penalties for animal cruelty are being used in South Australian courts [5]. However, an alternative explanation is that 'community expectations' are not aligning with the intent of the legislation, in that the harsher penalties the public are in favor of [33,34], are not being made use of by the justice system in the opinion of the public. In this context, the term 'community expectations' is being used to describe collective public opinion, whether perceived or gleaned from sociological research. Reasons for this disconnect could be that community expectations towards animal law enforcement are increasing at a rate the legislation cannot, or that the community expect too much from the animal law legal system given resource and funding availability [35,36].

Given the lack of ongoing access to information on public opinion around animal cruelty penalties it is impossible to assess their nature, and how they are reflected in the legislation. However, based on second level agenda-setting theory, it is likely that analyzing the themes present in animal cruelty media reports can give an indication of these 'community expectations', as the themes present are likely the building blocks of public opinion given the influential nature of the media [6,9–14]. Therefore, this study builds upon Arluke et al. [22] and Grugan [21] research and investigates the emerging themes from Australian media reports of penalties for animal welfare offences. Using thematic analyses, the predominant themes present in animal cruelty media reports, that refer to the penalties in some capacity, are identified and discussed in terms of being indicators of public opinion. Since agenda-setting analyses have found to be consistently correlated with the public agenda [37], this study provides a viewpoint on how the media may be influencing 'community expectations', and in turn animal welfare legislation in Australia.

2. Materials and Methods

2.1. Newspaper Selection

This study focused on Australian news reporting nationally despite the state-based approach to animal welfare legislation, as previously it has been identified that all the state and territory-based Animal Welfare Acts in Australia are similar in terms of penalty structure and sentencing principles [29]. Therefore, articles were selected from all online national Australian print media sources. Print media remains a widely accessible media source in Australia that plays a significant role in influencing issues in society [38]. Print news media is important for political decision making by downplaying some issues and diverting that attention to others [39]. Therefore, with print media becoming widely available to a diverse demographic of Australians through electronic sources and social media sharing [40]; newspaper articles remain a popular and widely available source of current affairs relating to animal cruelty offences in Australia. All newspapers from all Australian states and territories were selected, excluding any magazines, newsletters,

journals, or blog posts from the search. A total of 533 Australian newspapers available on the electronic database Newsbank [41] were included in the search. Metropolitan and rural newspapers were included to reduce any demographic biases between the two news sources and identify a newspaper sample with broad readership demographics and political orientations.

2.2. Search Strategy

Similar to Grugan [21] content analysis methodology, a 6-month period from 1 June 2019 to 1 December 2019 was selected. This period was prior to the emerging COVID-19 news articles in the Australia media. Articles were retrieved from Newsbank [41] using the following search criteria: "animal* (lead/first paragraph)" AND "welfare OR abuse OR cruel* OR violent* (all text)" AND "penalty* OR case OR offence OR prosecution OR crime* OR sentence OR case OR charge OR law OR illegal OR legal OR justice OR prison OR jail OR fine (all text)" OR "animal cruelty case" OR "welfare offence" OR "cruelty offence" OR "cruelty charges".

2.3. Eligibility Criteria

Articles accepted for analysis were those that included specific discussions on sentencing in animal cruelty cases, or articles which discussed penalties in general terms. The latter included reports on animal welfare legislation reform or making referral to maximum penalties for animal welfare offences. The nature of the articles included varied from court reports to those discussing penalties arising under the eight state and territory-based animal protection acts in Australia. Articles discussing penalties arising for offences towards animals under other legislation, such as crimes acts, domestic animal acts, or wildlife acts, were excluded due to their differing enforcement models and penalty types.

Articles were excluded if they did not make any reference to penalties or animal welfare offences. Furthermore, any 'letters of editors' or public submissions were excluded as they often included multiple topics and lacked a focus on animal cruelty cases. The 'year in review' articles were excluded, as these revisited already published articles. Finally, all duplicates were excluded. The search identified 787 articles; 128 remained after articles were screened for the eligibility criteria. A further 57 articles were excluded after examining for duplicates. Thus, a total of 71 articles remained for analysis.

2.4. Analysis

A thematic analysis was performed following the methods of Braun and Clarke [42]. Articles were imported into Nvivo 12 [43] for coding. Both the semantic and latent attributes of the data were considered, and an inductive coding approach was taken, where codes and themes were developed from the data content. The version of thematic analysis used in this study, reflexive thematic analysis, advocates against the use of measures of inter-rater reliability and other such coding practices as a measure of quality [44]. Therefore, coding was performed by one coder (RM) in the absence of a codebook. Following initial coding, the codes were returned to, and revised as the coding process proceeded. Codes were then clustered into candidate themes to give some indication of their prevalence, and test their value in giving an overall account of the data [45]. Six themes were initially identified, however after thematic maps identified theoretical overlap between the themes, they were collapsed into three final themes.

3. Results

Three salient themes were generated from the analysis: (1) current animal welfare laws are not good enough and need reform; (2) laws are improving, and animal welfare is being taken seriously; (3) and reforms are too harsh and unnecessary. The majority of the data were included in these three predominant themes.

3.1. Theme 1: 'Animal Welfare Laws Are Failing and Need Reform': Action Is Needed

The first theme captured the need to take action to combat the failings of animal welfare laws. These 'failures' were often ascribed to legislation not being tough enough to adequately protect animals, and more often, expressed the need for legislative reform. Many articles made statements similar to the following:

> "*For many years, I, too, have questioned the way animals are treated and just why animal welfare laws do not go far enough*" (stated by journalist, Queensland Times, 14 August 2019)

Overall, this theme was the most common in the dataset, expressed by approximately half the included articles. In addition to these articles discussing the need for legislative reform, similarly to Parliamentarians, the authors would also refer to community expectations:

> "*She also called on the courts to enforce sentences more in line "with community expectation" in animal cruelty cases*" (quoted from RSPCA ACT spokesperson, Canberra Times, 20 September 2019)

> "*Our pets are much-loved members of our families. The community has no tolerance for this kind of offending*" (quoted from Sentencing Advisory Council spokesperson, Central Queensland News, 30 August 2019)

In making such statements, authors infer that the process of justice is failing due to disparity between community expectations and the sentencing reality. Animal welfare is generally accepted as an issue in which governments legislate in the public interest [2,3]. Thus, alignment of community expectations with the legislative objective should occur. The majority of references to this disparity followed with comments regarding the leniency of penalties for animal welfare offences.

> "*Animal bans are not enough. Many members of the community would like to see jail terms imposed for severe animal cruelty cases, and more cases also need to be brought to court*" (quoted from pet rescue spokesperson, Central Queensland News, 30 August 2019)

> "*The attack has prompted calls for harsher penalties for acts of animal cruelty, including mandatory jail time*" (stated by journalist, The Examiner (Launceston), 28 July 2019)

These statements imply that to correct the disparity, the penalties for animal welfare offences need to be harsher. Maximum penalty increases are not an uncommon reform in Australia, however it has been reported that penalty increases are more of a symbolic gesture to reflect this notion of "getting tough" rather than effecting meaningful changes by the sentencing courts [5]. Therefore, unsurprisingly, many articles also referred to lenient sentences handed out in court.

> "*We have a terrible history in Tasmania of absolutely pathetic punishments for people doing barbaric things to animals*" (quoted from wildlife sanctuary spokesperson, The Mercury (Hobart), 27 July 2019)

> "*The sentence handed down last week certainly does not reflect the seriousness of this crime . . . It's time that we started to impose these maximum sentences and treat cases of cruelty to animals as the serious crimes that they are*" (stated by journalist, Northern Miner (Townsville), 11 July 2019)

> "*This act of cruelty is sickening, we don't want this to become another case of lenient sentencing that will do nothing to deter further acts of extreme animal mistreatment*" (quoted from Member of Parliament, Midstate Observer (Orange), 18 June 2019)

> "*SERIOUSLY, what does someone have to do to an animal to land themselves a bed in jail?*" (quoted from RSPCA QLD spokesperson, The Sunday Mail (Queensland), 7 August 2019)

Pairing the two sentiments of penalty increases within statute and harsher imposition of sentences at the court level, the messaging appeared to be that increasing the statutory maximums should result in harsher sentence imposition by the courts, with 'harsher' generally considered as terms of imprisonment, with statements like the following:

> "*When we think about tougher penalties for cruelty, we think about jail*" (quoted from RSPCA QLD spokesperson, The Sunday Mail (Queensland), 7 August 2019)

In addition, it was also implied that action was needed to strengthen animal welfare legislation since acts of cruelty were getting worse and becoming more common.

> "*Animal cruelty is getting worse in this State, and it seems to be a very bad year this year and I hope this is a wakeup call*" (quoted from farm sanctuary spokesperson, The Advocate (Tasmania), 27 July 2019)

> "*RSPCA inspectors are rescuing almost two animals a day on average as the number of reports of neglect increased by more than 200 since last year*" (stated by journalist, Sunday Mail (Adelaide), 4 August 2019)

Extracts such as these imply that without further action animal cruelty will continue to become a larger and more severe problem in society. They speak to a need to act before it's too late, creating a sense of urgency. Similarly, the link between human and animal violence, as established in the literature [46–53], was addressed on numerous occasions with the view propounded that animal cruelty should be stopped before it progresses into human violence.

> "*While this incident is shocking enough in itself, it overlooks the link between animal abuse and domestic violence: a causal link that has been researched extensively but is often ignored when animal abuse incidents are treated in isolation from their wider social implications . . . Alarmingly, there is also the documented fact that children who are exposed to animal abuse absorb and normalize this behavior, thus perpetuating a cycle of violence*" (stated by journalist, Magnet Eden (New South Wales), 27 June 2019)

> "*The research, not just in Australia, has shown that deliberate, premeditated animal cruelty, which this was, is a precursor to other types of violence . . . So, we really need to take this seriously*" (quoted from RSPCA QLD spokesperson, Daily Mercury (Queensland), 24 June 2019)

Pairing this urgency to act before it's too late with the threat of future human violence, could target a different demographic than the usual 'animal-lovers', potentially resulting in visceral reactions from a more diverse, larger group of readers.

Finally, a relatively small number of articles referred to the idea that animals are receiving no justice from the criminal justice system. They were often described as "defenseless" and "voiceless" creatures, which are inadequately represented and protected during the court process. This idea was often related to the 'lenient sentences' addressed earlier, since the court failure to impose a harsh sentence on the offender, fails to afford justice to the animal.

> "*Unfortunately, these defenseless animals had no voice and received no justice*" (quoted from RSPCA ACT spokesperson, The Canberra Times, 20 September 2019)

3.2. Theme 2: 'We Take Animal Welfare Seriously and Are Reforming Laws': Action Is Being Taken

The second, contrasting, theme contained a number of extracts suggesting animal welfare legislation is improving, and that animal welfare is a clear priority for the Australian state and territory governments. In comparison with the first theme, this theme represented more positive messages, being 'we hear your concerns and are taking action'. This theme was most prevalent in the dataset when reporting penalty increases, whether to the maximum penalties through amendments (e.g., "Legislation introduces tough new penalties"—stated by journalist, The Canberra Times, 27 September 2019) or when secur-

ing a high sentence in court (e.g., "It's the longest jail term imposed for an RSPCA NSW prosecution"—stated by journalist, Liverpool Champion New South Wales, 2 July 2019).

Accounts of amendments in this theme were primarily focused on the maximum penalties. The penalties were either quoted directly with the monetary value of a fine and the term of a custodial sentence, or they were summarized as "tough new penalties".

> "*Dog owners who leave their pet in a hot car even for a few minutes will face whopping fines of $40,000 and a year's jail under beefed-up laws targeting animal cruelty—and stupidity*" (stated by journalist, The Sunday Mail Queensland, 16 September 2019)

Commonly, such articles would focus on amendments in general, and not discuss the penalties being applied in court. These articles would link the 'community expectations' to these amendments, implying that authorities are listening to the community and attempting to close the gap between public expectations and outcomes.

There was some discussion around penalties in action, in terms of sentences handed down in courts. Many of these articles focused on achieving a "record sentence" in Australia, implying that the courts are starting to use penalties on the higher end of the scale. However, many of these articles reported on the most heinous acts of animal cruelty where a high sentence was likely warranted. So, although a "record sentence" was handed out, it was probably for one of the worst acts of cruelty seen in the State.

> "*Recently convicted animal-cruelty offender, [name removed] has received a record sentence for brutally stabbing, beating and hanging a dog . . . The longest jail term imposed for an RSPCA NSW prosecution*" (stated by journalist, Liverpool Champion New South Wales, 2 July 2019)

Many quotes from authorities were used in this theme to articulate that animal cruelty is being taken seriously and will not be tolerated. These statements were often found in articles discussing proposed amendments to strengthen the legislation and signified to the public that they should be afraid of animal welfare law, as they will be caught and charged with cruelty. It implies that the authorities that either enforce or draft the laws are concerned with animal welfare and will ensure that the legislation is where it needs to be to adequately protect animals.

> "*We take incidents such as these very seriously and anyone who engages in activities such as these will face the full brunt of the law*" (quoted from NSW police spokesperson, Magnet Eden New South Wales, 3 October 2019)

> "*Minister for Agricultural Industry Development and Fisheries [name removed] said animal welfare was everybody's responsibility and Queensland would not stand for cruelty to animals*" (quoted from by Minister, North West Star Queensland, 29 October 2019)

> "*A proposed crackdown on the mistreatment of pets will debated in the ACT Assembly on Tuesday, as the government seeks to pass its Australian-first animal welfare reforms*" (stated by journalist, Canberra Times, 30 July 2019)

There were mentions again to the community in this theme, however unlike the first theme, these statements were overall more positive in nature and focused on this idea that the reason why cruelty reports are increasing is because the community are becoming more aware of signs of cruelty.

> "*RSPCA Chief Inspector [name removed] said the increasing number of reports was a sign that the community was learning to identify the signs of animal abuse and neglect*" (quoted from RSPCA SA spokesperson, The Sunday Mail Adelaide, 4 August 2019)

> "*We will continue to work with the community in the first instance to change negative behaviors, but, when necessary, our inspectorate's ability to take punitive and corrective measures will now be strengthened by the additional offences*" (quoted from RSPCA ACT spokesperson, Canberra Times, 27 September 2019)

Many reported animal cruelty cases are finalized by the enforcement agency working with and educating animal owners on humane pet care [54]. Statements like those above show that the community education efforts undertaken by enforcement agencies appear to be working. It also provides some educational material to the reader that many investigations of cruelty do not pursue legal criminal action, in that Australia wide only 0.0062% of cruelty investigations result in prosecution [55]. On this note, a small number of articles discussed alternative penalties to the common fine and jail sentences.

> "*Sometimes when these offenders escape jail, we might need to stop and ask whether the court might have got it right. Maybe these special cases need a rehabilitative approach, rather than a prison cell, if we have any chance of curbing the disturbing behavior and protecting animals and people in the future*" (quoted from RSPCA QLD spokesperson, The Sunday Mail (Queensland), 7 August 2019)

Alternative rehabilitative forms of penalty, often in the form of court mandated counselling and conflict resolution training, have been discussed in the literature as potentially more useful forms of punishment for animal abuse [56–58]. However, these penalties were rarely discussed in articles included in the dataset, the emphasis mainly being on custodial sentences. Statements like the above challenge the idea that harsher sentences are needed and show some support for the current system of discretion and variety in penalty imposition, whilst still advocating for slight improvements. Such statements provide further educational material to the reader and would challenge their thinking when it comes to penalties, perhaps breaking this perceived cycle of harsher penalties in legislation equals harsher sentences in court, which equals less cruelty.

3.3. Theme 3: 'Reforms Are Not Necessary': Action Is Too Harsh

This theme provides a counterargument to the other two themes, in that animal welfare reforms are not necessary, and the legislation should remain the same without any further action. However, it was defined at various levels; some articles articulated a mild aversion towards reforms (e.g., "The Opposition is opposed to what they described as 'radical laws'"—stated by journalist, Canberra Times, 30 July 2019), whilst others expressed extreme disdain (e.g., "[Owners] could now potentially be framed as animal abusers for failing to do things like get their dog's nails clipped. This is neither reasonable nor fair"—quoted from Member of Parliament, Canberra Times 30 July 2019). This theme was far less common than the other two themes, only accounting for 10% of the dataset.

The majority of this theme comprised discussions on proposed amendments being too tough and impractical for everyday animal owners, and therefore not necessary. Although similar, the below quotes relate to different proposed amendments. The first quote referring to the proposed changes to animal welfare offences under the *Animal Welfare Act 1992* (ACT) after legally recognizing animal sentience. The second quote relates to a proposal to prohibit dogs being secured on metal trays over 28 degrees Celsius (82.4 degrees Fahrenheit). This law has since passed and can be found in s 6(4) of the *Prevention of Cruelty to Animals Regulations 2019* (Vic).

> "*[Opposition leader] had already made clear her opposition to the proposal when she claimed the laws could effectively turn dog lovers into criminals*" (quoted from Member of Parliament, Canberra Times, 27 September 2019)

> "*We want a rule to come in to make sure animals are protected but we want to make sure it's a practical rule to work with*" (quoted from Victorian Farmers Federation spokesperson, Wimmera Mail-Times, 9 September 2019)

There were also mentions of simply using common sense when it comes to human dealings with animals, and that as a society we should not require such paternalistic laws that overlook common sense.

A less common attribute to this theme was that animal cruelty is not as bad as it seems and often prosecution is not always necessary. Most animal cruelty cases are often negligent-type acts (commonly defined as 'basic cruelty'), rather than the application of

actual cruelty (commonly defined as 'aggravated cruelty') [5], in which the latter under legislation have a higher maximum penalty attached [29]. Hence, the majority of cases would not warrant the highest penalty, as they fall under this 'basic cruelty' category. Often these articles expressed that the offenders are remorseful and, in some cases, did not know they were doing the wrong thing.

> "*[RSPCA prosecutions officer] said people often thought only 'evil' people were charged with animal cruelty, but the vast majority were people who'd made 'silly choices'*" (stated by journalist, The Sunday Mail Queensland, 16 September 2019)

> "*We don't just want to go and stick people in jail. We want to change behavior,*" [RSPCA spokesperson] said. "*I don't want people to run away when they see the RSPCA inspector van; I want them to work with us so that we can continue to reach the good outcomes that we do*" (quoted from RPSCA ACT spokesperson, Canberra Times, 28 July 2019)

As articulated here, focusing on harsh sentences or penalty increases may not be necessary to punish most animal abusers, and instead advice and assistance from enforcement agencies could work in lieu of prosecution. This sentiment is similar to the previous theme discussed on alternative penalties. However, instead of recommending use of more rehabilitative forms of penalty, these statements are highlighting the option of not using the court system at all, instead working with the owners in an educative fashion.

4. Discussion

This study applied a thematic analysis to news articles and identified three common ways the media portrays animal cruelty reports and penalties in Australia. These themes were: (1) current animal welfare laws are not good enough and need reform; (2) laws are improving, and animal welfare is being taken seriously; and (3) reforms are too harsh and unnecessary. The three themes were established from news reports that included a discussion of, or reference to, the penalties or sentences for animal welfare offences. The remainder of this paper will discuss the agenda-setting effects these themes could have on the 'community expectations' of the penalty outcomes that should arise from animal welfare law, and the consequences these 'expectations' have on the political and legal framework underpinning human responsibilities towards animals.

4.1. Agenda-Setting Effects

Animal welfare laws in Australia are essentially public interest laws, in the sense that governments will generally legislate in the public interest, whilst also balancing this with advancements in knowledge about animals and their welfare needs. As a result, the community has some ability to drive legislative change through their expectations and opinions, as regularly observed during political debates [4,5]. However, as Geysen et al. [4] noted, despite reviewing the explanatory notes and second reading speeches of these political debates, the content of these 'expectations' which are relied upon by policy-makers, are largely unknown. Based on the established agenda-setting effects of the news media [37], the themes established in this paper will give a likely indication of the information the public are using to build these 'expectations', making them potential indicators of public opinion. At this level this paper is making an assumption that will require further validation with appropriate sociological research.

Based on the emerging themes, it is likely that the public are measuring the success of animal welfare laws by the magnitude of the penalty handed down in court, regardless of the details of the case. The reports on 'record sentencing' were prevalent in the positive theme of "laws are improving", whereas 'lenient sentencing' made up the bulk of the negative theme of "laws are not good enough". Such findings are similar to Grugan [21] results on animal cruelty media analyses, where the author found that less severe cases were reported in a more neutral athematic way, in contrast to the more severe cases which were presented emotively with loaded language that condemned either the act, the offender or

the justice system. Thus, the public are encouraged to perceive severe penalties as positive, and minor penalties as negative, which is in line with reported sociological research [34]. Hence, the combined message of the two themes is that harsher penalties (often in the form of jail time) are needed to protect animals from cruelty, regardless of the type of cruelty inflicted on the animal. This is in contradiction to academic commentary which questions the effectiveness of harsher penalties [5,32,58,59], and advocates for alternative penalties which have a more rehabilitative focus to tackle the root of the problem, not the result.

With that said, whether intentional or not, the media is likely providing an element of social deterrence through this penalty portrayal. Deterrence theory focuses on the ability of laws to deter members of society from committing illegal acts, through the belief that capture and punishment of offenders will occur [60]. Simply put, the threat of punishment is enough to deter people from committing a crime. However, deterrence is only one aspect of punishment theory that underpins the imposition of penalties in court, with the other aspects of rehabilitation, retribution, restitution, and incapacitation [61–64] perhaps being less visible to the public. When the media portray harsh sentences and maximum penalties in a positive light, it signifies to the public that harsh penalties are the norm for animal welfare offences and creates social deterrence due to fear of the harsh penalties. Therefore, whilst it is likely that the media are creating elevated penal 'expectations' amongst the public, they may be playing a valuable role in creating a social deterrent effect.

4.2. Sociological Research

Sociological research investigating public opinion towards penalties for animal welfare offences is now over a decade old in Australia, thus further research is required to update our current understandings of public opinion to draw more conclusive assessments. However, the portrayal of penalties by the media is consistent with the findings of this previous sociological research, which has determined that the public favor harsh penalties for animal welfare offences, namely prison sentences [33,34]. This implies that there could be a connection between the two, however establishing causality is difficult as is it unknown which came first, public opinion or media content [17]. Public opinion could be influencing media coverage, as journalists understand it will generate interest [65], conversely media coverage could be influencing public opinion. Establishing cause-and-effect is difficult as the evidence is grounded in "real world" data that is influenced by a range of uncontrollable and unknown factors. However, given that for the majority of the public the media is their only source of information on animal welfare law, it is highly likely, based on agenda-setting theory, that the media is having some effect on public opinion, even if the extent of this influence is unknown.

Similarly to Arluke et al. [22], we observed that the majority of media reports only discussed the most severe cases of animal cruelty, likely because they will generate greater public interest. However, given that these severe or deliberate (previously defined as 'aggravated') cases of animal cruelty are in fact in the minority [5], this selective reporting could skew public perception on the reality of the crime of animal cruelty based on a consideration of both prevalence and severity of acts, making it appear a more significant issue that it actually is. Discussion of penalties in these articles, creates an urgency for harsher penalties given the heinous nature of the case. In addition, this urgency for harsher penalties can also be created through referral to the established link between acts of human violence and animal cruelty [46–53]. The 'link' suggests that offenders who are deliberately cruel to animals are more likely to be violent to humans, as evidence suggests these offenders have the potential to develop into child abusers [24,31], spouse-beaters [24–28], or even murderers [29,30]. The use of this messaging through the media likely creates a fear response in the public, which further solidifies the need for harsher penalties, in order to break this cycle at the animal stage, before it progresses further to humans. However, as mentioned above, these type of offences are in the minority, with the majority of offences being the more minor duty of care breaches [5]. Thus, if the public are perceiving these severe and deliberate 'aggravated' cases as the norm, they could

also be indirectly perceiving these harsher sentences as the norm, which in turn elevates their expectations.

4.3. Sentencing Guidelines

Although the public are demanding harsher sentences, as Markham [23] noted, case sentencing is a complex process, it is not as simple as sentencing based on the communities' expectations. Case sentencing is a multifactorial process, in which judges must consider numerous factors, such as, judicial discretion, adherence to sentencing guidelines and the doctrine of precedent, when deciding a sentence. Sentencing in Australia is guided by sentencing legislation, where judges will decide a sentence in accordance with the State's relevant Act. For example, in South Australia, Section 10 of the *Sentencing Act 2017* outlines the use of imprisonment and states that prison sentences must only be handed out as a last resort or if it is required for community safety. Considering the majority of animal cruelty cases are breach of duty of care cases, not aggravated cases, where the offender intends to harm the animal [5], it implies (at least from the perspective of violence) that the majority of animal cruelty offenders do not pose a risk to the community. In addition to adhering to sentencing guidelines outlined in legislation, judges are also bound by precedents and must follow the determinations made in higher courts [66], this makes any substantial increases to sentences difficult if precedent binds judges to sentence in accordance with previous decisions. Instead, a slow increase to sentences may occur overtime, instead of the large increase the public appear to favor.

Thus, even though the public favor prison sentences, they are not necessarily warranted for the majority of perpetrators of animal offences. Therefore, the penalty reforms occurring throughout Australia are essentially symbolic gestures [4,32], used to signify the ideology of "getting tough" on offenders [30,31], rather than practical efforts to elevate court-handed down penalties [5].

4.4. Penalty Reform Cycle

Through combining findings from sociological research, evidence of agenda-setting from this study, and the content of sentencing guidelines in Australia, we posit that there is a relationship between all three. This relationship forms the basis of our proposed 'penalty reform cycle' (Figure 1), which is hypothesized to contribute to the public's elevated penal expectations and this idea of an 'enforcement gap' in animal law, in that the expectations in relation to penalties are not aligning with the realities of the justice system [54]. This cycle speculates that the community expectations of harsher penalties is driving largely 'symbolic' reform efforts to raise maximum penalties for animal welfare offences, which the media report through the second theme as "laws are improving". However, factors such as judicial discretion, the need to adhere to sentencing guidelines and statute, and resource constraints such as overcrowded prisons and the cost of incarceration, lead to harsher penalties not being applied in court, which causes the media to report on the 'lenient sentencing' common in the first theme of "laws are not tough enough". The public then become disillusioned with the legal system and the penalties imposed, fueling the expectations that harsher penalties are needed, which begins the cycle again.

Although the inter-relationships between parties in this cycle are clear, it is unknown where the cycle starts due to the difficulties in establishing causation [17]. Sinclair et al. [67] established that a media exposé had an influence over public views on animal welfare. In contrast, Tiplady et al. [68] found that less than 10% of people exposed to a broadcast about animal cruelty in Australia acted and contacted politicians. However, as previously stated, given that the media is a major source of information on animal welfare matters for the public, it will likely have some impact on public opinion. In order to break or redirect the cycle, public education may be a successful intervention. Agenda-setting effects are less likely to influence readers who have knowledge or experience with animal welfare law [19,20] and have greater knowledge of the justice system and the types of animal welfare cases being presented to it. Therefore, any public education campaigns should

focus on how the sentencing court considers and hands down penalties for individual offenders as well as the typical distribution of offences across the aggravated and breach of duty-of-care categories.

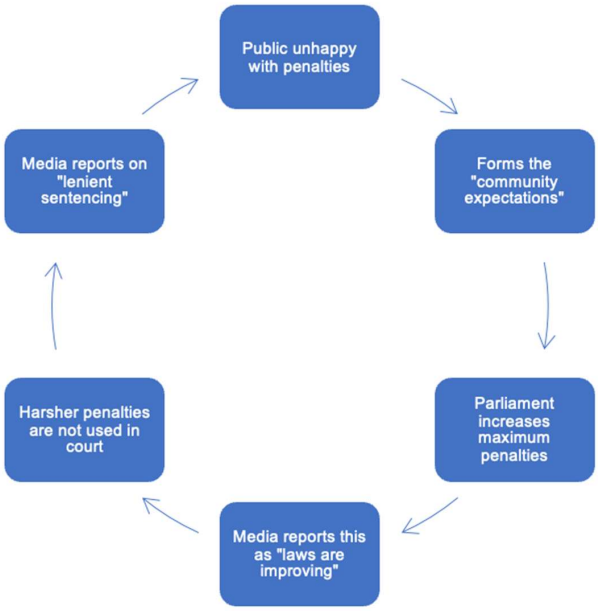

Figure 1. Proposed penalty reform cycle around animal cruelty offences involving the media, the public, courts, and the legislature. "Laws are improving" comprises of the second theme found from the analysis, whilst "lenient sentencing" comprises of the first theme.

It should be noted that an individual's experiences and perspectives will influence the way information is interpreted for that individual, and therefore using themes in this context does not guarantee the readers will interpret such information in the speculated way [69]. The themes in this paper are intended to provide a guide to the types of messaging apparent in news articles on animal welfare law and how they could influence 'community expectations', and consequently the political framework surrounding animal welfare legislative reform. However, further sociological research is needed to validate the speculations in this paper by directly exploring public opinion and expectations of animal welfare law, and the contributions those expectations have on this proposed penalty reform cycle.

5. Conclusions

Portrayal of animal cruelty penalties by the media in Australia can be allocated into three contrasting themes of (1) current animal welfare laws are not good enough and need reform; (2) laws are improving, and animal welfare is being taken seriously; and (3) reforms are too harsh and unnecessary. The predominant theme emerging related to magnitude of penalties, regardless of the severity of the offence. Articles discussing statutory amendments to increase penalties were often present in the second theme, whilst discussion of custodial sentences handed down in court were common to the first theme. It is proposed that there is a relationship between themes one and two, and the 'community expectations' that have been referred to as drivers of animal law reform efforts in Australia. This relationship forms the basis of the proposed penalty reform cycle, whereby the media reports on recent statutory amendments with a theme that 'laws are improving' (theme two), then, due to a wide range of judicial system-related factors, harsher sentences are not applied in court, resulting in media reporting of 'lenient sentencing' (theme one). Therefore, the public become dismayed at the penal system, forming the 'community expectations',

which then inform parliamentary debate and fuel future amendment efforts. Thus, the cycle continues.

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Chapter 8: An Investigation into ‘Community Expectations’ Surrounding Animal Welfare Law Enforcement in Australia

Contextual Statement

Animal welfare law reform efforts have commonly been attributed to increasing alignment with the ‘communities’ expectations’, implying that the public have power to drive legislative change. Hence, the expectations or intentions side of the enforcement gap is likely driven by public opinion. Although this assertion of reforming legislation to reflect public expectations has been repeatedly made by parliamentarians, there has been no information publicly available disclosing the nature of such ‘expectations’ that lawmakers use to shape animal welfare legislation upon. Based on previous research and the consistent approach to increasing the maximum penalties for animal welfare offences, it can be assumed that these ‘expectations’ include harsher penalties for offences. This chapter aims to quantify this by providing an assessment of current community expectations of animal welfare law enforcement using a representative survey of the Australian public. The results from this chapter suggest that the public are more in favour of preventing animal cruelty through a stronger enforcement model rather than punishing animal cruelty offenders through harsher sentences. Thus, suggesting that public opinion appears to be less punitive than lawmakers believe.

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Overall percentage (%)	75%		
Certification:	This paper reports on original research I conducted during the period of my Higher Degree by Research candidature and is not subject to any obligations or contractual agreements with a third party that would constrain its inclusion in this thesis. I am the primary author of this paper.		
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Co-Author Contributions

By signing the Statement of Authorship, each author certifies that:

i. the candidate's stated contribution to the publication is accurate (as detailed above);

ii. permission is granted for the candidate in include the publication in the thesis; and

iii. the sum of all co-author contributions is equal to 100% less the candidate's stated contribution.

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An investigation into 'community expectations' surrounding animal welfare law enforcement in Australia

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Nature of reform to animal welfare legislation in Australia has commonly been attributed to increasing alignment with the 'communities' expectations', implying that the community has power in driving legislative change. Yet, despite this assertion there has been no publicly available information disclosing the nature of these 'expectations', or the methodology used to determine public stance. However, based on previous sociological research, as well as legal reforms that have taken place to increase maximum penalties for animal welfare offences, it is probable that the community expects harsher penalties for offences. Using representative sampling of the Australian public, this study provides an assessment of current community expectations of animal welfare law enforcement. A total of 2152 individuals participated in the survey. There was strong support for sentences for animal cruelty being higher in magnitude (50% support). However, a large proportion (84%) were in favour of alternate penalties such as prohibiting offenders from owning animals in the future. There was also a belief that current prosecution rates were too low with 80% of respondents agreeing to this assertion. Collectively, this suggests a greater support for preventing animal cruelty through a stronger enforcement model rather than punishing animal cruelty offenders through harsher sentences. This potentially indicates a shift in public opinion towards a more proactive approach to animal welfare, rather than a reactive approach to animal cruelty.

KEYWORDS

animal welfare, animal cruelty, law enforcement, animal law, public opinion, Australia, penalties

1 Introduction

As sentient beings (Mellor, 2019), animals are afforded legal protection through animal welfare legislation. Underpinning this protection are societal values which deem that animals' interests in avoiding pain and suffering are morally relevant and worthy of consideration (Ohl and van der Staay, 2012). In practice, this means governments will generally legislate in the public interest when it comes to animal welfare (Nurse, 2016), making community expectations and opinions a major driver for legislative change. This has been observed in a number of Western countries, with several countries in the European Union reforming animal welfare legislation to align with public opinion (Bennett et al., 2002; Veissier et al., 2008; Vecchio et al., 2020), along with the United States (Mayer, 2002; MacArthur Clark et al., 2019) and the United Kingdom (Nurse, 2016) as some examples. These reform efforts are in concert with increasing public concern regarding matters of animal welfare, implying that policy makers are cognizant of changing public attitudes and willing to consider these attitudes when making domestic legislative decisions (Stimson, 1999; Erikson et al., 2002; Stimson, 2004). In line with this global trend, there have been a range of recent reforms to the state-based animal welfare acts (AWAs) in Australia. At least one driver for reform in this area appears to be a desire to align the objectives of the legislation with the expectations of the community (Geysen et al., 2010; Morton et al., 2018). This is evident from the referrals to public opinion made during the consultation process for animal welfare law reform efforts, some examples include:

"Extensive consultation took place with the general public and relevant organizations over the suggested amendments to this bill to ensure that appropriate measures for the welfare of animals were enforced through the proposed legislation … The proposed changes to this bill reflect the public's concerns" (South Australian Legislative Council, 2007).

"The Bill is necessary to meet community expectations and provide a modern legislative framework for dealing with animal welfare issues … Such legislation is one means of demonstrating to the community that Queensland meets community and market expectations in relation to animal welfare" (Queensland Government, 2001b).

The state of Victoria has entered the early stages of a reform proposal for the relevant animal welfare act, with one goal being to "meet community expectations" (p.9; (Victorian Government, 2020b). Yet, in spite of these referrals to community expectations or concerns, the Australian jurisdictions often fail to disclose the nature of these expectations (Geysen et al., 2010), and when community engagement reports are released they often fail to divulge information on sampling and recruitment, making it impossible to assess the representativeness of the data from the community's perspective, as an example see the Victorian Government's engagement summary report (Victorian Government, 2021). In addition, findings from such reports are likely heavily subjected to social desirability bias, whereby the public provide responses they believe will be favored by others (Lai et al., 2021). Furthermore, in the absence of direct request to do an engagement survey, only a relatively small proportion of citizens will contact their local government representative (also known as Members of Parliament) when concerned about matters of animal welfare, with those that do often feeling most strongly about the need for legislative change (Tiplady et al., 2013). This leads to a further potential bias around the nature of community expectations.

A key focus of animal welfare law reform has been on penalties within acts, with referral to public opinion being cited as responsible for substantial increases to maximum penalties for offences in some state-based AWAs (Queensland Government, 2001a; South Australian Government, 2008; Victorian Government, 2012; Australian Capital Territory Government, 2019; Northern Territory Government, 2020; Victorian Government, 2020a). In spite of the previous criticism, this particular trend does align with community opinion found from sociological research conducted in the last two decades which has established that the community are largely in favor of harsher penalties, often in the form of custodial sentences (Allen et al., 2002; Taylor and Signal, 2009). Maximum penalties, in the forms of custodial sentences and monetary fines, have been argued to provide insight into the legislative intent behind AWA reforms enaction (Morton et al., 2020) in that reform efforts resulting in higher maximum penalties implies the intention of parliaments to "get tough" on animal welfare offenders, and sends a message to the community that animal cruelty will not be tolerated (Morgan, 2002; Sankoff, 2005). However, based on the limited case analyses in Australia it is likely that the maximum penalty increases are failing to translate into increased court sentences (Morton et al., 2018). Parliamentary setting of maximum penalties and sentencing in court are two separate processes; parliamentarians set the maximum penalties laid out in acts, and the court system, through judicial officers, will determine the specific sentence within the set penalty range. Therefore, on the surface it would appear that the court system is failing to consider the legislative intent, hence failing to meet 'community expectations'. Yet on deeper analysis the complexities of case sentencing become apparent. Courts are bound by rules; they are bound by previous court determinations, known as the doctrine of precedent (Cook et al., 2009), and must adhere to sentencing principles outlined in sentencing legislation (Schreiner, 2005). These rules prevent the overuse of the publicly favored prison sentences (through sentencing legislation) and favor an incremental and slow progression in change to penalties (through the doctrine of precedent), thus generally preventing large increases to the magnitude of penalties handed down for offences. Hence, the complexities of case sentencing make it impossible to produce

the immediate jump in penalties that the community may be expecting.

There is evidence that judicial officers are aware of legislative intent behind increasing maximum penalties, for example a South Australian Magistrate commented regarding sentencing for the case of RSPCA SA v Crisp (2010):

"…where the maximum financial penalty was raised from $10,000 to $20,000, the fact that Parliament did that reflects the concern of the community as to the ill treatment of animals. It is a matter which the community … regard as being something that should be severely punished"

However, as suggested by a New South Wales Magistrate, the potential of alignment between community expectations and court determinations is debatable (Schreiner, 2005). The criminal justice system will likely always lag behind community expectations. Given this lag, as Sankoff (2008) noted it is important to measure a social justice movement's progress to ensure its foundations are still applicable to today's society. Considering there is no publicly available information on the exact nature of the Australian communities' expectations, upon which parliamentarians have come to rely, this study herein assumes that the 'expectations' relate to harsher penalties for animal cruelty offences. This will practically be reflected in increases in the length of custodial sentences and the monetary value of fines. Using representative sampling of the Australian public, this study provides quantitative data on current community opinions towards penalties for animal welfare offences. As a secondary aim, given the uniqueness of the AWA enforcement model whereby a non-governmental organization (NGO) carries the bulk of the enforcement burden (Morton et al., 2020) in lieu of individual government-funded agencies (ie. state or federal police forces), we also gathered public opinion on multiple components of this enforcement model. This included public reporting of animal cruelty and inspectorate investigation of reports. The findings of this research allow us to gauge alignment between AWA reform efforts and current community expectations and provide information on the Australian public's viewpoints to inform policy makers in the future.

2 Materials and methods

2.1 Ethical statement

This research was approved by the Human Research Ethics Committee of the University of Adelaide (H-2020-241) and conducted in accordance with the provisions of the National Statement on Ethical Conduct in Human Research (National Health and Medical Research Council, Updated July 2018). All participants provided informed consent prior to taking the survey and had the option to withdraw their responses prior to completion.

2.2 Recruitment

An online survey was developed and distributed nationally throughout Australia using the software and distribution company, Qualtrics (Qualtrics, Provo, UT). Participants were recruited from Qualtrics' actively managed research panels, whereby they were invited to participate *via* email or opted to involve themselves after signing into a panel portal. Email invitations were kept general without the inclusion of specific details about the survey's content to avoid any self-selection bias. All invitations included an anonymous link to the online survey, as well as informing the participants that the survey was for research purposes only and the approximate length of time for completion of the survey.

A representative sample size of the adult (18 years old and over) Australian population was calculated based on a population estimate of 20 million with a 95% confidence interval and a 2.0% margin of error. This equated to a sample size of 2401 participants. In order to obtain a representative sample of the Australian population, participants were selected and balanced based on predetermined demographic quotas relative to the overall Australian adult population for age, gender and location from each state and territory in Australia. Participants were only eligible to participate if they were over the age of 18 years and a current Australian resident. Data collection spanned eight weeks from 18 June 2021 to 20 August 2021. A total of 2534 responses were collected and reviewed by Qualtrics for completeness and authenticity, which deemed 2152 responses suitable for analysis. The completion rate of the survey was 84.9%.

2.3 Questionnaire design

The survey questionnaire was designed to investigate public opinion towards discrete components of the animal welfare law enforcement process, beginning with the reporting stage and ending with prosecution outcomes. The survey was broken into four components (refer Supplementary file). The first component included 13 screener questions, which included detail of respondents' age, gender, state/territory location within Australia, ethnic origin, education and occupation, experience in the legal field and animal ownership status. The remaining survey components contained 22 opinion-based questions on the animal law enforcement process, these questions were separated into three discrete components: reporting of animal cruelty, case investigation, and the court process.

Questions pertaining to reporting cruelty focused on public opinion on common terminology used in AWAs such as 'animal' and 'cruelty', as well as ranking their overall confidence in reporting to the correct authority. Investigation related questions considered public opinion of enforcement

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authorities, educational interventions in lieu of prosecution, and overall opinion on nationwide investigation and prosecution rates from RSPCA Australia's 2019/2020 annual statistics (RSPCA, 2021). Finally, the court process questions focused on public opinion surrounding the imposition of penalties, the seriousness of animal cruelty per utility group (companion, farm, native and pest), prohibition orders and overall opinion regarding sentencing outcomes. Questions were designed to elicit public opinion, rather than knowledge, and were presented in the form of multiple-choice questions or Likert scale responses. Time to complete the survey averaged 8.5 minutes.

2.4 Statistical analysis

All data analyses were conducted using IBM SPSS Statistics (IBM Corp, Armonk, NY). Data were cleaned to remove any incomplete responses. Descriptive statistics were used to visualize spread of responses. Chi-squared tests were used to examine associations between responses and demographic groups for categorical data. Normality tests identified the continuous data as non-parametric. For this reason Kruskal-Wallis and Mann Whitney U tests were used to examine the association between reporting confidence responses and demographic groups (age, gender, location, and animal ownership). As there were more than two categorical independent groups within age demographics, a Kruskal-Wallis test was applied, whereas Mann Whitney U tests were utilized for the remaining demographic variables as there were only two groups within each. Participants that responded with 'prefer not to say' for any of the demographic questions were removed from the dataset when analyzing for demographic associations, hence each variable has a different sample size.

3 Results

3.1 Participant demographics

A total of 2152 individuals participated in the survey, with 53.5% identifying as female, 44.1% as male, and 2.4% as a third gender or other. Participant age ranges were 18-34 years old (35.8%), 35-44 years old (17.9%), 45-54 years old (15.0%) and 55 + years old (31.3%). The majority of participants lived with or owned an animal (66.0%) and described their residential location as urban (74.1%), with the remainder as rural (20.5%) or undisclosed (5.4%). This survey collected data from all Australian states and territories, with 32.0% of responses from New South Wales, 26.0% from Victoria, 20.1% from Queensland, 9.5% from Western Australia, 7.3% from South Australia, and the remaining 5.1% combined between Tasmania, Northern Territory, and Australian Capital Territory.

3.2 Animal status

From the entire sample (n=2152), 87.5% of participants when asked at the commencement of the survey believed animal cruelty was illegal, whereas 6.8% believed it was not illegal and 5.7% did not know. When asked what species of animals should be awarded legal protection from cruelty (Figure 1), the most common responses included the mammalian species, being dogs (88.9%) and kangaroos (82.0%). Birds (78.1%), reptiles (lizards; 64.7%) and amphibians (frogs; 58.8%) were common responses, followed by aquatic species, being cephalopods (octopuses; 54.0%), fish (48.3%) and crustaceans (crabs; 44.7%). The two invertebrate species included in the question evoked vastly different responses, with 43.7% agreeing bees should be protected from cruelty, in comparison to the 4.7% who selected flies. Participants were not informed that animal welfare laws commonly define 'animal' as any member of the vertebrate family (excluding human beings), with variable inclusion of fish, cephalopods and crustaceans dependent on the jurisdiction (Morton et al., 2021).

Participants believed it was most important for the criminal justice system to take animal cruelty seriously when the victim was a companion animal (65.0% extremely important; 22.8% very important) (Figure 2). Native animal cruelty was also ranked highly within the sample (61.8% extremely important; 23.0% very important), followed by farm animal cruelty (49.5% extremely important; 29.2% very important). Australian pest species (e.g., rats and camels) ranked lowest (25.8% extremely

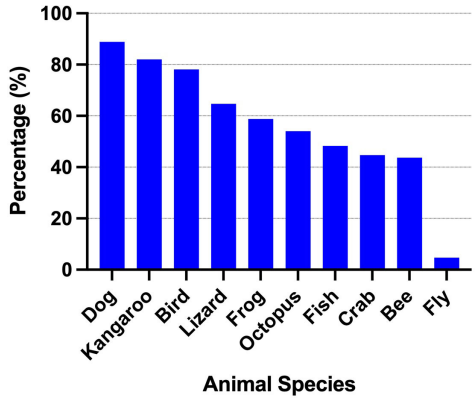

FIGURE 1
Percentage of respondents that believed named species should be awarded protection from cruelty. As multiple response options were available for participants, "all the above" responses were removed from the sample, giving a sample size of n=954. "Which of the following species do you think should be protected from cruelty?".

important; 25.6% very important), with a cumulative percentage of 27.9% participants selecting it was of minimal importance to take cruelty towards them seriously (14.4% slightly important; 13.5% not at all important).

3.3 Enforcement

When asked which enforcement agency would be best suited to enforce animal welfare law (Figure 3), the most common response from participants was a new government department dedicated solely to animal welfare enforcement (39.8%). There was a slight difference between preference for an existing government agency (25.4%) or a private charitable organization (23.0%) to carry out enforcement. Police were the least selected option (11.8%). The questionnaire did not inform participants that the common enforcement agency in Australia is a private charitable organization. In terms of acceptable outcomes in the event of cruelty, the majority of participants believed that officers of the legal system should decide the outcome of the case (46.1%), rather than having a direct preference towards punitive action in the form of custodial sentences or monetary fines (29.5%) (Figure 4). Participants also had the option to select an educative response, where the enforcement agency works with the owners to improve the situation, rather than proceeding with prosecution (24.4% response).

Participant responses towards the use of court orders prohibiting persons found guilty of animal cruelty from owning animals were positive (Figure 5), with the majority of participants (63.6%) strongly in favor of prohibition orders. A large percentage of participants (20.4%) were also in favor of prohibition orders; however, they selected the less strongly worded answer being 'probably yes', rather than 'definitely yes'. A smaller group (13.7%) believed that prohibition order use should depend on the specific case of animal cruelty, whilst cumulatively 2.3% of participants were not in favor of prohibition orders. Participants were not informed that prohibition orders are commonly used at the discretion of the sentencing court in Australia for offenders found guilty of an animal welfare offence.

3.4 Demographic associations

3.4.1 Reporting confidence

Participants ranked their confidence in reporting animal cruelty to the appropriate agency on a 100-point scale (with 0 being not confident at all and 100 being extremely confident). Given the non-parametric nature of the data, the median ranking was 71, with an interquartile range of 42 (Q1 = 50; Q3 = 92). Confidence rankings were analyzed against demographic variables age, gender, location, and animal ownership (Table 1), where participant gender and animal ownership status had a significant relationship with reporting confidence.

A Mann-Whitney U test was conducted to determine if there were differences between genders (male/female), location (urban/rural) and animal ownership (yes/no). The level of confidence of participants in reporting animal cruelty was highly significant between participants that owned an animal compared to those that didn't ($P<0.001$) (Figure 6A). The median responses differed greatly between owners (median = 75; IQR = 48) and non-owners (median = 64; IQR = 42). Animal owners selected rankings of 100 more frequently than non-owners causing an increased interquartile range. Gender was significant (p-value = 0.046), and the median responses between males (median = 71) and females (median = 72) only differed by

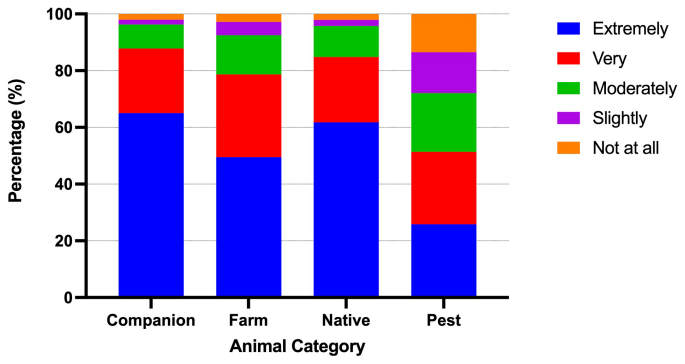

FIGURE 2
Percentage ranking of importance for the legal system to take cruelty seriously based on animal species involved (n=2152). "How important do you think it is for the legal system to take animal cruelty seriously when the animal is a [companion, native, farm, or pest animal]?".

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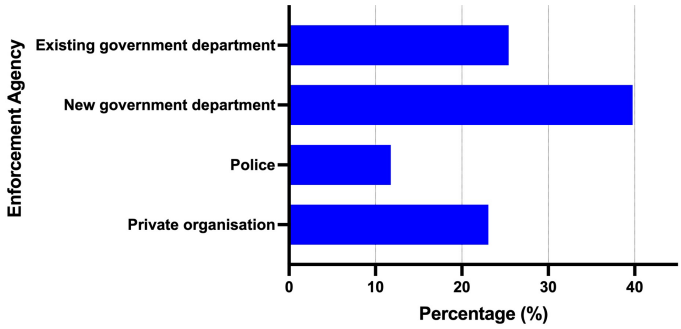

FIGURE 3
Enforcement agency preferences of respondents (n=2152). "In your opinion, which organization should enforce animal welfare law?".

a single ranking score (Figure 6B). The interquartile range for the female responses (IQR = 48) was slightly higher in comparison to the males (IQR = 40), which was due to a greater number of females selecting ranking scores of 100, in comparison to males. There was no significant difference between those respondents that live in an urban or rural location (P=0.404).

3.4.2 Prosecution rate

Overall, 79.6% of participants believed that more investigations of animal cruelty should be prosecuted in court, whilst 17.2% believed it depended on the circumstances of the case and 3.2% responding with no change was needed. Participants were informed that in the 2019/2020 financial year a total of 58,487 investigations were conducted nationally in Australia by state-based RSPCAs and of those investigations 376 prosecutions were finalized in court. This information was based on the RSPCA Australia's 2019/2020 annual statistics (RSPCA, 2021). Reponses were analyzed against demographic variables with the finding that all variables had a significant relationship with a desire for prosecution (Table 2). The nature of the associations are elaborated on below (Figure 7).

A chi-square test of association was conducted to determine whether there was a significant association between prosecutorial action, and age, gender, location and animal ownership. Gender differences around prosecutorial opinion were found to be highly significant (Table 2; $P < 0.001$; Figure 7B), with females responding more commonly with 'definitely yes' (female 63.3%; male 47.7%) and males responding more neutrally with 'it depends' (female 12.3%; male 20.8%). There was a statistically significant association with age group where the 18-24 year age group had the highest percentage of 'definitely yes' (65.0%), whilst ages 65+ years had the lowest percentage (46.6%). However, when comparing the 'definitely yes' and 'probably yes' responses, all ages had a response rate of approximately 80%. A response of 'it depends'

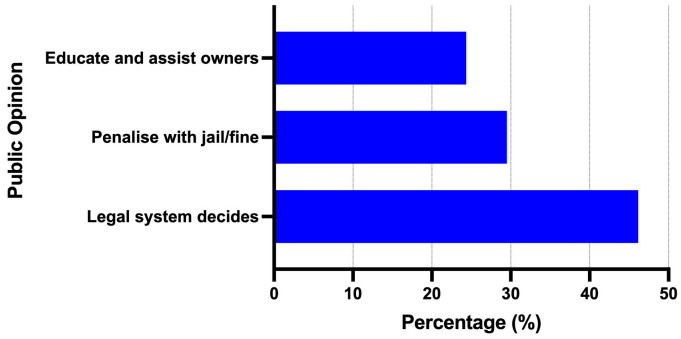

FIGURE 4
Percentages of responses towards alternative enforcement outcomes for animal cruelty investigations (n=2152). "Do you think owners should be educated or punished when animal welfare issues occur (e.g. not taking your sick animal to the vet)?".

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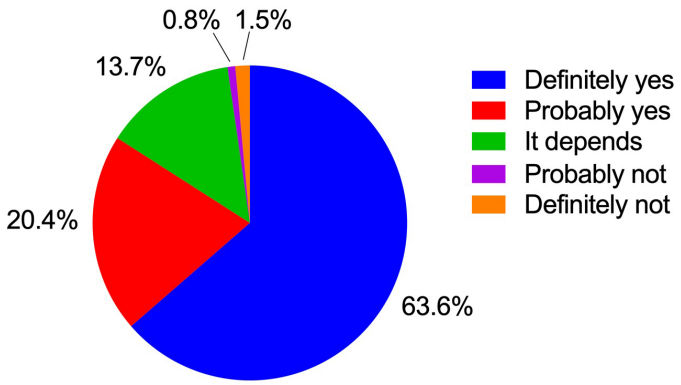

FIGURE 5
Reponses (%) towards ban of animal ownership when offenders are found guilty of animal cruelty (n=2152). "If someone was found guilty of animal cruelty, do you believe they should be banned from owning animals?".

was more common amongst older participants, whilst all ages only had a small proportion of 'no' responses (approximately 2.0% of each age range). Finally, animal owners responded more strongly (definitely yes 59.7%) than non-owners (definitely yes 46.6%), and non-owners had a high proportion of 'it depends' responses (owners 13.5%; non-owners 23.9%).

3.4.3 Sentencing outcomes

In total, 49.8% of participants believed the penalties handed down in court for animal cruelty offences needed to be harsher, whilst 27.2% believed that the sentence should depend on the individual circumstance of the case, 17.8% believed that the current sentences are appropriate, and 5.2% thought they were too harsh. Participants were informed that previous South Australian research has shown that on average 10% of the maximum penalties are used in court, which would equate to approximately a 4 month imprisonment sentence (Morton et al., 2018). Relationship between responses and demographic variables is shown in Table 3, where gender, age and animal ownership were found to be significant factors (p-value <0.000) and residential location had no significant relationship with response.

TABLE 1 Association between demographic variables and reporting confidence.

Variable	Kruskal-Wallis Value	Mann-Whitney U Value	df	p-Value (two-tailed)
Age group (n=2045)	10.610		5	0.060
Gender (n=2012)		527079.5	**	0.046
Location (n=1990)		344173.0	1	0.404
Animal ownership (n=2057)		372064.5	***	<0.001

Undisclosed responses were removed from the data, hence different n values between the variables; p-value <0.05. Kruskal-Wallis test was used as there were more than two categorical independent groups within age demographics, and Mann Whitney U tests were used for the remaining demographic variables as there were only two groups within each.

The significant associations between age (A), gender (B) and animal ownership (C) and responses toward sentencing outcomes are shown in Figure 8. A higher proportion of females believed that the penalties needed to be harsher (59.9%) in comparison to males (40.6%). There were no differences between the proportion of males and female who believed that the penalties were appropriate. However, a higher proportion of males believed that the penalties should depend on the individual circumstance (32.5%) in comparison to females (20.7%). Younger participants commonly believed penalties should be harsher in comparison to older participants. Whilst responses of 'it depends' were more common amongst older participants. There were minimal differences between the proportions of 'it's appropriate' responses. The 45-54 year age group had a higher proportion (8.6%) of 'too harsh' responses. Participants who owned animals responded more commonly with 'needs to be harsher' (54.9%) in comparison to non-owners (41.3%), and non-owners had a high proportion of 'it depends' responses (34.7%) in comparison to animal owners (22.5%).

4 Discussion

This study aimed to gain a more comprehensive understanding of the undisclosed, yet heavily referred to

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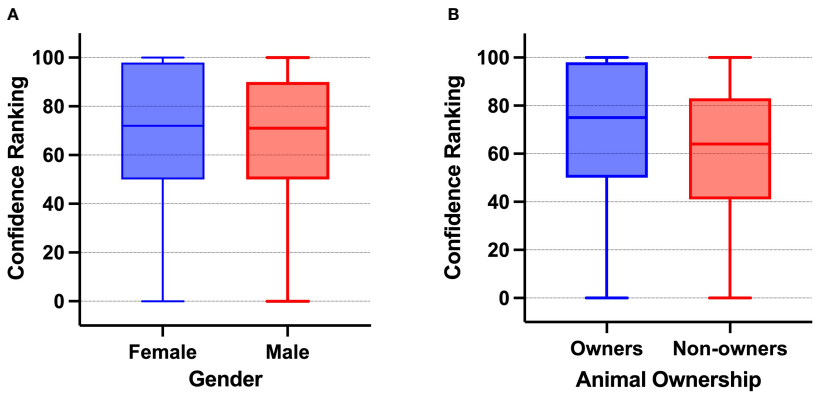

FIGURE 6
Box plots showing the significant relationship between reporting confidence and the demographic variables of gender **(A)** and animal ownership **(B)**; p-value < 0.05. "Do you feel confident that you know how and where to report animal cruelty?".

"community expectations" around animal welfare law objectives in Australia. In contrast to previous research, which suggests that the community view harsher penalties as favorable, our results suggest that the community favors increasing the number of prosecutions, rather than the magnitude of sentences. When considered with our other findings that there is some degree of trust in the legal system to make decisions on penalties and that there is strong support for prohibiting offenders found guilty of AWA offences from owning animals, the implications are that the Australian public care more about the prevention of animal cruelty through a strong enforcement model, rather than an inflexible punitive approach after cruelty has occurred. Thus, public opinion could be shifting towards a more proactive approach to animal welfare enforcement rather than a reactive, punitive approach to animal cruelty. The remainder of this paper will discuss these findings in line with previous research and provide further commentary about what these expectations could mean for the Australian animal welfare legal system specifically, and common law countries more generally.

TABLE 2 Association between demographic variables and opinion towards prosecution rates.

Variable	Pearsons Chi-square Value	df	p-Value
Age group (n=2045)	61.449	20	<0.001
Gender (n=2012)	55.250	4	<0.001
Location (n=1990)	12.313	4	0.015
Animal ownership (n=2057)	45.034	4	<0.001

Each variable was established to have a significant relationship with a desire for prosecution. Undisclosed responses were removed from the data, hence different n values between the variables; p-value <0.05.

4.1 Public supportive of judicial officers' decision-making around penalties

Much of our findings are in line with previous research identifying that the Australian public are supportive of harsher sentences for animal welfare offences. The previous survey of Taylor and Signal (2009) found that approximately 60% of respondents believed the current penalties for deliberate companion animal cruelty were not strong enough. However, there are some differences in design between the two studies, with Taylor and Signal (2009) not defining whether 'penalties' relate to the maximum penalties written in legislation or the penalties handed down for offences in court (as we have referred to as 'sentences'), which in practice are vastly different. In the federated Australian system, each state and territory has set differing maximum penalties for both duty of care breaches and deliberate cruelty. However focusing solely on deliberate animal cruelty the maximum ranges from 2 years in prison to 5 years (see Morton et al. (2021) for a detailed account of all custodial and monetary maximums in each Australia jurisdiction). However, the sentenced penalty is often significantly lower. Our previous research analyzing case sentences in South Australia has shown that on average 10% of the maximum penalties are being used in court (Morton et al., 2018). Furthermore, Taylor and Signal (2009)'s study specifically focused on companion animal cruelty, whilst ours remains more general. In our study, fifty percent of respondents believed that the current sentences for deliberate animal cruelty were not harsh enough. However, the 50% remainder then either believed that the current sentences handed down for offences were appropriate, or that they should depend on the circumstances of the case. This finding may reflect an appreciation for the complexity of sentencing and the nuanced

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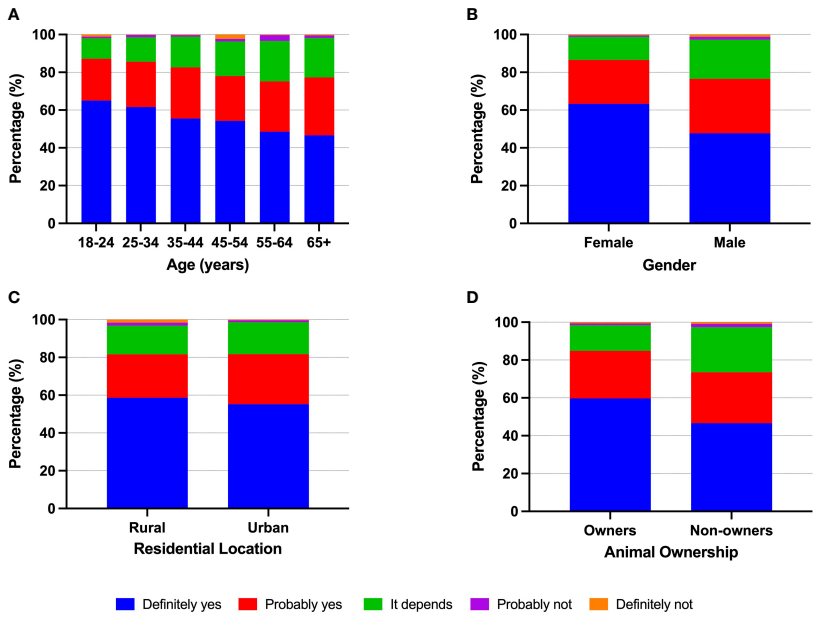

FIGURE 7
Percentages showing the significant relationship between opinion on prosecution rates and the demographic variables of age **(A)**, gender **(B)**, residential location **(C)** and animal ownership **(D)**; p-value < 0.05. "In your opinion do you think more animal welfare investigations should go to court?" based on a 0.6% prosecution rate from 2019/2020 financial year data.

approach applied by the courts. Paired with the finding that a higher proportion of our sample believed that the legal system should decide the outcome of the case, rather than having a direct preference towards punishment in the form of custodial sentences or monetary fines, this is suggestive that the Australian public have a level of trust in the criminal justice system around sentencing in this area of law.

Given the complexity of case sentencing (Markham, 2009), this purported trust in the legal system is likely favorable for society; as expressed by a New South Wales Magistrate:

"If the courts were to adopt a populist approach and seek to satisfy the community outrage as often whipped up by various arms of the media at the expense of doing justice, then the community as a whole suffer" (Schreiner, 2005).

However, this does make the common referral to reform being based on community expectations perplexing as this would suggest that the arms of government may be out of step with each other. Alternatively, there could be political reasons at play. Political science literature suggests that policy makers who fail to declare themselves tough on crime are taking big electoral risks (Hough, 2003), thus by publicly announcing that 'community expectations' are driving the AWAs increased punitive power, it creates popularity for parliamentarians and increases their chances of re-election. This potentially makes the AWA reform efforts largely 'symbolic gestures', rather than practical tools to increase sentences in court (Morton et al., 2021), and tends to direct blame towards the court system rather than the parliamentary process. In addition, policy makers are

TABLE 3 Association between demographic variables and opinion on sentences for deliberate animal cruelty.

Variable	Pearsons Chi-square Value	df	p-Value
Age group (n=2045)	63.626	15	<0.001
Gender (n=2012)	77.678	3	<0.001
Residential location (n=1990)	0.596	3	0.897
Animal ownership (n=2057)	48.213	3	<0.001

Age, gender and animal ownership were established to have significant relationship with a desire to increase sentences. Undisclosed responses were removed from the data, hence different n values between the variables; p-value <0.05.

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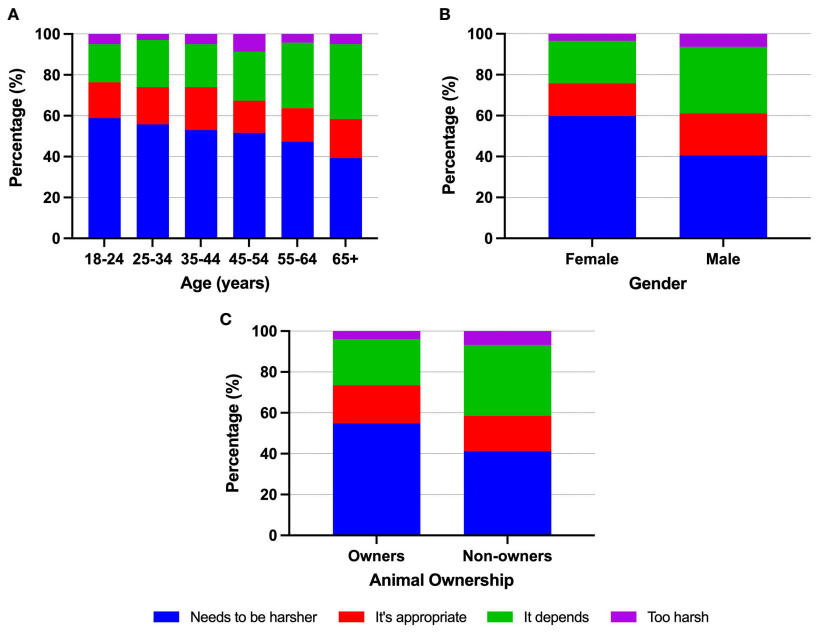

FIGURE 8
Response percentages showing the significant relationship between opinion on sentences for animal cruelty and the demographic variables of age **(A)**, gender **(B)** and animal ownership **(C)**; p-value < 0.05. "Previous research has shown that the average penalty for this type of offence [deliberate animal cruelty causing serious harm] is 4 months imprisonment; do you think this is appropriate and sufficient?".

more interested in generalized, aggregated trends in public preferences, rather than specific preferences relating to targeted policy areas (Stimson, 1999; Erikson et al., 2002; Stimson, 2004). In other words, policy makers are leading the public "in particulars by following [it] in general" (Stimson, 1999), likely meaning that specific 'community expectations' relating to animal welfare law are not driving the increases to AWA's maximum penalties, instead a generalized public desire toward greater punitiveness in law is being considered (Pickett, 2019).

Public criticism of fines and imprisonment sentences for criminal offences likely stems from a lack of understanding of the criminal justice system (Pickett et al., 2015), and the alternative forms of penalties available. In addition, access to information on sentencing, usually delivered by various sectors of the media, further consolidates public opinion that sentencing is too lenient (Hough, 2003). Consequently, this makes fines and imprisonment the easiest forms of punishment to envision by the public (Bernuz Beneitez and María, 2022), and criticize when unhappy with a court's determination. In reality, court determinations are driven by weighing of evidence, consideration of aggravating and mitigating factors, precedents, judicial discretion, as well as principles set through sentencing legislation. However, in the absence of such understanding, criminology literature has suggested that public opinion towards harsher penalties is unreliable (Cullen et al., 2000; Drakulich and Kirk, 2016) and stems from an overestimation of the lenience of the system (Frost, 2010), consequently creating the "myth of the punitive public" (Thielo et al., 2016). Further evidence being that when provided with accurate information about criminal punishment (through fact sheets, videos, or seminars) public support towards harsher penalties reduces (Hough and Park, 2002; Bohm and Vogel, 2004; Indermaur et al., 2012; Roberts et al., 2012). Unsurprisingly, the information on animal welfare law enforcement portrayed through the media is substantially negative and tends to focus on the worst cases of cruelty (Arluke et al., 2002; Hampton et al., 2020; Morton et al., 2022), painting a picture that cruelty is worse than it seems to the public, augmenting their need for greater punitiveness.

Support of greater punitiveness for animal cruelty specifically and criminal acts more generally is not exclusive to

Australia. For example support for prison sentences has also been observed in studies from the United States (Sims et al., 2007; Bailey et al., 2016). However, a recent Spanish study has challenged this widespread viewpoint by identifying that support for alternative forms of penalties was high. Bernuz Beneitez and María (2022) identified public support towards rehabilitative programs based on anger management was equally balanced against support for imprisonment sentences. This support for less punitive, alternative sentencing outcomes is gratifying given that previous commentators have suggested that fines and imprisonment are not the most effective way to rehabilitate animal cruelty offenders (Livingston, 2001; Sharman, 2002; Morton et al., 2018). Scholarly support for alternative penalties is derived from the knowledge that fines or imprisonment sentences meet very few of the punishment theory aspects, being deterrence, retribution, rehabilitation, restitution, and incapacitation (Escamilla-Castillo, 2010; Zaibert, 2012; Bregant et al., 2016; Sylvia, 2016). Ghasemi (2015) has suggested that the fundamentals of criminal acts should be considered by legal systems to apply strategies to "solve the problem" for the offender rather than just penalizing them. This way, the court determination could be more effective in reducing recidivism, which our findings indicate is highly regarded by the public, more so than harsher sentences. Proposed alternative penalties focus on the rehabilitative aspect of punishment theory and often include court-mandated counselling and non-violent-conflict resolution training (Sharman, 2002). As noted by Holoyda (2018), the type of counselling best suited for the treatment of animal cruelty is unknown as there are no models which have undergone any sort of study or peer review. However, consideration for alternative penalties is important for starting discussions and building traction in this area of law, especially considering any public support for less punitive outcomes (i.e., rehabilitation) may be overlooked by policy makers when generalized public perceptions are trending toward greater punitiveness (Shapiro, 2011; Lax and Phillips, 2012). This means that although public opinion may be shifting towards a more proactive, less punitive approach to animal welfare, policy makers will likely maintain a reactive punitive approach. Fortunately, there are means available to achieve this proactive approach which do not rely on policymakers' buy-in.

4.2 Achieving a proactive approach to animal welfare protection

Firstly, to achieve a proactive approach to animal welfare law enforcement a strong enforcement model is needed. Currently, the bulk of the enforcement burden in Australian jurisdictions is given to non-governmental organizations (NGOs), with some sharing of responsibility with government departments (Morton et al., 2020). Although this model differs strikingly from that of the general criminal law where individual government-funded agencies (i.e., state or federal police forces) carry the burden, this enforcement model for animal welfare law has an extensive history in Australia (Caulfield, 2008), as in many other countries like Canada (Coulter and Campbell, 2020; Coulter, 2022), United Kingdom (Hughes and Lawson, 2011), New Zealand (Rodriguez Ferrere et al., 2019) and most European countries outside of Scandinavia (Coulter and Fitzgerald, 2019). Furthermore, it has been recommended as the most appropriate model by parliamentary inquiries in the Australian states of Western Australia and Victoria (Easton et al., 2015; Comrie, 2016) (with the other states yet to have an inquiry into this matter). Whilst, select NGOs receive annual financial support from the relevant state or territory government to cover the costs of enforcement (Morton et al., 2020), there is speculation within the literature about whether the funding supplied is sufficient to enforce the legislation to its full capacity (Ellison, 2009; Duffield, 2013). It is important to acknowledge however that resourcing constraints are purely speculated, with a lack of information publicly available either to support or refute this claim.

Our findings indicate that the community believe the current prosecution rates to be too low, suggesting the enforcement model is not strong enough to meet the communities' expectations. One reason for low prosecution rates may be that there are insufficient resources to investigate and prosecute reported cases. Additionally, if there is a resource gap enforcement authorities will be persuaded to only take cases to court that 'are a sure win', for example where evidence is strong and substantial, as a way of saving resources by reducing the risk of adverse cost orders (Ellison, 2009; Duffield, 2013). This also precludes the bringing of test cases, exploring new areas of law, to court. As a result, statutory law reform remains the main way for animal law to progress and this process, requires a substantial level of support, is retrospective and often lengthy (Cook et al., 2009). As we have seen, these statutory reform efforts are the main vehicle to align what is happening in practice with community expectations. However, as Schreiner (2005) noted, the likelihood of creating any degree of alignment is improbable simply due to the retrospective nature of legislative reforms. Thus, the expansion of the common law through increased court caseload, could advance and expedite application of animal welfare law by creating incremental improvements to its interpretation in court. This may lead to faster alignment of practice with community expectations than waiting for the groundswell of support policy makers require for legislative reforms. If any criticism relating to resourcing holds merit, it could mean resources are a limiting factor for increasing the numbers of investigations resulting in prosecution. Therefore, funding allocations would require further consideration by

state governments in order to accurately align legislation to the community expectations. This makes the question posed by South Australian parliamentarian, the Honourable Mark Parnell in 2007 still valid 15 years later.

"What is the point of increasing penalties if we do not increase the resources that are used to investigate cases of animal cruelty?" (South Australian Legislative Council, 2007).

Alternately, there may be adequate resourcing and alternate reasons why prosecution rates are perceived to be low. Firstly, there is a suggestion that public belief of what constitutes good welfare may be higher than the AWAs threshold for an offence (Victorian Legislative Assembly Committee, 2017). This could lead to higher reporting of alleged animal cruelty with the cases having no substance. Rectification of this issue is likely best achieved through public education campaigns that not only focus on the identity of the relevant enforcement authority in each jurisdiction, but also make clear the types of incidents that may constitute a legal act of cruelty. However, as noted by Glanville et al. (2021) due to the complexity and diversity of community attitudes towards animal cruelty, education programs that have the greatest chance of success are likely those that directly target the relevant audience. These may be aimed at particular demographic groups. To date education programs in this area have tended to be generalized education campaigns delivered through mainstream information sources. Given the findings of a number of previous studies (Paul, 2000; Taylor and Signal, 2006a; Taylor and Signal, 2006b; Phillips et al., 2011; Phillips et al., 2012; Glanville et al., 2021), as well as the current study, which show that there are associations between community opinion and the demographic factors of gender and age, where females and younger adults tend to support harsher penalties and are most in favor of legislative change, these demographic groups may be a logical first focus when planning these education campaigns. Additionally, further improvements to address underreporting could include the mandated reporting by veterinary professionals of suspected cruelty whilst protecting them from liability if reporting in good faith. This has already been implemented in some Canadian provinces (Marion, 2015). This may be especially relevant to the Australian scenario given that there is suggestion that the Australian public already believe this to be the case (Acutt et al., 2015). On this note, Hanrahan and Chalmers (2020) have argued that animal welfare issues require a greater focus in the realm of social work services. They argue that the lack of service coordination and cross-sector reporting between social work agencies and animal welfare authorities fails to acknowledge the established link between interpersonal violence and animal cruelty (Walton-Moss et al., 2005; Volant et al., 2008; DeGue and DiLillo, 2009; Flynn, 2011; Febres et al., 2014; Levitt et al., 2016; Newberry, 2017; Macias-Mayo, 2018). Hence, as with mandated veterinary reporting there is the potential to mandate reporting for social workers, especially considering these professionals likely have greater insight into human-animal relations, and access into private homes, compared to the general public.

Secondly, there may be challenges in meeting the evidential burden to satisfy the court that the offence elements have been met. This may stem from less developed forensic technology for animals (Ledger and Mellor, 2018), the time taken to detect and initiate an investigation, or innate challenges with maintaining an evidence chain of custody where multiple animals may be involved (i.e., individual identification of animals to link with evidence of harm). Thirdly, there could be a deficit in the written law such that animal cruelty is occurring but has not advanced to the stage where a breach of an act provision has occurred. For example, the threshold of animal welfare offences often requires the animal to suffer before an offence is committed (Morton et al., 2021), which is in direct contradiction to the objective of the AWAs nationally since the legislation is not able to "promote animal welfare" (Australian Capital Territory Government, 2022; New South Wales Government, 2022; Northern Territory Government, 2022; Queensland Government, 2022; South Australian Government, 2022; Tasmanian Government, 2022; Victorian Government, 2022; Western Australian Government, 2022) if it requires evidence of harm. Previously we have suggested amending the wording for some offences to include "likely to cause harm" to provide options for intervention prior to the animal experiencing any degree of harm or suffering (Morton et al., 2021), which could bring the threshold of an offence closer to community expectations. In reality, all of these factors are likely to be contributors towards the attrition in numbers from cruelty report to prosecution, and thus the perception of low prosecution rates. This misalignment between community expectations and the current outcomes of the legal system has been referred to as an 'enforcement gap' in animal welfare law (Morton et al., 2020). This concept recognizes the many stakeholders involved in this process and how their interests need to be balanced against one another – the community being one key stakeholder. The way animal law enforcement is viewed by the community is affected by public understanding and attitudes (Ohl and van der Staay, 2012), meaning that further education on animal law enforcement and its limitations would likely aid in reducing the perception that greater punitive measures are needed (Hough and Park, 2002; Bohm and Vogel, 2004; Indermaur et al., 2012; Roberts et al., 2012).

5 Limitations

While our recruitment for this survey was representative, as it was also voluntary there is the potential for bias towards people who are more concerned about or engaged with animal-related issues. Being anonymous the risk of social desirability bias was reduced, as participants feel more comfortable responding truthfully instead of providing responses considered 'favorable'

when they know their responses will not be shared with others (Lai et al., 2021). Finally, due to the lack of research in this area, there is little empirical data against which comparisons can be drawn. Whilst we have taken the utmost care to provide informed assumptions based on previous research, parliamentary statements and history, our discussions on prosecution rates and resourcing limitations are only speculative and require validation. In addition, our methodological approach focused solely on public opinion, rather than the public's knowledge of animal welfare law enforcement. Whilst we provided the respondents with some basic information in order to gauge their opinions on adequacy of the law, the information provided was limited in scope and depth. This approach of assessing opinion rather than knowledge was taken since policymakers cite community opinions and perceptions in their discussion on legal reform in this area. However, we do acknowledge there is likely a connection between knowledge and opinion, as knowledge will likely guide and shape opinion (Erian and Phillips, 2017). Indeed, it is for this reason that we excluded legal and law enforcement professionals from recruitment. Further research is required to understand the depth of public knowledge on animal law enforcement, and the effect that increasing knowledge of the process has on opinions more generally.

6 Conclusions

The Australian public surveyed supported a move towards higher prosecution rates and use of prohibition orders, rather than punishment of offenders through harsher penalties. These findings could suggest that the public are shifting their stance on animal welfare law towards a more proactive, educative approach rather than a reactive, punitive focus. However, in order to increase investigation and/or prosecution rates, there is likely to be a need for extra resources. In addition, with a larger number of cases entering the court system there will be increased opportunities for common law to progress, and thus the availability of increased precedent around statutory interpretation on provisions will guide future decisions. Thus, although greater resources may be initially required to increase enforcement power, the improvements in common law may reduce the need for legislative reforms, which likely would reduce the resources required during parliamentary inquiries and debates. However, this approach requires further consideration with the use of current data on enforcement and prosecution statistics.

Data availability statement

The raw data supporting the conclusions of this article will be made available by the authors, without undue reservation.

Ethics statement

This studies involving human participants were reviewed and approved by the Human Research Ethics Committee of the University of Adelaide. The participants provided their written informed consent to participate in this study.

Author contributions

RM, AW, MH, and RA, conceptualization and methodology. RM and MH, formal analysis. RM, writing – original draft preparation. RM and AW, writing – review and editing. AW, MH, and RA, supervision. AW, funding acquisition. All authors contributed to the article and approved the submitted version.

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Conflict of interest

The authors declare that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

Publisher's note

Supplementary material

The Supplementary Material for this article can be found online at: https://www.frontiersin.org/articles/10.3389/fanim.2022.991042/full#supplementary-material

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Chapter 9: The Drivers of 'Community Expectations' Surrounding Punishment for Animal Welfare Offences: Findings from Online Focus Group Discussions

Contextual Statement

Although the previous chapter identified *what* the public expect of animal welfare law, there has been no studies aimed at understanding *why* the public have those expectations, especially in relation to punitive expectations. Given the complexity of public opinion it is essential to not only understand what community expectations surrounding punishment for animal welfare offences are, but why these opinions are held and what the drivers of them are. This chapter aimed to achieve this through conducting online focus group discussions on animal welfare law with a sample of the Australian public. The findings of this research allow us to gauge the alignment between animal welfare law reform efforts and community expectations and provides empirical data to better inform lawmakers into future. Hence, allowing public opinion to be accurately implemented into law reform efforts and consequentially reducing the enforcement gap by bringing the realities closer to the expectations.

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Overall percentage (%)	75%		
Certification:	This paper reports on original research I conducted during the period of my Higher Degree by Research candidature and is not subject to any obligations or contractual agreements with a third party that would constrain its inclusion in this thesis. I am the primary author of this paper.		
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By signing the Statement of Authorship, each author certifies that:

i. the candidate's stated contribution to the publication is accurate (as detailed above);
ii. permission is granted for the candidate in include the publication in the thesis; and
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The Drivers of 'Community Expectations' Surrounding Punishment for Animal Welfare Offences: Findings from Online Focus Group Discussions

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Abstract

The reason for reform to animal welfare legislation has commonly been attributed to increasing alignment with the 'communities' expectations. This suggests that the community has power in driving legislative change. Yet, despite this assertion there has been minimal research on the content and drivers of these 'expectations' in Australia. Whilst limited sociological research has identified *what* the public expect of animal welfare law, there has been no studies aimed at understanding *why* the public have those expectations, especially in relation to punitive expectations. Using online focus groups, this study investigated the influencers of participant opinions around animal welfare law enforcement to provide greater understanding of the drivers of these 'community expectations'. Using thematic analysis five drivers were identified: (1) the degree of animal suffering; (2) providing assistance over punishment; (3) media reporting; (4) how to deter offenders; and (5) the intention of the offender. It is proposed that the public instinctively take a highly punitive approach to sentencing for animal cruelty, but responses are modified through conscious reasoning when provided with information around the facts and circumstances of the case. Such findings could suggest that the public are not as punitive as legislators perceive when it comes to animal welfare law.

Keywords: animal welfare, animal cruelty, public opinion, animal law, penalties

Introduction

As a society, the public can have power to influence the direction and scope of animal welfare legislation as a result of their influence on legislators (Bernd, 2009). Historically, many Western countries have reported 'community expectations' or 'public concern' as being a major driver for legislative change, whereby the intention of law reform is to achieve closer alignment with public opinion. This is evident from recent animal law reform efforts in Australia (Geysen et al., 2010; Morton et al., 2018), the United States (MacArthur Clark et al., 2019; Mayer, 2002), the United Kingdom (Nurse, 2016), and several countries in the European Union (Bennett et al., 2002; Vecchio et al., 2020; Veissier et al., 2008). Essentially, this suggests that Western governments tend to legislate matters of animal welfare in the public interest, implying that lawmakers are considering public attitudes and opinions when making domestic legislative decisions (Erikson et al., 2002; Stimson, 1999; Stimson, 2004). However, as noted by Geysen et al. (2010), the nature of these 'community expectations' or 'public concerns' are often not disclosed by governments, making it difficult to determine whether law reform accurately reflects community opinion.

Previous sociological research suggests the public are largely supportive of harsher sentences for animal cruelty offences (Allen et al., 2002; Bailey et al., 2016; Sims et al., 2007; Taylor & Signal, 2009; Vollum et al., 2004). Given that many of the recent reform efforts to animal welfare legislation in Australia have increased the maximum penalties for offences (Morton et al., 2018), an assumption can be made that legislators are supposing that the community expects harsher penalties. However, the reality of public opinion is far more nuanced. In our

previous research surveying the Australian public (Morton et al. (2022a)), we identified that whilst there was support for harsher sentencing for animal welfare offences, there was greater support for increasing the rate of prosecution (i.e., having more cases enter the court system). Additionally, whilst we hypothesized that respondents would have a preference towards punitive sentences in the form of custody time or monetary fines, a majority of participants were willing to trust the courts in deciding appropriate sentences. Based on that survey's results, we proposed that the public are more supportive of a proactive, educative focus in regard to current offending, than the literature currently suggests for this area of law.

Further evidence in support of this is the idea that public criticism of fines and imprisonment stems from a lack of understanding of the criminal justice system (Pickett et al., 2015). Due to the lack of accessibility of animal cruelty cases (Cao, 2015), the major source of information on this type of offending available to the public is that delivered through the various sectors of the media (Marsh, 2014). Media reporting tends to urge the need for greater punitiveness (Arluke et al., 2002; Hampton et al., 2020; Hough, 2003; Morton et al., 2022b). Consequently, fines and imprisonment are the easiest recourses for the public to understand (Bernuz Beneitez & María, 2022), and to criticize. Studies have shown that when provided with factual, non-biased information about criminal punishment (through fact sheets, videos, or seminars) public support towards harsher penalties reduces (Bohm & Vogel, 2004; Hough & Park, 2002; Indermaur et al., 2012; Roberts et al., 2012). Hence, in the absence of a comprehensive understanding of the criminal law system, it is likely that public opinion is unreliable when it comes to punitiveness (Cullen et al., 2000; Drakulich & Kirk, 2016; Frost, 2010; Thielo et al., 2016).

Given the complexity of public opinion it is essential to not only understand what community expectations around punishment for animal welfare offences are, but also why these opinions are held and what the modifiers of them are. This study aimed to determine these opinions and modifiers by conducting online focus group discussions on animal welfare law with a sample of the Australian public. The findings of this research allow us to gauge the alignment between animal welfare law reform efforts and community expectations and will inform lawmakers into the future. Whilst grounded in animal welfare law, it is likely the findings from this study can be extrapolated to public opinion surrounding punishment for criminal law generally, given public support for greater punitiveness is common across criminal law (Pickett, 2019).

Materials and Methods

Ethical Statement

This research was approved by the Human Research Ethics Committee of the University of Adelaide (H-2022-017) and conducted in accordance with the provisions of the National Statement on Ethical Conduct in Human Research (National Health and Medical Research Council, Updated July 2018). All participants provided informed consent prior to entering the online focus group platform.

Research Design

This study forms the secondary part of our investigation into community expectations relating to animal welfare law enforcement. Previously we conducted a national survey of the Australian public to understand *what* the public expect of the enforcement system (Morton et al. (2022a)). We used the results of that survey to guide the design of this study. The current study was focussed on understanding *why* the Australian public have those expectations. The emphasis here was on the nature of people's beliefs rather than how many particular claims

were made. As a result, we were not seeking to establish any form of representativeness or statistical significance in this study (Bray & Ankeny, 2017; Hood, 2007).

The qualitative data used in this study were generated from an online asynchronous focus group. Whilst different from the traditional face-to-face focus group design, an online focus group draws on similar methodologies of data collection through focused discussions but utilizes computer mediated technology to mimic face-to-face interactions online (Lobe, 2017). Rather than providing a replacement for face-to-face methods, these online methods provide an alternative set of tools which come with their own advantages and limitations (Williams et al., 2012). Using an online platform allows recruitment to expand to locations which are geographically dispersed (Fox, 2017; Lobe, 2017). As a result, in this study we were able to involve participants from all states and territories in Australia akin to our prior survey (Morton et al., 2022a). Additionally, individuals are able to participate from the safety and comfort of their own computer (Dodds & Hess, 2021; Gaiser, 2008; Lijadi & van Schalkwyk, 2015), which avoids any health risks due to the COVID-19 pandemic and provides a level of anonymity that can encourage participants to be more forthright in their responses (Lobe, 2017; Stewart & Williams, 2005; Tidwell & Walther, 2002). However, these online methods do limit participation to only those individuals with access to a computer and internet. This study specifically used asynchronous focus groups, which are conducted over a longer period, often several days, in comparison to synchronous methods which are conducted in 'real time' (Fox, 2017). This method allows participants to engage with the discussions on their own schedules making them more convenient and inclusive (Williams et al., 2012).

Focus Group Protocol

The online focus group was developed on the platform provided by the research and recruitment company, McNair yellowSquares (Crows Nest, NSW). The platform structure was similar to an online discussion board or forum, where participants could post a new thread (i.e., new starting comment on the board) that allowed for follow up responses from other participants or facilitators, or alternatively post comments on existing threads. The focus groups were conducted over a three-day period (14 June 2022 to 16 June 2022), with participants being informed that they needed to complete all tasks across the three days and participate in the discussion for a minimum of 15 minutes per day. Tasks were structured as pre-set activities which involved participants either watching videos or reading scenarios and statistics relating to animal law enforcement in Australia (see supplementary files for the scenarios). Participants were prompted to provide their opinion on the pre-set activity with predetermined open-ended questions which automatically appeared when the task was completed. All participant responses were followed up by general lines of questioning manually made by the three facilitators engaged throughout the study. The online focus group forum was monitored continuously from 7am-7pm each day to ensure timely responses and maximize the amount of engagement from participants while they were active on the forum. On average each participant was actively engaged in the forum for a total of 115 minutes across the three days (approximately 38 minutes per day).

Participants

Participants were recruited from McNair yellowSquares' research panels. Individuals were randomly contacted via email to participate with stratification based on age, gender, cultural background, education and income. Email invitations were kept general without the inclusion of specific details regarding the content of the online focus group to avoid any self-selection

bias. For those that wished to participate, they were directed to the participant information sheet to provide their informed consent prior to entering the online forum.

A total of 35 individuals participated in the study, with 54.3% identifying as female and 45.7% as male. Participant age ranges were 18-34 years old (34.3%), 35-44 years old (17.1%), 45-54 years old (20.0%) and 55+ years old (28.36%). The majority of participants described their residential location as urban (94.3%), reported no dietary specifications for ethical reasons (88.6%) and lived with or owned an animal (60.0%). This study collected data across seven Australian states and territories, with 31.4% of responses from New South Wales, 17.1% from Western Australia, 17.1% from Victoria, 14.4% from South Australia, 11.4% from Queensland, 5.7% from Tasmania and 2.9% from Australian Capital Territory. No participants were from Northern Territory.

Data Analysis

A thematic analysis was performed following the methods of Braun and Clarke (2006). Transcripts from the online focus groups were imported into Nvivo 12 (QSR International Pty Ltd) for coding. Inductive coding was undertaken, where codes and themes were developed from the data content. We used the reflexive thematic analysis approach, which advocates against the use of measures of inter-rater reliability and other such coding practices as a measure of quality (Braun & Clarke, 2013). Hence, coding was performed by one coder (RM) in the absence of a codebook. Codes were then clustered into candidate themes to give some indication of their prevalence, and test their value in giving an overall account of the data (Braun & Clarke, 2012). A total of five themes were identified from the data.

Results

Five themes relating to the drivers of 'community expectations' surrounding punishment for animal welfare offences were generated from the thematic analysis: (1) the degree of suffering experienced by the animal; (2) providing assistance over punishment; (3) media reporting; (4) the need for greater deterrence; and (5) the intentions of the offender. The majority of the data were included in these five themes.

Theme 1: Degree of Suffering Experienced by the Animal

The first of these themes captured the way animal pain and suffering was used to emphasise the wrongfulness of animal cruelty and the need for a greater punitive response by the law. Animals were often viewed as sentient by our participants, through their articulation of animals having the ability to experience pain and suffering and interests in avoiding such experiences. Many participants made comments like the following:

> "All sentient beings feel pain and suffering and seek comfort and happiness. Why should humans be allowed to take that from any of them?" (Male, 60-64, vegetarian).

Due to animals' sentient abilities, many participants believed that higher degrees of animal suffering required a greater response from the criminal justice system. However, throughout this theme it was apparent that many participants attributed human characteristics and emotions to non-human animals when describing their sentience, a concept known as anthropomorphism (Taylor, 2011). Participants consistently used human characteristics to articulate what animal pain and suffering is, such as behaviours like crying or describing animals as their children, which suggests that our participants idea of 'animal sentience' is being driven by their individual experiences of human pain and suffering.

> "I imagine animals being in pain and being powerless to do anything about it. These animals will be crying from the pain and suffering they are in" (Female, 18-24, no ethical dietary choices).
>
> "How could you beat an animal when it's looking at you asking why?" (Male, 55-59, no ethical dietary choices).
>
> "Animals are just like humans but don't have a voice like we do. All animals should be treated the same as humans do. Some people can't have kids, so they have pets and treat them like their own kids instead" (Female, 45-49, vegan).

To further understand this idea that perceived animal suffering requires a greater legislative and punitive response, participants were asked to rank which species of animal they believed should be protected from suffering under animal welfare legislation. The responses were comparable to our previous findings from our survey (Morton et al., 2022a), where participants ranked companion animals, native animals and farm animals amongst the most deserving, while reptiles, amphibians, fish and cephalopods remain intermediate, and invertebrates were ranked as the least deserving. However, when asked to justify this ranking many of our participants found themselves in a moral dilemma, where they referred to their emotive connection to some species and the absence of such connection to others (often invertebrates) to justify their order ranking.

> "I mean the warm and fluffies certainly are more emotive than the scalies, slitheries and crawlies, but they're all creatures, so surely they all deserve fair treatment" (Female, 35-39, no ethical dietary choices).
>
> "I am really confronting with my belief and behaviour. I mean, if I considered animal cruelty for every single animal, why do I kill flies? Can I kill a fly and then go and report animal cruelty against a dog?"

> *Moderator: What do you think the difference is between a fly and a dog for you?*
>
> "I don't like flies. That is all. It's what concerns me from the beginning. It's subjective and complicated. The law should be law for all animals, but how do we measure what animals are 'important' enough to protect?" (Female, 35-39, no ethical dietary choices).

Thus, this emotive connection to specific species of animals often drove our participants to display an empathic response towards these animals' suffering, which was driven by anthropomorphic tendencies. Participants tended to consider the worst examples of animal cruelty, such as acts of physical violence (and mainly towards species where there was an emotive connection), when providing their opinions. This was a major driving factor for the 'community expectation' that a greater punitive response is required by the legal system, as displayed below:

> "These maximum penalties feel pretty weak. I believe they should bump the maximum penalty for deliberate cruelty up to 10 years at least. To think that someone could perpetrate the most wicked act of cruelty on an animal and only get 2 years imprisonment in some states is unthinkable to me. Deliberate cruelty is just that, deliberate. People found guilty of it shouldn't be given a slap on the wrist (which I find a 2-year maximum sentence to be), they should be locked up for a long time" (Male, 18-24, no ethical dietary choices).

Theme 2: Providing Assistance over Punishment

Interestingly, a large number of responses challenged the previous theme by suggesting that sentencing should help the offenders and the system should take a greater educative and less punitive approach to reduce the incidence of animal cruelty. The extracts found in theme two were often derived from scenario-based exercises, where participants were asked to provide

their opinions about punishment after they read through two common examples of offences: (1) a 'basic' offence/duty of care breach, and (2) an 'aggravated' offence/deliberate act (Morton et al., 2021). Scenario (1) involved a dog suffering from a large tumorous mass growing from its ear, which the owner was aware of but failed to take the animal to the vet due to a lack of funds. Scenario (2) focused on the same species of animal (dog), but instead the dog was healthy and destroyed the owner's couch, which caused the owner to act out of rage and repeatedly kick the dog until it could no longer walk (see supplementary files for the specific scenarios used). A belief that sentencing should help the offender was consistently observed from both scenarios. It was apparent from participants' responses that they were considering the offender's perspective in these scenarios and balancing that against the degree of animal suffering that they perceived to have occurred. The provision of scenarios limits the respondent's ability to envision the worst-case scenario, providing some evidence that this desire for greater punitiveness can be challenged through providing further information about the circumstances of cases which allows consideration of the human element. The most common response expressed from scenario (1) was to give the offender a warning and educate them on appropriate animal care, followed by placing the owner on a prohibition order to prevent them from owning animals in the future. Not a single participant suggested imprisonment as a viable penal option for this cruelty example. Statements like the following captured the approach most participants took when explaining their choice:

> "If they genuinely cannot afford the vet bill, a fine may cause more financial distress. Hopefully re-educating the owner will show them the appropriate way to care for their animals" (Male, 60-64, no ethical dietary choices).

The most common response for scenario (2) was to sentence the offender to court-mandated counselling for anger management, while imprisonment was the second common response. Most participants expressed the following opinion:

> "We hear a lot in the media now about people that are in court who committed a crime while suffering a mental health condition. It is not an excuse for the animal cruelty displayed by this owner but finding the root of the problem (anger issues) and addressing it, the owner will be able to contribute better to society and earn back the right to own a dog again in the future. If the owner was just to get a fine, no strategies will have been put in place to prevent the owner from displaying this behaviour again in the future" (Female, 18-24, no ethical dietary choices).

Another common sentiment expressed during the scenario-based questions was a degree of compassion shown by our participants towards the offender. This was often observed during the scenario (1) exercise, as many participants found the financial struggles relatable.

> "I can empathise with a tough financial decision. It's a bad situation but from the details provided, I don't think the owner deserves to be jailed for something like this" (Male, 24-29, no ethical dietary choices).
>
> "I can understand this situation because vets are extremely expensive" (Female, 24-29, Australia, no ethical dietary choices).
>
> "I feel for [the owner] for not being able to afford the vet" (Female, 55-59, no ethical dietary choices).

Furthermore, when asked if their opinions would change if the animal had died from the tumorous growth, most participants said no as the owner's financial struggles did not mean they intended to cause harm to the animal, suggesting the element of intent was important for our participants' decision-making process (intent element is further discussed in theme five).

Finally, a sentiment which was expressed throughout the entirety of the focus group discussion was the need to educate people on appropriate animal care. Many participants suggested that

education could improve many aspects of the animal welfare law enforcement process. Education was considered valuable in preventing owners from making mistakes during their animal ownership which can cause animal cruelty:

> "I think that there is not enough education readily accessible on how to properly care for animals. For most people, it would be common sense, but not everyone has had experience in looking after animals. This would help prevent many animals from having to go through suffering and an inspector having to come out for something that could have been prevented with the right education in the first place" (Female, 18-24, no ethical dietary choices).

Additionally, education was noted to increasing public awareness about industries that can result in improvements to animal welfare laws:

> "I also think societally there are lots of things that could verge on animal cruelty that we just don't think about - I never considered cruelty in the racing industry until I owned a rescue greyhound, so I think that more education would lead to greater public interest and therefore better laws" (Female, 35-39, no ethical dietary choices).

Theme 3: Media Reporting

The third theme related to participants' reliance on the media for information on animal welfare law enforcement in Australia. Many referred to forms of mass media (news reports) and social media as their sources of information.

> "I see some articles in the local paper which disturbs me and have a friend on Facebook that has a farm, and she complains about the treatment of some horses at the next-door property" (Male, 55-59, Australian, no ethical dietary choices).

Additionally, some participants referred to a lack of information on animal welfare law in the media, which they interpreted as the laws working in the background and not being

'newsworthy', or alternatively they are not being enforced at all meaning there is no news to report. There was also the assertion that only the more serious cases of animal cruelty are likely to be reported by the media, suggesting that the public are only using the most serious cases to build their opinions on.

> "We don't hear very much about it in the media so either the laws are working, or people are getting away with it" (Male, 40-44, no ethical dietary choices).
>
> "I feel like there's more that can be done around animal welfare, and I think we don't hear about it often enough probably because it's not a high priority or interest area to be reporting on by the media" (Female, 18-24, no ethical dietary choices).
>
> "When they are more serious cases, they are more likely to get a mention on the news" (Female, 18-24, no ethical dietary choices).

Participants also suggested that the media should use their influence to educate the public on animal welfare laws and animal care, with one participant suggesting the 'good stories' should be reported where owners were educated about their alleged misconduct and rectified the situation without requiring court intervention.

> "A social media saturation would really help educate" (Female, 55-59, no ethical dietary choices).
>
> "Also, instead of just the bad stories, can we get the good stories like when people have been made aware of things that might not be best and have complied and made changes or the companies that do practice good animal welfare" (Male, 40-44, no ethical dietary choices).

Theme 4: The Need for Greater Deterrence

This theme implied that the participants believed that the sentences handed down in court and the maximum penalties written into legislation would not deter people from committing offences. Many participants stated that the current penalties are too weak and need to be harsher to achieve this deterrence factor. This deterrence factor is therefore a likely major driver for the public's desire for harsher penalties.

> "I think the laws could be harsher, I feel the penalty does not deter people from re-offending. How are these perpetrators going to learn they can't do these horrendous things if they are only getting a slap on the wrist or a measly fine. It's just not enough" (Female, 65+, no ethical dietary choices).

Participants repeatedly referred to the risk of reoffending when discussing the need for greater deterrence, making assertions that repeat offending is a reoccurring issue within animal welfare law enforcement.

> "With these figures [referring to the maximum penalties] it is no wonder repeat offenders continue with their cruel treatment of animals, surely a harsher deterrent would prevent some from reoffending" (Male, 60-64, no ethical dietary choices).
>
> "They performed an intentional bad act on a dog, so they would probably do it again" (Male, 25-29, no ethical dietary choices).

Some participants questioned the effectiveness of penalties as a general deterrent to offending based on a perception that most people are likely unaware of what they are:

> "I also think that people committing these crimes are not actively looking at what the punishment would be, so I don't feel like this is much of a deterrent for them" (Female, 25-29, no ethical dietary choices).

Considering none of the participants were previously aware of the current maximum penalties for animal welfare offences, it is very likely that the majority of the community are similarly unaware, and hence like statement above suggested, it is likely the maximums are playing a very minor deterrent effect. Regardless of the effectiveness of deterrence in reducing offending, it appeared to be a significant influencer of opinions around penalties for animal cruelty, as referral to it was observed during any discussion around penalties.

Theme 5: The Intentions of the Offender

The final theme captured the participants' views on offender intention when making judgements about the severity of the offence. In scenarios where the offender deliberately or intentionally inflicted pain or suffering on an animal, a harsher punishment was needed for two reasons. One reason was the previously discussed association between intentional acts and risk of reoffending; that is those who intend to cause harm will likely reoffend in the future. Secondly, acting with malice suggested to our participants that the offence was more severe and hence required a greater punitive response to ensure the offender was held accountable for their actions.

> "They intentionally hurt and punished the dog multiple times and had no regards to the injuries that were caused. This to me seems liable for a proper sentencing, the owner needs to be held accountable and fully understand the repercussions for their actions" (Female, 25-29, no ethical dietary choices).

Furthermore, the absence of intent led the participants to infer that the offence was less serious, with the offender being at a lower risk of reoffending. This could be resolved with less punitive action.

> "It wasn't malicious so it shouldn't happen again" (Male, 25-29, no ethical dietary choices).

This sentiment was observed even during discussions of animals dying due to non-intentional pain and suffering inflicted by an offender, suggesting that the perceived intent may have a stronger influence on 'community expectations' than the perceived animal suffering discussed in theme one.

Discussion

This study formed part of our research aimed at gaining a more comprehensive understanding of the undisclosed, yet heavily referred to 'community expectations' around animal welfare law objectives in Australia. Our previous research (Morton et al., 2022a) identified *what* the public expects of the animal law enforcement system, whilst this study was aimed at understanding *why* the public have those expectations through identifying the drivers or influencers of their expectations. By applying a thematic analysis to online focus group discussions, we have identified five drivers of public opinion relating to punishment for animal welfare offences in Australia. These drivers as captured by the following themes: (1) the degree of animal suffering; (2) providing assistance over punishment; (3) media reporting; (4) the role of deterrence; and (5) the intention of the offender. The remainder of this paper will discuss how the public decide what is an appropriate sentence for animal cruelty, and how that opinion can be challenged by conscious reasoning when provided with information around the facts and circumstances of the case. We then discuss the role the media plays in influencing public opinion on this form of law enforcement.

Public Intuition Surrounding Sentencing Severity

The discussions showed that when making judgements around acceptable sentencing participants commonly considered two main factors. These factors are the perceived degree of suffering to the animal (theme one), and the perceived intention of the offender (theme five). It was generally viewed that offenders who intended to cause serious suffering to animals required an increased punitive response. This approach is similar to that embodied in the legislation. Animal welfare offences are often divided into 'aggravated' or 'basic' offences (Morton et al., 2021), with higher maximum penalties being available to the courts for the aggravated offence where serious harm is caused to an animal, and the offender's conduct is intentional or reckless (Morton et al., 2021; Morton et al., 2018). This inclusion of aggravation in animal welfare offences recognizes that some acts have a greater degree of culpability and hence the offender poses a greater danger to society. As a result, a greater penalty is attached to these offences (Roberts, 2011). It is likely that the public are considering that those who commit these aggravated offences are more culpable, hence more likely to reoffend and require a harsh sentence to deter them from reoffending (theme 4). However, this is where the similarity between public opinion and criminal punishment begins to divert. Whilst deterrence is a factor of the theory which underpins criminal punishment (Bregant et al., 2016; Escamilla-Castillo, 2010; Sylvia, 2016; Zaibert, 2012), it is not the only factor the courts use to justify an increased punitive response. Court determinations are balanced against numerous factors such as weighing of evidence (which often includes considering the degree of suffering experienced by the animal), consideration of aggravating (such as intent) and mitigating factors, prior court determinations, guidelines set by sentencing legislation and the judiciary applying their own discretion. The decided sentence should consider all aspects of the underpinning facets of criminal punishment, with deterrence being only one factor, and the remainder being retribution, rehabilitation, restitution, and incapacitation (Bregant et al., 2016; Escamilla-Castillo, 2010; Sylvia, 2016; Zaibert, 2012).

Additionally, the theory of deterrence is not without complications. Deterrence is dependent on potential offenders having knowledge of the maximum penalties written in legislation (Paternoster, 2010; Roberts, 2003), which is unlikely, given the majority of our participants were not aware of the magnitude of penalties, nor the means of finding such information prior to their participation in the study. Furthermore, deterrence theory requires a degree of reasonableness to be exercised by the potential offenders, that is they must conduct a cost-benefit analysis (Paternoster, 2010), where they weigh the cost of the punishment against the benefits (to them) of animal cruelty. Considering many animal cruelty offenders are those who suffer from mental illnesses (Lockwood, 2018) or react acutely to emotional responses such as anger or revenge (Arluke & Irvine, 2017), it is unlikely that any reasonable cost-benefit analyses are being undertaken. Additionally, even if these conditions are met, penalties must be certain, swift, and severe for deterrence to have any general effect (Paternoster, 2010; Roberts, 2003). As Roberts (2003) discusses regarding criminal law generally, certainty and swiftness is difficult to achieve due to low rates of prosecution and the slow pace of criminal proceedings, yet severity is easily achieved by a stroke of the legislative pen – i.e., increases to maximum penalties. Hence, this public desire for greater deterrence could be driving legislators to increase the penalties for animal cruelty offences as a display of being "tough on crime" (Morgan, 2002; Sankoff, 2005), as legislators who fail to make such declarations regarding criminal law generally often reduce their chances of re-election by public vote (Hough, 2003). This is known as 'penal populism', which Roberts et al. (2002) defines as "allowing the electoral advantage of a policy to take precedence over its penal effectiveness" (p. 5). This might imply that the penal increases in animal welfare law are largely 'symbolic gestures', rather than being aimed at causing practical effect whereby sentences are increased in court (Morton et al., 2021). This also lends to the view that the arms of government may be out of

step with each other, as legislators are increasing the maximum penalties at a rate the courts cannot match in sentencing. As a result of all these factors, deterrence through means of punishment is unlikely to be successful in reducing cases of animal cruelty.

An alternative approach to reduce offending that has been identified, is to capitalise on the fear of enforcement (Paternoster, 2010). This was also a consideration that came to light in our previous survey where participants suggested the rate of prosecution was more important to them than the severity of the punishment (Morton et al., 2022a). To address this, a legislative focus away from penalties towards resourcing of enforcement agencies would be needed since there is currently speculation that the current resourcing is not enough (Duffield, 2013; Ellison, 2009).

Challenging Public Intuition with Circumstantial Information

Throughout the study, we observed a shift in opinion away from greater punitiveness when our participants were given information around the facts and circumstances of the case, and the alternative sentencing options available. This shift was captured by theme two (providing assistance over punishment), as our participants would consistently favour the more rehabilitative approaches to sentencing (court-mandated counselling, education), rather than the common punitive options (custodial sentences, monetary fines). This shift in opinion has been observed previously in qualitative research into criminal penalties internationally (Roberts, 2002). Individuals who are provided with additional information about criminal punishment are more likely to favour the less punitive alternatives than those who are provided with no information (Bohm & Vogel, 2004; Gainey & Payne, 2003; Hough & Park, 2002; Indermaur et al., 2012; Roberts et al., 2012; Sims & Johnston, 2004). The common reasoning for this shift expressed by our participants was that they felt punishment should help the

offender to reduce the risk of recidivism, which is a sentiment similarly expressed in the literature (Ghasemi, 2015; Livingston, 2001; Morton et al., 2018; Sharman, 2002). Yet, despite this global public support for less punitive, more rehabilitative sentencing alternatives (Baker et al., 2015; Kury et al., 2003; Maruna & King, 2008; Roberts, 2002; Sims & Johnston, 2004), knowledge on these alternatives is poor (Roberts, 2002), and as Freiberg (2002) noted, in order to achieve widespread public acceptance for these rehabilitative penal options, public knowledge of their existence is required. Additionally, even if the public are not as punitive as legislators believe (Sims & Johnston, 2004), it has been suggested that public officials find it difficult to choose between supporting rehabilitative alternatives and harsher penalties (Kury et al., 2003), which is likely linked to the political reasons discussed above, that it is an electoral risk if politicians are not seen to be tough on crime (Hough, 2003).

It is abundantly clear that there are a substantial number of misperceptions on both ends of the spectrum – the public and the legislators. As Roberts (1992) discussed in his review over 30 decades ago, it is equally important to dispel not only the misperceptions the public holds towards crime, but also dispel the misperceptions legislators have towards public opinion. It would appear the legislators are mostly driven by political reasons when making legislative change to animal welfare laws, by deferring to 'community expectations' but never truly consulting them (Maruna & King, 2008). Likewise, it is unlikely legislators will even consider public opinion regarding alternative penalties without widespread public acceptance, which requires public knowledge (Freiberg, 2002).

The Influence of the Media

Many of our participants claimed that they relied on the media as their primary source of information on animal welfare law (theme three). Consequently, the various avenues of the

media are likely a good place to start when considering how to inform the public around animal welfare law. A New South Wales Magistrate once stated regarding sentencing for animal cruelty matters "public confidence in the system of justice administered by the courts is vital to society and is enhanced by informed public debate. This requires responsible media" (Schreiner, 22 February 2005). The media has a substantial influence on public knowledge towards crimes, as people often see crime and its development not from their own individual experiences, but rather through the eyes of the media (Kury et al., 2003). Considering the majority of the public have little experience with crimes of animal cruelty (Grugan, 2019), they will rely heavily on what is disseminated through the media to build their opinions on. This can be problematic due the selective reporting of the media, since it has been shown that focus tends to be on heinous crimes painting a picture that is grossly distorted (Arluke et al., 2002; Beckett & Sasson, 2004). A relationship between the news media and public opinion toward penalties for animal cruelty offences has been proposed. This has been described as the 'penal reform cycle' (Morton et al., 2022b). The cycle posits that the media report on increases to maximum penalties set in law whilst also reporting instances of supposed 'lenient' sentencing, which causes public opinion to cycle between believing the laws are improving and the penalties are failing (Morton et al., 2022b). If true, this likely serves only to encourage public confusion around animal cruelty sentencing and fails to provide education around the principles of criminal punishment and the range of alternative sentencing strategies available.

If the influencing power of the media can be harnessed, the potential for using this as a way of informing and educating the public on animal law penalties is substantial. Whilst a call for more balanced news reporting has been made (Kury et al., 2003), achieving this is challenging since the news media is driven by the necessity to capture public interest (McCombs, 2014), which is most easily done through report of heinous cases. Conversely, the various arms of the

media can be used to disseminate widespread education campaigns from governmental agencies or non-governmental animal welfare organisations. Such education campaigns should surround penalties, particularly focusing on how the sentencing court considers and hands down penalties for individual offenders as well as the typical distribution of both types of offences – 'aggravated' cruelty and 'basic' duty of care breaches.

Limitations

Although the recruitment for this study was randomized, it was also voluntary, hence there is the potential for bias towards people who are more concerned about or engaged with animal-related issues. Being online meant participation was only limited to those who had access to a computer and internet over the three-days of the discussion group. However, the online method also allowed for a greater level of anonymity in comparison to traditional face-to-face focus groups (Lobe, 2017; Stewart & Williams, 2005; Tidwell & Walther, 2002), which reduced the risk of social desirability bias as participants feel they can be more forthright in their responses rather than providing the 'favourable' responses (Lai et al., 2021). Finally, our methodological approach was focused on understanding participant opinions, rather than their knowledge of animal welfare law. Whilst the participants were provided with some basic information to gauge their opinions, the information was limited in scope and depth. This was an intentional design choice as legislators refer to public opinion and perceptions, rather than knowledge, during their discussions on animal welfare law reform. However, there is a likely connection between knowledge and opinion, as knowledge will likely guide and shape opinion (Erian & Phillips, 2017). It is for this reason that we excluded legal and law enforcement professionals from recruitment. Further research is required to understand the depth of public knowledge on animal law enforcement, and the effect that increasing knowledge of the process has on opinions more generally.

Conclusion

This paper outlines the intuitive approach the public could take when deciding what is an appropriate sentence for animal welfare offences. It is proposed that the public instinctively take a highly punitive approach to sentencing for animal cruelty, however, opinions become less punitive when provided with information around the facts and circumstances of the case. This could suggest that the Australian public are not as punitive as legislators believe when it comes to animal welfare law. However, there is a need to establish the level of knowledge the Australia public have regarding these less punitive and more rehabilitative alternatives to sentencing for animal cruelty they appear to be in support of.

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Chapter 10: General Discussion

Understanding the Potential Contributors of the 'Enforcement Gap'

Animal cruelty is an emotive and complex issue which affects animals on an international scale. Whilst public concern for animal welfare has increased over the last decade, the role of law in the prevention of animal cruelty and promotion of animal welfare has been questioned. A number of shortcomings relating to the operation of Animal Welfare Acts ('AWA') have been purported, from issues with the legislation, the enforcement of the legislation and its penalties, to public opinion regarding matters of animal welfare law. Through collating the available literature, this thesis has discussed the presence of an 'enforcement gap' within the Australian animal welfare law context. The 'enforcement gap' is a phenomenon that seeks to explain why many well-intended laws appear to fail, in that the enforcement outcomes fail to align with the expectations or intentions derived from written law. Chapter 2 hypothesised that the enforcement gap is likely created due a range of factors derived from all stages of the enforcement process, from the legislation to public opinion. However, as noted in the chapter there is a dearth of empirical data available on the contributors of this gap. Thus, without understanding the potential contributors of the gap, solutions to reducing the gap cannot be suggested. Hence, this thesis aimed to understand the potential contributors of the 'enforcement gap' within the Australian animal welfare law context. As this research is grounded in a common law country, it has the ability to be extrapolated to other common law countries. Thus, this thesis provides a framework of addressing the shortcomings in animal welfare law internationally.

It should be noted that the potential causes of the enforcement gap are not exclusive to those mentioned in this thesis and I recognise the difficulties in establishing cause-and-effect in this research, as the evidence is grounded in 'real world' data that is influenced by a range of uncontrollable and unknown factors. However, the chapters are intended to provide an

indication as to which aspects of animal welfare law enforcement could be contributing to the enforcement gap, to guide future research in developing solutions to reduce the gap.

Legislation

Given animal welfare law enforcement is dictated by the provisions written in legislation, this thesis began its investigation through a comprehensive legislative comparison undertaken in Chapters 3 and 4. Whilst Chapter 3 focuses on the primary legislation in the form of statutes, Chapter 4 focuses on subordinate legislation or secondary legislation in the forms of regulations and codes of practices. Considering animal welfare is legislated at the state and territory level in Australia, Chapter 3 collates all statutes which include provisions for animal welfare protection in Australia and compares the cross-jurisdictional differences between the states and territories. It has been suggested that inconsistencies exist between the state and territory statutes, and that a uniform approach to legislating animal welfare protection would be beneficial in reducing the enforcement gap. However, I showed in Chapter 3 that animal protection laws are generally consistent between each Australian jurisdiction and were found to have similar shortcomings, which likely do not require a federal uniform approach to rectify. Thus, the state-based approach to animal welfare primary legislation is unlikely a major contributor of the enforcement gap.

Chapter 4 is intended to be complementary to Chapter 3, by collating the subordinate legislation to provide a more comprehensive understanding of animal welfare laws in Australia, as primary and secondary legislation work as one body of law to form the animal welfare legislative framework. Subordinate animal welfare legislations are lower ranking as they are given power under the jurisdiction's specific AWA, however, in a similar vein to animal welfare statutes, subordinate laws often come under scrutiny for their contribution to the

inconsistent and contradictory framework of animal welfare legislation. Through similar methodologies, Chapter 4 compared the regulations and codes of practices enabled by the state and territory based AWAs and identified substantial differences between the subordinate laws adopted in each jurisdiction. However, it is likely these differences are a reflection of the geographic and demographic variation across the Australian states and territories, and any shortcoming can be addressed and managed through mechanisms of national data collection rather than a uniform approach.

Thus, the legislation component of the 'enforcement gap' is unlikely to be a major contributor. Although both chapters did identify issues within the legislation, such as a lack of consistent definition of an 'animal' (Chapter 3) and relying on versions of codes of practice that are decades old (Chapter 4), these issues do not require an overhaul of the entire legislative framework pertaining to animal welfare, as the uniformity hypothesis suggested. The shortcomings noted in Chapters 3 and 4 are isolated issues within the legislative framework and can be targeted without requiring large scale reform efforts. The legislative framework is not without flaws; however, it is unlikely such flaws are setting unrealistic goals for animal welfare enforcement. Hence, making it an unlikely contributor to the enforcement gap, as the 'gap' comprises the misalignment between the goals or intentions of the law and the outcomes of the enforcement process.

Enforcement

Shifting the focus to the other side of the enforcement gap, Chapter 5 focused on the outcomes of the enforcement process by investigating the average penalties sentenced before and after parliament increased the maximum penalties for animal welfare offences. It is argued that this commitment to increased penalties provides evidence of the legislature's intent, in that the

changes intended to increase sentencing outcomes to reflect public concern. I showed in this chapter that whilst the average sentences have doubled in magnitude since the increases, when comparing sentences as a percentage of the maximum penalty no changes were observed, with both groups using less than 10% of the maximum penalties available. This finding provides evidence that the legislative intent behind the increased penalties is not being reflected in court decisions around sentencing. Thus, pushing the outcomes of the enforcement process further away from the intentions of the written law, making this aspect of the enforcement component appear to be a contributor to the enforcement gap.

However, as Markham (2009) noted, due to the complexity of case sentencing, it is almost impossible to quantify sentencing data to display the absolute truth. There is no calculation or strict mathematical formula for handing down penalties, there is judicial input, as well as defendant mitigating or aggravating factors that the court will consider in line with the guidelines outlined in sentencing legislation. These principles dictate that the publicly favoured custodial sentences only be handed down as a last resort. Prima facie, sentencing for animal welfare offences appears to contribute to the enforcement gap, however due to the realities of the sentencing process, large penal increases are likely not possible. Therefore, creating any form of alignment between the legislative intent behind penal increases and the outcomes of the enforcement process is a near impossible task, suggesting the law reform efforts to increase penalties are simply 'symbolic gestures' to appease public opinion surrounding support for harsher penalties, rather than practical tools in increase the sentences handed down in court.

Public Opinion

Unlike the legislation and enforcement aspects investigated in this thesis, the public opinion component was found to be a likely contributor of the enforcement gap. Animal welfare laws

are essentially public interest laws, as animal welfare law reform efforts have commonly been attributed to addressing the 'community expectations'. Hence, the public has power to drive legislative change to animal welfare laws. Chapters 6 and 7 both established that the news media and social media are likely influencing public opinion through the way in which animal welfare law enforcement is portrayed to the public. This is especially so given that the information disseminated through the various channels of the media are the major primary source of information the public has on animal welfare law enforcement. In both chapters I established that the information dispersed through the media and discussed on social media is likely having a negative impact on community perceptions around animal welfare law. Hence, causing the public to build unrealistic punitive opinions through only sharing the worst examples of animal cruelty and cycling news media reports through the 'penalty reform cycle' proposed in Chapter 6. The influential role of the media was confirmed in Chapter 9, as one of the drivers of public opinion was established to be the media. Thus, confirming that the media is a likely contributor to the enforcement gap through elevating public expectations around penalties to a level that is unobtainable currently within the legal system.

Finally, in Chapters 8 and 9 I investigated the nature of 'community expectations' which Australian lawmakers repeatedly reference as a driver of animal welfare law reform efforts. To dates, there has been no information publicly available disclosing the nature of these commonly cited 'expectations', hence these final two chapters investigated *what* the public expect (Chapter 8) and *why* they hold those expectations (Chapter 9). Both chapters identified a shift in public opinion from the commonly cited support for harsher sentences to a more proactive approach through enhancing the strength of the current enforcement model. Suggesting that in order to bring the realities of the enforcement outcomes closer to the expectations or intentions of the law, legislators should focus on improving the enforcement model rather than increasing

the penalties for offences. However, this shift in public opinion was identified only when participants were provided with information around the facts and circumstances of the case, which suggests that public knowledge surrounding animal welfare law enforcement is also required to reduce the enforcement gap.

Future Directions Towards Reducing the 'Enforcement Gap'

The aim of this thesis was to identify the potential contributors of the enforcement gap to guide future research into reducing the enforcement gap to bring the realities of law enforcement closer to the intentions or expectations of the law. Based on the findings from the chapters, future research should focus on improving the current enforcement model and establishing the most effective form of public education to increase public knowledge and understanding surrounding animal welfare law enforcement specifically and animal care generally.

Improving the Enforcement Model

A component of the enforcement process that was not investigated in this thesis is the resourcing available to the enforcement agencies to enforce the AWAs. It has been speculated that the current resourcing to NGOs is not enough (Duffield, 2013; Ellison, 2009). Considering this thesis found that the Australian public are more in favour of preventing animal cruelty through a stronger enforcement model rather than punishing animal cruelty offenders through harsher sentences, this is likely an area that requires further consideration. Additionally, a stronger enforcement model would likely result in a greater fear of enforcement which would satisfy the deterrence factor Chapter 9 found was a driver of public opinion surrounding punishment for animal welfare offences. Furthermore, greater enforcement would also increase the case load entering the court system, which would allow the law to progress through incremental improvements in precedents (as more cases results in more precedents that

persuade the decisions of future cases) rather than relying on statutory reforms which require extensive amounts of time and support.

International enforcement models could be a place to start when considering improvements. For example, it was reported that the Canadian province of Ontario has removed NGO enforcement of animal welfare legislation, after concerns over charitable dollars subsidising a government function (Coulter, 2019). Coulter (2019) suggested that Ontario should consider a strategic combination of a government agency for enforcement and NGOs for animal care. This partnership model has been successfully implemented in New York City, where police forces and NGOs work symbiotically, with police officers trained for animal cruelty investigations and the NGOs providing supportive animal care (Coulter, 2019). Such an approach could be feasible within the Australian context, especially considering Chapter 8 found the public were in support of establishing a new government agency tasked with animal welfare law enforcement.

Public Education

Increasing public awareness of animal welfare law enforcement is imperative to bringing the expectations side of the enforcement gap closer to the realities side. Without public education it is likely that the media will continue to elevate public opinion especially in relation to penalties. Chapter 9 demonstrates that when provided with factual information around the circumstances of a case and the sentence handed down, public support towards harsher penalties reduced and shifted towards alternative less punitive options, such as court-mandated counselling or educative animal welfare notices. However, effective widespread education campaigns must be established in order to increase public knowledge of animal welfare law

enforcement and the alternative penalties available for this shift in public opinion to be large enough for lawmakers to recognise and implement into law reform efforts.

Currently the long-term effects of public education are unknown, however, as noted by Glanville et al. (2021) due to the complexity and diversity of public attitudes towards animal cruelty, education programs that have the greatest chance of success are likely those that directly target the relevant audience. To date education programs in this area have tended to be generalized education campaigns demonstrated through mainstream information sources. Given this thesis found there are associations between community opinion and the demographic factors of gender and age, these demographic groups may be a logical first focus when planning these education campaigns. Additionally, education campaigns focused on animal care in general would likely be beneficial in increasing public awareness around animal care and ownership. Considering Chapter 5 established that the most common offences committed in South Australia are duty of care breaches, such as a failure to provide appropriate living conditions for animals (often companion animals such as dogs and cats), providing such education could potentially reduce the amount of duty of care breaches entering the court system. Currently animal care education programs are often aimed at school children, however it could be beneficial to provide such information on specific animal care when people take on ownership of an animal, such as at the point of sale or adoption.

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Appendices

Appendix 1: Chapter 8 Participant Survey

Q2 What gender do you identify as?

- ○ Male (1)
- ○ Female (2)
- ○ Non-binary / third gender (3)
- ○ Other (4)
- ○ Prefer not to say (5)

Q3 What is your age range?

- ○ 18-24 years old (1)
- ○ 25-34 years old (2)
- ○ 35-44 years old (3)
- ○ 45-54 years old (4)
- ○ 55-64 years old (5)
- ○ 65 years or older (6)
- ○ Prefer not to say (7)

Q4 Which Australian state/territory do you live in?

- ○ Australian Capital Territory (1)
- ○ New South Wales (2)
- ○ Northern Territory (3)
- ○ Queensland (4)
- ○ South Australia (5)
- ○ Tasmania (6)
- ○ Victoria (7)
- ○ Western Australia (8)
- ○ Prefer not to say (9)

Q5 Would you describe your current residential location as:

- ○ Urban (eg. major city, town, suburban) (1)
- ○ Rural (eg. country town, remote) (2)
- ○ Prefer not to say (3)

Q6 How would you self-describe your primary ethnic origin?

- ○ Aboriginal or Torres Strait Islander (1)
- ○ European (2)
- ○ Asian (3)
- ○ Indian (4)
- ○ Middle Eastern (5)
- ○ African (6)
- ○ North American (7)
- ○ South American or Caribbean Islander (8)
- ○ Oceanian or Australian (9)
- ○ Prefer not to say (10)

Q7 What is the highest level of education you have completed?

- ○ No formal education (1)
- ○ High school (2)
- ○ TAFE or equivalent (3)
- ○ Bachelors degree (4)
- ○ Masters or PhD (5)
- ○ Prefer not to say (6)

Q8 Which best describes your current occupation?

- ○ Professional (1)
- ○ Technical and trade (2)
- ○ Education (3)
- ○ Retail and hospitality (4)
- ○ Health care (5)
- ○ Primary industry (6)
- ○ Other (please specify) (7)

_____

- ○ Currently unemployed (8)
- ○ Retired (9)
- ○ Prefer not to say (10)

Q9 Does your employment involve working with animals?

- ○ Yes (1)
- ○ No (2)
- ○ Prefer not to say (3)

Q10 Do you work in legal practice or law enforcement?

- ○ Yes (1)
- ○ No (2)
- ○ Prefer not to say (3)

Q11 Do you regularly volunteer for, or donate to an animal welfare group?

- ○ Yes (1)
- ○ No (2)
- ○ Prefer not to say (3)

Q12 Do you live with or own a pet?

- ○ Yes (1)
- ○ No (2)
- ○ Prefer not to say (3)

Q13 Do you follow a specific diet for ethical reasons relating to animal welfare?

- ○ Vegan (consumes no food of animal origins) (1)
- ○ Vegetarian (consumes dairy or eggs, but no meat) (2)
- ○ Pescatarian (consumes fish, but no meat) (3)
- ○ Other (please specify): (4) _____
- ○ No (5)
- ○ Prefer not to say (6)

Q14 Have you had any experience with an animal cruelty case?

- ○ Yes - legal professional (1)
- ○ Yes - defendant (2)
- ○ Yes - witness (3)
- ○ Yes - reported cruelty to enforcement agency (4)
- ○ Yes - police (5)
- ○ Yes - animal welfare organisation employee (6)
- ○ No (7)
- ○ Other (please specify) (8) _____
- ○ Prefer not to say (9)

End of Block: Introduction and Screener Questions

Start of Block: Main Survey

Q15 Do you think animal cruelty is illegal in Australia?

- ○ Definitely yes (1)
- ○ Probably yes (2)
- ○ It depends (3)
- ○ Probably not (4)
- ○ Definitely not (5)

Q16 Which of the following species do you think SHOULD BE protected from cruelty? (select all that apply)

- ☐ Lizard (1)
- ☐ Fly (2)
- ☐ Kangaroo (3)
- ☐ Plant (4)
- ☐ Frog (5)
- ☐ Crab (6)
- ☐ Bird (7)
- ☐ Octopus (8)
- ☐ Dog (9)
- ☐ Fish (10)
- ☐ Bee (11)
- ☒ All of the above (12)

Q17 Do you feel confident that you know how and where to report animal cruelty? Rank your confidence level between 0-100 (where 0 means not very confident and 100 means extremely confident)

	0 10 20 30 40 50 60 70 80 90 100
How confident would you be about how to report animal cruelty? ()	

Q18 Which of the following do you think count as "animal cruelty"? (select all that apply)

- [ ] Not giving your pet enough food or water (1)
- [ ] Not taking your pet to the vet when it is unwell (2)
- [ ] Beating an animal (3)
- [ ] Leaving an animal in a hot car (4)
- [ ] Failing to register your animals with the council (5)
- [ ] Tail docking a lamb (6)
- [ ] Abandoning your pet (7)
- [ ] I don't know (8)

Page Break

Q19 In your opinion, should animal welfare law enforcement be a public (i.e. government) or a private (i.e. charitable organisation) responsibility?

- ○ Public (1)
- ○ Private (2)

Q20 Which entity do you think is best placed to enforce animal welfare law?

- ○ An existing government department (e.g. local council, Department of Agriculture) (1)
- ○ A new government agency dedicated to animal welfare (e.g. an animal welfare authority) (2)
- ○ The police (3)
- ○ A private charitable organisation (e.g. RSPCA, Animal Welfare League) (4)
- ○ Other (please specify) (5) _____

Q21 What enforcement options do you think are currently available to the relevant agency that enforces animal welfare law? (select all that apply)

- ☐ Taking the animal away from the owners (1)
- ☐ Prosecuting the owners in court (2)
- ☐ Educating the owners (3)
- ☐ Putting hidden cameras to record potential cruelty (4)
- ☐ Issuing a written letter of caution (5)
- ☐ Nothing (6)
- ☐ Giving an on-the-spot fine (7)
- ☐ I don't know (8)

Q22 In 2019 there were 58,487 investigations of animal cruelty nationally conducted by RSPCA. How many of those investigations do you think went to court nationally?

- 3 (1)
- 37 (2)
- 376 (3)
- 3,763 (4)
- 37,631 (5)

Page Break

Q23 From those 58,487 investigations, a total of 376 prosecutions were finalised in court by the RSPCA Australia-wide. Do you think this prosecution rate is adequate?

- Extremely adequate (1)
- Somewhat adequate (2)
- Neither adequate nor inadequate (3)
- Somewhat inadequate (4)
- Extremely inadequate (5)

Q24 In your opinion do you think more animal welfare investigations should go to court?

- Definitely yes (1)
- Probably yes (2)
- It depends (3)
- Probably not (4)
- Definitely not (5)

Q25 Do you think owners should be educated or punished when animal welfare issues occur (e.g. not taking your sick animal to the vet)?

- ○ Educated on appropriate pet care and resources available (1)
- ○ Taken to court and issued with a legal punishment (e.g. fine or jail time) (2)
- ○ It depends on the animal welfare issue and the owner (legal system should decide) (3)

Page Break

Q26 Who do you think should hand out penalties for animal cruelty?

- ○ Enforcement agency (1)
- ○ Judge in court (2)
- ○ Government department (3)
- ○ Police (4)
- ○ I don't know (5)

Q27 What penalties do you think are used for animal cruelty offenders? (select all that apply)

- [ ] Community service (1)
- [ ] Fine (2)
- [ ] Home detention (3)
- [ ] Mandated counselling (4)
- [ ] Jail time (5)
- [ ] Good behaviour bond (6)
- [ ] No penalty required (7)
- [ ] I don't know (8)

Q28 If someone was found guilty of animal cruelty, do you believe they should be banned from owning animals?

- ○ Definitely yes (1)
- ○ Probably yes (2)
- ○ It depends (3)
- ○ Probably not (4)
- ○ Definitely not (5)

Page Break

Q29 How important do you think it is for the legal system to take animal cruelty seriously when the animal is a COMPANION ANIMAL (e.g. dog, cat)?

- ○ Extremely important (1)
- ○ Very important (2)
- ○ Moderately important (3)
- ○ Slightly important (4)
- ○ Not at all important (5)

Q30 If a COMPANION ANIMAL (eg. dog/cat) dies due to deliberate animal cruelty, what kind of response is required from the legal system? (select all that apply)

- ☐ Fine (1)
- ☐ Jail time (2)
- ☐ Community service (3)
- ☐ Good behaviour bond (4)
- ☐ Court mandated counselling (5)
- ☐ No response needed (6)
- ☐ It depends on the circumstances (7)

Q31 How important do you think it is for the legal system to take animal cruelty seriously when the animal is a FARM ANIMAL (e.g. cow, sheep, chicken)?

- ○ Extremely important (1)
- ○ Very important (2)
- ○ Moderately important (3)
- ○ Slightly important (4)
- ○ Not at all important (5)

Q32 If a FARM ANIMAL (e.g. cow, sheep, chicken) dies due to deliberate animal cruelty, what kind of response is currently required by the legal system? (select all that apply)

- ☐ Fine (1)
- ☐ Jail time (2)
- ☐ Community service (3)
- ☐ Good behaviour bond (4)
- ☐ Court mandated counselling (5)
- ☐ No response needed (6)
- ☐ It depends on the circumstances (7)

Q33 How important do you think it is for the legal system to take animal cruelty seriously when the victim is a NATIVE ANIMAL (e.g. wombat, kangaroo)?

- Extremely important (1)
- Very important (2)
- Moderately important (3)
- Slightly important (4)
- Not at all important (5)

Q34 How important do you think it is for the legal system to take animal cruelty seriously when the victim is a PEST ANIMAL (e.g. rats, mice, camel)?

- Extremely important (1)
- Very important (2)
- Moderately important (3)
- Slightly important (4)
- Not at all important (5)

Page Break

Q35 In a case where a person deliberately hit an animal causing serious harm, what penalty do you think is suitable?

- ○ Jail time (1)
- ○ Fine (2)
- ○ Good behaviour bond (3)
- ○ Community service (4)
- ○ Court mandated counselling (5)
- ○ No response needed (6)

Q36 In the scenario from the previous question, what, if any, length of jail time do you think is warranted (where 0 equals no jail time necessary and 4 equals four years)

	0 1 1 2 2 3 3 4
What length of jail time in years would be warranted? ()	

Page Break

Q37 Previous research has shown that the average penalty for this type of offence (deliberate abuse causing serious harm) is 4 months imprisonment; do you think this is appropriate and sufficient?

- ○ No - needs to be harsher (1)
- ○ No - it is too harsh (2)
- ○ Yes (3)
- ○ It depends on the circumstances of the case (4)

End of Block: Main Survey

Appendix 2: Chapter 9 Focus Group Protocol

SCREENERS

What gender do you identify as?

- Male
- Female
- Other (please specify): TEXTBOX
- Prefer not to say

[Good mix required]

In what year were you born?

[Must be 18yrs or older to participate]

What is your postcode?

[Mix of states/territories across Australia]

What best describes your ethnic heritage (please select all that apply)?

- Aboriginal or Torres Strait Islander
- Southern or Eastern European
- North-West European
- Southern or Central Asian
- South-East Asian
- Polynesian, Pacific Islander, Maori
- North African or Middle Eastern
- Sub-Saharan African
- North American
- South or Central American or Caribbean Islander
- Other (please specify): TEXTBOX
- I prefer not to say

[reasonable mix]

Highest completed education:

Primary school

Secondary school

TAFE College

University Degree

University Post-graduate Degree

Other (please specify): TEXTBOX

No formal schooling

I prefer not to say

[reasonable mix]

Which ONE of the following best describes your current employment situation?

Working full-time for pay

Working part-time for pay

Self-employed

Working without pay in a family/other business

Unemployed, looking for work

Retired

Full-time student

Household duties not looking for paid work

Not working because of a disability

Other (please specify): TEXTBOX

[reasonable mix]

Have you worked (with or without pay) in any of the industries or sectors?

Legal practice or law enforcement [not eligible to participate]

Veterinary medicine

Public sector, policy development, or politics

Non-government, humanitarian, or animal welfare organisation

None of these

What was the total annual income received by everyone in your **household** BEFORE TAX in the last financial year? If your household does not combine finances, please answer for yourself only.

Below $40,000

$40,000 - $49,999
$50,000 - $59,999
$60,000 - $69,999
$70,000 - $79,999
$80,000 - $89,999
$90,000 - $99,999
$100,000 - $109,999
$110,000 - $119,999
$120,000 - $129,999
$130,000 - $139,999
$140,000 - $149,999
$150,000 – 159,999
$160,000 +
Prefer not to say
[reasonable mix]

Have you had any experience with an animal cruelty case?

Yes [direct to follow up question]
No

If yes, please select one of the following options that best explains your experience with an animal cruelty case:

I worked as a legal professional and have experience with the state-based Animal Welfare Acts and animal welfare offences [not eligible to participate]
I've been charged with animal cruelty/I was a defendant in court for an animal welfare offence [not eligible to participate]
I stood as a witness in during a court case for animal cruelty
I reported animal cruelty to an enforcement agency
I work for the police and have experience with animal cruelty cases [not eligible to participate]
I am an animal welfare organisation employee or volunteer who saw/handled an animal that was involved in a cruelty case

DAY 1

WELCOME PAGE:

Participants are linked to the front page of the platform where they will be shown the consent form preamble and a brief **video (video 1)** by Rochelle Morton, in which she introduces the project, explains what the discussion group is, and reminds participants to be respectful of each other's perspectives. Participants are asked to consent to participate in the study and are directed to click 'next' to continue to the site.

Topic 1/4 Questionnaire [private survey]

In the task box:

Before we begin the discussion, please tell us a bit more about yourself by filling out this brief questionnaire.

Would you describe your current residential location as:

Urban (e.g. major city, town, suburban)

Rural (e.g. country town, remote)

Do you regularly volunteer for, or donate to an animal welfare group?

Yes

No

Do you live with or own a pet?

Yes

No

Do you follow a specific diet for ethical reasons relating to animal welfare?

Vegan (consumes no food of animal origins)

Vegetarian (consumes dairy or eggs, but no meat)

Pescatarian (consumes fish, but no meat)

Other (please specify): TEXTBOX

No

Topic 2/4: INTRODUCTION

Group room - Participants will be able to interact with each other and see each other's responses. In this section, participants will see posts from each of the moderators welcoming them to the group and introducing themselves (with photo).

In the task box:

Welcome to the forum! Let's start off by introducing ourselves. Please share with us a bit about yourself and describe (with words or images) what comes to mind when you see the term 'animal cruelty'.

Follow-up/prompts:

- Response/question in case people's associations are to personal experience with animal cruelty. e.g., How did this affect your thinking about animal cruelty?
- If association is related to media: Can you give us a brief description of how animal cruelty featured in media?

Topic 3/4: Familiarity with animal welfare law

The aim of day 1 is to understand participants current understanding on animal law and its enforcement and also provide them with background knowledge that will aid in their discussions over the next few days.

In the task box:

Tell us a bit about your familiarity with animal welfare law.

Have you ever heard about "animal welfare legislation" or "animal welfare acts"? Do you feel like you could explain animal welfare law to a friend?

Animal welfare law is one of the many types of criminal law that most people might not have heard of so don't worry if it seems unfamiliar to you.

Clarifying prompts:

- [if they have heard about it]: Do you feel like you know enough about it to explain it to a friend, for example?
- [if they have heard about it]: What kinds of things have you heard?
- [if they have heard about it]: How did you first hear about animal welfare law?
- [if they have heard about it]: Where do you hear about animal law related matters? Do you regularly keep informed on the topic?

- [if they have NOT heard about it]: Does it surprise you that you haven't heard about it? / Is it unusual for you not have heard about criminal law matters?
- [if they have NOT heard about it]: How about some of the related issues/terms that others have mentioned – are any of those familiar to you?

Topic 4a/4: Information on the legal framework and how it relates to animal welfare

For this topic, participants are invited to seek further information through the video responses to FAQs.

In the task box:

To help with our discussions over the next couple of days, please review these video responses to frequently asked questions for any further information about animal welfare law and its enforcement in Australia.

FAQs [participants should only see questions and by clicking on a question the video answer will be made visible in addition an excerpt of the script]

QUESTION: Is animal cruelty illegal in Australia?

[video answer **(video 2)** with option to view the transcript below]

Yes, animal cruelty is a criminal act. Animal welfare laws are in place to make sure we are not causing any unnecessary suffering for animals. These laws apply to all animals, from companion animals to wild animals and farm animals. However, what is considered as "necessary suffering" can change depending on the utility of the animal, for example this is

why animals used for farming are treated differently in comparison to animals kept as companions.

QUESTION: How are these laws enforced?

[video answer **(video 3)** with option to view the transcript below]

ANSWER: We have different laws for each state and territory in Australia, however they are enforced similarly. The majority of animal cruelty cases begin with a report from a witness, which is investigated by an animal welfare inspector. Often the inspectors will work with the owners and educate them on proper animal care first. But if the animal is suffering, the inspectors can remove the animal from the owners with a warrant. In the case where the welfare issue is severe enough, they will take the owners to court which is known as prosecuting them.

QUESTION: What is a prosecution?

[video answer **(video 4)** with option to view the transcript below]

ANSWER: To prosecute an alleged offender means to take them to court over an offence under animal welfare laws. In court a judge will listen to evidence for and against the case and make a decision if the offender is guilty or not guilty. In a case where the offender is found guilty, the judge will then penalise the offender by using the maximum penalty's Parliament has set in legislation as a guide to decide a sentence. These can be either a fine or a jail sentence. Also, the judge may decide to put the offender on a prohibition order, which prohibits the offender from owning animals for a set time period.

Topic 4b/4: Information on the legal framework and how it relates to animal welfare, continued…

What other questions come to mind after reviewing the questions? What else do you think is important for you to know about animal welfare law and enforcement in Australia? Please add your own questions in the comments. You can also reply, react, or add to other people's questions.

We are going to answer these questions as best we can before the end of the discussion group, but we might not be able to answer all of them.

Follow-up questions/prompts:

- What is it about X that you think is important to know more about?
- It seems like most/ a lot of people would like to know more about X, why do you think that is the case?

DAY 2

Topic 1a/4 Views on animal law enforcement

The aim of day 2 is to generate attitude statements about different perceptions of reporting and investigating animal welfare matters.

Key issues to consider include: animal definition, cruelty definition, reporting cruelty, enforcement agencies, investigating cruelty and prosecution rates, case prioritisation, resourcing issues, ngo vs government

In the task box:

Welcome back! Today, we are interested in what you think and feel about animal law enforcement.

How would you describe your current feelings about animal welfare law enforcement?

Follow-up/prompt:

- How do you think X [if a particular concern is mentioned] will be affected?
- Where did you hear about X [if a particular concern is mentioned]?
- Do you often use X to keep informed about animal welfare law enforcement?

Topic 1b/4: Why animal welfare matters

In the task box: RANK

In your view, which of the following statements align with your beliefs about why animal welfare law matters? Please rank your level of agreement FOR ALL STATEMENTS between 1-7 (where 1 means no agreement and 7 means complete agreement).

1. Animal cruelty is an unacceptable behaviour which needs to be controlled (it is an offence against standards of good behaviour)
   [7pt scale No agreement → Complete agreement]

2. Animals do not deserve to be victims of cruelty since they can experience pain and suffering
   [7pt scale No agreement → Complete agreement]

3. People who are violent towards animals are more likely to be violent towards humans (these people are dangerous and likely to become a risk to society)
   [7pt scale No agreement → Complete agreement]

Did you find it easy to answer this question or were you unsure? Why do you think that is the case?

Follow-up/prompt:

- Did you find that all statements were important to you? Or did a particular one stand out the most?
- Did anyone have alternative beliefs about why animal welfare law is important? What are they?

Topic 2/4: Legal definition of 'animal'

In the task box: SELECT ALL THAT APPLY

In this exercise, please select all the animal species you believe should be protected from cruelty under the state-based Animal Welfare Acts?

After you have selected, please explain your thought processes during your selection (i.e., what did you think about when you selected some and not others).

- Lizard
- Fly
- Kangaroo
- Frog

- Crab
- Bird
- Cow
- Octopus
- Dog
- Fish
- Bee
- Cat

Follow-up/prompt:

- Did you know that in some states and territories fish, crabs and octopuses are not protected under the Act? How does that make you feel?
- If you were to witness what you think is animal cruelty, are there any species of animals about which you would not report to an enforcement agency?
- What kinds of things would you consider when deciding whether to report a potential cruelty issue?
- Are you surprised that not all animals are protected?
- Are there any types of animals that are not protected equally? Do you think this is necessary?

Topic 3/4: Legal definition of 'cruelty'

In the task box: SORT

Please complete the following exercise by ranking the cruelty (from most serious to least serious) of the below scenarios in your own opinion.

- Failing to give your pet enough food or water
- Not taking your pet to the vet when it is unwell
- Beating an animal
- Leaving an animal in a hot car
- Failing to register your animals with the council
- Tail docking a lamb (removing the tail)
- Abandoning your pet
- Using poison (bait) to control wild animals
- Not exercising your pet

According to the laws, beating an animal would be considered most serious. Did your opinion differ from this? Why or why not?

Follow-up/prompt:

- Using bait to control wild animals is not considered as cruelty under state laws, what do you think about that?
- Tail docking lambs is not considered as cruelty under state laws, what do you think about that?
- Are there other types of examples where you find it difficult to understand if it is cruel or not?
- Are there any scenarios you believe should NOT be included in the list? Which ones are they?

Topic 4a/4: Reporting animal cruelty

In the task box: SELECT ONE

If you witnessed animal cruelty, which ONE of the following enforcement agencies would you report it too?

- Local council
- RSPCA
- Police
- Government department (Department of Agriculture/Environment)
- Veterinary practice
- Animal Welfare League
- I would help the animal directly/approach the person

Did you find it easy to answer this question or were you uncertain?

Follow-up/prompt:

- Did any of the options above strike you as particularly risky for you? Which one?

Topic 4b/4 Investigating animal cruelty

In the task box: SELECT ONE

In your view, which ONE of the following enforcement agencies would be best suited to investigate cases of animal cruelty?

- Police
- Current government department (e.g. Department of Agriculture/Environment)
- Local council
- New government department for animal welfare or management
- Private charitable organisation (e.g. RSPCA, Animal Welfare League)
- Other (please write suggestion in the comments)

What were your main reasons behind your choice?

Follow-up/prompt:

- Where there any agencies you wouldn't choose? Why or why not?
- Do you know which agency(s) in currently involved in enforcement? Is this agency different to the one you selected? [if yes – what are you reasons for selecting a different agency?]

DAY 3

Topic 1/4: Prosecution rates

The aim of day 3 is to generate attitude statements about different perceptions of prosecuting animal welfare matters.

Key issues to consider include: maximum penalties vs sentenced penalties, who hands out penalties, jail vs fines, magnitude of penalties, education vs punishment, aggravated vs basic offences, prohibition orders

In the task box:

Welcome back! Today, we are interested in what you think and feel about animal welfare law in the criminal justice system. To begin with, please consider the following statistics on court cases:

In the 2019-2020 financial year there were 57,910 animal cruelty investigations conducted nationally by RSPCA. From those investigations, 359 (0.62%) were taken to court.

Are these numbers as you expected them to be? How do they differ from what you expected?

Please keep in mind that RSPCA are not the only agency that would take animal cruelty cases to court, however they are the only agency which publicises this information.

Follow-up/prompt:

- What do you think causes this drop from investigations to prosecutions?
- How do you these numbers make you feel? Is this a positive or negative association for you?
- Why do you think more cases should go to court?
- Are these numbers as you expected them to be?

Topic 2a/4: Maximum penalties

In the task box:

Parliament sets the maximum penalties laid out in the animal welfare legislation. Please see below the maximum penalties for neglect and deliberate cruelty in each Australian state/territory.

Neglect means a failure to care for an animal properly (i.e., failure to seek veterinary treatment)

Deliberate cruelty means to intentionally harm an animal (i.e., beating an animal)

State/Territory	**Neglect**	**Deliberate Cruelty**
ACT	2 years imprisonment 200 penalty units	3 years imprisonment 300 penalty units

NSW	6 months imprisonment 50 penalty units	2 years imprisonment 200 penalty units
NT	18 months imprisonment 150 penalty units	2 years imprisonment 200 penalty units
QLD	1 year imprisonment 300 penalty units	3 years imprisonment 2000 penalty units
SA	2 years imprisonment $20,000.00	4 years imprisonment $50,000.00
TAS	1 year imprisonment 100 penalty units	5 years imprisonment 200 penalty units
VIC	1 year imprisonment 250 penalty units	2 years imprisonment 500 penalty units
WA	5 years imprisonment $50,000.00	Not included

A penalty unit is a standard amount of money used to calculate the total amount of a fine.

How would you describe your feelings towards these maximum penalties? Is it mostly a positive or negative association for you?

Follow-up/prompt:

- Are you surprised to learn that deliberate cruelty and neglect have different penalties?
- Are these figures as you expected them to be?
- Where would you think to find information on maximum penalties? Have you heard any information recently?

Topic 2b/4: Sentenced penalties

In the task box:

Previous research has found that average penalties handed out to offenders only uses 10% of the maximum penalties (shown from the previous exercise). Meaning that:

4-year jail term maximum = 4-months sentenced to prison*

*on average

Do you think this difference between maximum penalties and sentenced penalties is appropriate? Who do you think is responsible for deciding a sentence?

Follow-up/prompt:

- What do you think causes this drop between maximum penalties and sentenced penalties?
- How does the average sentence make you feel? Is this a positive or negative association for you?
- Do you trust or have faith in the criminal justice system to decide the best suited penalty for a particular case? Why or why not?
- Where would you think to find information on court cases? Have you heard any information recently?

Topic 3a/4: Alternative penalties

In the task box: SELECT ONE

Please consider the follow scenario:

An adult dog has a very large and obvious tumour growing in its ear, which is irritating it. The owner is aware of the lump but is hoping it goes away on its own because they cannot afford the vet. An inspector visits the property and takes the dog immediately to a vet to have the lump removed. The owner is very sorry the dog suffered and thankful that the dog is now healthy with a new family.

In your view, please select which ONE course of action is best suited for this scenario. The owner should be:

- Sentenced to pay a fine in court
- Put on a prohibition order (preventing them from owning future animals)
- Sentenced to jail in court
- Placed on court mandated counselling for anger management training
- No action needed
- Given a warning and educated on appropriate animal care

What were your main reasons behind your choice?

Follow-up/prompt:

- What were your main reasons behind your choice?
- Where there any options you wouldn't choose? Why or why not?
- Was there another option you believe could also be suitable?
- Would your opinion change if the dog died? Why?
- Would your opinion change if the owner did not know they were doing anything wrong and believed the animal to be healthy? What course of action would be best suited in that case?

Topic 3b/4: Alternative penalties

In the task box: SELECT ONE

Please consider the follow scenario:

An adult dog has chewed a hole in the owner's couch, the owner is furious and kicks the dog several times and throws it outside. The dog is hurt and cannot walk, the owners partner notices the dog, and rushes the dog to the vet. The dog fully recovers after some rehabilitative care and is rehomed. The owner is shocked at his actions and explained that he had a bad day and wasn't in the best headspace.

In your view, please select which ONE course of action is best suited for this scenario. The owner should be:

- Given a warning and educated on appropriate animal care
- Placed on court mandated counselling for anger management training
- No action needed
- Sentenced to jail in court
- Put on a prohibition order (preventing them from owning future animals)
- Sentenced to pay a fine in court

What were your main reasons behind your choice?

Follow-up/prompt:

- What were your main reasons behind your choice?
- Where there any options you wouldn't choose? Why or why not?
- Was there another option you believe could also be suitable?
- Would your opinion change if the dog died? Why?

Topic 4a/4: Discussing animal welfare law

In the task box:

Since joining this discussion, have you had conversations with anyone outside this forum about animal welfare law?

If so, with whom? What did you discuss with them?
If not, why not?

Follow-up/prompt:

- How did their opinion compare with yours?
- Had they heard of [discussion point] before?

Topic 4b/4: Discussing animal welfare law

In the task box:

Has anything you discussed during the course of this forum (either within the group or with others) changed your opinion about animal law enforcement? If so, what?

We have asked all our questions, but is there anything else that you would like to say about the topic?
FOLLOW-UP AS NEEDED

Thank you for participating in our forum on animal welfare law and its enforcement in Australia.