

THE PROTECTION THAT ANIMAL WELFARE LAWS IN AUSTRALIA OFFER (SOME) ANIMALS

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“All animals are equal, but some animals are more equal than others.”¹

The laws and regulations applying to animals in Australia are somewhat torn between the notion that animals are characterised by both common law and statute as personal property (and as such can largely be treated in the way their owners see fit) and the notion that animals are considered to be unlike other forms of personal property (a dog is not like a toaster, for example) which calls for the introduction of animal cruelty and welfare legislation.²

In certain circumstances, animals will be treated differently under the laws and offered protections. In other circumstances, however, animals will be treated just like toasters and be at the mercy of their respective owners.

This article will set out, on a high level, the regulatory landscape in Australia, followed by an outline of the laws in respect of companion animals and animal cruelty and welfare legislation to show where the line is drawn between a greyhound that is considered a ‘companion animal’ and a greyhound that is considered a ‘commodity’.

THE AUSTRALIAN REGULATORY FRAMEWORK

Due to a lack of constitutional power, the Commonwealth is not permitted to directly regulate animals. The law relating to animals is therefore found in State and Territory legislation as part of a complex network of different regulatory regimes.³

Overall, animals are regulated throughout Australia by:⁴

- general Commonwealth policies or strategies;
- model Codes of Practice and standards for the welfare of animals;
- State animal welfare legislation attempting to give effect to general Commonwealth policies and strategies; and
- local council regulations concerning the management of certain companion animals.



Bernadette Wilkins's Kimba Karma

While the State and Territory legislation is intended to reflect the Commonwealth initiatives and aims to create a law that is consistent across the country, the legislative responsibility remains with the relevant State and Territory and the extent to which the Commonwealth initiatives are binding law will depend on the approach taken at State and Territory level. What becomes apparent from analysing the different State and Territory legislation is that Australia's animal law is complex and approached inconsistently within the country.

In addition to its complexity, the regulatory framework in respect of animal laws has been criticised in the past for its failure to adequately protect the welfare of animals and to achieve further advancements in the area of animal welfare.⁵ One of the main criticisms of the regulatory framework relates to the conflict of interest that may be implied in respect of the bodies that are responsible for drafting animal welfare codes and standards. The composition of these bodies included members of government departments (whose main focus may not necessarily lie with animal welfare but rather with industry productivity) and representatives from government primary industry departments (whose focus may likely be the economic and profitable development of primary industries).⁶

HOW IS AN ANIMAL DEFINED UNDER THE LAW?

Under the law, an animal is defined as property.⁷ This division of people and things reflects the main philosophical theories which consider animals to be 'inferior' to humans due to their lack of higher cognitive abilities. As animals are excluded from the definition of a 'legal person', they fall within the category of 'things'. Because of this classification, the law does not protect animals from certain offences, such as murder, as these offences can only be committed against people. This characterisation of animals as property is however often considered to be insufficient and, consequently, the law distinguishes between different types of animals, for example where significant emotional value is attached to dogs as companion animals. But when should an animal 'deserve' additional protection or even be awarded rights, such as the right to be free from harm?

DOGS AS COMPANIONS

The framework that applies to animals as companion animals or pets (which is limited to dogs and cats) is complex - each State and Territory has enacted

specific legislation, and regulations and, in some States, there is additional legislation that deals with specific breeds of dogs (such as dogs that are considered dangerous).⁸ Practically, the administration of these laws lies with local councils. These have in turn created further by-laws, regulations and so-called model laws for the practical management of companion dogs.⁹ While it is beyond the scope of this article to provide a detailed overview of this framework, it can be considered as a framework that deals with the registration of dogs, the regulation of aggressive and dangerous dogs and breeding licences. This means that an owner of a companion animal in New South Wales must ensure that he or she complies with the New South Wales legislative framework, including any regulations issued by their respective council.

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Noteworthy, in many State and Territories, this framework provides for an additional layer of regulation in respect of pet greyhounds. For example, in NSW, greyhounds are the only breed identified under the regulations that are required to wear a muzzle in public.¹⁰ A greyhound will only be exempt from this requirement where the greyhound successfully completed an approved greyhound re-training program and wears an approved collar.¹¹ In Victoria, similar muzzling requirements existed for greyhounds until 1 January 2019 when, under an exemption order issued by the Governor, all pet greyhounds have been exempt from having to wear a muzzle in public.¹² Greyhounds, however, must be 'restrained' and cannot be exercised off leash in public places, including any off-leash dog parks¹³ (but for a number of limited circumstances, such as when participating in obedience classes).¹⁴

AUSTRALIAN ANIMAL WELFARE LEGISLATION

In addition to this framework of legislation specific for companion animals, there is a general legislation (again, enacted by each State and Territory) in respect of animal cruelty and welfare. Generally speaking this legislation's purpose is to prevent and criminalise acts of cruelty directed towards animals. However, form and content of the legislation is different in each State and Territory and while some impose a positive duty to care, other provisions merely prohibit acts of cruelty.¹⁵

Overall, the cruelty offences may be divided as follows:¹⁶

- general acts or conduct towards animals that are defined as cruel; and
- specific acts or conduct towards animals as identified in the legislation (for example, 'unreasonable abandonment and release' of an animal).¹⁷

EXEMPTIONS TO THE PROTECTIONS ESTABLISHED BY ANIMAL WELFARE LEGISLATION

Overall, the animal welfare legislation prohibits general and specific acts of cruelty towards animals. What is considered 'an animal' under the legislation differs however in each State and Territory as the term is defined in each legislation.¹⁸ So, not every animal is protected by the welfare legislation in each State and Territory but once a dog is defined as an 'animal' for the purposes of the legislation, you would assume that all dogs will be offered the same protection - unfortunately not.

In addition to excluding certain animals from the definition of an 'animal' altogether, there are animals that are exempt from the application of the animal welfare legislation, for example, the treatment of farm or 'production' animals is not governed by this legislation, but instead by the relevant industry Codes of Practice.¹⁹

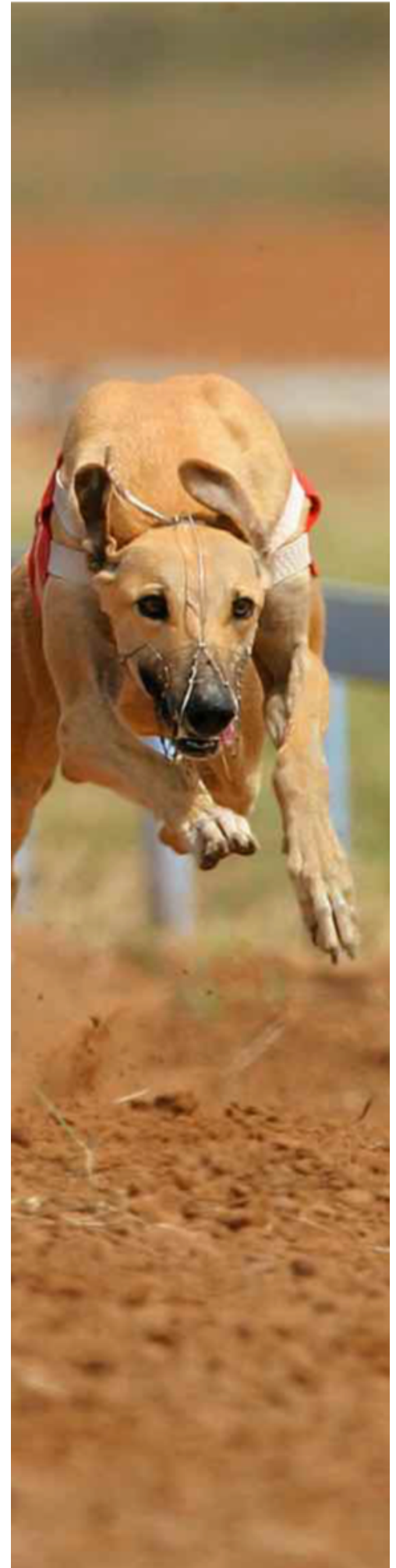


HOW DOES THE ANIMAL WELFARE LEGISLATION PLAY OUT FOR GREYHOUNDS?

Outlined below are some examples of the approach taken at State and Territory level to introduce animal welfare legislation to greyhounds:

- In Victoria, the legislation that practically governs animal welfare for greyhounds in the racing industry does not include the Victorian animal welfare legislation. The Codes of Practice established under this legislation are limited to the ‘private keeping of dogs’ and do not cover racing greyhounds. In addition, the legislation applicable to companion dogs provides Greyhound Racing Victoria (GRV) with a certain status which means that the legislation that applies to a companion dog does not apply to racing greyhounds. Because of that status, GRV members are exempt from having to register their greyhounds with their local council if they are already registered with GRV (resulting in a loss of oversight). While the animal welfare legislation is relevant to the use of animals for live baiting (and makes this an offence), “additional, greyhound racing specific legislation and the Code of Practice for the Operation of Greyhound Establishments” establish the minimum standard relevant to the animal welfare of racing greyhounds. Following an investigation into the animal welfare and cruelty in the Victorian greyhound industry, the final report highlights that there is no consistent approach to animal welfare across the legislation applicable to racing greyhounds.²⁰ Further, the piece of legislation that covers greyhound racing does not focus on animal welfare, nor does it require GRV to specifically address welfare as part of its functions.²¹ The report questions the adequacy of animal welfare standards, how these standards have been enforced across agencies, the differing powers of inspectors, and penalties for offences under different legislation.²² Following this investigation, Victoria has released a new Code of Practice for the Keeping of Greyhounds.²³ This Code has been introduced to set “a standard of welfare for all racing greyhounds in Victoria”²⁴ and “assist with meeting community expectations regarding animal welfare and help to secure a sustainable future for greyhound racing in Victoria.”²⁵ As the commencement date of the Code is 1 January 2020, it remains to be seen whether the introduction of this Code will in fact provide racing greyhounds with animal welfare protections in Victoria.
- In comparison, the Australian Capital Territory (ACT) introduced legislation in November 2017 to ban greyhound racing effective from 30 April 2018. As a result, the ACT’s animal welfare legislation makes it an offence to conduct, facilitate to conduct, or allow a greyhound to take part in greyhound racing.²⁶ The use of animals for live baiting is also forbidden.²⁷ However, while greyhound racing may be banned in the ACT, the breeding, training

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and ownership of greyhounds is still permitted.²⁸ While a greyhound trainer based in the ACT will need to meet the relevant regulations of the ACT and a greyhound based in the ACT will receive the benefit of the animal welfare protections just as any other companion dog, ACT based greyhounds can be raced in other States and Territories²⁹ which raises the question of the effectiveness of the protections that are provided to greyhounds in the ACT.

FINAL THOUGHTS...

Acknowledging that the idea that animals are considered property under the law is entrenched in today's legal framework, how can the entitlement to treat one's 'property' however one pleases be reconciled with the notion that animals are living beings that not only suffer pain but also experience joy? When contemplating the fact that the legal concept of property actually finds its limitations when it is applied to animals without considering that animals are in fact not like any other 'property', the following quote stuck:

We have no right to inflict suffering and death on another living creature unless there is some unavoidable necessity for it, and that we ought all of us to feel what a horrible thing it is to cause suffering and death out of mere thoughtlessness. The exhibiting of trained animals I abhor. What an amount of suffering and cruel punishments the poor creatures have to endure in order to give a few moment's pleasure to men devoid of all thought and feeling for them.³⁰



Flora and Michael Scott's foster fail and expert digger, Miss Nellie

REFERENCES

1. G. Orwell, *Animal Farm* (1945)
2. See A. Bruce, *Animal Law in Australia – An Integrated Approach*, 2nd ed, LexisNexis Butterworths Australia, 2018, p 3.
3. See *ibid*, p. 76.
4. See *ibid*, p. 76.
5. See S White, 'Regulation of Animal Welfare in Australia and the Emergent Commonwealth: 'Entrenching the Traditional Approach of the State and Territories of Laying the Ground for Reform?' (2007) 35 *Federal Law Review* 348; E Ellis, 'Making Sausages and Law: The Failure of Australian Animal Welfare Laws to Protect Both Animals and Fundamental Tenets of Australia's Legal System' (2010) 3 *Australian Animal Protection Journal* 4.
6. See A Dale, 'Animal Welfare Codes and Regulations – The Devil in Disguise?' in P Sankoff and S White (eds), *Animal Law in Australasia*, The Federation Press, Sydney, 2009, pp 185-186.
7. See A. Bruce, *Animal Law in Australia – An Integrated Approach*, 2nd ed, LexisNexis Butterworths Australia, 2018, p. 76.
8. See *ibid*, p. 108.
9. See *ibid*, p. 109.
10. See section 15 of the *Companion Animals Act 1998* (NSW) and regulation 33B(1) of the *Companion Animals Regulation 2008* (NSW).
11. See regulation 33B(2) of the *Companion Animals Regulation 2008* (NSW).
12. See *Order exempting non-racing greyhounds from the operation of section 27(1)(a)* made on 21 August 2018 and published in Government Gazette No. S 389 on 23 August 2018.
13. See section 27 *Domestic Animals Act 1994* (Vic).
14. See <http://agriculture.vic.gov.au/pets/dogs/greyhounds> (cited at 1 May 2019).
15. See A. Bruce, *Animal Law in Australia – An Integrated Approach*, 2nd ed, LexisNexis Butterworths Australia, 2018, p. 190.
16. See *ibid*, p. 193.
17. The annexed table provides a more detailed overview of the legislation in each State and Territory, the duties that the legislation is imposing and/or the conduct that is prohibited and what the penalties are for a breach of the relevant legislation
18. See, for example, section 2 of the *Animal Welfare Act 1992* (ACT).
19. Lawyers for Animals, *The Law*, available at <http://lawyersforanimals.org.au/information/the-law/> (1 May 2019).
20. State of Victoria Department of Economic Development, Jobs, Transport and Resources, 'Investigation into animal welfare and cruelty in the Victorian greyhound industry - Final Report 30 April 2015, 2015, p. 11.
21. *Ibid*, p. 11.
22. *Ibid*, p. 1.
23. See Greyhound Code of Practice, Code of Practice for the keeping of Racing Greyhounds available at <http://agriculture.vic.gov.au/pets/dogs/greyhounds/code-of-practice> (1 May 2019).
24. See State of Victoria Department of Economic Development, Jobs, Transport and Resources, *Code of Practice for the Keeping of Racing Greyhounds*, FREQUENTLY ASKED QUESTIONS, available at <http://agriculture.vic.gov.au/pets/dogs/greyhounds/code-of-practice> (1 May 2019).
25. *Ibid*.
26. See section 18A of the *Animal Welfare Act 1992* (ACT).
27. See section 17(2)(c) of the *Animal Welfare Act 1992* (ACT).
28. See Greyhound racing and trialling in the ACT available at <https://www.act.gov.au/greyhound> (1 May 2019).
29. See *ibid*.
30. C Joy, 'The Sacredness of All that Lives' in *Albert Schweitzer: An Anthology*, Adam and Charles Black, London, 1952, p. 268.

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AUSTRALIAN ANIMAL WELFARE LEGISLATION ³¹

Jurisdiction	Legislation	Prohibition	Penalties ³²
Australian Capital Territory	<i>Animal Welfare Act 1992</i>	It is an offence for a person to: <ul style="list-style-type: none"> – commit an act of cruelty on an animal – commit an act of cruelty on an animal that causes death or serious injury to the animal – cause an animal unnecessary pain 	100 penalty units (\$16,000) or 1 year imprisonment or both 200 penalty units (\$32,000) or 2 years imprisonment or both 100 penalty units (\$16,000) or 1 year imprisonment or both
New South Wales	<i>Prevention of Cruelty to Animals Act 2007</i>	A person shall not commit an act of cruelty upon an animal A person in charge of an animal shall not authorise the commission of an act of cruelty upon the animal A person should not fail to prevent cruelty, alleviate pain or provide necessary treatment to an animal A person shall not commit an act of aggravated cruelty upon an animal	50 penalty units (\$5,500) or 6 months imprisonment (person) 250 penalty units (\$27,500) (corporation) 200 penalty units (\$22,000) or 2 years imprisonment (person) 1,000 penalty units (\$11,000) (corporation)
Northern Territory	<i>Animal Welfare Act 2007</i>	A person must not neglect commit an act of cruelty on an animal	100 penalty units (\$15,500) or 12 months imprisonment
Queensland	<i>Animal Care and Protection Act 2001</i>	A person in charge of an animal owes a duty of care to it A person must not be cruel to an animal	300 penalty units (\$39,165) or 1 year imprisonment 2,000 penalty units (\$261,100) or 3 years imprisonment

³¹ See A. Bruce, *Animal Law in Australia – An Integrated Approach*, 2nd ed, LexisNexis Butterworths Australia, 2018, p. 190-207.

³² Most jurisdictions denominate the penalties in terms of the value of a 'penalty unit' and each penalty unit is worth a different amount (as determined by the relevant State or Territory). The figures shown in the table are as at 1 May 2019.

South Australia	<i>Animal Welfare Act 1985</i>	Ill-treatment of an animal is an offence	\$20,000 or 2 years imprisonment (cruelty) \$50,000 or 4 years imprisonment (aggravated cruelty)
Tasmania	<i>Animal Welfare Act 1993</i>	A person in charge of an animal has a duty of care to ensure the welfare of the animal A person in charge of an animal or group of animals must not manage them in a way that causes unreasonable or unjustifiable pain or suffering Committing acts that cause unreasonable and unjustifiable pain to an animal is an offence	200 penalty units (\$32,600) or 6 months imprisonment or both (person) 1,000 penalty units (\$163,000) (corporation) 100 penalty units (\$16,300) or 12 months imprisonment or both (person) 500 penalty units (\$81,500) (corporation) 200 penalty units (\$32,600) or 60 months imprisonment or both (person) 1,000 penalty units (\$163,000) (corporation)
Victoria	<i>Prevention of Cruelty to Animals Act 1986</i>	A person who commits certain acts of cruelty on an animal is guilty of an offence A person who commits an act of cruelty that results in death or serious disablement of an animal commits an act of aggravated cruelty and is guilty of an offence	250 penalty units (\$40,298) or 12 months imprisonment (person) 600 penalty units (\$96,714) (corporation) 500 penalty units (\$80,595) or 2 years imprisonment (person) 1,200 penalty units (\$193,428) (corporation)
Western Australia	<i>Animal Welfare Act 2002</i>	A person must not be cruel to an animal A person is cruel to an animal if they commit certain acts, including torture, harmful transportation and abandonment	Minimum: \$2,000 Maximum: \$50,000 and 5 years imprisonment

