ADDRESSING THE IMPACT OF ANIMAL ABUSE: THE NEED FOR LEGAL RECOGNITION OF ABUSED PETS AS SENTIENT VICTIMS OF DOMESTIC VIOLENCE IN AUSTRALIA

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Awareness of the incidence and impact of domestic violence has increased in recent decades, along with community and legal recognition of the interests of animals. However, streams of jurisprudence addressing these issues have only partially influenced one another. While in most Australian jurisdictions, animal cruelty can constitute domestic violence, abused companion animals have not been accorded the legal status of victims. This article proposes introducing laws that recognise such animals as sentient victims of domestic violence. This would enable courts to make orders protecting these animals, which would safeguard their welfare and ensure that people with whom they live who are also experiencing domestic violence can escape without worrying about the fate of their animals. Further, it would convey the seriousness of animal cruelty, and might increase support for and awareness of programs for re-homing abused animals, and training of people involved with animals to identify and report animal abuse.

I INTRODUCTION

My neighbours visited with their little dog, and as it approached me, tail wagging, to say hello, he slammed its back so that it was crushed to the floor. It urinated in panic.

The neighbour was speechless. He claimed it was done to protect me. The dog was injured, and hobbled behind my neighbour, who quickly made her excuses and left. He stood over me, as I cleaned the floor, and told me that's what happens when anyone disrespects his position as pack leader. He made it clear that included me.[1]

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1 Hayley Foster, Victoria Principe and Martina Talcevska, 'Domestic Violence and Animal Abuse: Brief Summary of Survey Responses for Domestic Violence and Animal Abuse Roundtable' (Position Paper, Women's Safety NSW, 19 February 2020) 2 ('Domestic Violence and Animal Abuse: Brief Summary of Survey Responses').

A victim/survivor of domestic violence reported the above incident, using the word 'he' to denote her abusive partner.[2]

In recent years, there have been some significant developments in Australian law that address human abuse of animals.[3] In all Australian jurisdictions, laws have been enacted that prohibit human cruelty towards animals and prescribe relatively harsh penalties for their breach.[4] Another important change has been the statutory recognition in most jurisdictions that humans can behave violently towards each other in a domestic setting by harming their companion animals.[5] Perpetrators of domestic violence may abuse their companion animals as a means of hurting and controlling their human victims.[6] Much of this legislation thus acknowledges that harming or killing an animal or threatening to do so – in addition to violent behaviour or threatened violence towards humans in a household – can constitute domestic violence.[7] Yet the ways in which these statutes address this issue is not consistent.

This article argues that, while all Australian jurisdictions have laws prohibiting assault and animal cruelty, it is crucial to introduce uniform laws throughout Australia that treat companion animal abuse as a form of domestic violence. The key doctrinal reasons for this stem from both animals' sentience and the 'deviance generalization' theory (discussed in Part II(A) below) that individuals who are violent towards animals are likely to engage in other forms of violent behaviour.[8] Vesting abused companion animals with victim status would acknowledge their capacity to think, feel and suffer, and convey the seriousness and the community's censure of human violence towards them. The proposed reforms would also underline the connection between animal abuse and domestic violence. Research has established that individuals who behave cruelly towards animals often engage in behaviour that harms people,[9] and abuse of companion animals frequently takes place in homes in which people also behave violently towards the humans with whom they live.[10]

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2 Ibid.

3 Note that this article uses the term 'animal' to refer to all animals, excluding human beings. While human beings are themselves animals, this popular use of the term animal is helpful for the purposes of clear communication. See Peter Singer, *Animal Liberation* (Penguin Random House, revised ed, 2015) xx; Deborah Cao, *Animal Law in Australia* (Thomson Reuters, 2nd ed, 2015) 25–32 [1.130]–[1.180].

4 See below Part II(D).

5 See, eg, *Family Law Act 1975* (Cth) ss 4AB(1), (2)(f). In this article, the term 'companion animals' is used to refer to animals that are colloquially known as 'pets'. For a discussion of this nomenclature, see Editors, 'Terms of Discourse' (2011) 1(1) *Journal of Animal Ethics* vii, viii.

6 Women's Safety NSW, *Animal Abuse and Domestic and Family Violence* (Report, 27 August 2020) 3 ('*Animal Abuse*').

7 National Council to Reduce Violence against Women and Their Children, *Domestic Violence Laws in Australia* (Report, June 2009) 16 [1.29] ('*Domestic Violence Laws in Australia*').

8 See Part II below.

9 Arnold Arluke et al, 'The Relationship of Animal Abuse to Violence and Other Forms of Antisocial Behavior' (1999) 14(9) *Journal of Interpersonal Violence* 963, 965; Stefany Monsalve, Fernando Ferreira and Rita Garcia, 'The Connection between Animal Abuse and Interpersonal Violence: A Review from the Veterinary Perspective' (2017) 114 *Research in Veterinary Science* 18, 18.

10 See below Parts II(A) and II(B).

Pragmatically, enhanced regulation in this area is necessary to improve protection of both animal victims of domestic violence and the humans with whom they live. The presence of companion animal abuse in a home heightens the risk that its human inhabitants will experience and have difficulty escaping from abuse. Further, victims of domestic violence may be reluctant to escape their tormentors for fear that they will leave behind companion animals who will suffer abuse and/or whom they will miss for their companionship and emotional support.[11]

Laws that classify companion animal abuse as a form of domestic violence can enable courts to intervene to protect, to some extent, the human victims of abuse with whom they live. However, such laws do not empower courts to make orders specifically protecting abused companion animals and, as a consequence, those animals might continue to suffer, and human victims of domestic violence may feel compelled to remain in dangerous circumstances to ensure their companion animals' safety. Indeed, some Australian legislation that treats animal abuse as a type of domestic violence refers to companion animals as human 'property',[12] which implies that animals deserve no greater respect, and thus protection in their own right, than inanimate items that humans similarly own.[13] Moreover, pursuant to these statutes, human victims of domestic violence may not receive court protection for their companion animals where they do not technically own the animals in their household towards whom their abuser behaves cruelly. Thus, conferring a victim status to abused animals would facilitate the making of court orders protecting the animal and human victims of domestic violence, irrespective of who owns the animal.

Moreover, this law reform would enable courts to make orders specifically prioritising protection of abused companion animals' interests by requiring their removal to alternative accommodation.[14] Such orders would liberate the humans with whom they live, who are concerned about their companion animals' safety, to escape from domestic violence because they would be reassured that they were not abandoning their companion animals to a fate of suffering further abuse. These laws would hopefully result in an increase in government support, and judicial officers' awareness, of a growing number of programs that are designed to re-

11 For example, protection orders can be issued that prohibit the perpetrator from committing violent acts against the victim and other protected people (such as relatives), and these orders can include conditions such as requiring the perpetrator to leave the victim's home. See 'National Domestic and Family Violence Bench Book' (Bench Book, Australian Institute of Judicial Administration, June 2021) 3.1.10: Animal Abuse; Domestic Violence NSW, 'Animals and Their Families: The Hidden Victims of Domestic Violence' (Media Release, 21 August 2020) <https://www.dvnsw.org.au/wp-content/uploads/2020/11/210820-Animals-and-People-experiencing-DFV.pdf> ('Animals and Their Families'); Anne M Volant et al, 'The Relationship between Domestic Violence and Animal Abuse' (2008) 23(9) *Journal of Interpersonal Violence* 1277, 1291.

12 See, eg, *Domestic and Family Violence Act 2007* (NT) ss 5(b), 6(b)(ii), 84(1)(a)(ii).

13 This is even the case in relation to companion animals. As noted by Steven White, relinquished companion animals in some circumstances can be legally surrendered to an animal shelter where they will face death because legally they are 'object[s] … of property that can be disposed of when it is no longer convenient to continue owning [them]': Steven White, 'Companion Animals: Members of the Family or Legally Discarded Objects?' (2009) 32(3) *University of New South Wales Law Journal* 852, 853.

14 As discussed in Part IV below, some organisations already provide facilities to receive these animals.

home abused companion animals and assist humans with whom they live to escape violent households.[15] The proposed law reform may also lead to an expansion of current education of people who work with and treat animals, such as veterinarians, to identify and report animal abuse.[16]

The next part of this article examines the abovementioned findings from research into the connections between domestic violence and abuse of animals, the reticence of some victims of domestic violence to escape from their abusers due to the risk of their companion animals suffering harm if they are left behind, and animals' sentience. Part III of the article provides an overview of relevant current Australian laws that address animal abuse in the context of domestic violence and animal sentience. In Part IV, the article examines existing programs for re-homing abused companion animals and education of veterinarians to identify companion animal abuse. Part V of the article discusses the recommendations for law reform outlined above.

II DOMESTIC VIOLENCE AND ANIMAL ABUSE

There is now an extensive body of research confirming: the link between animal abuse and domestic violence; the adverse effects of animal abuse on human victims of domestic violence; and many animals' sentience and their capacity to feel physical and psychological pain. The key findings of this research are set out below.

A The Propensity for Abusers of Animals to Behave Violently Towards Other Humans

Research has demonstrated a link between animal cruelty and violence towards humans: individuals who treat animals cruelly are more likely to behave violently towards other people.[17] While this increased propensity for violence may manifest in a progression from violence towards animals to violence towards humans, it is also displayed in cases where an offender behaves cruelly towards both animals and humans simultaneously.[18]

This connection is well illustrated by a systematic review of studies that were undertaken between 1995 and 2017, which looked at the connection between violent conduct towards animals and interpersonal violence.[19] Longobardi and Badenes-Ribera's study found that evidence supports the 'deviance generalization hypothesis',[20] according to which 'a wide range of criminal behaviors are positively

15 These reforms are considered in greater detail in Part V below.
16 These reforms are considered in greater detail in Part V below.
17 Arluke et al (n 9) 965; Monsalve, Ferreira and Garcia (n 9) 18.
18 C Longobardi and L Badenes-Ribera, 'The Relationship between Animal Cruelty in Children and Adolescent and Interpersonal Violence: A Systematic Review' (2019) 46 *Aggression and Violent Behavior* 201, 202.
19 Ibid 201.
20 Ibid 208, quoting Arluke et al (n 9) 965. See also Randall Lockwood, 'Review: Animal Cruelty, Antisocial Behaviour and Aggression: More Than a Link' (2014) 4(2) *Journal of Animal Ethics* 118, 120–1;

correlated with one another either because one form of deviant behavior leads to involvement in other forms of deviance or because different forms of deviance have the same underlying causes'.[21] In other words, the hypothesis posits that an individual who abuses animals is likely to commit other crimes, including violent crimes. A recent study by the Sentencing Advisory Council of Victoria ('VSAC') also supports the deviance generalisation hypothesis, as it found that the data indicates that 'animal cruelty may actually be better classified as part of a broader pattern of antisocial behaviour by certain offenders'.[22]

B The Common Co-occurrence of Human and Animal Abuse in Domestic Violence Settings

An expanding body of research is establishing that domestic violence settings are often the sites of abuse of both humans and animals simultaneously or at different times.[23] A survey undertaken by Women's Safety NSW found that between 1 and 3 in 5 domestic violence victims report animal cruelty.[24] An Australian study published in 2008 found '[s]ignificantly higher rates of partner pet abuse, partner threats of pet abuse, and pet abuse by other family members' in families where domestic violence had taken place compared to families where it had not occurred.[25] Research conducted by Frank Ascione and others in the United States similarly identified that women seeking protection from domestic violence were nearly 11 times more likely to indicate that their partner had abused their companion animals compared with women who had not experienced domestic violence.[26] The abovementioned recent study undertaken by VSAC identified that around 15% of animal cruelty cases prosecuted in the Magistrates' Court of Victoria in 2016 and 2017 took place in a domestic violence setting.[27] The co-occurrence of animal abuse and interpersonal violence may in fact be much more prevalent than this research has uncovered, given the likelihood that many victims withhold such information in responding to interviews and questionnaires.[28]

Bernard Unti, 'Cruelty Indivisible: Historical Perspectives on the Link between Cruelty to Animals and Interpersonal Violence' in Frank R Ascione (ed), *The International Handbook of Animal Abuse and Cruelty: Theory, Research, and Application* (Purdue University Press, 2008) 7, 25.

21 Arluke et al (n 9) 965.

22 Sentencing Advisory Council, *Animal Cruelty Offences in Victoria* (Report, 19 February 2019) 60 [8.14] ('*Animal Cruelty Offences in Victoria*').

23 LJ Tong, 'Fracture Characteristics to Distinguish between Accidental Injury and Non-Accidental Injury in Dogs' (2014) 199(3) *Veterinary Journal* 392, 398. See Frank R Ascione et al, 'Battered Pets and Domestic Violence: Animal Abuse Reported by Women Experiencing Intimate Violence and by Nonabused Women' (2007) 13(4) *Violence Against Women* 354, 355; Piers Beirne, 'From Animal Abuse to Interhuman Violence? A Critical Review of the Progression Thesis' (2004) 12(1) *Society and Animals* 39, 41–2; Michelle Newberry, 'Pets in Danger: Exploring the Link between Domestic Violence and Animal Abuse' (2017) 34 *Aggression and Violent Behavior* 273, 273.

24 *Animal Abuse* (n 6) 7.

25 Volant et al (n 11) 1277.

26 Ascione et al (n 23) 365.

27 *Animal Cruelty Offences in Victoria* (n 22) xv.

28 Newberry (n 23) 273.

Research suggests that perpetrators of domestic violence may abuse their companion animals as a means of harming, intimidating and/or controlling their human victims, particularly where the animals are a source of comfort and companionship for those people.[29] For instance, a victim of domestic violence reported that her brother threatened to kill her birds in order to intimidate her and, on one occasion, in fact snapped the neck of one of the birds.[30] Likewise, in *R v Maher*,[31] the County Court of Victoria convicted the accused of stalking and abusing his ex-partner, and this defendant subsequently strangled the cat of his former partner with a telephone lead.[32] More recently, in *R v French*,[33] the offender was convicted of animal cruelty for strangling the his partner's cat with a zip tie.[34] When his partner returned home, the offender told her that he had 'sorted out the cat problem … the cat is gone'.[35] The sentencing judge found that this caused 'great upset to [the] victim'.[36] In several cases, courts have recognised that the defendants' abuse of companion animals was a form of psychological and coercive control of their human victims. For instance, in *Holding v Parkin*,[37] the Supreme Court of Western Australia acknowledged that the offender murdered his victim's pet chicken because he was angry with her and knew she was fond of her companion animal, and intended thereby to exert psychological control over her.[38] Similarly, in *Bond v Royal Society for the Prevention of Cruelty to Animals (SA) Inc*,[39] the Supreme Court of South Australia found that the offender, driven by spite and anger towards his victim, killed the victim's dog in the aftermath of an argument.[40]

The co-occurrence of animal and domestic abuse has also been observed in overseas jurisdictions. In the United States, for example, more than 50 per cent of the 101 women from five domestic violence programs in Utah who were interviewed for the aforementioned study conducted by Frank Ascione and others in 2007 had partners who had either threatened to hurt their companion animals or had carried out this threat.[41] In the case of *People v Weeks*,[42] the Colorado Court of Appeals held that the trial court did not abuse its discretion in admitting evidence that showed the offender had abused animals prior to killing his three-year-old

29 Lyla Coorey and Carl Coorey-Ewings, 'Animal Victims of Domestic and Family Violence: Raising Youth Awareness' (2018) 7(1) *Animal Studies Journal* 1, 3; Samara McPhedran, 'Animal Abuse, Family Violence, and Child Wellbeing: A Review' (2009) 24(1) *Journal of Family Violence* 41, 41; Newberry (n 23) 273; Amy J Fitzgerald et al, 'Animal Maltreatment in the Context of Intimate Partner Violence: A Manifestation of Power and Control?' (2019) 25(15) *Violence Against Women* 1806.

30 'Animals and Their Families' (n 11).

31 (County Court of Victoria, Judge Hampel, 20 October 2009).

32 *Maher v The Queen* [2011] VSCA 136 [3] (Ashley JA, Bongiorno JA agreeing at [48]), quoting *R v Maher* (Country Court of Victoria, Judge Hampel, 20 October 2009) [11].

33 [2020] NSWDC 767.

34 Ibid [11]–[12] (Priestley DCJ).

35 Ibid [12].

36 Ibid.

37 (2012) 223 A Crim R 523.

38 Ibid 525 [9] (Hall J).

39 (2011) 109 SASR 149.

40 Ibid 154 [24] (Duggan J).

41 Ascione et al (n 23) 361.

42 369 P 3d 699, 704–8 (Dailey J, Webb and Plank JJ agreeing at 716) (Colo Ct App, 2015).

daughter. Here, evidence that the offender had 'slammed a puppy's head against a wall to punish it for urinating on the floor', and seized the family's pet cats by their throats and held them against the wall was held to be relevant to show that the offender's three-year-old daughter had died from a similar act committed by the offender rather than an accident.[43] In *People v Oglesby*,[44] an offender killed his girlfriend's recently rescued kitten and the next morning violently assaulted his girlfriend in a motel parking lot.[45] Likewise, in Scotland, a number of instances of domestic abuse involving animals were recounted by the Animal Welfare Foundation (a charity run by the veterinary and animal welfare profession).[46] In Glasgow, a victim of domestic violence reported to police that her former partner had stabbed her pet cat to death with a pen.[47] In another example, police were regularly called to the home of a domestic violence victim, and every instance of abuse within the home included allegations that the perpetrator had beaten the family dog.[48]

Given the apparent high prevalence of abuse of animals in sites of domestic violence, it is critical that legislation in all Australian jurisdictions treats companion animal abuse as a form of domestic violence and that abused companion animals are legally recognised as victims of domestic violence. The well-established link between abuse of animals and violence towards humans reinforces the need for legal recognition of animals as victims to protect humans, but also animals in these situations. Research demonstrating this link is typically relied on to advocate for increased protection for animals principally due to the risk to human safety.[49] As Nik Taylor and Heather Francis have highlighted, this perspective is 'humancentric', as it only emphasises the 'need to address animal abuse because it is a sign of potential or actual human-to-human abuse'.[50] However, the link between human and animal abuse also reinforces the need to protect animals in their own right who are at risk of abuse in domestic violence settings, and may even be an abuser's first target. It is thus vital that the simultaneous abuse of humans and animals in domestic settings – while reinforcing the need for better protection of human victims – also be utilised to recognise the animals as victims in their own right, so

43 Ibid.

44 70 Cal Rptr 3d 443 (Cal Ct App, 2008).

45 Ibid 444–5.

46 'How We Help', *Animal Welfare Foundation* (Web Page) <https://www.animalwelfarefoundation.org.uk/about-us/how-we-help/>.

47 Animal Welfare Foundation and The Links Group, 'Recognising Abuse in Animals and Humans' (Guidance Document, 2016) 17.

48 Ibid 18.

49 See generally Nik Taylor and Heather Fraser, *Companion Animals and Domestic Violence: Rescuing Me, Rescuing You* (Palgrave Macmillan, 2019) 44–5. In fact, early animal welfare legislation was often advocated for on the basis of the Kantian notion that 'he who is cruel to animals becomes hard also in his dealings with men': see Immanuel Kant, *Lectures on Ethics*, tr L Infield (Harper and Row, 1963) 239, quoted in Alex Bruce, *Animal Welfare Law in Australia: An Integrated Approach* (LexisNexis Butterworths, 2012) 21. See, eg, Geertrui Cazaux, 'Beauty and the Beast: Animal Abuse from a Non-Speciesist Criminological Perspective' (1999) 31(2) *Crime, Law & Social Change* 105, 108.

50 Taylor and Fraser (n 49) ch 2.

as not to minimise their plight.[51] This protection can be accorded to animals and human victims by recognising animals as sentient victims of domestic violence.

C The Potential for Companion Animal Abuse to Prevent People from Escaping Domestic Violence

Female victims of domestic violence in particular are often reluctant to leave their homes due to concerns for the wellbeing of their companion animals, some of whom have also already experienced abuse in those settings. By prioritising their companion animals' safety,[52] these human victims remain in positions of vulnerability and disadvantage, and at risk of experiencing further violence.[53] A recent study undertaken by Domestic Violence NSW observed that 42% of domestic violence victims postponed leaving their homes for over a year due to the substantial obstacles to obtaining help, including accommodation, for their companion animals.[54] Thirty-three percent of participants in another Australian study deferred seeking refuge from domestic violence because they were worried about their companion animals' safety.[55] Of these participants, seven postponed leaving their homes for over two months.[56]

If domestic violence perpetrators are aware of their victim's attachment to and unwillingness to abandon their companion animals, they may use their victim's emotional vulnerability to coerce them into remaining in an abusive home.[57] During Michelle Newbury's research into the link between animal abuse and domestic violence, a victim of domestic violence related her experience of her abuser using this strategy as follows:

> He sent me a video of him putting his hand over the dogs' mouth and nose to suffocate it and then threw it against the cupboard. He told me if I didn't return for good the dog would die next time, so of course I went back.[58]

In this case, the offender used his cruelty towards the dog to manipulate his human victim to return to the site of domestic violence. Clearly, this outcome is undesirable for the offender's human and animal victims.

D The Potential for Abuse of Animals to Cause Them Pain

In addition to the above rationales, protection of abused companion animals should be prioritised and their sentience legally recognised because research has established their capacity to feel physical as well as psychological or emotional pain that is similar to the pain experienced by humans. We now consider the

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51 Ibid.
52 Catherine M Tiplady, Deborah B Walsh and JC Phillips, 'The Ongoing Impact of Domestic Violence on Animal Welfare' (2015) 4(2) *Animal Studies Journal* 116, 129.
53 Coorey and Coorey-Ewings (n 29) 3.
54 'Animals and Their Families' (n 11).
55 Volant et al (n 11) 1288.
56 Ibid.
57 'Animals and Their Families' (n 11). See also Newberry (n 23) 278.
58 Newberry (n 23) 277.

scientific evidence supporting this conclusion, which confirms that human abuse of companion animals can cause them suffering.

It was initially difficult for researchers to establish whether animals can experience physical pain and, if so, the manner in which they might do so. Many researchers have noted that the subjectivity of the experience of pain and the inability of animals to convey sensations of pain in a way that humans can readily comprehend made it challenging for scientists to establish conclusively that animals feel physical pain.[59] Despite these difficulties, as scientist Lynne Sneddon explains, research has now found that '[a]nimals and humans share similar mechanisms of pain detection, have similar areas of the brain involved in processing pain and show similar pain behaviours'.[60]

To determine whether animals feel pain, scientific researchers largely adopted anthropomorphic strategies, which involve attributing human qualities to animals. Scientists subjected animals to pain stimuli and observed whether they displayed any physiological or behavioural responses which a human would be likely to exhibit if subjected to similar stimuli. Three main types of responses were identified that could indicate that animals experience pain: their bodily functions, for example, eating, drinking, defecating, and urinating; their physiological responses, such as blood cortisol levels; and their behavioural responses, such as crying out or attempting to escape.[61] Animals subjected to pain stimuli in this research demonstrated each of these responses and thereby confirmed that they can feel physical pain.

Observation of animal behavioural responses to pain stimuli, in particular, indicate that animals are capable of experiencing physical pain. When subjected to pain stimuli, animals exhibit many of the same behaviours that humans would likely display if subjected to the same stimuli. These behaviours include vocalisation and thrashing around.[62] Such reactions have indicated to scientists that animals share the human system of recording pain known as 'nociception'. Nociception involves nociceptors, or nerve ends in the body, receiving pain messages and forwarding them to the brain.[63] The brain processes the pain messages and prompts parts of the body to respond in a manner that indicates the experience of pain, such

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59 See, eg, Anna Klassen, 'Methodological Signatures in Early Ethology: The Problem of Animal Subjectivity' (2021) 52(2) *Journal for General Philosophy of Science* 563, 564; Helen S Proctor, Gemma Carder and Amelia R Cornish, 'Searching for Animal Sentience: A Systematic Review of the Scientific Literature' (2013) 3(3) *Animals* 882, 883–4; Lynne U Sneddon and Matthew C Leach, 'Anthropomorphic Denial of Fish Pain' (2016) 3(28) *Animal Sentience* 1–3.

60 Lynne U Sneddon, 'Can Animals Feel Pain?', *The Wellcome Trust* (Web Page, 3 December 2015) <http://www.wellcome.ac.uk/en/pain/microsite/culture2.html>, archived at <https://web.archive.org/web/20120413122654/http://www.wellcome.ac.uk/en/pain/microsite/culture2.html>.

61 Daniel M Weary et al, 'Identifying and Preventing Pain in Animals' (2006) 100(1) *Applied Animal Behaviour Science* 64, 65.

62 See, eg, Lynne U Sneddon et al, 'Defining and Assessing Animal Pain' (2014) 97 *Animal Behaviour* 201, 204; Jane Kotzmann and Morgan Stonebridge, 'There is Value in Stating the Obvious: Why United States Legislatures Should Explicitly Recognize Animal Sentience in Their Laws' (2021) 30(3) *Cornell Journal of Law and Public Policy* 425, 434.

63 See, eg, Adrienne E Dubin and Ardem Patapoutian, 'Nociceptors: The Sensors of the Pain Pathway' (2010) 120(11) *Journal of Clinical Investigation* 3760, 3760.

as calling out. Scientific research suggests that many vertebrate animal species, including cats, dogs and birds,[64] rats,[65] guinea pigs,[66] horses,[67] chickens, cows and sheep, utilise the system of nociception.[68] Fish also use a system of pain recording that operates in a similar way to nociception.[69] Thus, scientific research indicates that many animals which humans commonly adopt as companion animals can experience physical pain.

Practices adopted by members of the scientific community who work with animals reflect their acceptance of the notion that animals can feel pain. For example, according to the National Health and Medical Research Council of Australia, '[a]nimals have a capacity to experience pain and distress' and when used for scientific purposes '[s]teps must be taken at all times to safeguard [their] … wellbeing … by avoiding or minimising harm, including pain and distress'.[70] Further, veterinarians frequently give animals analgesics and anaesthetics for pain relief that are similar to those consumed by humans.[71]

Scientific research has also found that many animals are capable of experiencing psychological or emotional pain. While it has been difficult to establish that animals can feel physical pain, it has been even more challenging to prove that animals are able to feel psychological pain because it does not necessarily manifest in physical symptoms. Nevertheless, as Hope Ferdowsian and Debra Merskin recognise, '[a]natomical, physiological, and behavioural similarities across species demonstrate that animals experience pain and distress [including psychological pain and distress] in ways similar or identical to humans'.[72]

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64 Karol A Mathews et al, *Analgesia and Anaesthesia for the Ill or Injured Dog and Cat* (John Wiley & Sons, 2018) 8.

65 John V Roughan and Paul A Flecknell, 'Evaluation of a Short Duration Behaviour Based Post Operative Pain Scoring System in Rats' (2003) 7(5) *European Journal of Pain* 397.

66 Hilde Vermeirsch et al, 'Evaluation of Pain Behaviour and Bone Destruction in Two Arthritic Models in Guinea Pig and Rat' (2007) 87(3) *Pharmacology Biochemistry and Behavior* 349.

67 Johannes PAM van Loon et al, 'Application of Composite Pain Scale to Objectively Monitor Horses with Somatic and Visceral Pain under Hospital Conditions' (2010) 30(11) *Journal of Equine Veterinary Science* 641; PD McGreevy, 'Guest Editorial: The Fine Line Between Pressure and Pain: Ask the Horse' (2011) 188(3) *Veterinary Journal* 250, 250–1.

68 MJ Gentle, 'Attentional Shifts Alter Pain Perception in the Chicken' (2001) 10(Supp) *Animal Welfare* 187, discussed in Weary et al (n 61) 73; Kristen A Walker, Todd F Duffield and Daniel M Weary, 'Identifying and Preventing Pain During and After Surgery in Farm Animals' (2011) 135(3) *Applied Animal Behaviour Science* 259; Ignacio Viñuela-Fernández et al, 'Pain Mechanisms and Their Implication for the Management of Pain in Farm and Companion Animals' (2007) 174(2) *Veterinary Journal* 227; KMD Rutherford, 'Assessing Pain in Animals' (2002) 11(1) *Animal Welfare* 31; Andrew D Fisher, 'Addressing Pain Caused by Mulesing in Sheep' (2011) 135(3) *Applied Animal Behaviour Science* 232, 239.

69 Sneddon et al (n 62) 202; Lynne U Sneddon, Victoria A Braithwaite and Michael J Gentle, 'Do Fishes Have Nociceptors? Evidence for the Evolution of a Vertebrate Sensory System' (2003) 270 *Proceedings of the Royal Society B: Biological Sciences* 1115.

70 'Australian Code of Practice for the Care and Use of Animals for Scientific Purposes' (National Health and Medical Research Council, 8th ed, 2013) 10 [1.10]–[1.11].

71 Viñuela-Fernández et al (n 68) 231.

72 Hope Ferdowsian and Debra Merskin, 'Parallels in Sources of Trauma, Pain, Distress, and Suffering in Humans and Nonhuman Animals' (2012) 13(4) *Journal of Trauma and Dissociation* 448, 461. See also FW Rogers Brambell, *Report of the Technical Committee to Inquire into the Welfare of Animals Kept under Intensive Livestock Husbandry Systems* (Report Cmnd 2836, 1965) 9 [25].

It is clear that animals have the capacity to feel emotions, which is required in order to experience psychological pain.[73] Many animals are able to experience primary emotions, which are those emotions that are 'almost instinctive',[74] including fear, anger, and sadness. Further, some animals are also able to experience social emotions, such as jealousy, guilt and sympathy.[75] For example, the capacity of chimpanzees to experience grief is demonstrated in the following observation of primatologist Jane Goodall:

> Never shall I forget watching as, three days after Flo's death, Flint climbed slowly into a tall tree near the stream. He walked along one of the branches, then stopped and stood motionless, staring down at an empty nest. After about two minutes he turned away and, with the movements of an old man, climbed down, walked a few steps, then lay, wide eyes staring ahead. The nest was one which he and Flo had shared a short while before Flo died … the last short journey he made, pausing to rest every few feet, was to the very place where Flo's body had lain. There he stayed for several hours, sometimes staring and staring into the water. He struggled on a little further, then curled up – and never moved again.[76]

Scientific research also indicates that animals can suffer psychological illnesses. According to Franklin McMillan, a 'rapidly proliferating literature provides extensive evidence supporting the existence of psychological trauma … in nonhuman species'.[77] Animals can experience psychological illnesses that are similar to those suffered by some humans, such as post-traumatic stress disorder, depression, anxiety and obsessive-compulsive disorder.[78]

Australian legislatures are increasingly acknowledging animal sentience. In 2019, in an important, symbolic and substantive gesture, the Australian Capital Territory ('ACT') amended its *Animal Welfare Act 1992* (ACT) to recognise animal sentience in the objects section of this statute.[79] The amendments made the ACT the

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73 Marc Bekoff, 'Animal Emotions: Exploring Passionate Natures' (2000) 50(10) *BioScience* 861.

74 See Klaus Wilhelm, 'Do Animals Have Feelings?' (2006) 17(1) *Scientific American Mind* 24, 27.

75 Ibid 26–9.

76 Jane Goodall, *Through a Window: My Thirty Years with the Chimpanzees of Gombe* (Houghton Mifflin Harcourt, 2010) 224–5.

77 Franklin D McMillan, 'Psychological Trauma in Animals: PTSD and Beyond' (Conference Paper, International Association of Animal Behavior Consultants Conference, 2011) 107. See also Marc Bekoff, 'Do Wild Animals Suffer From PTSD and Other Psychological Disorders?', *Psychology Today* (Blog Post, 29 November 2011) <https://www.psychologytoday.com/us/blog/animal-emotions/201111/do-wild-animals-suffer-ptsd-and-other-psychological-disorders>; Marc Bekoff, 'Animals Don't Laugh, Think, Get Depressed, or Love Declares a Psychiatrist', *Psychology Today* (Blog Post, 3 September 2012) <https://www.psychologytoday.com/us/blog/animal-emotions/201209/animals-dont-laugh-think-get-depressed-or-love-declares-psychiatrist>; Shreya Dasgupta, 'Many Animals Can Become Mentally Ill', *BBC* (Web Page, 9 September 2015) <http://www.bbc.com/earth/story/20150909-many-animals-can-become-mentally-ill>, archived at <https://web.archive.org/web/20150911222730/http://www.bbc.com/earth/story/20150909-many-animals-can-become-mentally-ill>.

78 Hope R Ferdowsian et al, 'Signs of Generalized Anxiety and Compulsive Disorders in Chimpanzees' (2012) 7(6) *Journal of Veterinary Behavior* 353, 359–60; Hope R Ferdowsian et al, 'Signs of Mood and Anxiety Disorders in Chimpanzees' (2011) 6(6) *PLoS ONE* 1:1–10, 9–10; Dasgupta (n 77); James Dao, 'After Duty, Dogs Suffer Like Soldiers', *The New York Times* (online, 1 December 2011) <https://www.nytimes.com/2011/12/02/us/more-military-dogs-show-signs-of-combat-stress.html?pagewanted=all&_r=0>.

79 *Animal Welfare Legislation Amendment Act 2019* (ACT); *Animal Welfare Act 1992* (ACT) s 4A(1)(a). See also Jane Kotzmann, 'Recognising the Sentience of Animals in Law: A Justification and Framework for Australian States and Territories' (2020) 42(3) *Sydney Law Review* 281, 282–3.

first Australian jurisdiction to recognise animal sentience expressly in its laws and generated significant media attention.[80] Victoria's government has also publicly committed to passing legislation recognising that animals are sentient and, at the time of writing, is considering feedback on its Directions Paper, including support from a majority of survey respondents for recognition of animal sentience in legislation that is proposed to replace the *Prevention of Cruelty to Animals Act 1986* (Vic).[81] The government of Western Australia is also reviewing its *Animal Welfare Act 2002* (WA) and has publicly supported the recommendation of an independent panel to amend section 3 of this Act so that it expressly recognises 'that animals are living beings, able to perceive, feel, and have positive and negative experiences'.[82]

The increasing recognition of animals as sentient is consistent with all jurisdictions in Australia adopting laws prohibiting animal cruelty and providing for relatively harsh penalties (in the form of prison terms) for violation of these laws. For example, in New South Wales ('NSW'), sections 4(2) and 5(1)–(3) of the *Prevention of Cruelty to Animals Act 1979* (NSW) prohibit animal cruelty. The maximum penalties for an animal cruelty offence are 2,000 penalty units in the case of a corporation, and 400 penalty units or imprisonment for one year, or both, in the case of an individual.[83] Further, the maximum penalty for an offence of aggravated cruelty under the Act is 5,000 penalty units in the case of a corporation and 1,000 penalty units or imprisonment for two years, or both, in the case of an individual.[84]

As we have seen, scientific research indicates that many animals – including most animals that are commonly adopted as companion animals – are capable of experiencing physical and psychological pain. In response to this research, animal sentience is also increasingly recognised explicitly or implicitly in animal cruelty

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80 Ibid. See, eg, Ross Kelly, 'Recognition of Animal Sentience on the Rise', *Veterinary Information Network News Service* (online, 14 May 2020) <https://news.vin.com/default.aspx?pid=210&Id=9639465>; David Brooks with Danielle Celermajer, 'Wild Lives and Broken Promises: Why Are Kangaroos Deemed "Killable"?', *ABC News* (online, 20 July 2020) <https://www.abc.net.au/religion/davidbrooks-danielle-celermajer-wild-lives-and-broken-promises/12474146>; Jane Kotzmann, 'ACT's New Animal Sentience Law Recognises an Animal's Psychological Pain and Pleasure, and May Lead to Better Protections', *The Conversation* (online, 3 October 2019) <https://theconversation.com/actsnew-animal-sentience-law-recognises-an-animals-psychological-pain-and-pleasure-and-may-leadto-better-protections-124577>; Dan Jervis-Bardy, 'ACT's "Sentience" Laws Impose Tough New Penalties for Mistreating Animals', *The Sydney Morning Herald* (online, 27 September 2019) <https://www.smh.com.au/environment/sustainability/act-s-sentience-laws-impose-tough-newpenalties-for-mistreating-animals-20190927-p52vfe.html>; Elise Scott, Tahlia Roy and Niki Burnside, 'Canberra Set to Recognise Animals as "Sentient Beings" That Are Able to Feel and Perceive in Australian First', *ABC News* (online, 13 May 2019) <https://www.abc.net.au/news/2019-05-13/canberra-animal-laws-fine-owners-who-dont-exercise-dogs/11106158>.

81 Minister for Agriculture (Vic), 'Andrews Labor Government Delivers More Support for Animal Welfare' (Media Release, 19 October 2017) <https://www.premier.vic.gov.au/andrews-labor-government-delivers-more-support-animal-welfare>; Victorian Government, 'A New Animal Welfare Act for Victoria', *Engage Victoria* (Web Page) <https://engage.vic.gov.au/new-animal-welfare-act-victoria>.

82 Department of Primary Industries and Regional Development, Government of Western Australia, 'Government Response to the Report of the Independent Review of the *Animal Welfare Act 2002*', (Response Document, 2 June 2021) 3.

83 *Prevention of Cruelty to Animals Act 1979* (NSW) s 5.

84 Ibid s 6(1).

laws. If victims of domestic violence recognise animals' capacity to experience pain, they may be reluctant to leave violent homes for fear that their tormentors will inflict physical and/or psychological suffering on their companion animals. It is therefore critical that the law protects both animal and human victims of domestic violence.

E Conclusion: The Need to Protect Animals in Domestic Violence Contexts

As we have demonstrated, research has established that there is a strong connection between animal abuse and violence towards people, including domestic violence, and that animals are sentient and capable of feeling physical and psychological pain that is similar to that experienced by humans. These matters underpin the importance of legally recognising abused companion animals as victims of domestic violence. If animals can feel pain, they can suffer from human abuse. It is therefore critical to ensure that they are protected from human cruelty. Moreover, the heightened risk of individuals who abuse animals also behaving violently towards people with whom they live indicates that failing to safeguard pets from human cruelty can result in human victims of domestic violence similarly not securing protection. It is therefore appropriate that, notwithstanding recent legislative changes, the Animal Justice Party of NSW is still campaigning for animals to be legally classified as victims of domestic violence in their own right.[85] Likewise, Victorian Animal Justice Party Member of Parliament Andy Meddick has indicated his intention to bring a motion proposing amendments to Victorian family violence prevention laws to recognise animals as family violence victims.[86]

We now examine in greater detail the extent to which current Australian legislation addresses human abuse of animals in the context of domestic violence and recognises animals' sentience.

III AUSTRALIAN LAWS CONCERNING ANIMAL ABUSE IN THE CONTEXT OF DOMESTIC VIOLENCE AND ANIMALS' SENTIENCE

As previously noted, most Australian jurisdictions have enacted legislation that expressly recognises actual and threatened companion animal abuse as a form of domestic violence.[87] Indeed, Tasmania is the only jurisdiction whose relevant legislation – the *Family Violence Act 2004* (Tas) – does not explicitly do so.[88] At the

85 'Shelter Animals from Domestic Violence', *Animal Justice Party (NSW)* (Web Page) <https://nsw.animaljusticeparty.org/campaign/animals-and-domestic-violence/>.

86 'Protect Pets from Family Violence', *Animal Justice Party* (Web Page) <https://animaljusticepartyvictoria.good.do/fdvanimals/signpetition/>.

87 *Domestic Violence Laws in Australia* (n 7) 16 [1.29].

88 Australian Law Reform Commission, *Family Violence: A National Legal Response* (Report No 114, October 2010) 200 [5.45]–[5.46] ('*Family Violence: A National Legal Response*'). The *Family Violence Act 2004* (Tas) does, however, recognise emotional abuse in section 9(1), and, in this respect, Catherine A Faver and Elizabeth B Strand argue that pet abuse can constitute emotional abuse: Catherine A Faver and Elizabeth B Strand, 'Fear, Guilt, and Grief: Harm to Pets and the Emotional Abuse of Women' (2007)

federal level, the *Family Law Act 1975* (Cth) now includes 'intentionally causing death or injury to an animal' as an example of 'family violence', which it defines as 'violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the *family member*), or causes the family member to be fearful'.[89] Similarly, in the ACT, section 8(2)(c) of the *Family Violence Act 2016* (ACT) defines 'family violence' by a person in relation to a family member of the person as including 'harming an animal'.[90] In South Australia, the *Intervention Orders (Prevention of Abuse) Act 2009* (SA) defines an 'act of abuse' as including acts that are intended to result in emotional or psychological harm, which may comprise acts 'causing the death of, or injury, to an animal'.[91] In Victoria's *Family Violence Protection Act 2008* (Vic), 'family violence' is defined as including 'causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the family member to whom the behaviour is directed'.[92] For this definition to apply, the objective of the behaviour must be 'to control, dominate or coerce the family member'.[93]

Some other Australian legislation acknowledges that harming animals can be a form of domestic violence but uses language that appears to deny animals' sentience. In Queensland, the *Domestic and Family Violence Protection Act 2012* (Qld) defines 'domestic violence' as including 'causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the person to whom the behaviour is directed, so as to control, dominate or coerce the person'.[94] Section 81 of that Act provides that where a court is satisfied that a respondent has used or threatened to use a 'thing' – which expressly includes a companion animal – to commit domestic violence and is likely to do so again, the court can include a condition in a domestic violence order prohibiting the respondent from possessing the 'thing'.

Other statutes treat abuse of animals as a type of domestic violence on the basis that they refer to animals as human property that has been or is threatened to be damaged, language that similarly fails to highlight animals' capacity to think and feel. This legislation is problematic, too, as it might only help to protect animals and victims of domestic violence where the human victims personally own the abused animals in their home. For instance, the *Domestic and Family Violence Act 2007* (NT) defines 'domestic violence' as 'conduct committed by a person against someone with whom the person is in a domestic relationship',[95] which may comprise 'damaging property, including by injuring or killing an animal'.[96] This Act also defines 'intimidation' of a person as including any 'conduct that causes

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7(1) *Journal of Emotional Abuse* 51. Thus, it could be said that Tasmanian domestic violence legislation does indirectly capture pet abuse.

89 *Family Law Act 1975* (Cth) ss 4AB(1), (2)(f).

90 *Family Violence Act 2016* (ACT) s 8(2)(c).

91 *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s 8(4)(d).

92 *Family Violence Protection Act 2008* (Vic) s 5(2)(e).

93 Ibid.

94 *Domestic and Family Violence Protection Act 2012* (Qld) s 8(2)(g).

95 *Domestic and Family Violence Act 2007* (NT) s 5(b).

96 Ibid.

a reasonable apprehension of … damage to the property of the person, including the injury or death of an animal that is the person's property'.[97] The statute grants police officers special powers where they reasonably believe 'it is necessary to remove a person to prevent an imminent risk of damage to property, including the injury or death of an animal'.[98] Likewise, in Western Australia, while the *Domestic Violence Orders (National Recognition) Act 2017* (WA) does not refer to harming of animals, the *Restraining Orders Act 1997* (WA) defines 'family violence' as including 'causing death or injury to an animal that is the property of the family member'.[99]

Nevertheless, the most recent relevant statutory change marks a break away from this trend of treating abused animals in the context of domestic violence as damaged property. In response to campaigning by the Animal Justice Party NSW and, in particular, Member of the Legislative Council Emma Hurst,[100] the NSW legislature passed the *Stronger Communities Legislation Amendment (Domestic Violence) Act 2020* (NSW) in November 2020, which amends the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) ('*CDPVA*') to improve protection of animals in domestic violence contexts.[101] The amendments to the *CDPVA* require prohibitions in apprehended domestic violence orders to specify that a defendant is prohibited from 'intentionally or recklessly destroying or damaging any property or harming an animal that belongs to, or is in the possession of, the protected person or a person with whom the protected person has a domestic relationship'.[102] The amended *CDPVA* also defines 'intimidation' as including 'conduct that causes a reasonable apprehension of … harm to an animal that belongs or belonged to, or is or was in the possession of, the person or another person with whom the person has a domestic relationship'.[103] In addition, the objects section of this statute now recognises 'the intersection between animal abuse and domestic violence'.[104] While the amended *CDPVA* continues to refer to animals as 'belonging' to humans, the amendments represent a positive step towards distancing animals from the concept of 'property' in this legislation, and acknowledging their sentience by expressly seeking to protect them from harm. These changes convey that animals will not be regarded legally as a person's property whom they are free to treat however they please, acknowledge that an individual can perpetrate domestic violence by

97 Ibid s 6(1)(b)(ii).

98 Ibid s 84(1)(a)(ii).

99 *Restraining Orders Act 1997* (WA) ss 5A(1), 5A(2)(f).

100 'Penalties for Animal Abuse Set to Drastically Increase in NSW', *Emma Hurst MP* (Media Release, 9 November 2020) <https://www.emmahurstmp.com/penalties_for_animal_abuse_set_to_increase>.

101 See New South Wales, *Parliamentary Debates*, Legislative Assembly, 22 October 2020, 4993–4 (Mark Speakman, Minister for the Prevention of Domestic Violence).

102 *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 36(c) ('*CDPVA*'), as amended by *Stronger Communities Legislation Amendment (Domestic Violence) Act 2020* (NSW) sch 1 item 11 ('*Stronger Communities Act*').

103 *CDPVA 2007* (NSW) s 7(1)(c)(iv), as inserted by *Stronger Communities Act 2020* (NSW) sch 1 item 1.

104 *CDPVA 2007* (NSW) s 9(3)(f2). See also the definition of 'intimidation' (*CDPVA 2007* (NSW) s 7(1)(c)(iv)), which includes 'conduct that causes a reasonable apprehension of … harm to an animal that belongs or belonged to, or is or was in the possession of, the person or another person with whom the person has a domestic relationship'.

harming an animal in the home regardless of whether the human victim owns the animal, and imply that animals are sentient rather than inanimate objects.

These advances lay the groundwork for the introduction of further laws that can potentially empower courts to make orders specifically protecting abused companion animals by recognising that they deserve respect and thus protection in their own right. Moreover, they may help to change the apparent attitudes of some people who abuse animals by discouraging the belief that animals are merely their property whom they can abuse and use to manipulate and coerce their human victims.[105] Some research suggests that people who abuse their companion animals consider them to be their 'property' rather than 'sentient creatures',[106] due to their speciesist attitude that humans are inherently superior to animals.[107] One study found that 90% of people who abused their companion animals never showed them affection, 95% of them only communicated with their companion animals through commands and threats, and 70 per cent of them considered their companion animals to be their 'property'.[108] Conversely, a significant number of people who live with companion animals consider them to be family members, rather than their 'property'.[109] If those individuals live in sites of domestic violence, the perpetrator may abuse them by harming the companion animals whom they cherish.[110]

As outlined in Part II, consistent with a shift away from treating abused animals as damaged property is the global and Australian trend in recent years towards explicitly recognising animals' sentience in animal welfare legislation.[111] The fact that legislation penalises animal cruelty reflects some recognition that animals are sentient. However, while these laws seek to protect animals from cruelty, including in domestic violence situations, they do not go far enough to protect animals that are experiencing domestic violence, due to the property paradigm that underpins animal welfare legislation.[112] Where the companion animal is the property of the offender, the victim would be unable to take the animal with them when fleeing domestic violence without potentially generating a legal dispute between them and the animal's owner. Further, animal welfare legislation does not permit granting

105 See above discussion at Part II(E).

106 Ascione et al (n 23) 357.

107 Ibid; Domestic Violence NSW, *Animals and People Experiencing Domestic and Family Violence: How Their Safety and Wellbeing Are Interconnected* (Report, November 2020) 26.

108 Pamela Carlisle-Frank, Joshua M Frank and Lindsey Nielsen, 'Selective Battering of the Family Pet' (2004) 17(1) *Anthrozoös: A Multidisciplinary Journal of the Interactions of People and Animals* 26, 34.

109 Charlotte A Lacroix, 'Another Weapon for Combating Family Violence: Prevention of Animal Abuse' in Frank R Ascione and Phil Arkow (eds), *Child Abuse, Domestic Violence, and Animal Abuse: Linking the Circles of Compassion for Prevention and Intervention* (Purdue University Press, 1999) 62, 63–4.

110 'Animals and Their Families' (n 11). See also Newberry (n 23) 278.

111 See, eg, *Wet Dieren* [Animals Act 2011] (Netherlands) art 1.3; *Code Civil* [Civil Code] (France) art 515-14; *Animal Welfare Act 2008* (Tanzania) s 4(b)(i); *Animal Welfare and Safety Act*, CQLR 2016, c B-3.1, Preamble; *Civil Code 2016* (Colombia) art 655; *Animal Welfare Act 1999* (NZ) title paragraph (a)(i); *Consolidated Version of the Treaty on the Functioning of the European Union*, opened for signature 13 December 2007, [2012] OJ C 326/01 (entered into force 1 December 2009) art 13; Donald M Broom, 'Animal Welfare and Legislation' in Frans JM Smulders and Bo Algers (eds), *Welfare of Production Animals: Assessment and Management of Risks* (Wageningen Academic Publishers, 2009) 339, 339.

112 See generally Gary L Francione, *Animals, Property and the Law* (Temple University Press, 1995) pts 1–2.

custody or possession of the companion animal to the victim or an independent third party in the interim before the matter reaches a final hearing.

Animal welfare legislation may also fail to protect animals who are abused in sites of domestic violence because animal cruelty cases are rarely prosecuted in Australia. For instance, in South Australia, of the 4,244 reports of animal cruelty to the Royal Society for the Prevention of Cruelty to Animals ('RSPCA') in the 2018–19 financial year, charges were laid in just 0.8% of complaints.[113] Yet this was one of the higher prosecution rates in Australia in the 2018–19 financial year; in Western Australia, for example, the rate was 0.2%.[114] As Amber Macias-Mayo observes, 'when an animal abuser is not prosecuted and punished to the full extent of the law, it may embolden the abuser', who might then increase their violent behaviour towards their human victim.[115] Further, human and animal victims of domestic violence require immediate action to protect them from harm and thus, even in the rare circumstances where a perpetrator of domestic violence is prosecuted for animal cruelty, the victims of their abuse would only receive assistance after significant harm has already been suffered.

As will be outlined further below, the inclusion of animals in laws that govern family violence would serve to enhance the interests of both animal and human victims of domestic violence.

IV CURRENT PROGRAMS TO IDENTIFY AND ASSIST ABUSED ANIMALS IN DOMESTIC VIOLENCE SETTINGS

There has been a growth in several Australian jurisdictions of programs, many of which have attracted government funding, to help find accommodation for companion animals of people who are escaping domestic violence, and train veterinarians to identify and report cases of companion animal abuse.[116] While these initiatives are important, some still require expansion and further funding to have a meaningful impact. In addition, there remain obstacles in some states to victims of domestic violence finding safe accommodation for themselves and their companion animals.

The RSPCA Queensland, together with the Queensland Domestic and Family Violence Service, provide the 'Pets in Crisis' service, which arranges temporary shelter and veterinary services for the companion animals of people who are

113 Rochelle Morton et al, 'Explaining the Gap between the Ambitious Goals and Practical Reality of Animal Welfare Law Enforcement: A Review of the Enforcement Gap in Australia' (2020) 10 *Animals* 482:1–21, 9.

114 Ibid.

115 Amber Macias-Mayo, 'Plowing the Landscape of Terror: How Recognizing the Link Can Diminish' (2019) 33(2) *American Journal of Family Law* 301, 304.

116 See, eg, 'Pets in Crisis Program', *Royal Society for the Prevention of Cruelty to Animals Queensland* (Web Page) <https://www.rspcaqld.org.au/what-we-do/save-animals/Pets%20in%20Crisis%20Program> ('Pets in Crisis Program'); Stuart Winthrope, 'Making the Link Between Family Violence and Animal Abuse', *Pursuit* (Web Page, 7 September 2018) <https://pursuit.unimelb.edu.au/articles/making-the-link-between-family-violence-and-animal-abuse>.

escaping domestic violence.[117] The Queensland government has contributed $100,000 in recent years to this program.[118] In 2015, a Special Taskforce on Domestic and Family Violence in Queensland issued a report titled *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland*.[119] The report's 87th recommendation is to pilot a refuge that provides for the needs of families with companion animals, with a view to providing more flexible refuges in the future.[120] In response to this report, a number of shelters in Queensland now accommodate companion animals.[121]

In other states and territories, some services are available through the relevant jurisdiction's RSPCA, which receive some government funding.[122] In the ACT, the RSPCA runs 'Project SAFE (Support for Animals and Families in Emergencies)'. This program aims to provide temporary emergency care for the companion animals of people who are leaving domestic violence settings.[123] In South Australia, the RSPCA has implemented the 'Safe Kennels Domestic Violence Project'.[124] This project aims to develop collaborative relationships with organisations that work with people who are affected by domestic violence, provide information to people leaving domestic violence settings, and assist in providing shelter for companion animals affected by domestic violence.[125] In Tasmania and NSW, the RSPCA have a 'Safe Beds for Pets' program that arranges emergency shelter for companion animals of individuals leaving domestic violence.[126] Similarly, the

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117 'Pets in Crisis Program' (n 116); Emma Lagoon, 'Support for Pets in Domestic Violence Situations', *RSPCA Queensland* (Web Page, 15 December 2020) <https://www.rspcaqld.org.au/blog/in-the-community/support-for-pets-domestic-violence>; North Queensland Domestic Violence Resource Service, 'Pets in Crisis' (Web Page) <https://nqdvrs.org.au/pets-in-crisis/>.

118 Felicity Caldwell, 'Domestic Violence Attention Turns to Pets, the Voiceless Victims', *Brisbane Times* (online, 15 August 2017) <https://www.brisbanetimes.com.au/national/queensland/domestic-violence-attention-turns-to-pets-the-voiceless-victims-20170815-gxwfkj.html>.

119 Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (Report, 28 February 2015).

120 Ibid 34, 245.

121 Caldwell (n 118); Department of Housing and Public Works, 'Domestic and Family Violence', *Queensland Government* (Web Page, 29 November 2019) <https://www.hpw.qld.gov.au/about/initiatives/domestic-family-violence>, archived at <https://webarchive.nla.gov.au/awa/20200323065047/https://www.hpw.qld.gov.au/about/initiatives/domestic-family-violence>.

122 RSPCA ACT, *2019–2020 Annual Report* (Report, 2020) 3; RSPCA South Australia, *Annual Report 2019/2020* (Report, 2020) 5; Thea Halpin, 'Domestic Violence Shelters for Pets Needed in South Australia', *ABC News* (online, 30 January 2017) <https://www.abc.net.au/news/2017-01-30/what-happens-to-pets-in-domestic-violence-situations/8222494>; RSPCA Tasmania, *Annual Report 2019/20* (Report, 2020) 33; RSPCA Western Australia, *RSPCA WA 2019/20 Annual Report: Financial Statements Appendix* (Report, 24 September 2020) 4.

123 'RSPCA ACT Domestic Violence Program: "Project SAFE"', *RSPCA ACT* (Web Page, 19 April 2018) <https://www.rspca-act.org.au/node/496>.

124 'Safe Kennels: Our Domestic Violence Program', *RSPCA SA* (Web Page) <https ://www.rspcasa.org.au/safe-kennels-project/>.

125 Ibid.

126 'Emergency Boarding for Pets', *Shelter Tasmania* (Web Page) <https://sheltertas.org.au/housing-in-tasmania/homelessness/emergency-boarding-for-pets/>. See also Safe Beds for Pets, 'Community Domestic Violence Program', *RSPCA New South Wales* (Web Page) <https://www.rspcansw.org.au/what-we-do/working-in-communities/community-domestic-violence-program/#1504656623103-e09e24eb-e577>.

Western Australian government provided a grant of $100,000 to the RSPCA in that state to continue the 'Pets in Crisis' program launched in 2017. This program assists individuals with companion animals who are leaving domestic violence by providing temporary foster care for those animals.[127] The Victorian government provided $100,000 in funding between 2015 and 2019 to the 'Safe Steps Family Violence Response' program, which helps find shelter for companion animals of people who are leaving domestic violence situations.[128] Nevertheless, the program struggles to meet the 'high demand' for its services.[129]

The NSW government has recently announced a one-off funding grant of $500,000 to enable companion animals to be accommodated in refuges and animal shelters, under a scheme referred to as the 'Pets and Animal Welfare Support Grants Program'.[130] Nevertheless, there is a significant lack of shelters and refuges available in NSW to house animals.[131] While the RSPCA NSW's 'Community Violence Program' is able to offer temporary accommodation for animals, it has restricted capacity.[132] The government also has a 'Staying Home Leaving Violence' program that assists domestic violence victims who are unable or do not wish to leave their homes, but it is only available in limited locations.[133] Yet a potential obstacle to some victims of domestic violence leaving their homes and finding safe, affordable accommodation to rent and live in with their companion animals is NSW tenancy laws that permit landlords to refuse to allow a companion animal to live in their property.[134] By contrast, in Victoria, tenants have a right to keep a

127 Simone McGurk, Minister for Child Protection, Women's Interests, Prevention of Family and Domestic Violence and Community Services, 'Over $1 Million Funding Allocated to Support Animal Welfare in Western Australia' (Media Statement, 11 August 2018) <https://www.mediastatements.wa.gov.au/Pages/McGowan/2018/08/Over-1-million-dollars-funding-allocated-to-support-animal-welfare-in-Western-Australia.aspx>.

128 Peter Lusted, '"Life-Saving" Victorian Domestic Violence Pet Shelter Program Struggling to Meet High Demand', *ABC News* (online, 31 March 2017) <https://www.abc.net.au/news/2017-02-28/domestic-violence-pet-shelter-program-struggling-to-meet-demand/8308606>; 'Domestic Violence Support: Victorian Government to Fund Pet Care for Victims Leaving Home', *ABC News* (online, 5 July 2015) <https://www.abc.net.au/news/2015-07-05/government-funds-animal-care-for-family-violence-victims/6595870>.

129 Lusted (n 128).

130 Department of Communities and Justice NSW, 'New Law to Help Protect Pets from Domestic Violence Perpetrators' (Media Release, 18 October 2020) <https://dcj.nsw.gov.au/news-and-media/media-releases/new-law-to-help-protect-pets-from-domestic-violence-perpetrators.html>; 'Animals and Their Families' (n 11).

131 Lauren van der Kraan and Tara Ward, 'Animal Abuse and Domestic Violence: Action Needed to Protect the Human and Animal Victims', *Community Legal Centres NSW* (Web Page, 8 December 2020) <https://www.clcnsw.org.au/animal-abuse-and-domestic-violence-action-needed-protect-human-and-animal-victims>.

132 Note that the RSPCA New South Wales Community Domestic Violence Program, which aims to assist pet owners leaving situations of domestic violence, was previously known as Safe Beds for Pets: 'Community Domestic Violence Program', *RSPCA New South Wales* (Web Page) <https://www.rspcansw.org.au/what-we-do/working-in-communities/community-domestic-violence-program/#1504656623103-e09e24eb-e577>.

133 Department of Communities and Justice NSW, 'Staying Home Leaving Violence', *NSW Government* (Web Page) <https://www.facs.nsw.gov.au/domestic-violence/services-and-support/programs/staying-home-leaving-violence>.

134 van der Kraan and Ward (n 131).

companion animal with their landlord's consent, which cannot be unreasonably withheld.[135] This clearly improves the availability of appropriate and affordable housing options for people leaving domestic violence situations.

Also in Victoria, veterinary science students at the University of Melbourne, on the suggestion of the Eastern Domestic Violence Outreach Service,[136] are now trained to recognise signs of animal abuse in domestic violence contexts.[137]

V LAW REFORM RECOMMENDATIONS

In light of the above discussion, it is apparent that, although legislation in most Australian jurisdictions treats animal abuse as a potential form of domestic violence, the manner in which animals are dealt with in the domestic violence setting across Australia is inconsistent and incoherent. This is inappropriate especially given the extensive research confirming the pervasiveness of animal abuse in the domestic violence context and animals' sentience.[138] Moreover, there are compelling reasons for awarding animals in domestic violence matters independent legal status, as opposed to being treated like property.

Although some Australian jurisdictions state that domestic violence can include causing injury or death to animals, there is no express statutory recognition that animals can be victims of domestic violence.[139] Instead, the status of animals in the domestic violence setting is generally defined by the impact that their abuse may have on the humans in their household. Subordinating the status of animals in this context does not fully acknowledge their distinct interests. Over 200 years ago, philosopher Jeremy Bentham argued that animals' capacity to feel pain made it morally imperative to recognise their interests, writing:

> The day *may* come, when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. The French have already discovered that the blackness of the skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor. It may come one day to be recognized, that the number of legs, the villosity of the skin, or the termination of the *os sacrum*, are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? Is it the faculty of reason, or, perhaps, the faculty of discourse? But a full-grown horse or dog is beyond comparison a more rational, as well as more conversable animal, than an infant of a day, or a week, or even a month, old. But suppose the case were otherwise, what would it avail? the question is not, Can they *reason*? nor, Can they *talk*? but, Can they *suffer*?[140]

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135 'Pets and Renting', *Consumer Affairs Victoria* (Web Page, 4 May 2021) <https://www.consumer.vic.gov.au/housing/renting/applying-for-a-rental-property-or-room/pets-and-renting>.

136 The Eastern Domestic Violence Outreach Service ('EDVOS') is a not-for-profit organisation, primarily funded by the State Government of Victoria: 'Who is EDVOS', *EDVOS* (Web Page) <https://www.edvos.org.au/aboutus/>.

137 Winthrope (n 116).

138 'Domestic Violence and Animal Abuse: Brief Summary of Survey Responses' (n 1) 1.

139 Ibid 7.

140 Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, (Hafner Publication Company, 1948) 311 (emphasis in original).

Awarding abused companion animals the independent legal status of victims would recognise their interests. Explicit acknowledgment in legislation that animals can be victims of domestic violence would recognise their sentience and lead to greater protection for them. At a federal level, this might be achieved by extending the definition of a 'member of the family' in section 4 of the *Family Law Act 1975* (Cth) to include animals, so that harming an animal would be recognised as an act of family violence itself regardless of its impact on other human family members. Similar changes should be made to state and territory domestic violence legislation. Thus, legal actions relating to the abuse of companion animals would be able to be pursued in the same courts as domestic violence actions generally can be commenced at present (namely, the Federal Circuit and Family Court of Australia, and Magistrates and Local Courts) and they would be subject to the same rules relating to costs and standing.[141]

Legal recognition of abused companion animals as victims of domestic violence would emphasise the link between animal abuse and domestic violence, and therefore encourage courts to appreciate the seriousness of this conduct as well as its detrimental impact on animals. As abused companion animals currently lack the legal status of victims of domestic violence, at present, domestic violence proceedings and orders that are made in them do not focus on their welfare. Consequently, courts may permit perpetrators of domestic violence to retain custody of companion animals whom they have abused, potentially exposing them to further maltreatment. This can also discourage human victims of domestic violence from escaping for, as we have seen, many victims of domestic violence feel pressured to remain in abusive households because they do not want to abandon their companion animals to the risk of suffering further abuse.

Failure to accord companion animals victim status in domestic violence settings downplays the significance of and may even be viewed as condoning companion animal abuse. Yet, in addition to causing animals suffering, companion animal abuse has the potential to harm human victims of domestic violence far more than damage to inanimate property. Indeed, research has confirmed 'the particular [severe] impacts on victims' behaviours arising [simply] from fear of an animal being harmed'.[142] Attributing victim status to abused animals would enable courts to make orders protecting the animal and human victims of domestic violence, regardless of who owns the animal.[143] This would emphasise that human ownership

141 In domestic violence actions, generally each party is responsible for their costs of the proceedings and actions can be commenced by the victims or police. The key relevant state and territory legislative provisions are contained in: *Family Violence Act 2016* (ACT); *CDPVA 2007* (NSW); *Domestic and Family Violence Act 2007* (NT); *Domestic and Family Violence Protection Act 2012* (Qld); *Intervention Orders (Prevention of Abuse) Act 2009* (SA); *Family Violence Act 2004* (Tas); *Family Violence Protection Act 2008* (Vic); *Restraining Orders Act 1997* (WA). We thank the anonymous reviewers for this suggestion.

142 *Family Violence: A National Legal Response* (n 88) 241 [5.200].

143 Ibid 225–7 [5.134]–[5.136]. If a single person abuses their companion animal, the animal should still be considered a domestic violence victim. The harm to the animal is the same irrespective of whether the owner has a human partner, and acknowledging this as an act of family violence reinforces the need to elevate the status of animals and enhances the options available to courts, such as removing the animal from the owner to a safe environment. We thank the anonymous reviewer for this point.

of an animal does not carry with it a right to treat an animal however the individual wishes, and enable courts to place abused companion animals in the custody of an independent person or agency.

As mentioned, to ensure a uniform, coherent approach by the law to abuse of animals in domestic violence contexts, it is crucial that animals are legally recognised as potential victims of domestic violence in all Australian jurisdictions. This would ensure that state and territory laws are consistent with amendments that would need to be made to the *Family Law Act 1975* (Cth), which applies throughout Australia and governs many family violence proceedings, and with other state and territory laws dealing with domestic violence protection orders.[144] In order to implement this law reform effectively, some structural and pragmatic considerations would also need to be addressed as follows.

Courts would need to focus specifically on the interests of animals where domestic violence complaints include evidence of their abuse. This would require courts to make orders taking into account the best interests of animals, such as mandating their medical treatment or removing them to alternative accommodation. As we have seen, in several Australian jurisdictions, the infrastructure for placing abused companion animals in independent care is already in place and these programs are well subscribed. One study found that 4 of the 5 women in the study, having left violent relationships, participated in the 'Pets in Crisis' animal fostering service in Queensland,[145] which provides care and accommodation for animals from violent households. This is one of the few services providing emergency accommodation for human victims of domestic violence that allow animals to be housed on-site.[146] As we have seen, RSPCA NSW has implemented a 'Safe Beds for Pets' program that also provides temporary housing for companion animals.[147] This has been shown to have effectively assisted victims of domestic violence to source alternative accommodation for themselves and their companion animals. Redfern Legal Centre notes that a victim of domestic violence who was reluctant to leave her home because she did not want to abandon her companion animals contacted a Safe Beds for Pets shelter, which arranged accommodation for her animals for 12 weeks,[148] giving her an opportunity to find ongoing pet-friendly accommodation.[149] The Advisory Panel on Reducing Violence Against Women and their Children observed that such accommodation is important to address some of the reasons why victims of domestic violence remain in abusive relationships:

> [M]any of the current responses to women who report violence can add to a woman's sense of isolation and lack of control over her life, and can discourage her from reporting violence. The Advisory Panel has heard that while many services provide essential safety and support, many responses across the whole system can cause further harm to a woman who has experienced violence, and her children, by

144 Ibid 55.
145 Tiplady, Walsh and Phillips (n 52) 129.
146 Ibid.
147 'Domestic Violence and Animal Abuse: Brief Summary of Survey Responses' (n 1) 12.
148 'Case Study: Pets and Domestic Violence', *Redfern Legal Centre* (Web Page) <https://rlc.org.au/article/case-study-pets-and-domestic-violence>.
149 Ibid.

> adding to her: isolation, for example, when she is expected to 'just leave' her home or community … or be separated from a companion animal.[150]

While much of the infrastructure for re-housing abused domestic animals is already in place in some Australian jurisdictions, it is critical that it is expanded, and that judicial officers and court staff are educated about the availability of these programs.

To make the proposed reforms more effective, it is imperative that veterinarians assume a greater role in identifying and reporting animal abuse, especially because people are often reluctant to confide in their veterinarians about violent behaviour towards animals in their households.[151] This article recommends that veterinarians undergo specific training in recognising animals who have been abused, as it is apparent that many veterinarians are currently unaware of the key signs of animal abuse.[152] In her research, Lydia Tong found that only 7–8% of veterinarians in both Australia and the United States considered that they had sufficient training to detect and prevent animal abuse.[153] In addition, another study found that only 13% of veterinarians in Australia believed they had the necessary resources to offer and provide help where companion animals were abused.[154] It appears that many veterinarians do not receive adequate training and lack resources to help animal victims, and are uncertain about their legal rights and responsibilities where they suspect that animals have been abused.[155] It is suggested that Australian veterinary science courses replicate the University of Melbourne's program discussed above, and teach professionals working in the animal care industry how to identify and respond to animal abuse.[156]

In addition, police officers should also receive training in identifying and dealing with animal abuse in the domestic violence setting, as it has been established that they are also generally unable to identify major signs of animal abuse.[157]

In evaluating the desirability of any reform proposal, it is critical to consider not only the advantages, but also any possible disadvantages of the recommendation. To this end, it is significant that legal recognition of animals as victims of domestic violence would have no adverse consequences for the animals or humans who have experienced this abuse. While it might result in the removal of an animal from the custody of an abusive owner, the detriment this would cause the owner is immaterial compared to the benefits for the abused animal and other human

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150 *COAG Advisory Panel on Reducing Violence Against Women and their Children* (Final Report, 1 April 2016) 43.

151 Tiplady, Walsh and Phillips (n 52) 133.

152 VM Williams et al, 'Animal Abuse and Family Violence: Survey on the Recognition of Animal Abuse by Veterinarians in New Zealand and Their Understanding of the Correlation Between Animal Abuse and Human Violence' (2008) 56(1) *New Zealand Veterinary Journal* 21, 22; Monsalve, Ferreira and Garcia (n 9) 18.

153 Lydia Tong, 'Identifying Non-Accidental Injury Cases in Veterinary Practice' (2016) 38(2) *In Practice* 59, 60.

154 Tiplady, Walsh and Phillips (n 52) 119–20.

155 Monsalve, Ferreira and Garcia (n 9) 23.

156 See also R Lockwood and P Arkow, 'Animal Abuse and Interpersonal Violence: The Cruelty Connection and Its Implications for Veterinary Pathology' (2016) 53(5) *Veterinary Pathology* 910, 911.

157 *Royal Commission into Family Violence* (Report and Recommendations, 2016) vol 3, 15.

members of the household. Legislative changes in overseas jurisdictions that have elevated the legal status of abused animals have not diminished the interests of any other person or entity beyond depriving their owners of possession of them. Numerous American states have included companion animals in domestic violence protection orders, recognising these animals' status as victims.[158] These reforms have not resulted in any discernible detriment to any person who has not perpetrated domestic violence.

These recommendations, if implemented, would not alter the legal status of animals as the property of their owner. Awarding animals the status of sentient victims of domestic violence, however, would require a court to ensure that animals' interests are taken into account, which in turn would help to ensure the protection of both the animal and human victims of domestic violence. In particular, courts would be empowered to make orders that facilitate a transfer of animal ownership and/or possession to domestic violence victims or third parties. Further, as detailed above, the suggested reforms would not have any discernible adverse consequences, except to a person who has perpetrated domestic violence. Finally, it is beyond the scope of this article to consider the application of the suggested reforms in contexts other than domestic violence.

VI CONCLUSION

There is growing appreciation that animals who are abused in Australian homes require greater protection than the law currently affords them and that their interests are not taken into account sufficiently in domestic violence proceedings. The manner in which legislation addresses violence towards animals in the domestic setting varies between jurisdictions. In most Australian jurisdictions, the law recognises that companion animal abuse can constitute a form of domestic violence. This approach is sound, especially given the extensive research that has been conducted that establishes a strong connection between animal abuse and interpersonal violence. Yet no legislation in any Australian jurisdiction currently accords animals who are abused in domestic settings the status of victims of domestic violence and some statutes refer to animals as the property of their human owners. Further, Australian jurisdictions differ in the levels of support they provide for services to assist animals who are suffering from abuse in domestic violence contexts.

In this article, we have contended that, to protect animal and human victims of domestic violence adequately, it is vital that legislation in all Australian jurisdictions recognises companion animal abuse as domestic violence, and animals as potential, sentient domestic violence victims. These law reforms would acknowledge the intrinsic worth of animals, their capacity to suffer from human cruelty, and the status of companion animals as distinct and separate from their owners. They would

158 Rebecca F Wisch, 'Domestic Violence and Pets: List of States that Include Pets in Protection Orders', *Animal Legal and Historical Center* (Web Page, 2021) <https://www.animallaw.info/article/domestic-violence-and-pets-list-states-include-pets-protection-orders>.

demonstrate the community's denunciation of violence in any form and highlight the connection between animal abuse and domestic violence. Further, they would enable courts to make orders that properly protect abused companion animals and take into account their need for safe accommodation and other requirements. This reform would result in an increase to the number of companion animals who are removed from the custody of their abusive owners and of people leaving violent domestic settings, as they will not need to remain in their households to protect their companion animals.