

Me and my Max

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I thought I would do an article for this edition of *Balance* that is way out of left field, would entirely take everyone by surprise and not in my area of practice whatsoever. However, this is one for the pet and animal lovers out there and dedicated especially for my puppy, Max, who, yes, goes to Doggy Day Care!

I have recently had reason to look for and found the *Animal Welfare Act (NT)* ("the Act"). This important piece of legislation has noble objectives to ensure that animals are treated humanely; prevention of cruelty to animals; and promotion of community awareness about the welfare of animals.

You will all be heartened to know that 'animals' means a live member of a vertebrate species including an amphibian, bird, mammal (other than a human being) and reptile; a live fish in captivity or dependent on a person for food; or a live crustacean if it is in or on premises where food is prepared for retail sale, or offered by retail sale, for human consumption.

The Act provides a *minimal level of care* is required for an animal, namely that it has appropriate and sufficient food and water; has appropriate accommodation and living conditions; is appropriately treated for disease, injury or suffering, is allowed appropriate exercise; is handled only in ways that are appropriate, is confined or restrained only in ways that are appropriate; is worked, ridden or otherwise used only in ways that are appropriate; is not abandoned;

and is not used in an organised animal fight.

"Appropriate" means appropriate to ensure that the welfare, health and safety of the animal, having regard to all relevant circumstances; including the animal's species and the environment in which it is kept or lives.

The Act prescribes that a person in charge of an animal owes a duty of care to it. The person will commit an offence if the person breaches the duty of care, with a maximum penalty of 100 penalty units or imprisonment for one year. 100 penalty units in 2013 is \$14,100.00. A person is taken to have breached the duty of care if the person fails to take reasonable steps to ensure the animal receives the minimum level of care.

In addition to a finding of breach of duty of care to an animal, a person may also commit an offence if the person is cruel to an animal. The maximum penalty for cruelty is 150 penalty units or 18 months imprisonment. A person is guilty of cruelty to an animal if the person fails to ensure the animal receives the minimal level of care and intends to cause harm to the animal. The Act also provides that a person is cruel to an animal (irrespective of whether or not the person is in charge of the animal), if the person causes the animal unnecessary suffering; fails to take reasonable action to mitigate the animal's suffering after having caused same; uses on the animal a device prescribed by the Regulations to be inhumane and

subjects the animal to treatment prescribed by the Regulations to be cruel.

The Act also provides for an offence of Aggravated Cruelty, namely that the person is cruel to an animal and the cruelty causes the death of, or serious harm to, the animal and the person intends to kill or seriously harm the animal. The maximum penalty for this offence is 200 penalty units or two years imprisonment.

Pausing a moment for private reflection takes me back to the many fish that have mysteriously disappeared from the tank after they floated at the top of the water for some time, as well as the hermit crabs that escaped their small enclosure and never found their way home. I have to confess that many a fish has made its last journey down the toilet bowl; and the odd hermit crab has been squashed (accidentally) under a door or two after it escaped from its palatial home. Suffice to say, and I am sure you are all glad to know, I do not now own or care for any fish or hermit crabs. None of the disappearances of these animals were in any way deliberate or intentional.

I am currently however, the carer of two long neck turtles, and a puppy dog named Max. The turtles have lived with me for some three years and Max has just turned two. Although again, I have to confess that my daughter's confidence in my caring ability for animals was somewhat lacking when she said in relation to the turtles when they



first arrived “mum, what will we do if the turtles start to float like the fishes we used to have?”, or an even better question when we took charge of Max, “mum, you know it won't be possible to flush a puppy down the toilet?!” I am sure she didn't really mean it, however, her lack of confidence was a little concerning at the time.

Although now I think I can probably get my daughter back and let her know that using Max as a pillow, is probably contrary to the Act and the requirement that an animal should be handled in appropriate ways only. Further, locking Max out of her room may also be denying him his access to appropriate accommodation and living conditions, and getting him to transport items of clothing on his back from the clothesline to her room probably also contravenes the requirement that an animal should be only be worked, or used in an appropriate manner.

Back to seriousness, what does happen if a person fails to care for his / her animals? The Act sets up the Animal Welfare Authority. The functions of the Authority are to ensure compliance with the Act; appoint inspectors and officers of the Authority; administer the licensing regime for premises used for teaching or research, permits to conduct teaching or research programs under the Act; and to otherwise administer the Act.

The Authority also has the power to obtain relevant information from persons, consult with persons and make inquiries as appropriate. The Authority also has power to ask people to comply with its requests for information and production of documents, and a penalty applies if the person fails to comply with such requests without a reasonable excuse.

The Act also sets up enforcement procedures for breaches under the Act. The Act provides a power of entry to an inspector or officer exercising their powers under the Act to enter premises upon

provision of seven days notice to the occupier of the premises, provided that the inspector or officer believes on reasonable grounds there is in or on the premises an animal or thing connected with an offence. Entry to premises may occur with the consent of the occupier, or in pursuance of a search warrant, or if the inspector or officer believes on reasonable grounds that the circumstances are so serious and urgent as to require immediate exercise of the power of inspection and/ or to alleviate suffering. The last entry can be made without the occupier's consent or the authority of a search warrant.

If an inspector or officer enters premises for inspection purposes, he / she may also examine any animal in or on the premises; inspect the premises; take copies of documents; take photographs or make films or videotapes; seize animals or things connected with an offence; require reasonable assistance of a person on the premises; and ask questions of persons in or on the premises.

An inspector's or officer's power to alleviate suffering can be exercised where the person believes on reasonable grounds that an animal has not been provided with appropriate or sufficient food or drink during the previous 24 hours; an animal is so severely injured, overworked, diseased or in such a physical condition that it is necessary for the animal to be provided with veterinary treatment; or an animal is being treated in a manner that is likely to cause it suffering. In such cases, the inspector or officer may provide the animal with food or drink; seize the animal, give the person in charge of the animal a written notice requiring the person to provide the animal with rest, food, drink, shelter or treatment, including veterinary treatment, if required. The penalty for a failure to comply with such a notice is 50 penalty units or six months imprisonment.

Following seizure of an animal or

animals by an inspector or officer on behalf of the Animal Welfare Authority, the Authority may keep and care for the seized animal. The Authority may retain the animal until one of the following occurs: two years elapse from when the animal was seized without prosecution having been commenced for an offence; the Authority decides not to prosecute any person for an offence in connection with the animal; if a prosecution is commenced for an offence, all proceedings relating to the prosecution (including appeals) have been completed; Court orders return or disposal of animal.

If the animal is not returned to the person entitled to it, the Authority may also sell or otherwise dispose of the animal; give the animal to a charitable organisation; retain the animal for the Authority's use; give the animal to another Agency that may use it; if none of the said avenues of disposal is reasonable or practicable, the Authority may destroy the animal.

The Act also provides that the Authority has the right to recover the costs of seizure and care costs for seized animals from their owners. The Act provides that the Authority is entitled to recover reasonable costs incurred in relation to taking possession of the animal; transporting the animal; providing the animal with a minimum level of care; storing or looking after the thing; returning, selling or disposing of the animal. The right to seek reimbursement for costs extends to the Authority or any other person who incurs seizure and care costs for the animal.

The Court must not make a reimbursement order unless satisfied that the seizure of the animal was reasonable in the circumstances; it is reasonable in the circumstances to require the person against whom the order is sought to pay the seizure and care costs. An order to pay seizure and care costs may be enforced



for payment under the *Fines and Penalties (Recovery) Act (NT)*.

Where a person has been prosecuted for an offence under the Act, and there has been a finding of guilt against that person, and where that person is in charge of an animal (whether or not the animal is connected to the offence), the Court may order that the animal be seized if it is satisfied that the offender is likely to commit an offence against the Act in relation to the animal. In such circumstances, the Court may, where it considers appropriate order that the offender must not, for a specified period be a person in charge of an animal or allow an animal into or onto premises occupied by the offender.

The above is a brief summary of the *Animal Welfare Act (NT)*. It is heartening to know that our pets and other animals are protected and there are provisions in place for dealing with animals and things in need of care. The provisions in relation to parties being able to recover the seizure and care costs for seized animals will undoubtedly assist to make the scheme under the Act more workable and the funding will hopefully be channelled back into the animal welfare system in the Northern Territory. It also places greater responsibility for owners of multiple or great number of animals to ensure that they are able to properly care for their animals on their premises to an acceptable minimum level.



And finally... for the cute part... above is my puppy Max (the smallest one in the picture who thinks he is a horse) at his Doggy Day Care hours, having a ball of a time in Stuart Park! ●

FOR THE RECORD

Farewell Sandy Quinn

Megan Lawton,
Chief Executive Officer,
Law Society Northern Territory



The Law Society Northern Territory was pleased to join with the staff of the Federal Court to farewell Sandy Quinn who has for many years been the Registry Manager.

Members of the profession were keen to acknowledge the important contribution Sandy had made to the smooth running of the registry. Cec Black presented a gift on behalf of the profession

and Kevin Jenkins presented a gift on behalf of Sandy's colleagues. It was a wonderful opportunity to celebrate the important contribution that Court staff make to the work of the profession, the courts and court users including unrepresented litigants. Federal Magistrate Turner and Judge Dawe were in attendance along with approximately 30 others and acknowledged Sandy's work. The gathering was held at the Court.

The Federal Magistrates Court has now been proclaimed the Federal Circuit Court and members of the profession have been invited to a ceremonial sitting to acknowledge the appointment of Alexandra Harland as a new Federal Circuit Court Judge in Darwin on 7 May 2013 at 9.30am. ●