

**BESTIALITY: CHALLENGING THE BOUNDARY OF  
THE AUSTRALIAN CRIMINAL LAW**

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*This article analyses the statutory provisions and all case law on bestiality offending recorded throughout settler Australia’s history. It identifies that while bestiality is an offence in every state and territory, the law does not disclose a clear rationale for a prohibition against sexual activity between humans and animals. It considers how Judeo-Christian attitudes toward non-procreative sex influenced bestiality’s origins and development in English law, and whether progressive and conservative international views on animal rights provide guidance on its continued criminalisation. The article concludes that conflicting perspectives within modern academic and activist discourses do not provide guidance on maintaining the offence, and so the crime of bestiality challenges the boundary of the criminal law.*

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Content warning: This article contains explicit discussion of cases involving sexual activity with animals, acts of animal cruelty and instances of child sexual abuse.

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I INTRODUCTION

Queer theorists Michael Brown and Claire Rasmussen, pose the question: ‘So what should we make of fucking animals?’<sup>1</sup> The question, in a legal setting, is not an abstract one and needs to be expanded to consider other forms of human–animal sexual activity. Bestiality is an offence in every Australian state and territory, and offenders face extreme social stigma and maximum penalties of between five and 14 years’ imprisonment.<sup>2</sup> It is an ancient crime that was rarely prosecuted until modern technology enabled the production of relevant evidence. There are digital records for 32 bestiality cases in settler Australian history that are publicly available or were publicly available for 28 days after sentence was passed (‘the Australian cases’). These cases show a drastic increase in prosecutions over time. There were two prosecutions in the 18<sup>th</sup> century, three in the 19<sup>th</sup> century, four in the 20<sup>th</sup> century, and the remaining 23 in the first 24 years of the 21<sup>st</sup> century.<sup>3</sup> The offence has been subject to parliamentary review in Australian jurisdictions since 2008, but these legislative changes have attracted little academic attention. This article provides the first analysis of all the bestiality statutory provisions and cases available for Australia. Given that records indicate one bestiality prosecution now occurs in Australia, on average, every year, it is timely to consider the criminalisation of sexual activity between humans and other species of animal (‘animals’). Part II outlines the scope and method of the study. Part III discusses current Australian bestiality statutory provisions and their origins. Part IV introduces the key categories of bestial offenders and classifies the Australian defendants according to those categories. Part V provides the substantive analysis, and explores three themes arising

<sup>1</sup> Michael Brown and Claire Rasmussen, ‘Bestiality and the Queering of the Human Animal’ (2010) 28(1) *Environment and Planning D: Society and Space* 158, 159.
<sup>2</sup> See below Appendix B.
<sup>3</sup> See below Appendix A.

from the Australian judicial interpretation of the core wrong of bestiality. The first two themes are (i) effects on the animals; and (ii) infringement on human or public dignity. These themes reflect hundreds of years of legal and religious commentary arising from historical Judeo-Christian traditions. They also reflect modern animal rights discourse, informed by a body of queer rights scholarship and activism, which challenges the traditional prohibition against bestiality. However, the Australian cases disclose a third theme, of disgust and revulsion toward inter-species sexual activity, which predominates as the accepted ground for its criminalisation. Overall, despite large bodies of jurisprudence and international philosophical, criminological and psychological literature, the Australian case law and legislation do not disclose a coherent principled basis for the imposition of criminal sanctions on humans for engaging in sexual activities with animals. Part VI therefore concludes that tensions within and between current academic and activist discourses inhibit the formation of a coherent normative position on bestiality's continued criminalisation.

## II SCOPE AND METHOD

This article analyses 32 cases that were identified through the following methods:

- 1 ongoing review of sentencing remarks on the South Australia Courts Administration Authority website during 2012–24;<sup>4</sup>
- 2 searching 'bestiality', 'buggery', 'zooerasty', 'zoophilia', 'bestiosexuality', 'zoosexual', 'sex with animal' and 'carnal knowledge with animal' for every Australian jurisdiction in the AustLII, Westlaw Australia and Lexis+ Australia and legal databases; and
- 3 searching the above terms for every Australian jurisdiction in the individual databases for sentencing remarks maintained (usually only for 28 days) by the local courts authority.<sup>5</sup>

<sup>4</sup> Courts Administration Authority South Australia, *Sentencing Remarks* (Web Page, 4 September 2025) <<https://www.courts.sa.gov.au/court-decisions/sentencing-remarks/>>, archived at <<https://perma.cc/7Y9V-X5CZ>>. The cases were identified as part of the author's regular review of sentencing remarks in the local jurisdiction.

<sup>5</sup> See Supreme Court Library Queensland, *Public Sentencing Remarks* (Web Page, 10 September 2025) <<https://www.sclqld.org.au/collections/caselaw/sentencing-remarks>>, archived at <<https://perma.cc/ZFZ9-MPLU>>; Supreme Court of the Northern Territory, *Sentencing*

The 32 cases comprise the following bestiality and related offences, eg ‘inciting,’ ‘aiding and abetting’ bestiality and ‘carnal knowledge of an animal’:

- 18 sentencing remarks;
- six defendant appeals against sentence;
- four defendant appeals against conviction;
- one defendant application for discharge from an indictment;
- one prosecution entry of a *nolle prosequi*;
- one judgment from a trial by judge alone; and
- one defendant appeal against conviction for domestic violence offences, where a charge of bestiality was ‘no billed’.

The details of the cases are provided in Appendix A. Of the sentencing remarks, one addresses three co-accused<sup>6</sup> and one addresses two co-accused.<sup>7</sup> The other cases each relate to a single defendant. The material for each defendant is referred to as ‘a case,’ even where defendants are jointly charged. The defendants from South Australia (‘SA’) have been anonymised because their sentencing remarks are no longer publicly available. The other defendants have not been anonymised because their cases are publicly available, although courts anonymised some defendants.

The cases span the years 1796–2024, across all jurisdictions except Western Australia (‘WA’). 28 cases involve male defendants only, and two cases involve female defendants and male defendants. There were no cases involving only female defendants. 25 cases involve dogs, two cases involve horses, one case

*Remarks* (Web Page, 5 September 2025) <<https://supremecourt.nt.gov.au/sentencing-remarks/publication-policy>>, archived at <<https://perma.cc/95SP-XMUV>>; ACT Supreme Court, *ACT Supreme Court Judgments and Sentences* (Web Page, 4 September 2025) <<https://www.courts.act.gov.au/supreme/judgment>>, archived at <<https://perma.cc/3WHH-8VFG>>; Supreme Court of Tasmania, *Latest Sentences* (Web Page, 4 September 2025) <<https://www.supremecourt.tas.gov.au/the-court/publications/latest-sentences/>>, archived at <<https://perma.cc/UQ2L-V438>>; Supreme Court of Victoria, *Recent Sentences* (Web Page, 9 September 2025) <<https://www.supremecourt.vic.gov.au/areas/case-summaries/recent-sentences>>, archived at <<https://perma.cc/9465-EFDV>>; Supreme Court of Western Australia, *Sentences* (Web Page, 11 September 2022) <<https://www.supremecourt.wa.gov.au/S/sentences.aspx>>, archived at <<https://perma.cc/3FFS-GPS4>>; New South Wales Caselaw, *Recent Decisions for All Courts and Tribunals* (Web Page, 2 May 2025) <<https://www.caselaw.nsw.gov.au/browse?display=all>>, archived at <<https://perma.cc/HGM6-XZSY>>.

<sup>6</sup> Transcript of Proceedings (Sentencing Remarks), *R v TR* [2012] (District Court of South Australia, DCCRM-11-2099, Muecke DCJ, 5 July 2012) (‘TR’).

<sup>7</sup> Transcript of Proceedings (Sentencing Remarks), *R v JY* [2020] (District Court of South Australia, Grant DCJ) (‘JY’).

involves two goats and the remaining cases each involve a single calf, sow, sheep and turkey.<sup>8</sup>

There are two main limitations to the methodology. First, the available cases do not represent all the bestiality cases prosecuted in Australia, because not all cases are permanently available in digital form. Some sentencing remarks are not published online, and most that are published online are removed after 28 days.<sup>9</sup> Due to penalty ranges in some jurisdictions, at some times, certain cases would have been resolved in lower courts that do not publish judgments. Second, charging anomalies affect the material identified through the database searches. For example, one case involves a male defendant forcing a 15-year-old female child to have sexual intercourse with a dog and is included because it was charged as 'bestiality by proxy'.<sup>10</sup> Importantly, comparable cases could be charged as rape and not be identified in the searches. Similarly, a case involving a male defendant forcing a female child to have sexual intercourse with a dog is included because he was charged with 'carnal knowledge against the order of nature' and the matter was 'dealt with as bestiality'.<sup>11</sup> His conviction was overturned.<sup>12</sup> The court observed he could have been charged with 'procuring a sexual act' of a child,<sup>13</sup> which would not have been identified in the searches. Similarly, cases of 'carnal knowledge with an animal' are only identified if they specifically refer to bestiality.<sup>14</sup>

These limitations do not undermine the value of the analysis overall, as I do not purport to identify the extent of bestial offending or its prosecution, or draw conclusions about decisions on the enforcement of the provisions. My analysis presupposes that the nature of the offending results in significant under-prosecution, but that the 32 available cases provide rich enough data to analyse the characterisation of its wrong. I accept Douglas Husak's contention that the boundaries of criminalisation must reflect the 'conditions that must be satisfied before the state may enact a statute that subjects offenders to criminal liability'.<sup>15</sup> There is an extensive body of legal philosophy, history and theory that considers the complex and competing grounds upon which criminal laws

<sup>8</sup> See below Appendix A.

<sup>9</sup> See generally nn 4–5.

<sup>10</sup> *R v Lee* [2019] ACTSC 14, [9]–[10] (Elkaim J) ('Lee').

<sup>11</sup> *R v CAP* [2009] QCA 174, [3(c)], [8], [22] (Jones J).

<sup>12</sup> *Ibid* [8]–[9], [33]–[35] (Jones J).

<sup>13</sup> *Ibid* [14] (Jones J).

<sup>14</sup> See, eg, *Wood v Chute* (1993) 111 FLR 420 ('Wood').

<sup>15</sup> Douglas Husak, 'Criminal Law Theory' in Martin P Golding and William A Edmundson (eds), *The Blackwell Guide to the Philosophy of Law and Legal Theory* (Blackwell Publishing, 2005) 107, 107.

can and should be imposed, which is beyond the scope of my enquiry. It is sufficient, here, to recognise Nicola Lacey's emphasis on the need for 'legitimation of the criminal law and criminal process'<sup>16</sup> and Andrew Ashworth and Jeremy Horder's call for 'sufficient reasons for invoking this coercive and censoring machinery'.<sup>17</sup> There is a large body of scholarly critique of criminalisation focuses on the modern expansion of criminal laws.<sup>18</sup> However, existing laws also require attention, and the current Australian statutory and case law on bestiality raise questions about the conditions that justify its modern criminalisation.

### III AUSTRALIAN LAW

#### A *Origins*

The Australian colonies inherited the English prohibition against penile penetration of an animal by a man, or of a woman by an animal. This prohibition has been traced to an ancient legal code, the Hittite laws, dating from circa 1650–1500BCE;<sup>19</sup> the central Jewish text, the Talmud;<sup>20</sup> and Old Testament laws cursing and calling for the death of both the human and animal involved.<sup>21</sup> Throughout English and Australian history, this conduct has been described as 'bestiality', 'buggery', 'sodomy' or 'carnal knowledge with an animal'. It was, originally, part of an 'unnatural' offence that also prohibited 'sodomy'

<sup>16</sup> Nicola Lacey, 'Principles, Policies, and Politics of Criminal Law' in Lucia Zedner and Julian V Roberts (eds), *Principles and Values in Criminal Law and Criminal Justice: Essays in Honour of Andrew Ashworth* (Oxford University Press, 2012) 19, 33.

<sup>17</sup> Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (Oxford University Press, 7<sup>th</sup> ed, 2016) 22.

<sup>18</sup> See, eg, Douglas Husak, *Overcriminalisation: The Limits of the Criminal Law* (Oxford University Press, 2008) 3–17 ('Overcriminalisation'). See also generally Ellen S Podger, 'Overcriminalization: New Approaches to a Growing Problem' (2012) 102(3) *The Journal of Criminal Law and Criminology* 529; Erik Luna, 'The Overcriminalization Phenomenon' (2005) 54(3) *American University Law Review* 703.

<sup>19</sup> Martha T Roth, 'Hittite Laws' in Piotr Michalowski (ed), *Law Collections from Mesopotamia and Asia Minor* (Scholars Press, 1995) 213, 213.

<sup>20</sup> Andrea M Beetz, 'Bestiality/Zoophilia: A Scarcely Investigated Phenomenon between Crime, Paraphilia, and Love' (2004) 4(2) *Journal of Forensic Psychology Practice* 1, 5; Brian Holoyda et al, 'Bestiality: An Introduction for Legal and Mental Health Professionals' (2018) 36(6) *Behavioral Sciences & the Law* 687, 691.

<sup>21</sup> See generally Roland Boer, *The Earthy Nature of the Bible: Fleshly Readings of Sex, Masculinity, and Carnality* (Palgrave Macmillan, 2012) 133.

between men.<sup>22</sup> As Jens Rydström observed in his historical study of Sweden, bestiality and homosexuality were aspects of the ‘sodomitical sin’ and were viewed as ‘fornication against nature’.<sup>23</sup> Courtney Thomas’ study of early modern England reveals that ‘while the same terminology was used to describe both actions, bestiality was perceived as inherently more wicked’.<sup>24</sup>

There is some evidence that acceptance of bestiality co-existed with its prohibition. Doron J Ben-Atar and Richard D Brown found that it was represented in cave paintings, ‘foundational mythologies of Western civili[s]ation’ and live shows at the Roman Colosseum.<sup>25</sup> Other researchers have found similar evidence in Egypt, India<sup>26</sup> and Africa.<sup>27</sup> Medievalist specialising in the late medieval period Tess Wingard noted the paradox that despite harsh bestiality laws, medieval ecclesiastical court records exist for ‘barely more than a handful of trials’.<sup>28</sup> She proposed that bestiality ‘may have been ubiquitous to the point of normalization in late medieval rural England’.<sup>29</sup> Thomas, similarly, found that although ‘moralists and legal writers thundered against bestiality’, prosecutions were rare, and low conviction rates suggest ‘juries were not blinded by a sense of moral outrage when they tendered verdicts’.<sup>30</sup> She posited that low reporting rates reflected the need to protect personal relationships and social cohesion in local communities.<sup>31</sup> This proposition is consistent with Taylor’s analysis that relative to population size, prosecutions for bestiality (and sodomy) were relatively high in colonial New South Wales, where social relations were weak and beset with persistent concerns about ‘convict discipline and sex ratios’.<sup>32</sup>

<sup>22</sup> See, eg, *R v Reynolds* (1880) 1 LR (NSW) 129, 129 (Manning J) (‘*Reynolds*’); *R v Packer* [1932] VLR 225, 228 (Cussen ACJ, Mann J, MacFarlan J agreeing at 228) (‘*Packer*’); *R v Bourne* (1952) 36 Cr App R 125, 128 (Goddard CJ for the Court); *Elnami v Tasmania* (2020) 33 Tas R 60, 64 [10] (Estcourt J) (‘*Elnami*’).

<sup>23</sup> Jens Rydström, “Sodomitical Sins Are Threefold”: Typologies of Bestiality, Masturbation, and Homosexuality in Sweden, 1880–1950’ (2000) 9(3) *Journal of the History of Sexuality* 240, 244.

<sup>24</sup> Courtney Thomas, “‘Not Having God before His Eyes’: Bestiality in Early Modern England’ (2011) 26(1) *The Seventeenth Century* 149, 154.

<sup>25</sup> Doron S Ben-Atar and Richard D Brown, *Taming Lust: Crimes Against Nature in the Early Republic* (University of Pennsylvania Press, 2014) 10.

<sup>26</sup> Beetz (n 20) 4.

<sup>27</sup> Midas Dekkers, *Dearest Pet: On Bestiality*, tr Paul Vincent (Verso, 1994) 129–30.

<sup>28</sup> Tess Wingard, ‘The Trial of Thomas Frogbrook: Bestiality and the Law in an Early Sixteenth-Century English Rural Community’ (2022) 95(270) *Historical Research* 506, 511.

<sup>29</sup> *Ibid* 520.

<sup>30</sup> Thomas (n 24) 150–1, 163.

<sup>31</sup> *Ibid* 162.

<sup>32</sup> Luke Taylor, ‘Speaking the Unspeakable: Buggery, Law, and Community Surveillance in New South Wales, 1788–1838’ (2020) *Law and History Review* 38(4) 737, 776.

However, opposition to bestiality prevailed in Christian teachings. In the 13<sup>th</sup> century, Italian theologian, priest and philosopher, Saint Thomas Aquinas, called bestiality the ‘gravest of all sins’.<sup>33</sup> Over subsequent centuries, the secular, English law incorporated this Christian aversion. In 1533, the first non-ecclesiastical law was passed to punish, through death, ‘the detestable and abominable vice of buggery committed with mankind or beast’.<sup>34</sup> In 1772, William Blackstone referred to bestiality as an ‘infamous *crime against nature*’ that reflects a ‘deep[] malignity’.<sup>35</sup> An 1828 statutory amendment to the *Offences Against the Person Act* clarified that only ‘penetration’ (‘carnal knowledge’), not ‘the emission of seed’, was required for proof of the offence.<sup>36</sup> In 1861, 20 years after the death penalty was abolished for rape and unlawful carnal knowledge of a girl under the age of 10 years,<sup>37</sup> the death penalty for bestiality was replaced with a maximum penalty of life imprisonment.<sup>38</sup> This maximum penalty remained in the United Kingdom until 2003, when the offence of intercourse with an animal was enacted, with a maximum penalty of two years’ imprisonment.<sup>39</sup> A mens rea element has always been implied for bestiality offences, and in 2024, the Court of Criminal Appeal of New South Wales confirmed the requirement of intent.<sup>40</sup> Proof of fault has not been controversial in the Australian cases, which generally involve, as identified in Queensland in 1956, ‘ample evidence which a jury could accept as manifesting an intention, by an overt act, to commit the offence’.<sup>41</sup>

The 1796 case of *R v Hyson* is the earliest recorded prosecution for bestiality in Australia. The minutes of proceedings from the case capture the elements of the offence, its extreme seriousness, and the perceived nature of the wrong:

George Hyson, labourer, was brought before the court charged for that he not having the fear of God before his eyes, but being moved and seduced by the instigation of the Devil ... carnally knew the said she dog and then and there, feloniously, wickedly and diabolically and against the order of nature, did commit

<sup>33</sup> Wingard (n 28) 509 (citations omitted).

<sup>34</sup> *Buggery Act 1533*, 25 Hen 8, c 6.

<sup>35</sup> William Blackstone, *Commentaries on the Laws of England* (Robert Bell, 1772) bk 4, 215 (emphasis in original).

<sup>36</sup> *Offences Against the Person Act 1828*, 9 Geo 4, c 31, s 18.

<sup>37</sup> *Substitution of Punishments for Death Act 1841*, 4 & 5 Vict, c 56, s 3.

<sup>38</sup> *Offences Against the Person Act 1861*, 24 & 25 Vict, c 100, s 61.

<sup>39</sup> *Sexual Offences Act 2003* (UK) s 69.

<sup>40</sup> *Lam v The King* [2024] NSWCCA 6 [62] (Meagher JA, Weinstein J agreeing at [160]). The case involved allegations of sexual offences committed by a female school teacher against male students in the 1970s.

<sup>41</sup> See *R v Edwards* [1956] QWN 16, 23 (Bradford AJ).

and perpetrate that detestable and abominable crime of buggery (not to be named among Christians) to the great displeasure of almighty God, to the great scandal of all human kind.<sup>42</sup>

In 18<sup>th</sup> century colonial Australia, the wrong was clear and consistent with the contemporary world view of the Anglo settlers: sexual penetration between humans and animals offended the divinely-ordained natural order. The offence brought together strands of the Judeo-Christian tradition that opposed non-reproductive sexual activity and claimed the superiority of humans over other animals. The prohibition has been more enduring than both the religious and secular views from which it originated, and the category of crime against nature that defined it.

### B Legislation

For centuries, the Australian offence of bestiality reflected the English ecclesiastical, common and statutory law. However, it has been subject to legislative reform in a number of jurisdictions in the 21<sup>st</sup> century. The amendments in the common law jurisdiction of SA and the criminal code jurisdiction of Tasmania illustrate a national trend toward expanding the scope of the offence.

#### 1 South Australia

When the original *Criminal Law Consolidation Act 1935* (SA) was passed, bestiality was enacted under 'Unnatural Offences',<sup>43</sup> and described as 'buggery, committed either with mankind or with an animal'.<sup>44</sup> The penalty included whipping and a maximum term of 10 years' imprisonment.<sup>45</sup> In 1972, sexual conduct between men was decriminalised,<sup>46</sup> and in 1975 'buggery with an animal' was classified as an 'Offence with Animals' that still attracted a

<sup>42</sup> *R v Hyson* [1796] NSWKR 3, [87] (Collins JA) cited in *The Kercher Reports: Decisions of the New South Wales Superior Courts, 1788 to 1827*, ed Bruce Kercher and Brent Salter (Francis Forbes Society for Australian Legal History, 2009) 139 ('*The Kercher Reports*'). Hyson was convicted of assault not buggery and so avoided a death sentence: at *ibid*. Three years later, James Reece was convicted of bestiality and both he and the sow involved were sentenced to death. He was the only person executed for the offence in this period: *R v Reece* [1799] NSWKR 1, [67] (Dore JA), cited in *The Kercher Reports* (n 42) 153; Taylor (n 32) 748.

<sup>43</sup> *Criminal Law Consolidation Act 1935* (SA) s 69, as enacted ('*SA Consolidation Act*').

<sup>44</sup> *Ibid*.

<sup>45</sup> *Ibid*.

<sup>46</sup> *Criminal Law Consolidation Act Amendment Act 1972* (SA) ss 2–3, inserting *SA Consolidation Act* (n 43) s 68a.

maximum penalty of 10 years' imprisonment.<sup>47</sup> The current offence of 'bestiality' was enacted under 'Miscellaneous Sexual Offences' in 2008, as part of sweeping reforms to sexual offences. The 10 years' maximum penalty of imprisonment was again retained, but the common law requirement of penile penetration of or by an animal was abolished.<sup>48</sup> Any sexual activity with an animal was criminalised to be consistent with the enactment of a separate provision making compulsion of any sexual activity with an animal part of the physical element of rape.<sup>49</sup> There was minimal parliamentary discussion of the expansion of liability, or its implications,<sup>50</sup> but the result was, as Muecke DCJ observed in *R v TR* ('TR') in 2012, that it now 'encompasses conduct that is as broad as it is varied'.<sup>51</sup>

## 2 Tasmania

The same pattern of adherence to, then gradual expansion of, the English law is evident in Tasmania. The original *Tasmanian Criminal Code Act 1924 (Tas)* ('*Tasmanian Criminal Code*') created, under the category of 'Crimes against Morality', the offence of 'carnal knowledge of an animal'.<sup>52</sup> The offence reflected the common law and required 'penetration to any the least degree of the organ alleged to have been known, by the male organ of generation'.<sup>53</sup> The offence was renamed 'unnatural sexual intercourse' in 1987,<sup>54</sup> and 'bestiality' in 2017.<sup>55</sup> During the prosecution of Ammar Elnami in 2020, the Supreme Court of Tasmania rejected Crown submissions that the 2017 amendments broadened the definition of bestiality to encompass non-penetrative sexuality.<sup>56</sup> In response to this case, the *Tasmanian Criminal Code* was amended in 2023 to remove the

<sup>47</sup> *SA Consolidation Act* (n 43) s 69, as amended by *Criminal Law (Sexual Offences) Amendment Act 1975* (SA) s 30.

<sup>48</sup> *SA Consolidation Act* (n 43) s 5(1) (definition of 'bestiality') 69, as amended by *Criminal Law Consolidation (Rape and Sexual Offences) Act 2008* (SA) ss 4(1), 9.

<sup>49</sup> *SA Consolidation Act* (n 43) s 5(1) (definition of 'bestiality') s 48(2)(c), as inserted by *Criminal Law Consolidation (Rape and Sexual Offences) Act 2008* (SA) ss 4(1), 5.

<sup>50</sup> See, eg, South Australia, *Parliamentary Debates*, House of Assembly, 25 October 2007, 1473 (Michael Atkinson, Attorney-General); South Australia, *Parliamentary Debates*, Legislative Council, 6 March 2008, 2109 (Paul Holloway).

<sup>51</sup> *TR* (n 6).

<sup>52</sup> *Criminal Code Act 1924* (Tas) s 122(ii), as enacted ('*Tasmanian Criminal Code*').

<sup>53</sup> *Ibid* sch 1 s 1 (definition of 'carnal knowledge').

<sup>54</sup> *Tasmanian Criminal Code* (n 52) s 122, as amended by *Criminal Code Amendment (Sexual Offences) Act 1987* (Tas) s 6(b).

<sup>55</sup> *Tasmanian Criminal Code* (n 52) s 122, as amended by *Criminal Code Amendment (Sexual Assault) Act 2017* (Tas) s 4(m).

<sup>56</sup> *Elnami* (n 22) 63 [3], 67 [14]–[15], 79 [32] (Estcourt J).

requirement of penile penetration and criminalise any sexual activity between animals and humans.<sup>57</sup> The reasons for this criminalisation were not debated.

Like SA and Tasmania, both Australian territories criminalise non-penetrative sexual activity between humans and animals. The Australian Capital Territory ('ACT') enacted a bestiality offence in 2010,<sup>58</sup> having unintentionally decriminalised it in 1976 with the limitation of the application of the offence of 'buggery' between men.<sup>59</sup> The Northern Territory ('NT') amended their offence in 2023, and the explanatory statement referred to, but did not explain, the expansion of the offence to cover all intentional sexual involvement with an animal.<sup>60</sup> However, the related prosecution of zoologist Adam Britton for multiple offences of animal cruelty and bestiality generated much publicity in the years preceding the legal change.<sup>61</sup> Victoria requires sexual, but not necessarily penile, penetration.<sup>62</sup> NSW does not define bestiality, but its case law contemplates the possibility of the provision covering non-penetrative sexual activity.<sup>63</sup> Queensland and WA both still require penetration of or by an animal.<sup>64</sup>

While bestiality offences vary across the country, there is a national trend toward expanding the scope of conduct that attracts liability without discussion of its core criminality. This expansion is worthy of consideration, especially as much commentary on bestiality assumes penile penetration of an animal by a human male. However, my focus on the broad social and legal attitudes toward sexual activity between humans and animals is unaffected by the precise

<sup>57</sup> *Tasmanian Criminal Code* (n 52) ss 1, 122, as amended by *Justice and Related Legislation Miscellaneous Amendments Act 2023* (Tas) s 12; Tasmania, *Parliamentary Debates*, House of Assembly, 18 October 2022, 82–3 (Bridget Archer); Tasmania, *Parliamentary Debates*, House of Assembly, 19 October 2022, 54, 61 (Cassy O'Connor).

<sup>58</sup> *Crimes Act 1900* (ACT) s 63A, as inserted by *Crimes Legislation Amendment Act 2011* (ACT) s 8.

<sup>59</sup> *Law Reform (Sexual Behaviour) Ordinance 1976* (ACT) ss 3, 5.

<sup>60</sup> *Criminal Code Act 1983* (NT) sch 1 s 208N, as inserted by *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023* (NT) s 13; Explanatory Statement, Criminal Justice Legislation Amendment (Sexual Offences) Bill 2023 (NT) 10, 33–4.

<sup>61</sup> See, eg, Melissa Mackay, "Sadistic" Zoologist Adam Britton Remains behind Bars as Sentencing for Bestiality, Child Abuse Material Charges Delayed Again, *ABC News* (online, 6 February 2024) <<https://www.abc.net.au/news/2024-02-06/zoologist-adam-britton-bestiality-child-abuse-sentencing-delayed/103431386>>, archived at <<https://perma.cc/W9FZ-3M4R>>.

<sup>62</sup> *Crimes Act 1958* (Vic) ss 35A(3)–(4), 54A.

<sup>63</sup> *Crimes Act 1900* (NSW) s 79. See *Chesworth v The King* [2023] NSWCCA 115, [20] (Rothman J, Wilson J agreeing at [56], Yehia J agreeing at [57]) ('*Chesworth*').

<sup>64</sup> *Criminal Code Act 1899* (Qld) sch 1 s 6(1) (definition of 'penile intercourse'), s 211 (prohibition of 'bestiality'); *Criminal Code Act Compilation Act 1913* (WA) s 6 (definition of 'carnal knowledge'), s 181 (prohibition of 'carnal knowledge of animal').

elements of the offence. The offence from medieval England is clearly recognisable in 21<sup>st</sup> century Australian statutes, but a long history does not provide legitimate grounds for its continued criminalisation.

#### IV BESTIAL PRACTICES

Humans engage in sexual activities with animals for various reasons, but their motivations can be divided into three main categories. First, it may reflect a form of paraphilia,<sup>65</sup> involving ‘intense recurrent sexual fantasies, urges and behaviours’ where animals are the main, exclusive or preferred means of sexual expression.<sup>66</sup> In 1886, neuropsychiatrist and pioneering sexual psychopathologist, Richard von Krafft-Ebing, recognised bestiality as the sexual act between humans and animals, and variations on zooerasty as the pathological sexual attraction of humans to animals.<sup>67</sup> Since 1980, the Diagnostic and Statistical Manual of Mental Disorders has recognised variants of zoophilia and bestiosexuality as a form of mental illness.<sup>68</sup> According to the expert witness in *TR*, there is limited case evidence on bestiality, and professional opinion is divided on whether or not it is a paraphilia.<sup>69</sup> His opinion was that it depended on ‘the degree to which a person becomes involved in it. If it becomes a primary focus of sexual arousal for the sexual act, it would probably be considered as a paraphilia by most psychologists.’<sup>70</sup> Humans who engage in sexual activities with animals, ‘zoophiles’ or ‘zoos’, challenge the characterisation of this sexual orientation as deviancy. They advocate for the conduct to be destigmatised and recognised as part of a legitimate form of intimate partner relationship.<sup>71</sup>

The Northern Territory (‘NT’) case of *R v Britton* (‘*Britton*’) involved the only conclusive finding that an Australian defendant’s conduct reflected clinical

<sup>65</sup> Zeljko Bjelajac, Boro Merdović and Aleksandar M Filipović, ‘Internet in the Function of Promotion of Bestiality: Profiling Zoophiles’ (2023) 11(1) *International Journal of Cognitive Research in Science, Engineering and Education* 153, 153.

<sup>66</sup> Clare Sarah Allely, ‘Autism Spectrum Disorder, Bestiality and Zoophilia: A Systematic PRISMA Review’ (2020) 11(2) *Journal of Intellectual Disabilities and Offending Behaviour* 75, 75.

<sup>67</sup> Richard von Krafft-Ebing, *Psychopathia Sexualis: A Medico-Forensic Study* (Pioneer Publications, 1947) 563.

<sup>68</sup> American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (American Psychiatric Association, 1980) 270, 429. The fine distinctions in the nature of sexual attraction to animals captured in these terms are not relevant here.

<sup>69</sup> *TR* (n 6).

<sup>70</sup> *Ibid.*

<sup>71</sup> Beetz (n 20) 9; RJ Maratea, ‘Screwing the Pooch: Legitimizing Accounts in a Zoophilia On-Line Community’ (2011) 32(1) *Deviant Behavior* 918, 925–37.

deviance, and was accompanied by the intention to cause animal suffering. The sentencing judge determined that the defendant had a 'severe' 'deviancy' and 'paraphilic desires'.<sup>72</sup> Four other judges have accepted that defendants may have had an ongoing sexual attraction to animals. In 2012, an expert witness concluded that TR's conduct was not 'symptomatic of a deviant pattern of arousal',<sup>73</sup> but Muecke DCJ was 'not satisfied' that she was 'not sexually deviant' or 'did not have a paraphilia',<sup>74</sup> because she watched videos of bestial acts as a precursor to sexual activity with her husband.<sup>75</sup> Noel Mitchell was sentenced in Victoria in 2015 on the basis that he needed counselling and rehabilitation to deal with his 'bestial temptations'.<sup>76</sup> Justice Elkaim observed in the ACT in 2019 that the exchange of multiple messages and images depicting bestiality demonstrated that Jeffrey Lee and his co-accused, Mark Zonneveld, 'both had an interest in ... bestiality'.<sup>77</sup> In sentencing Jacob Johnston in Tasmania in 2023, Pearce J noted that while the defendant denied 'ongoing sexual urges towards animals', a psychologist testified that 'the acts themselves are indicative of a paraphilic disorder'.<sup>78</sup> The conduct of the other Australian defendants falls within one of two remaining categories.

In the second category, sexual activity with animals substitutes for sexual relations between humans. An 'opportunistic zoosexual' has no particular emotional connection or sexual attraction to animals, but has sexual relations with them when they are available and a consenting human is not.<sup>79</sup> For example, PN was sentenced by Heffernan DCJ in SA in 2022 as having acted out of character under the influence of methylamphetamine and was 'not motivated in committing the offence by sexual attraction to the dog'.<sup>80</sup>

<sup>72</sup> Transcript of Proceedings (Sentencing Remarks), *R v Britton* (Supreme Court of the Northern Territory, SCC 2212255, Grant CJ, 8 August 2024) ('*Britton*').

<sup>73</sup> *TR* (n 6).

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

<sup>76</sup> *DPP (Vic) v Mitchell* [2015] VCC 747 [6], [25] (Judge Pilgrim) ('*Mitchell*').

<sup>77</sup> *Lee* (n 10) [19]; *R v Zonneveld* [2019] ACTSC 122, [3].

<sup>78</sup> Transcript of Proceedings (Sentencing Remarks), *Tasmania v Johnston* (Supreme Court of Tasmania, Pearce J, 26 October 2023) ('*Johnston*').

<sup>79</sup> Marta E Szymańska-Pytlińska, Maria J Beisert and Agnieszka U Słopeń, 'Development of Zoophilic Interests and Behaviors in the Example of an Adolescent Male' (2021) 9(1) *Current Issues in Personality Psychology* 26, 33.

<sup>80</sup> Transcript of Proceedings (Sentencing Remarks), *R v PN* [2022] (District Court of South Australia, Heffernan DCJ, 2022) ('*PN*').

Third and finally, bestiality can reflect curiosity and desire for sexual experimentation.<sup>81</sup> In *TR* in SA in 2012, *TR* submitted that her sexual experience with dogs arose from a combination of ‘curiosity’, extending ‘boundaries of self confidence’ and indulging in ‘kinky fetishes’ and ‘fantasy’.<sup>82</sup> *TT* was looking for ‘variety’ and ‘something different’ in his sexual activity with his wife.<sup>83</sup> *GS* experienced a ‘sexual awakening’ after menopause.<sup>84</sup> Bestiality was not her sexual interest but she was ‘curious and perhaps excited regarding pushing the boundaries of sexual experimentation’, and so facilitated the *TS*’ sexual fantasies.<sup>85</sup> Similarly, the offending in *R v JY* (*JY*) arose in SA in 2020 because the married couple had ‘an active sex life and would explore new and different sexual behaviour with each other’.<sup>86</sup>

As clinical ‘deviancy’ features little in the cases, this article focuses on three themes that emerge on the categorisation of the wrong of bestiality. I have classified these themes as relating to (i) effects on the animals; (ii) infringement on public or human dignity and (iii) disgust or revulsion at the conduct. Each of these considerations reflects both orthodox and emerging discourses on the reasons for and against maintaining a crime of bestiality.

## V THE BESTIAL ‘WRONG’ IN AUSTRALIAN CASES

Husak asked: ‘How can we identify the harm or evil a given law is designed to proscribe? This question is incredibly difficult, because legislators need not articulate a rationale or objective for the statutes they enact.’<sup>87</sup> This observation is apt for Australian bestiality offences. There are no express statements from parliaments explaining the grounds for its criminalisation, although the retention of significant maximum penalties and a recent trend to expand its scope demonstrate ongoing support for historical opprobrium. This absence of parliamentary comment does not create a need for the judiciary to undertake statutory interpretation, because the elements of the offence are clear through statute and common law. It is not typically the role of judges to philosophise about the core wrong of offences created by parliament. However, determining liability and sentence involves some consideration of this matter, and so the

<sup>81</sup> G Amoo, O Abayomio and AA Olashore, ‘Zoophilic Recidivism in Schizophrenia: A Case Report’ (2012) 15(4) *African Journal of Psychiatry* 223, 223.

<sup>82</sup> *TR* (n 6).

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid.*

<sup>86</sup> *JY* (n 7).

<sup>87</sup> Husak, *Overcriminalisation* (n 18) 69.

case law provides the most extensive reflection on the offending in contemporary Australia. The welfare and rights of animals was a key feature of judicial concern.

### *A Effects on the Animals*

As discussed below, animal rights activists and scholars argue for a re-evaluation of the legal status of animals as property, and the relationship between humans and animals.<sup>88</sup> However, different strands within the discourse draw diametrically opposed conclusions about whether or not sexual relationships between humans and animals can be equal, or inherently involve exploitation and, therefore, whether bestiality should be a crime.

#### *1 Harm*

Harm to animals was not contemplated when John Stuart Mill articulated the influential ‘harm principle’ of criminalisation in 1859, arguing that ‘the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others.’<sup>89</sup> Animals were still not contemplated a century later, when Joel Feinberg supported criminal legislation that would ‘be effective in preventing (eliminating, reducing) harm to persons other than the actor.’<sup>90</sup> However, harm to animals could be construed as relevant to criminalising bestiality. In their assessment of its criminality, James Gacek, Richard Jochelson and Alicia Dueck-Read identify ‘evidence of suffering’ as an ‘empirically valid and morally grounded’ justification for criminalising bestial conduct.<sup>91</sup> The relevance of harm to animals was a recurrent theme in the latest Australian cases. In NSW in 2022, Grant DCJ observed that ‘harm or further injuries suffered by the animal’ would have increased the ‘objective gravity’ of the offence.<sup>92</sup> Justice Rothman observed in a sentencing appeal in NSW in 2023, that ‘gratuitous cruelty on the animal, apart from the offence itself ... would be an aggravating factor.’<sup>93</sup> In the same year in Tasmania,

<sup>88</sup> See below nn 146–8.

<sup>89</sup> John Stuart Mill, *On Liberty* (Batoche Books, 2001) 13.

<sup>90</sup> Joel Feinberg, *The Moral Limits of the Criminal Law: Harm to Others* (Oxford University Press, 1984) vol 1, 26.

<sup>91</sup> James Gacek, Richard Jochelson and Alicia Dueck-Read, ‘Critiquing the Conception of “Crimes Against Nature”: The Necessity for a New “Natural” Law’ (2022) 66(4) *International Journal of Offender Therapy and Comparative Criminology* 345, 360.

<sup>92</sup> *R v Sturt (a pseudonym)* [2022] NSWDC 155, [21], [21(a)] (Grant DCJ) (*‘Sturt’*), citing *DPP (Vic) v Walton* [2020] VCC 1839 (*‘Walton’*).

<sup>93</sup> *Chesworth* (n 63) [21] (Rothman J, Wilson J agreeing at [56], Yehia J agreeing at [57]).

Pearce J recognised in sentencing comments in *Tasmania v Johnston* ('*Johnston*') that when sentencing for bestiality, '[a]nimal welfare is an important matter'.<sup>94</sup>

Death and serious harm to animals commonly results from both the act of penile penetration and actions, like strangulation, accompanying sexual activity.<sup>95</sup> The association between these activities has resulted in animal ill-treatment being twice charged in Australia in addition to, or instead of, bestiality.<sup>96</sup> In another six cases, the existence of harm can be reliably inferred from the circumstances of the offending. The offence in *R v Reynolds* ('*Reynolds*') in 1880 involved a male turkey that the defendant had 'cut open from the vent downwards, to a sufficient extent to admit his person'.<sup>97</sup> In the NSW case of *R v PW* ('*PW*') in 2019, Tupman DCJ called the offending a 'serious example', because it involved inflicting 'physical pain on the dog by pulling its tail just because he, the offender, was having trouble continuing to penetrate the dog's anus with his penis'.<sup>98</sup> In a sentencing hearing in the ACT in the same year, the judge observed that physical injuries to a woman and a dog proved they were forced by a man into a mutual penetrative sexual act. One effect of the offence was that the dog's 'physical health deteriorated and he took on behaviours that are foreign to an animal. The offences are correctly described as animal cruelty'.<sup>99</sup> Similarly, in a 2020 Victorian case where a dog had been sexually penetrated by a carrot, the court heard testimony from a veterinarian about consequential internal and external injuries, and from attending police officers that the dog was physically restrained and 'shaking and visibly distressed'.<sup>100</sup> Judge Wraight had no apparent difficulty identifying 'intentional abuse' that made it a 'serious example of a serious offence'.<sup>101</sup> A repeat offender was identified as causing harm to two goats in Tasmania in 2023. Justice Pearce remarked that *Johnston*'s first offence 'caused distress to the animal ... it had noticeable swelling to its vulva and vaginal wall'.<sup>102</sup> Another goat 'was observed

<sup>94</sup> *Johnston* (n 78).

<sup>95</sup> Beetz (n 20) 8.

<sup>96</sup> In *Walton*, the defendant was charged with one count of bestiality and one count of 'cruelty to an animal': at [1]–[2] (Judge Wraight). In *Jolley v Queensland Police* [2018] QDC 12 ('*Jolley*'), the defendant was charged with one count of 'breach of duty of care to an animal': at [1], [3] (Clare DCJ).

<sup>97</sup> *Reynolds* (n 22) 129 (Manning J).

<sup>98</sup> *R v PW* [2019] NSWDC 963, [88] (Tupman DCJ) ('*PW*').

<sup>99</sup> *Lee* (n 10) [28] (Elkaim J).

<sup>100</sup> *Walton* (n 96) [20] (Judge Wraight).

<sup>101</sup> *Ibid* [19]–[20].

<sup>102</sup> *Johnston* (n 78).

by its owners to have an altered gait and a swollen and bleeding vagina.<sup>103</sup> Finally, the 2024 case of *Britton* involved the deliberate death of at least 39 of the 42 animals involved in the bestial conduct. The use of extreme physical violence, involving multiple weapons, put the issue of harm beyond question.<sup>104</sup>

However, more commonly, Australian bestiality cases did not involve allegations or evidence of harm. Four judges accepted lack of harm to animals as a factually correct and legally relevant mitigating factor. District Court Judge Muecke in *TR* in SA in 2012, was a sceptical exception who questioned the possibility of determining the existence of harm in bestiality cases. He noted that defence had submitted, without objection from prosecution, that it was a 'victimless crime' as the 'animals were not harmed'.<sup>105</sup> However, he was

unable to make any finding as to whether or not there was any distress to either of the two dogs. [He was] not satisfied that the dogs used probably 'were not physically harmed or ill-treated in order to perform the acts of bestiality' the subject of this charge. The fact that there is no evidence that there was distress does not mean that [he] can make a finding that there was no distress.<sup>106</sup>

It would, indeed, be difficult to assess the existence of harm arising from some forms of bestial conduct, in the absence of a physical examination of the animal, or where there was delay between the offending and its effects. For example, in 2018, a Queensland magistrate considered the possibility of future disease to a dog resulting from its exposure to human male bodily fluids.<sup>107</sup> However, in *TR*, a case where a large dog penetrated a woman, the owner of the dog was present and seemed genuinely concerned for her pet yet it was submitted by TR that there was no indication of struggle or distress from the animal.<sup>108</sup> A judge can always decline to make a finding on a certain issue, particularly in a sentencing hearing where the purpose of the forum is not to resolve disputed factual matters. However, it is curious to refuse to find a lack of harm while recognising the lack of allegations or evidence of harm in circumstances where absence of harm is objectively plausible. Judge Muecke's revulsion for the bestial acts is discussed later in the article,<sup>109</sup> and seems to have coloured his assessment of the evidence of harm.

<sup>103</sup> Ibid.

<sup>104</sup> See generally *Britton* (n 72) (Grant CJ).

<sup>105</sup> *TR* (n 6).

<sup>106</sup> Ibid.

<sup>107</sup> *Jolley* (n 96) [9] (Clare DCJ) (citations omitted).

<sup>108</sup> *TR* (n 6).

<sup>109</sup> See below Part V(C).

In contrast, in *JY* in SA in 2020, Stretton DCJ received evidence almost identical to that submitted in *TR*<sup>110</sup> but concluded that ‘the dog did not appear to be harmed, distressed or caused any pain or discomfort by the conduct.’<sup>111</sup> In *R v PN* (‘*PN*’) in SA in 2022, Heffernan DCJ also considered the offending mitigated because ‘[t]here is no evidence that the animal was in distress or pain because of [*PN*’s] actions. There is nothing to suggest that any injury was caused to the animal.’<sup>112</sup> Also in that year, Grant DCJ observed in *R v Sturt* that ‘there is no evidence to suggest there was any form of additional cruelty inflicted on the animal during the incident.’<sup>113</sup> Similarly, in *Chesworth v The King* (‘*Chesworth*’) in NSW in 2023, Rothman J accepted that ‘there was no gratuitous cruelty to the dog involved in the bestiality acts.’<sup>114</sup>

Ultimately, however, as judges in NSW and Tasmania articulated in 2023, the offence of bestiality ‘is not concerned wholly or principally with the infliction of violence’<sup>115</sup> or ‘cruelty’.<sup>116</sup> Harm is not an element of current or previous bestiality offences,<sup>117</sup> and cannot legitimately be a key to justifying its criminalisation. Rather, separate legislation across the country covers animal ill-treatment and harm. For example, under the *Prevention of Cruelty to Animals Act 1979* (NSW), any person who commits an act of cruelty upon an animal faces a maximum penalty of one year’s imprisonment.<sup>118</sup> Under the *Crimes Act 1900* (NSW), a person who tortures or kills an animal faces a maximum penalty of five years’ imprisonment.<sup>119</sup> These maximum penalties are significantly lower than the 14 years’ maximum penalty of imprisonment for bestiality in NSW, which suggests that the wrong in bestiality is both different to, and more serious than, even lethal cruelty toward an animal.<sup>120</sup> Similarly, a range of lawful, and (largely) socially acceptable, conduct involves harm to animals. Animals are harmed and killed for purposes including agriculture, medical research, hunting, textile and cosmetic industries, populating zoos and sport. These activities all contradict the criminalisation of sexual activity with animals because of an aversion to their harm. Concern

<sup>110</sup> *JY* (n 7). Cf *TR* (n 6).

<sup>111</sup> *JY* (n 7).

<sup>112</sup> *PN* (n 80).

<sup>113</sup> *Sturt* (n 92) [21(a)].

<sup>114</sup> *Chesworth* (n 63) [20] (Rothman J, Wilson J agreeing at [56], Yehia J agreeing at [57]).

<sup>115</sup> *Ibid* [21] (Rothman J, Wilson J agreeing at [56], Yehia J agreeing at [57]).

<sup>116</sup> *Johnston* (n 78) (Pearce J).

<sup>117</sup> See below Appendix B.

<sup>118</sup> *Prevention of Cruelty to Animals Act 1979* (NSW) s 5.

<sup>119</sup> *Crimes Act 1900* (NSW) s 530.

<sup>120</sup> *Ibid* s 79.

about harm in the context of bestiality reflects ambiguity in the legal status and corresponding treatment of animals, which highlights that the core bestial characteristic is sexual activity between animals and humans.

(a) *Sexual Activity as Ill-Treatment*

There is a meaningful difference between criminalising harm to animals caused by sexual activity by humans, and criminalising sexual activity between humans and animals. However, it is possible to construe human engagement of animals in sexual activity as ill-treatment irrespective of whether or not it results in physical harm. In offences between humans, the law recognises the violation of a person's sexual autonomy as different to, and worse than, violation of other aspects of their physical autonomy. For example, in Victoria, the maximum penalty for the offence of assault is five years' imprisonment,<sup>121</sup> for the basic offence of sexual assault is 10 years' imprisonment,<sup>122</sup> and for rape is 25 years' imprisonment.<sup>123</sup> Consistent with common law and statutes in other jurisdictions, none of these offences require proof of harm. The criminal wrong in each case is the increasingly serious infringement of bodily and/or sexual autonomy. The application of this principle to animals could justify the maintenance of bestiality as a sexual offence against animals, which would complement animal welfare laws by recognising a separate wrong. However, modern, industrial animal husbandry practices demonstrate legal acceptance of sexual contact between animals and humans for certain purposes. The branch of agriculture concerned with raising animals for meat, fibre, milk or other products requires invasive sexual contact from humans, including forcible semen extraction from bulls via anal electro-shocks,<sup>124</sup> and physical insertion of semen into cows.<sup>125</sup> As Naisargi N Dave and Alok Hisarwala Gupta observe, these processes are 'raw and tactile — sexual'<sup>126</sup> and create an arbitrary distinction between 'permissible and perverse interspecies sex'.<sup>127</sup>

The widely recognised legal and social differentiation of human–animal sexual activities according to their purpose rather than their nature, is

<sup>121</sup> *Crimes Act 1958* (Vic) s 31(1).

<sup>122</sup> *Ibid* s 40(2).

<sup>123</sup> *Ibid* s 38(2).

<sup>124</sup> Yamini Narayanan, 'Cow Protectionism and Bovine Frozen-Semen Farms in India: Analyzing Cruelty, Speciesism, and Climate Change' (2018) 26(1) *Society & Animals* 13, 22.

<sup>125</sup> *Ibid*.

<sup>126</sup> Naisargi N Dave and Alok Hisarwala Gupta, 'The Permissible and the Perverse: Indian Geographies of Interspecies Sex' (2023) 6(2) *Environment and Planning E: Nature and Space* 1391, 1402 (emphasis omitted).

<sup>127</sup> *Ibid* 1395.

illustrated by the experience in the United States ('US'). During the 1980s and 1990s, bestiality was inadvertently decriminalised in multiple states as a result of the intentional abolition of prohibitions against sodomy between men.<sup>128</sup> When a drunken man was caught trying to have sexual intercourse with his neighbour's sheep in Arizona in 2006, there was national outrage at both the act and the inability to prosecute the offender.<sup>129</sup> Arizona hastily reintroduced bestiality laws, but included an exception for '[i]nsemination of animals by the same species, bred for commercial purposes'.<sup>130</sup> Tasmania and Victoria both provide statutory exceptions for sexual activity undertaken for agricultural or scientific research purposes.<sup>131</sup> However, a *de facto* exemption is inherent across Australia, through the co-existence of bestiality laws and industrial farming practices that involve sexual activity. The following scholars from across disciplines have identified that such exceptions undermine any argument that bestiality laws reflect an intention to protect animals from sexual ill-treatment. Rather, laws permit sexual conduct for commercial purposes but not for sexual pleasure. Brown and Rasmussen conclude that the 'difference does not lie in the nature of the activity — both involve a human hijacking of animal sexual activity — but, rather, in the different purposes of the activity ... [h]uman pleasure makes the actions illegitimate'.<sup>132</sup> Philosopher and social and political theorist Amia Srinivasan agrees. She argues that 'anti-bestiality laws target human intent rather than action ... it's fine to violate an animal in order to produce milk or meat, but it's not OK if it turns you on'.<sup>133</sup> Gabriel Rosenberg, a political and cultural theorist, identifies that this 'difference in *relation to capital*, not in *relation to animals* ... produces both farmers and sex offenders'.<sup>134</sup> The core blameworthiness of bestiality resting in sexual pleasure is evident in Australian cases across the late-19<sup>th</sup> to the mid-21<sup>st</sup> century. In *Reynolds* in 1880, Manning J observed that in addition to 'blatent [sic] cruelty', 'the Prisoner completely gratified his lust on the body of a *male turkey*'.<sup>135</sup> The

<sup>128</sup> Brown and Rasmussen (n 1) 165–6.

<sup>129</sup> See, eg, Mike Branom, 'Arrested Deputy Fire Chief To Retire', *East Valley Tribune* (online, 31 March 2006) <[https://www.eastvalleytribune.com/news/arrested-deputy-fire-chief-to-retire/article\\_8a145c18-5c51-5ec8-9be7-e118f24c7b7c.html](https://www.eastvalleytribune.com/news/arrested-deputy-fire-chief-to-retire/article_8a145c18-5c51-5ec8-9be7-e118f24c7b7c.html)>, archived at <<https://perma.cc/D8KS-FTK3>>.

<sup>130</sup> Ariz Rev Stat Ann § 13-1411(C)(2) (2024); Gabriel Rosenberg, 'How Meat Changed Sex: The Law of Interspecies Intimacy after Industrial Reproduction' (2017) 23(4) *GLQ: A Journal of Lesbian and Gay Studies* 473, 473–4.

<sup>131</sup> *Tasmanian Criminal Code* (n 52) s 122(2); *Crimes Act 1958* (Vic) s 54B.

<sup>132</sup> Brown and Rasmussen (n 1) 168.

<sup>133</sup> Amia Srinivasan, 'What Does Fluffy Think?' (2021) 43(19) *London Review of Books* 5, 6.

<sup>134</sup> Rosenberg (n 130) 475 (emphasis in original).

<sup>135</sup> *Reynolds* (n 22) 129 (emphasis in original).

language was similar a century and a half later when, in NSW in 2023, Rothman J observed that the offending in *Chesworth* ‘required the animal to give sexual gratification to the applicant’.<sup>136</sup>

The differential treatment of commercial sexual activity with animals whether or not there is clear harm, with recreational sexual activity with animals where there is no clear harm, undermines sexual ill-treatment as a justification for bestiality laws. However, harm and ill-treatment are not the only grounds for criminalising bestiality. As Joanna Bourke observed in her 2020 historical analysis of human–animal sexual relations: ‘just because something is not inherently violent or harmful does not mean it is acceptable’.<sup>137</sup> International commentary identifies that bestiality also captures a wrong relating to an animal’s lack of ability to consent to sexual activity with humans, and the inherent power differential between humans and animals.

## 2 Human–Animal Power Relations

Consent and power are critical to the formulation of sexual crimes between humans, to balance protection of the vulnerable with respect for sexual autonomy. It is uncontroversial to protect young children from their own sexual interests and from those of predatory adults through laws that deny them the right to consent to sexual activity. In the case of teenagers and adults with disabilities, it is much more challenging to determine the age or level of cognition or impairment at which a person is legally granted or denied sexual autonomy.<sup>138</sup> With animals, the issue is even more fraught. Pioneering non-speciesist criminologist, Piers Beirne, articulates the fundamental issue as ‘[w]hether or not we should tolerate human-animal sexual relations hinges ... on answering the overriding question of whether it is consensual or coerced behavior’.<sup>139</sup> Animal rights discourse provides opposing responses to this proposition, and the Australian cases canvassed give it limited consideration.

### (a) Consent

Brown and Rasmussen found animals’ inability to consent was the ‘most frequent’ general argument in favour of bestiality laws in the US,<sup>140</sup> although, as in Australia, consent is not an element of the offence. It is surprising,

<sup>136</sup> *Chesworth* (n 63) [23] (Rothman J, Wilson J agreeing at [56], Yehia J agreeing at [57]).

<sup>137</sup> Joanna Bourke, *Loving Animals: On Bestiality, Zoophilia and Post-Human Love* (Reaktion Books, 2020) 13.

<sup>138</sup> See, eg, *Criminal Law Consolidation Act 1935* (SA) s 49.

<sup>139</sup> Piers Beirne, ‘Peter Singer’s “Heavy Petting” and the Politics of Animal Sexual Assault’ (2001) 10(1) *Critical Criminology* 43, 48.

<sup>140</sup> Brown and Rasmussen (n 1) 161–2.

therefore, that consent was only raised in four Australian cases. Two judges simply recognised that consent is not an element of the offence, and made no further observations on the matter. In *TR* in SA in 2012, Muecke DCJ provided lengthy sentencing remarks about the offending, its motivation and investigation and the seriousness of the offence overall. He actively engaged with various sentencing submissions made on behalf of *TR*, and yet only noted in passing that it was ‘submitted on [*TR*’s] behalf that consent in this matter is irrelevant.’<sup>141</sup> In sentencing Henry Anning in NSW in 2015, Norrish DCJ similarly recognised that consent is not an element of the offence and so ‘is not a relevant issue.’<sup>142</sup> There was minimal judicial consideration of arguments based on animals’ inability to actually or freely consent to sexual intercourse with humans.<sup>143</sup> In a defendant’s bestiality sentencing appeal in NSW in 2023, the justices impliedly acknowledged both issues when observing that the sentencing of offences against animals, including bestiality, takes into ‘account the vulnerability of a domestic animal and their incapacity, usually, to consent or refuse to engage in particular conduct.’<sup>144</sup> In Queensland in 2018, Clare DCJ implicitly invoked concepts of free consent. In declining an appeal against conviction, she found that while there ‘was no evidence as to how the incident began,’ it did not matter whether it was ‘contrived or opportunistic, the appellant did not stop the dog ... [e]ven if the dog was an enthusiastic participant ... [a] reasonable person would have quickly moved, covered up or chased the dog away.’<sup>145</sup>

The limited discussion of consent overlooks a potential dimension of its criminality. However, as Brown and Rasmussen acknowledge, applying to human–animal sexual relations the core ideal underpinning sexual relations, is ‘rhetorically efficacious in a liberal-democratic debate,’ but ‘beside the point’ because an animal is ‘property and thus subject to use and disposal according to the desires of its owners.’<sup>146</sup> Dutch biologist Midas Dekkers made the same point in his 1994 reflection on human–animal sexuality. He disapprovingly observed that ‘an animal is a thing and a thing has no rights, only a person has those.’<sup>147</sup> Characterising bestiality as recognising animals as fundamentally lacking capacity to consent, or being too vulnerable and subject to power dynamics to freely consent, are both at odds with their legal status. The

<sup>141</sup> *TR* (n 6).

<sup>142</sup> *Anning* (n 6) [117].

<sup>143</sup> See generally *ibid*.

<sup>144</sup> *Chesworth* (n 63) [22] (Rothman J agreeing at [56], Yehia J agreeing at [57]).

<sup>145</sup> *Jolley* (n 96) [28]–[29].

<sup>146</sup> Brown and Rasmussen (n 1) 162.

<sup>147</sup> Dekkers (n 27) 115.

classification of animals as objects or property permits their treatment in a multitude of legally and socially sanctioned ways that do not require their consent, including being consumed, worn, bred, owned and experimented upon. The requirement of consent to sexual activity is difficult to reconcile with broader laws and social attitudes and, as Brown and Rasmussen observe, would make 'sexual interaction an outlier in the interspecies bond'.<sup>148</sup>

If animals did have legal rights to consent to sexual activity with humans, the enforcement of the law would still depend on humans determining if and when an animal consented.<sup>149</sup> Members of the 'zoophile community' argue that this assessment is possible. Damian Jacob Sandler undertook empirical research with 'zoophiles' who consider themselves to be in committed loving relationships with animals comparable to intimate relationships between humans. The 'zoos' describe relying on signs of animals initiating and consenting to sexual activity just as consenting humans assess their human partners' non-verbal sexual cues.<sup>150</sup> RJ Maratea, similarly, found 'zoos' who argue that 'animals can assign consent' through their instincts and actions.<sup>151</sup> This argument is consistent with the submission from the apparently caring dog owner in *TR* that 'the dog didn't need much encouragement and seemed to enjoy it'.<sup>152</sup>

However, the ability of humans to assess animals' consent to sexual activity is contested. Beirne concedes that some animals can 'scratch, bite, growl, howl, hiss, and otherwise communicate protest about unwanted advances', but also recognises that other animals 'are not equipped to resist human sexual advances in any meaningful way, owing to their docile and often human-influenced natures'.<sup>153</sup> He therefore concludes that all bestiality is 'animal sexual assault'.<sup>154</sup> Srinivasan supports this position through analogy with sexual offences against humans. She observes that 'conflation of pleasure and consent is commonplace in rape apologism. It's at work whenever an orgasm or an erection is taken as proof that someone consented'.<sup>155</sup> She also poses the question:

<sup>148</sup> Brown and Rasmussen (n 1) 169.

<sup>149</sup> *Ibid.*

<sup>150</sup> Damian Jacob Sandler, 'Why People Who Have Sex with Animals Believe that It Is Their Sexual Orientation: A Grounded Theory Study of Online Communities of Zoophiles' (2018) 39(11) *Deviant Behavior* 1507, 1511.

<sup>151</sup> Maratea (n 71) 928.

<sup>152</sup> *TR* (n 6).

<sup>153</sup> Beirne (n 139) 51.

<sup>154</sup> *Ibid* 44.

<sup>155</sup> Srinivasan (n 133) 7.

In sex of all things, where humans so often misconstrue what other humans want, where the temptation to project our fantasies and images onto the other is always pressing, where coercion and control figure all too easily — can we ever trust ourselves to know, really know, what an animal wants?<sup>156</sup>

By contrast, Bourke acknowledges myriad reasons for sexual miscommunication between humans and animals but accepts that ‘mistakes are part and parcel of the co-creative, emotional process.’<sup>157</sup> Consent is inconclusive as a guide to the criminalisation of bestiality, and its adoption as a determining criterion would require greater understanding of animal behaviour and a fundamental reconsideration of the legal position of animals. Both the Australian cases and the international commentary recognise that, given current law and scientific knowledge, animal consent must be considered in the context of power dynamics between humans and animals.

*(b) Abuse of Power*

Brown and Rasmussen distil, although do not necessarily accept, the widespread views of American researchers that animals, like children, are innocent and vulnerable, and so any sexual activity between humans and animals is abusive and coercive.<sup>158</sup> Two Australian judges expressed concerns about the exploitation of animals. In *TR* in 2012, Muecke DCJ reflected: ‘I am aware that it is in the nature of domestic dogs frequently to seek to please humans, particularly their owners.’<sup>159</sup> In 2019, Tupman DCJ expressed the same sentiment when sentencing *PW* in NSW. He stated: ‘Dogs are trusting animals and obey their owners. They should not be used in this way.’<sup>160</sup> The possibility of unrecognised exploitation in unequal interspecies relations is evidenced in private messages tendered in *Britton* in 2024. The defendant wrote: ‘I only badly mistreat other dogs. My own dogs are family ... [o]ccasionally, I get a bit rougher like mouth fucking and holding them down, but I lavish them with treats afterwards.’<sup>161</sup> The extreme cruelty in this case is not representative of the bestial conduct in the Australian cases, or with international research on zoophilic conduct.<sup>162</sup> It does, nonetheless, demonstrate how human ownership, combined with paraphilia, could lead to misinterpreting animal responses and

<sup>156</sup> Ibid 8.

<sup>157</sup> Bourke (n 137) 134.

<sup>158</sup> Brown and Rasmussen (n 1) 164.

<sup>159</sup> *TR*, *TT*, and *GS* (n 6).

<sup>160</sup> *PW* (n 98) [87].

<sup>161</sup> *Britton* (n 72) (Grant CJ).

<sup>162</sup> See, eg, Bourke (n 137) 62.

justifying exploitative and abusive human conduct. Even in a case of manifest, extreme, intentional cruelty, like *Britton*, there is demonstrated potential for the misguided characterisation of the relationship between abuser and animal victim as involving some level of familial kindness.

Zoophiles' perspectives, however, on the sexual dynamics between humans and animals are consistent with their views on consent, and at odds with the concerns of Australian judges and some international commentators. Sendler recounted that zoophiles perceive themselves as negotiating human–animal power differentials just as human partners do. He summarised that 'participants have a belief that all cohabiting couples (whether human-human or human–animal) develop a specific language that only the two parties can understand ... they see sex with animals as a matter of partnership between them and a pet'.<sup>163</sup> Maratea, similarly, found 'zoophiles' who reject a species-based hierarchy and 'cast themselves as progressive on animal issues, proclaiming that their beliefs represent a higher consciousness toward the co-existence of humans and other animal species'.<sup>164</sup> These views, while lacking apparent mainstream support, are not held only by members of 'zoo communities'. Bourke leaves open the possibility of equal inter-species sexual relationships with the observation that '[a]lthough we can never truly know the Other ... we can make sensible deductions about it'.<sup>165</sup> She supports this assertion through comparison with loving attendance of humans to non-verbal communication of children and people with certain disabilities, and attention to the non-sexual needs of pets.<sup>166</sup> She further observes that while sexual activity between humans and animals can be exploitative, it is not inherently so, in the same way that 'a distressing proportion of acts of sexual intercourse between humans [being] rape does not mean that sex is rape'.<sup>167</sup> Wendy Doniger accepts, albeit with qualifications, that in some senses, 'bestiality seems no more reprehensible or selfish or risky (or disappointing) than inter-human sexuality'.<sup>168</sup> Sexologist Hani Melitski, conducted empirical research with 93 'zoos' in the USA, and concluded, more categorically, that sexual attraction to animals was simply a 'variation of sexual orientation'.<sup>169</sup> José Maria Valcuende del Río and Rafael Cáceres-Feria agree that '[s]ocial norms tend to view animals, to all intents and

<sup>163</sup> Sendler (n 150) 1511.

<sup>164</sup> Maratea (n 71) 933.

<sup>165</sup> Bourke (n 137) 30.

<sup>166</sup> Ibid 128–30, 140–1.

<sup>167</sup> Ibid 144.

<sup>168</sup> Wendy Doniger, 'Calf and Other Loves' (1994) 16(15) *London Review of Books* 3, 3.

<sup>169</sup> Hani Miletiski, 'Zoophilia: Another Sexual Orientation?' (2017) 46(1) *Archives of Sexual Behavior* 39, 39, 42.

purposes, as social minors that must be protected. This paternalistic vision of animals denies their possibility for agency'.<sup>170</sup>

Harm, lack of consent, and abuse of power are *protective* of animals and so are bases for prohibition. However, they are open to criticism from a particular expression of progressive animal rights discourse. While they recognise an undeniable vulnerability of animals in relation to humans, too many obvious contradictions in treatment and denial of legal rights to animals challenge them as a coherent rationale for bestiality laws. Like the original prohibition, the modern aversion, and the vigour with which it is maintained, relates specifically to recreational sexual activity. The wrong relates not to the welfare of the animal involved, but to its effect on the separate, but interrelated, concepts of human and public dignity. The Australian cases reflect this long religious and legal tradition. However, as will be seen in the next part, arguments about dignity still do not provide guidance on whether or not bestiality should be criminalised, because such arguments can support its retention or abolition.

## B *Infringement on Human or Public Dignity*

### 1 *Public Dignity*

In *JY and JB* in SA in 2020, Stretton DCJ made the deepest attempt of any Australian judge to articulate the wrong of bestiality. Public dignity was core to his characterisation. He observed that where 'there is no apparent harm to the animal concerned, the seriousness of the offence is rather that the conduct is an affront to the norms and standards of society ... to public dignity'.<sup>171</sup> His view reflects R A Duff's contention that public wrongs do not necessarily affect the public in a practical or material sense, but rather violate 'the core values by which we define ourselves as a polity'.<sup>172</sup> This principle could be applied to bestiality offending, but the broad concept of public dignity was not developed in this case or evident in any other judgements. Rather, the cases focused on the narrower concept of the human dignity of individual humans.

<sup>170</sup> José María Valcuende del Río and Rafael Cáceres-Feria, 'Social Scientific Analysis of Human-Animal Sexual Interactions' (2020) 10(10) *Animals* 1780, 1786.

<sup>171</sup> *JY* (n 7).

<sup>172</sup> R A Duff, *Answering for Crime: Responsibility and Liability in the Criminal Law* (Hart Publishing, 2007) 141.

## 2 Human Dignity

Meir Dan-Cohen explains infringement of human dignity as an alternative to 'a harm-oriented, utilitarian conception of crime'.<sup>173</sup> The principle is deeply-rooted in concepts of criminalisation, and has been evident in bestiality judgments for centuries. When George Dawson was indicted for the offence in 1594, he was described in the record of indictment as 'not having God before his eyes nor considering the dignity of human nature'.<sup>174</sup> The breadth and uncertainty of the concept of human dignity presents a manifest practical and conceptual difficulty for its use as a benchmark for criminalisation. Stephen Riley captured its opacity when he summarised that: 'In its strongest form, dignity might be held to justify or found all of humanity's shared or basic normative commitments ... [i]n its weakest form, it may only mean that humanity rejects extreme forms of inhumanity (gross degradation, genocide)'.<sup>175</sup> However, despite the limitations, application of the principle to bestial offending is supported by two, related, religious traditions: opposition to non-reproductive sexual relations that is no longer a mainstream social or legal view; and a rigid, hierarchical relationship between humans and animals that endures in law and social attitudes.

The evolving expression of religious views in Australian bestiality offences is illustrated by the SA provisions. As discussed above, the original SA provision on 'buggery', like its English antecedents, criminalised sexual intercourse both between men, and between humans and animals. The decriminalisation of 'sodomy' in SA in the early 1970s substantiates the rejection of religious bases for criminalisation of sexual activity. In 2001, Australian philosopher and ethicist, Peter Singer, accounted for the continuing criminalisation of bestiality despite the redundancy of one ground for the original prohibition. He recognised that bestiality

originated as part of a broader rejection of non-reproductive sex. But the vehemence with which this prohibition continues to be held, its persistence while other non-reproductive sexual acts have become acceptable, suggests that there

<sup>173</sup> Meir Dan-Cohen, 'Dignity, Crime, and Punishment: A Kantian Perspective' in Markus D Dubber (ed), *Foundational Texts in Modern Criminal Law* (Oxford University Press, 2014) 104–5.

<sup>174</sup> Thomas (n 24) 159 n 50, citing Indictment on Sessions Roll (Essex Quarter Sessions, Epiphany 1595), archived at Essex Record Office, Q/SR 129/83.

<sup>175</sup> Stephen Riley, 'Justice or Dignity? Reconciling Foundational Concepts in Practical Philosophy' in Austin Sarat, Antonio Pele and Stephen Riley (eds), *Human Dignity* (Emerald Publishing, 2022) 67, 69–70.

is another powerful force at work: our desire to differentiate ourselves, erotically and in every other way, from animals.<sup>176</sup>

English judge and Vicar General, Peter Collier, recognises that human differentiation from, and superiority over, animals reflects the religious tradition that only 'a person is created in the image of God, endowed with free will and an immortal soul'.<sup>177</sup> However, it is not an exclusively religious position. Animal studies theorist, Colleen Glenney Boggs, identifies a 'core' and 'secular notion that human beings are special'.<sup>178</sup> Gacek, Jochelson and Dueck-Read articulate that the inexorable result of these religious and philosophical traditions are laws deeming that bestial acts 'denigrate what it means to be a human being. The formal punishment, while criminal, is bound up with conceptions of damnation'.<sup>179</sup> Wesley J Smith, lawyer and Senior Fellow at the conservative think tank, the Center on Human Exceptionalism, agrees that the 'rationale behind antibestiality laws was the philosophy of human exceptionalism ... that such degrading conduct unacceptably subverts standards of basic human dignity and is an affront to humankind's inestimable importance and intrinsic moral worth'.<sup>180</sup>

However, rejection of these traditions as a basis for criminalisation of bestiality does not equate to rejection of the criminalisation of bestiality. Support for the prohibition also derives from progressive views. Srinivasan's feminist perspective critiques Singer's argument that animal rights discourse legitimises sexual activity between humans and animals:

For Singer, sexual desire is a sign of equality; the taboo against having sex with non-human animals shows that we think they are beneath us. That he can think this reveals his ignorance of even the most rudimentary feminist insight. Sex can be as much about degrading and dominating as elevating the other.<sup>181</sup>

<sup>176</sup> Peter Singer, 'Heavy Petting', *Prospect* (online, 19 April 2001) <<https://www.prospectmagazine.co.uk/opinions/56258/heavy-petting>>, archived at <<https://perma.cc/N6TS-2UGH>>.

<sup>177</sup> Peter Collier, 'Christianity, Human Dignity and Due Process' in Mark Hill et al (eds), *Christianity and Criminal Law* (Routledge, 2020) 138.

<sup>178</sup> Colleen Glenney Boggs, 'American Bestiality: Sex, Animals, and the Construction of Subjectivity' [2010] 76 (Fall) *Cultural Critique* 98, 99.

<sup>179</sup> Gacek, Jochelson and Dueck-Read (n 91) 358.

<sup>180</sup> Brown and Rasmussen (n 1) 164; Wesley J Smith, 'Horse Sense', *Washington Examiner* (online, 31 August 2005) <<https://www.washingtonexaminer.com/news/1124644/horse-sense-2/>>, archived at <<https://perma.cc/X7FT-R3JT>>.

<sup>181</sup> Srinivasan (n 133) 7.

Similarly, Brown and Rasmussen question bestiality as an indicator of equality. They warn against celebrating ‘freedom through fucking. Such an understanding once again subordinates the animal to human superiority and continues to privilege sexuality as a site of human self-creation.’<sup>182</sup>

The Australian cases reflect traditional and modern views on criminalising sexual activity between animals and humans, including concerns about animal harm, their ability to consent, and proper human-animal relationships. However, the engagement with these traditions and discourses is not strong. The resounding theme on the perceived wrong of bestiality that arises from the Australian cases is that judges find the conduct gross and repulsive, and expect the community to share their views. There is limited, but compelling, Australian and American evidence of public revulsion to bestiality. Modern philosophers and legal scholars have reflected extensively on criminalisation based on visceral reactions of disgust, repugnance or moral repulsion, and some have analysed bestiality as a relevant example. However, their conclusions differ. As discussed below, some argue that revulsion toward bestial conduct arises from social conditioning from an unexamined legacy from the Judeo-Christian tradition that should not influence modern law. Others argue that widespread public revulsion is a valid indication of core criminality that should influence modern law.

### *C Disgust and Repugnance*

A letter written to an American sex columnist captures an apparently widely-held response to bestiality. The author of the letter observes that there are worse fates for an animal than sexual activity with a human, but that sexual activity, nonetheless, provokes a particular visceral aversion: ‘if I were a sheep I’d rather be fucked once in a while than slaughtered, dismembered and consumed. But still, BLECH.’<sup>183</sup> In language that has changed throughout the country’s history, bestiality has evoked enough express revulsion from Australia’s judges to make it the dominant theme apparent in the case law. Between 1834 and 2023, 14 judges describe a personal reaction of revulsion to bestiality, and eight more express an expectation that the community will share their views.

In passing a sentence of death in the Colony of New South Wales in 1834, Dowling J referred to bestiality as ‘a most atrocious offence, not to be named amongst mankind.’<sup>184</sup> In 1932, Cussen ACJ referred to it as ‘the abominable

<sup>182</sup> Brown and Rasmussen (n 1) 173.

<sup>183</sup> Ibid 170 (citations omitted).

<sup>184</sup> *R v Smith [No 3]* (Supreme Court of New South Wales, Forbes CJ, Dowling and Burton JJ, 18 November 1834).

crime.<sup>185</sup> Judicial abhorrence toward the offending changed little over following decades. In sentencing TR, TT and GS in SA in 2012, Muecke DCJ quoted extensively from one year of ‘numerous’ and detailed blog posts and chats by TR about her sexual contact with dogs. He characterised the posts as ‘graphic and gross.’<sup>186</sup> Judge Hannan, sentencing ‘Jason Snyder’<sup>187</sup> in 2018, observed that the various ‘acts with the dogs simply disclose depravity.’<sup>188</sup> In 2019, Elkaim J remarked that plans to perform oral sex on a dog ‘dig down to the very depths of depravity.’<sup>189</sup> In NSW in the same year, Tupman DCJ described various bestial acts with dogs as ‘perverted.’<sup>190</sup> In sentencing JY and JB in SA in 2020, Stretton DCJ described the sexual activity as ‘obviously gross and inappropriate.’<sup>191</sup> In PN in SA in 2022, Heffernan DCJ called the offending ‘reprehensible.’<sup>192</sup> In NSW in the same year, Grant DCJ expressed ‘a sense of disgust’ in sentencing a defendant.<sup>193</sup> In delivering sentence in Tasmania in 2023, Pearce J remarked that the ‘defendant’s actions were morally repugnant and deserving of condemnation.’<sup>194</sup> Also in that year, Lonergan J in NSW described conversations inciting bestiality as ‘disgusting chatter.’<sup>195</sup> Other judges impliedly supported these characterisations by referencing the need to condemn the offending. In sentencing in Victoria in 2015, Judge Pilgrim remarked that bestiality ‘is to be denounced in the strongest of terms.’<sup>196</sup> In sentencing a married couple in SA in 2020, Stretton DCJ remarked that ‘any sentence must ... signal society’s condemnation of your behaviour.’<sup>197</sup> In dismissing an appeal against sentence in NSW in 2023, Rothman J explained the need for ‘condemnation of the conduct.’<sup>198</sup>

At least one colonial Australian judge was confident that the community would share his abhorrence. At trial in 1833, the Attorney-General for the

<sup>185</sup> *Packer* (n 22) 225 (Cussen ACJ, Mann J, MacFarlan J agreeing at 228).

<sup>186</sup> *TR* (n 6).

<sup>187</sup> A pseudonym: *DPP (Vic) v Snyder* [2018] VCC 2112 [1] n 1.

<sup>188</sup> *Ibid* [72].

<sup>189</sup> *Lee* (n 10) [19].

<sup>190</sup> *PW* (n 98) [87].

<sup>191</sup> *JY* (n 7).

<sup>192</sup> *PN* (n 80).

<sup>193</sup> *Sturt* (n 92) [20].

<sup>194</sup> *Johnston* (n 78).

<sup>195</sup> *DB v The King* [2023] NSWCCA 323, [62] (Longeran J, Simpson AJA agreeing at [1], Dhanji J agreeing at [78]).

<sup>196</sup> *Mitchell* (n 76) [35].

<sup>197</sup> *JY* (n 7).

<sup>198</sup> *Chesworth* (n 63) [26], [55] (Rothman J, Wilson J agreeing at [56], Yehia J agreeing at [57]).

Colony of Van Diemen's Land and the trial judge expected 'horror arising in the minds of the Jury from the bare mention of the perpetration of such a crime'.<sup>199</sup> Judges in later centuries anticipated similar community reactions. In an appeal against sentence in Alice Springs in 1993, Thomas J agreed with the magistrate's assessment of 'community outrage at this type of offence'.<sup>200</sup> In a 2006 High Court of Australia case involving possession of indecent or obscene material, Kirby J described bestiality as conduct that 'jurors may have found especially disgusting'.<sup>201</sup> When Muecke DCJ described the conduct of TR, TT and GS as 'gross', he added that '[he] cannot imagine that there would be much debate amongst most people about [that descriptor's] aptness'.<sup>202</sup> In Victoria in 2015, Judge Pilgrim asserted that bestiality 'is particularly repugnant to society'.<sup>203</sup> In 2018, Clare DCJ described bestial conduct as 'repugnant to the vast majority of our community'.<sup>204</sup> When denouncing the conduct of PN in 2022, Heffernan J understood why the dog's owner was 'distressed and sickened' when she discovered her pet had been subject to acts that were 'repulsive to all right-thinking people'.<sup>205</sup> Finally, in sentencing Johnston in Tasmania in 2023, Pearce J recognised the 'moral outrage that members of the community' may feel toward bestiality.<sup>206</sup> The language of horror and abomination evolved, over centuries, into the language of disgust, revulsion and repugnance, but the responses to the offending were remarkably consistent across the country, across centuries. The enduring orthodoxy is that bestiality is depraved and abhorrent, the inexorable and proper reaction to it is disgust and repulsion, and the penalty for it must include public condemnation.

Actual community views about bestiality in Australia are not as readily discernible as judicial expectations of community views. However, the public and legislative response to a case of simulated bestiality in the ACT in 2010 supports the expectations of Australian judges. A photograph of a Canberran rugby league player was posted on Twitter (now 'X') showing him simulating a

<sup>199</sup> *R v Wells* (Supreme Court of Van Diemen's Land, Montagu J, 21 March 1833).

<sup>200</sup> *Wood* (n 14) 423.

<sup>201</sup> *Bounds v The Queen* (2006) 228 ALR 190, 211 [93].

<sup>202</sup> *TR* (n 6).

<sup>203</sup> *Mitchell* (n 76) [35].

<sup>204</sup> *Jolley* (n 96) [28].

<sup>205</sup> *PN* (n 80).

<sup>206</sup> *Johnston* (n 78).

sexual act with a team-mate's pet dog.<sup>207</sup> His conduct was reported in the Australian and international media, and was subject to such broad condemnation that the player sought a release from his contract in Australia.<sup>208</sup> The Royal Society for the Prevention of Cruelty to Animals called the behaviour 'sickening' and stated that they were 'disgusted'.<sup>209</sup> A month after the media reporting of the incident, the ACT Parliament reintroduced the offence of bestiality. The then Attorney-General denied 'influence from the recent publicity'<sup>210</sup> but the circumstances of its recriminalisation closely followed a pattern evident in the USA. In 2005, a man in Washington died from injuries caused through anal penetration by a horse.<sup>211</sup> The incident revealed a commercial operation where men paid to have sex with animals on a local farm and provoked near universal disgust and disapproval.<sup>212</sup> The following year, bestiality laws were unanimously passed to complement animal cruelty laws, including capturing sexual acts that posed a much greater risk to the human involved than to the animal.<sup>213</sup> Recriminalisation became a trend across the US. In 1990, the offence of 'bestiality' was not criminal in any civilian US jurisdiction,<sup>214</sup> although sexual activity between animals and humans was still prohibited in some states under earlier provisions relating to 'unnatural' offences and

<sup>207</sup> Andy Wilson, 'Canberra Raiders' Joel Monaghan Apologises over Photograph', *The Guardian* (online, 2 November 2010) <<https://www.theguardian.com/sport/2010/nov/04/canberra-raiders-joel-monaghan-photographs>>, archived at <<https://perma.cc/NRZ6-FXYN>>; Brad Walter, 'Monaghan Faces Sack over Mad Monday Dog Photo Disgrace', *The Sydney Morning Herald* (online, 5 November 2010) <<https://www.smh.com.au/sport/nrl/monaghan-faces-sack-over-mad-monday-dog-photo-disgrace-20101104-17fx1.html>>, archived at <<https://perma.cc/2D79-E6HD>>.

<sup>208</sup> Chris Barrett and Chris Dutton, 'Joel Monaghan in Tears after Quitting the Raiders', *The Sydney Morning Herald* (online, 9 November 2010) <<https://www.smh.com.au/sport/nrl/joel-monaghan-in-tears-after-quitting-the-raiders-20101109-17lff.html>>, archived at <<https://perma.cc/AE6Z-NHYM>>.

<sup>209</sup> Andy Wilson, 'Canberra Raiders' Joel Monaghan Apologises over Photograph', *The Guardian* (online, 4 November 2010) <<https://www.theguardian.com/sport/2010/nov/04/canberra-raiders-joel-monaghan-photographs>>, archived at <<https://perma.cc/7GSH-ZWT4>>.

<sup>210</sup> Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 9 December 2010, 6052 (Simon Corbell, Attorney-General).

<sup>211</sup> Brown and Rasmussen (n 1) 158–9. See also Jennifer Sullivan, 'Videotapes Show Bestiality, Enumclaw Police Say', *The Seattle Times* (online, 16 July 2005) <<https://www.seattletimes.com/seattle-news/videotapes-show-bestiality-enumclaw-police-say/>>, archived at <<https://perma.cc/MQK8-XGPF>>.

<sup>212</sup> *Ibid.*

<sup>213</sup> Washington Rev Code § 16.52.205(3)-(4), (9) (2024). See also generally *ibid.*

<sup>214</sup> Brian James Holoyda, 'Bestiality Law in the United States: Evolving Legislation with Scientific Limitations' (2022) 12(12) *Animals* 1525, 1530. However, it has been illegal under federal US martial law since the 1950s: at 1530.

offences against nature.<sup>215</sup> It was more explicitly criminalised in 24 states by 2001,<sup>216</sup> 31 states by 2014,<sup>217</sup> and then 49 states by 2023.<sup>218</sup> Activists advocate for West Virginia to become the last state to criminalise the conduct.<sup>219</sup> Legislative action in both the ACT and the US supports Rosenberg's descriptive claim that '[a]ffective reactions to interspecies sex surely play an important role in its criminalization, codifying taboo, disgust, repulsion, and moral outrage.'<sup>220</sup> However, assuming Australian judges have correctly assessed public attitudes, the normative question remains whether moral aversion, revulsion or a determination of grossness is a sound basis for the criminalisation of bestial conduct.

The concept of disgust has attracted attention from historical and modern philosophers, ethicists and legal theorists. Legal ethicist, Martha C Nussbaum, describes disgust as an 'especially visceral emotion',<sup>221</sup> which legal theorist Dan M Kahan attributes to being 'confronted by others — whether sexual deviants or sadistic criminals — whose values seem shockingly alien and dangerous.'<sup>222</sup> In the 18<sup>th</sup> century, German Enlightenment philosopher, Immanuel Kant, identified bestiality as 'ignoble and degraded' conduct that 'occasions a disgust'.<sup>223</sup> However, the criminalisation of conduct based on disgust is not unique to bestiality. According to Senthorun Raj, where law regulating 'sexuality is concerned, the chief emotion at work is often disgust'.<sup>224</sup> Using one particular emotion as a benchmark for criminal law-making raises philosophical and practical concerns.

The decriminalisation of consensual homosexual behaviour illustrates that not all behaviour that was, historically, deemed to be repulsive and deserving of criminalisation continues to be viewed that way. However, this

<sup>215</sup> Ibid.

<sup>216</sup> Ibid.

<sup>217</sup> Ibid.

<sup>218</sup> Ibid.

<sup>219</sup> 'Laws Banning Sexual Assault of Animals', *Animal Legal Defense Fund* (Web Page, 2024) <<https://aldf.org/project/sexual-assault-of-animals/>>, archived at <<https://perma.cc/H6AS-4BJ9>>.

<sup>220</sup> Rosenberg (n 130) 475.

<sup>221</sup> Martha C Nussbaum, *Hiding from Humanity: Disgust, Shame and the Law* (Princeton University Press, 2004) 87.

<sup>222</sup> Dan M Kahan, "'The Anatomy of Disgust' in Criminal Law" (1998) 96(6) *Michigan Law Review* 1621, 1631.

<sup>223</sup> Immanuel Kant, *Lectures on Ethics*, ed Peter Heath and JB Schneewind, tr Peter Heath (Cambridge University Press, 2001) 161.

<sup>224</sup> Senthorun Raj, 'On Sexuality, the Law Still Caters to the Norms of Public Disgust', *The Conversation* (online, 25 July 2017) <<https://theconversation.com/on-sexuality-the-law-still-caters-to-the-norms-of-public-disgust-79705>>, archived at <<https://perma.cc/A6TT-TCKP>>.

decriminalisation occurred in Australia over the 22-year period between 1975 and 1997, which illustrates a lack of specificity in determining changed social attitudes that demand law reform.<sup>225</sup> In addition, differing views have always coexisted on whether or not certain conduct is disgusting and, if so, whether that provides grounds for criminalisation. During the 1950s and 1960s, this issue was famously ventilated as part of the influential ‘Hart–Devlin’ debate on legal moralism.<sup>226</sup> The debate was prompted by the 1957 ‘Wolfenden Report’ on Homosexual Offences and Prostitution,<sup>227</sup> which recommended that ‘revulsion against what is regarded as unnatural, sinful or disgusting ... is not a valid basis for overriding the individual’s privacy and for bringing within the ambit of the criminal law private sexual behaviour.’<sup>228</sup> In response, Lord Devlin championed disgust as a guide to law-making on the basis that the survival of society depended on adherence to a common morality. He favoured ‘toleration of the maximum individual freedom that is consistent with the integrity of society’, but asserted that the presence of disgust is a strong indication that a community’s ‘bounds of toleration are being reached.’<sup>229</sup> Three decades later, conservative bioethicist, Leon Kass, writing against human cloning, implicitly supported Lord Devlin’s position. He advocated that visceral reactions can serve to demarcate acceptable social conduct, and that disgust or repugnance contain ‘deep wisdom’ that is a more reliable guide to law than rational argument, because ‘we intuit and feel, immediately and without argument, the violation of things that we rightfully hold dear. Repugnance ... may be the only voice left that speaks up to defend the central core of our humanity.’<sup>230</sup> However, these views have always been contested. Influential legal theorist and philosopher, HLA Hart, disputed Lord Devlin’s ‘disintegration’ theory,<sup>231</sup> and posited the possibility that in matters of sexual morality, society is ‘a plural structure comprising a number of different mutually tolerant moralities.’<sup>232</sup> In the late 1990s, historian and socio-legal theorist, William Ian Miller, similarly

<sup>225</sup> Andrew Dutney, ‘The Right Thing To Do: Australian Religion and the 2017 Same-Sex Marriage Debate’ in Paul Babie and Rick Sarre (eds), *Religion Matters: The Contemporary Relevance of Religion* (Springer, 2020) 295, 296.

<sup>226</sup> See generally AR Blackshield, ‘The Hart-Devlin Controversy in 1965’ (1967) 5(3) *Sydney Law Review* 441.

<sup>227</sup> Ibid 441–2.

<sup>228</sup> Home Office and Scottish Home Department, *Report of the Committee on Homosexual Offences and Prostitution* (Cmnd 247, 1957) 22.

<sup>229</sup> Patrick Devlin, *The Enforcement of Morals* (Oxford University Press, 1965) 16–17.

<sup>230</sup> Leon R Kass, ‘The Wisdom of Repugnance: Why We Should Ban the Cloning of Humans’ (1997) 216(22) *The New Republic* 17, 20.

<sup>231</sup> HLA Hart, *Law, Liberty and Morality* (Oxford University Press, 1963) 19; Devlin (n 229) 13.

<sup>232</sup> HLA Hart, *The Morality of the Criminal Law: Two Lectures* (Oxford University Press, 1965) 40.

argued the arbitrariness of the visceral emotions relevant to governing law, by recognising that ‘culture, not nature ... draws lines between defilement and purity, clean and filthy, those crucial boundaries disgust is called on to police.’<sup>233</sup>

Traditional debates do not resolve whether or not disgust is an appropriate guide to law-making, but historical examples do demonstrate that the policing of these boundaries can be capricious and malicious. Nussbaum and Kahan found that disgust and repugnance have been linked to ‘various forms of shady social practice [and] projected outwards onto vulnerable people and groups,’<sup>234</sup> such as Jewish people, members of the LGBTQIA+ community, racial minorities and women.<sup>235</sup> These examples challenge the view that repugnance is a reaction to something universal and central to human experience. It supports zoophiles’ argument that they have been persecuted because limitations in scientific and medical knowledge have arbitrarily classified homosexuality as normal and zoophilia as abnormal, and that evolving understanding of genetics legitimises their ‘non-normative sexual attraction to animals.’<sup>236</sup> They align themselves to the gay rights movement, and argue that their sexual orientation needs to be similarly destigmatised and decriminalised.<sup>237</sup> This self-advocacy draws support from various legal commentators. Raj’s commentary on homosexuality could apply to their cause: ‘The law is still used to stigmatise and punish identities and forms of intimacy that don’t conform to the mainstream’s romanticised expectations ... we must ask ourselves why some sexualities still disgust us.’<sup>238</sup> Nicola Lacey provides a compelling partial answer to the question. In 2021, at age 81 years, Clare Devlin disclosed to the Independent Inquiry on Sexual Abuse that her father, Lord Devlin, had sexually abused her for a decade of her childhood. The disclosures were made after Lord Devlin’s death and never tested in court, but were supported by her five siblings.<sup>239</sup> As Lacey observed in commenting on the disclosures: the history of sex and sex crimes

<sup>233</sup> William Ian Miller, *The Anatomy of Disgust* (Harvard University Press, 1997) 15.

<sup>234</sup> Nussbaum (n 221) 14.

<sup>235</sup> Ibid 108; Kahan (n 222) 1638.

<sup>236</sup> Sendler (n 150) 1509–10.

<sup>237</sup> Maratea (n 71) 934–6.

<sup>238</sup> Raj (n 224).

<sup>239</sup> Beatrix Campbell, ‘“Our Silence Permits Perpetrators To Continue”: One Woman’s Fight to Expose a Father’s Abuse’, *The Guardian* (online, 25 July 2021) <<https://www.theguardian.com/uk-news/2021/jul/25/our-silence-permits-perpetrators-to-continue-one-womans-fight-to-expose-a-fathers-abuse>>, archived at <<https://perma.cc/2UN7-CQL8>>.

reveals ‘spectacular ... double standards and hypocrisy, particularly among elite men.’<sup>240</sup>

## VI CONCLUSION

Bestiality has been criminalised for hundreds of years, and its current criminalisation has apparent continuing judicial, parliamentary and community support in Australia. From a political perspective, tradition and public support may be adequate grounds for its continued criminalisation. However, the legitimacy of the offence depends on a review of multiple, complex, competing considerations. Bestiality has attracted national and international academic and public commentary throughout the 20<sup>th</sup> and 21<sup>st</sup> centuries. A strand of this commentary recognises that the religious origins of the prohibition run counter to contemporary social attitudes, and are no longer widely accepted as a dominant influence on criminal law. The decriminalisation of ‘sodomy’ in Australia appears to recognise these changing values, and set a precedent for the decriminalisation of bestiality. However, emerging progressive and conservative discourses do not provide clear guidance on law reform. Animal rights arguments are advanced for both its criminalisation and its decriminalisation. Bestiality’s decriminalisation could be principled law reform consistent with other changes to the criminal law over the past half century. However, that conclusion is challenged by Beirne’s question of whether removal of the stigma of human–animal sexual relations is ‘a logical addition to the justifiable extension of social acceptance and legal rights to gays, lesbians, and other sexual orientations’ or just the means to increase ‘the myriad ways in which humans, lawfully and with widespread social acceptance, exploit and harm our fellow creatures.’<sup>241</sup> Similarly, criminalisation on the grounds of disgust or repugnance is both supported and refuted by international philosophical and legal commentary. Disgust may reflect social conditioning and views that should not determine modern criminal laws, or fundamental truths that should. Irrespective of the origins of a disgust reaction, the manifest potential for its oppressive and discriminatory application significantly, perhaps decisively, undermines it as guide to criminalising conduct.

The only firm conclusion from the analysis of Australian bestiality legislation and cases is that the law is not clear on why sexual activity between humans and other animals continues to be criminalised. Any offence that exposes a person to the risk of extreme social stigma and a lengthy prison

<sup>240</sup> Nicola Lacey, ‘Patrick Devlin, *The Enforcement of Morals* (1965)’ in Chloë Kennedy and Lindsay Farmer (eds), *Leading Works in Criminal Law* (Routledge, 2024) 82, 82–3.

<sup>241</sup> Beirne (n 139) 43.

sentence needs to be understood and articulated with clarity and unequivocally reflect contemporary standards. Parliaments should seek to reconcile multiple legal, religious, social and sexual views and arrive at a modern understanding of whether or not it represents a core wrong, and should be included within the boundaries of the contemporary Australian criminal law. Ultimately, Srinivasan's observations regarding young male 'incels', who deem themselves to be 'involuntarily celibate' because women do not agree to have sexual intercourse with them, may articulate why bestiality should continue to be criminalised: 'everyone is entitled to want what they want' but there 'is no entitlement to sex'.<sup>242</sup>

<sup>242</sup> Amia Srinivasan, 'Does Anyone Have the Right to Sex?' (2018) 40(6) *London Review of Books* 5, 5, 10.

VII APPENDIX A: AUSTRALIAN BESTIALITY CASES 1796–2024

A Sentencing Remarks

| Jurisdiction  | Offence                                                 | Case Name                                                                                                                                                                                                                            | Nature of Offending                     |
|---------------|---------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|
| Colony of NSW | Assault with an intent to commit bestiality (one count) | <i>R v Hyson</i> [1796] NSWKR 3, cited in <i>The Kercher Reports: Decisions of the New South Wales Superior Courts, 1788 to 1827</i> , ed Bruce Kercher and Brent Salter (Francis Forbes Society for Australian Legal History, 2009) | Male defendant penetrated a female dog. |
| Colony of NSW | Bestiality (one count)                                  | <i>R v Reece</i> [1799] NSWKR 1, cited in <i>The Kercher Reports: Decisions of the New South Wales Superior Courts, 1788 to 1827</i> , ed Bruce Kercher and Brent Salter (Francis Forbes Society for Australian Legal History, 2009) | Male defendant penetrated sow.          |

| Jurisdiction      | Offence                                     | Case Name                                                                                                                                        | Nature of Offending                                                                     |
|-------------------|---------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| Van Diemen's Land | Attempting to commit bestiality (one count) | <i>R v Wells</i> (Supreme Court of Van Diemen's Land, Montagu J, 21 March 1833)                                                                  | Male defendant attempted to penetrate calf.                                             |
| Colony of NSW     | Bestiality (one count)                      | <i>R v Smith [No 3]</i> (Supreme Court of New South Wales, Forbes CJ, Dowling and Burton JJ, 18 November 1834)                                   | Male defendant penetrated female dog.                                                   |
| SA                | Bestiality (one count)                      | Transcript of Proceedings (Sentencing Remarks), <i>R v TR</i> [2012] (District Court of South Australia, DCCRM-11-2099, Muecke DCJ, 5 July 2012) | Female defendant penetrated vaginally by male dog.                                      |
| SA                | Aiding and abetting bestiality              | Transcript of Proceedings (Sentencing Remarks), <i>R v TT</i> [2012] (District Court of South Australia, DCCRM-11-2099, Muecke DCJ, 5 July 2012) | Male defendant aided and abetted wife to be penetrated vaginally by male dog.           |
| SA                | Aiding and abetting bestiality              | Transcript of Proceedings (Sentencing Remarks), <i>R v GS</i> [2012] (District Court of South Australia, DCCRM-11-2099, Muecke DCJ, 5 July 2012) | Female defendant aided and abetted acquaintance to be penetrated vaginally by male dog. |

| Jurisdiction | Offence                                                    | Case Name                                  | Nature of Offending                                                                                                                                   |
|--------------|------------------------------------------------------------|--------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| NSW          | Attempted bestiality (one count)                           | <i>R v Anning</i> [2014] NSWDC 359         | Male defendant attempted to be penetrated by a male dog.                                                                                              |
| Vic          | Bestiality (two counts)                                    | <i>DPP (Vic) v Mitchell</i> [2015] VCC 747 | Male defendant penetrated horse.                                                                                                                      |
| Vic          | Bestiality (two counts)                                    | <i>DPP (Vic) v Snyder</i> [2018] VCC 2112  | Male defendant committed various sexual acts with female and male dog.                                                                                |
| NSW          | Bestiality (two counts)                                    | <i>R v PW</i> [2019] NSWDC 963             | Male defendant committed various sexual acts including penetration of female dog.                                                                     |
| ACT          | Conspiring to commit bestiality (one count)                | <i>R v Zonneveld</i> [2019] ACTSC 122      | Plans for two male defendants to engage in various sexual acts with male dog.                                                                         |
| ACT          | Bestiality (one count)<br>Bestiality by proxy (two counts) | <i>R v Lee</i> [2019] ACTSC 14             | Male defendant had male dog perform oral sex upon him;<br><br>Male defendant forcibly penetrated 15-year-old female child's vagina with penis of dog. |

| Jurisdiction | Offence                | Case Name                                                                                                               | Nature of Offending                                                                                          |
|--------------|------------------------|-------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| Vic          | Bestiality (one count) | <i>DPP (Vic) v Walton</i> [2020] VCC 1839                                                                               | Male defendant penetrated vagina of dog with carrot.                                                         |
| SA           | Bestiality (one count) | Transcript of Proceedings (Sentencing Remarks), <i>R v JY</i> [2020] (District Court of South Australia, Grant DCJ)     | Female defendant committed multiple acts of non-penetrative sexual activity with dog and co-accused husband. |
| SA           | Bestiality (one count) | Transcript of Proceedings (Sentencing Remarks), <i>R v JY</i> [2020] (District Court of South Australia, Grant DCJ)     | Male defendant committed multiple acts of non-penetrative sexual activity with dog and co-accused wife.      |
| SA           | Bestiality (one count) | Transcript of Proceedings (Sentencing Remarks), <i>R v PN</i> [2022] (District Court of South Australia, Heffernan DCJ) | Male defendant masturbated dog and encouraged dog to lick his penis.                                         |
| SA           | Bestiality (one count) | <i>R v VA</i> [2022] (District Court of South Australia)                                                                | Male defendant masturbated dog.                                                                              |
| NSW          | Bestiality (one count) | <i>R v Sturt</i> (a pseudonym) [2022] NSWDC 155                                                                         | Male defendant committed various sexual acts with dogs.                                                      |

| Jurisdiction | Offence                 | Case Name                                                                                                                                          | Nature of Offending                                     |
|--------------|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|
| Tas          | Bestiality (two counts) | Transcript of Proceedings (Sentencing Remarks), <i>Tasmania v Johnston</i> (Supreme Court of Tasmania, Pearce J, 26 October 2023)                  | Male defendant vaginally penetrated two goats.          |
| NT           | Bestiality (ten counts) | Transcript of Proceedings (Sentencing Remarks), <i>R v Britton</i> (Supreme Court of the Northern Territory, SCC 2212255, Grant CJ, 8 August 2024) | Male defendant committed various sexual acts with dogs. |

B Sentencing Appeals

| Jurisdiction | Offence                                       | Case Name                                                                                                                       | Hearing Type                        | Nature of Offending                                                       |
|--------------|-----------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|---------------------------------------------------------------------------|
| Vic          | Aiding and abetting bestiality (three counts) | <i>R v Fellenberg</i> (Supreme Court of Victoria, Court of Criminal Appeal, Crockett, Southwell and Teague JJ, 6 November 1991) | Appeal against sentence — dismissed | Male defendant aided and abetted male youth to vaginally penetrate sheep. |

| Jurisdiction | Offence                                                            | Case Name                                     | Hearing Type                        | Nature of Offending                                                             |
|--------------|--------------------------------------------------------------------|-----------------------------------------------|-------------------------------------|---------------------------------------------------------------------------------|
| NT           | Carnal knowledge with an animal (one count)                        | <i>Wood v Chute</i> (1993) 111 FLR 420        | Appeal against sentence — dismissed | Male defendant penetrated female dog.                                           |
| Qld          | Attempted procurement of carnal knowledge of an animal (one count) | <i>R v RDD</i> [2004] QCA 403                 | Appeal against sentence — upheld    | Male defendant attempted to force male dog to vaginally penetrate his daughter. |
| Qld          | Bestiality (one count)                                             | <i>R v MCG</i> [2015] QCA 184                 | Appeal against sentence — upheld    | Female defendant penetrated by dog.                                             |
| NSW          | Bestiality (one count)                                             | <i>Chesworth v The King</i> [2023] NSWCCA 115 | Appeal against sentence — dismissed | Male defendant committed various sexual acts with dog.                          |
| NSW          | Incite bestiality (one count)                                      | <i>DB v The King</i> [2023] NSWCCA 323        | Appeal against sentence — dismissed | Male defendant committed various sexual acts with dog.                          |

*C Other Cases*

| Jurisdiction | Offence                                                               | Case Name                                 | Hearing Type                          | Nature of Offending/Allegation                                                                                                                                          |
|--------------|-----------------------------------------------------------------------|-------------------------------------------|---------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NSW          | Bestiality (one count)                                                | <i>R v Reynolds</i> (1880) 1 LR (NSW) 129 | Appeal against conviction — dismissed | Male defendant penetrated male turkey.                                                                                                                                  |
| Vic          | Inciting and aiding and abetting buggery (one count)                  | <i>R v Packer</i> [1932] VLR 225          | Appeal against conviction — dismissed | Male defendant incited, aided and abetted 13-year-old male to penetrate female dog.                                                                                     |
| Qld          | Attempted carnal knowledge of an animal (one count)                   | <i>R v Edwards</i> [1956] QWN 16          | Trial — nolle prosequi entered        | Male defendant was indicted on a charge of attempting to penetrate a bay mare, but conduct was merely preparatory to an attempt so nolle prosequi entered by the Crown. |
| Qld          | Carnal knowledge of an animal/against the order of nature (one count) | <i>R v CAP</i> [2009] QCA 174             | Appeal against conviction — upheld    | Male defendant forced male dog to penetrate woman.                                                                                                                      |

| Jurisdiction | Offence                                                                | Case Name                                       | Hearing Type                                                                                                 | Nature of Offending/Allegation                                                  |
|--------------|------------------------------------------------------------------------|-------------------------------------------------|--------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| NSW          | Attempted bestiality (one count)                                       | <i>R v Anning</i> [2013] NSWDC 285              | Trial — guilty                                                                                               | Male defendant attempted to be penetrated by male dog.                          |
| Qld          | Breaching duty of care to animal by inappropriate handling (one count) | <i>Jolley v Queensland Police</i> [2018] QDC 12 | Appeal against conviction — dismissed                                                                        | Male defendant committed various sexual acts with dog.                          |
| Tas          | Bestiality (one count)                                                 | <i>Elnami v Tasmania</i> (2020) 33 Tas R 60     | Defendant application for discharge from indictment — allowed                                                | Male defendant committed various sexual acts with dog.                          |
| NSW          | Bestiality (one count)                                                 | <i>DS v The King</i> [2023] NSWCCA 151          | Appeal against conviction (for domestic violence offences) — dismissed (bestiality charges were ‘no billed’) | Male defendant either forced or attempted to force male dog to penetrate woman. |

VIII APPENDIX B: AUSTRALIAN STATUTORY PROVISIONS 2024

| Jurisdiction | Provisions                                                                        | Offence Title | Offence Details and Penalty                                                                                                                                                                                                                  |
|--------------|-----------------------------------------------------------------------------------|---------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SA           | Criminal Law Consolidation Act 1935 (SA) ss 5(1) (definition of ‘bestiality’), 69 | ‘Bestiality’  | Prohibition:<br><br>A person who commits bestiality is guilty of an offence.<br><br>Maximum penalty: Imprisonment for 10 years.<br><br>Relevant Definition:<br><br>s 5(1) bestiality means ‘sexual activity between a person and an animal’. |
| NSW          | Crimes Act 1900 (NSW) s 79                                                        | ‘Bestiality’  | Prohibition:<br><br>Any person who commits an act of bestiality with any animal shall be liable to imprisonment for fourteen years.                                                                                                          |
| Vic          | Crimes Act 1958 (Vic) ss 35A(3)–(4), 54A                                          | ‘Bestiality’  | Prohibition:<br><br>(1) A person (A) commits an offence if A intentionally—<br><br>(a) sexually penetrates an animal; or<br><br>(b) causes or allows an animal to sexually penetrate A.                                                      |

| Jurisdiction | Provisions                                      | Offence Title | Offence Details and Penalty                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|--------------|-------------------------------------------------|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|              |                                                 |               | <p>(2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).</p> <p>Relevant Definition:</p> <p>s 35A(3) A person (A) sexually penetrates an animal if A engages in conduct with the animal that would involve sexual penetration as defined by subsection (1) were the animal another person (B).</p> <p>s 35A(4) A person (B) is sexually penetrated by an animal if B engages in conduct with the animal that would involve sexual penetration as defined by subsection (1) were the animal another person (A).</p> |
| Qld          | Criminal Code Act 1899 (Qld) sch 1 ss 6(1), 211 | 'Bestiality'  | <p>Prohibition:</p> <p>(1) Any person who engages in penile intercourse with an animal is guilty of a crime and is liable to imprisonment for 7 years.</p> <p>(2) For subsection (1), the definitions penile intercourse and engages in penile intercourse with another person in section 6 apply as if a reference in that section to another person were a reference to the animal mentioned in subsection (1).</p> <p>Relevant Definition:</p>                                                                                                                            |

| Jurisdiction | Provisions                                                                                                | Offence Title                      | Offence Details and Penalty                                                                                                                                                                                                                                                                                                                                                                                                                     |
|--------------|-----------------------------------------------------------------------------------------------------------|------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|              |                                                                                                           |                                    | s 6(1) Penile intercourse is the penetration, to any extent, of the vagina, vulva or anus of a person by the penis of another person.                                                                                                                                                                                                                                                                                                           |
| WA           | Criminal Code Act<br>Compilation Act<br>1913 (WA) ss 6<br>(definition of<br>'carnal<br>knowledge'), s 181 | 'Carnal<br>knowledge of<br>animal' | <p>Prohibition:</p> <p>Any person who has carnal knowledge of an animal is guilty of a crime and is liable to imprisonment for 7 years.</p> <p>Relevant Definition:</p> <p>s 6 carnal knowledge is 'complete upon penetration'. 'Penetration includes penetration of the anus of a female or male person'.</p>                                                                                                                                  |
| Tas          | Criminal Code Act<br>1924 (Tas) s 122                                                                     | 'Bestiality'                       | <p>Prohibition:</p> <p>(1) Any person who engages in an act of bestiality is guilty of a crime.</p> <p>(2) A person does not commit an offence against subsection (1) if the act that the person engaged in—</p> <p>(a) occurred in the course of a procedure being carried out by the person for a genuine veterinary, agricultural or scientific research purpose; and</p> <p>(b) was, in the circumstances, reasonable for that purpose.</p> |

| Jurisdiction | Provisions                                       | Offence Title                    | Offence Details and Penalty                                                                                                                                                                                                                                                                                                                                                                                             |
|--------------|--------------------------------------------------|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|              |                                                  |                                  | Relevant Definition:<br><br>s 1 bestiality means sexual activity of any kind between a human being and an animal.                                                                                                                                                                                                                                                                                                       |
| NT           | Criminal Code Act 1983 (NT) sch 1 ss 208N, 208GD | ‘Sexual involvement with animal’ | Prohibition:<br><br>A person commits an offence if the person is intentionally sexually involved with an animal.<br><br>Maximum penalty: Imprisonment for 7 years.<br><br>Relevant Definition:<br><br>208GD ‘sexually involved with an animal’ includes penetration of an animal’s genitals or anus by any human body part or object; penetration of a human by an animal’s penis; oral intercourse of or by an animal. |
| ACT          | Crimes Act 1900 (ACT) s 63A                      | ‘Bestiality’                     | Prohibition:<br><br>A person commits an offence if the person engages in a sexual activity of any kind with an animal.<br><br>Maximum penalty: imprisonment for 10 years.                                                                                                                                                                                                                                               |