DISTRICT COURT OF QUEENSLAND

CITATION:	*Morrison v Sutton* [2022] QDC 103
PARTIES:	**MICHELLE MEREE MORRISON** (appellant) **v** **JAMIE SUTTON** (respondent)
FILE NO:	D8/2021
DIVISON	Appellate
PROCEEDING:	Appeal against sentence
ORIGINATING COURT:	Magistrates Court Toogoolawah
DELIVERED ON:	13 May 2022
DELIVERED AT:	Maroochydore
HEARING DATE:	15 February 2022
JUDGE:	Cash QC DCJ
ORDERS:	**1. The application for an extension of time within which to appeal is refused; and** **2. The appeal is dismissed.**
CATCHWORDS	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – SENTENCE MANIFESTLY EXCESSIVE – where appellant pleaded guilty to 31 offences under *Animal Care and Protection Act 2001* – where the appellant neglected or was cruel to horses – sentence – where appellant fined $20,000 – where the court also ordered appellant to pay costs pursuant to s 189 of the Act – whether order for costs under s 189 relevant to sentence – prohibition order pursuant to s 183 – forfeiture order pursuant to s 182 – whether sentence excessive
LEGISLATION:	*Animal Care and Protection Act 2001* (Qld), s 17(2), s 18(2), s 182, s 183, s 185, s 189, s 192 *Justices Act 1886* (Qld), s 222, 223 *Penalties and Sentences Act 2017* (Qld), s 48
CASES:	*House v The King* (1936) 55 CLR 499 *R v Hart* [2008] QCA 199 *Teelow v Commissioner of Police* [2009] 2 Qd R 489 *Wilson v Barraud & Anor* [2021] QDC 223, [120], [121],

[126], [127], [130]

APPEARANCES: S B Neaves (Counsel) for the appellant instructed by Belle Dore Legal
J Cranitch (Government Legal Officer) for the respondent instructed by Department of Resources (Queensland)

Introduction

[1] On 24 May 2021 the appellant appeared before a Magistrate at Toogoolawah in relation to several alleged offences prosecuted on complaint by an officer of the Department of Agriculture and Fisheries (the Department).[1] The prosecutor amended the charges, after which the appellant pled guilty to a total of 31 offences contrary to either section 17 or section 18 of the *Animal Care and Protection Act 2001* (Qld) ("ACAPA"). In their final form, the charges alleged two offences of animal cruelty and 29 offences of a breach of duty to care for an animal. After hearing submissions, the Magistrate made the following orders:

a) The appellant was fined $20,000;

b) The appellant was prohibited from possessing, purchasing, or otherwise acquiring any horse without the approval of the Chief Executive of the Department (with an exception for 25 horses then in her possession);

c) Sixteen horses belonging to the appellant that had been seized by the Department on 1 April 2019 were forfeited to the State;[2]

d) The appellant was ordered to pay $40,000, being the costs of the Department in keeping the 16 seized horses from April 2019; and

e) The appellant was ordered to pay $1,603.60 in court and professional costs.

[2] Convictions were not recorded.

[3] The appellant is aggrieved by the orders made. She appeals, alleging that the sentence was excessive. She also challenges the prohibition and forfeiture orders. The appellant was eight days late in filing the appeal and requires an extension of time. The respondent was content for the merits of the appeal to be considered and did not oppose the court granting an extension if the appellant demonstrated that the appeal should succeed. For the following reasons I am of the view that the appellant has not made out any of the grounds of appeal. As such an extension of time would be inutile and the appeal should be dismissed. Before turning to the conduct of the appellant that gave rise to the prosecution it is convenient to set out the legal principles relevant to an appeal of this kind.

Relevant legal principles

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1 The officer who complained of the offences was the respondent, Mr Sutton. But in real terms the prosecutor was the Department, and it is the Department who instructed lawyers to appear in this appeal.

2 A total of 24 horses had been seized at the property on 1 April 2019 but some were euthanized, and some did not belong to the appellant. They were not the subject of the forfeiture order.

[4] The appeal is brought pursuant to section 222 of the *Justices Act 1886* (Qld). Section 222(2)(c) provides that if a person pleads guilty in the proceeding before the Magistrate, they may only appeal on the ground that the 'fine, penalty, forfeiture or punishment was excessive'. Pursuant to section 223 of the *Justices Act*, the appeal is by way of rehearing on the evidence given in the proceeding before the Magistrate (and any further evidence that might be admitted with leave). I am required to conduct a real review of both the evidence before the Magistrate, and the Magistrate's reasons for imposing the sentence, to determine whether the decision was affected by error. As this is an appeal against the exercise of the sentencing discretion, it must be determined in accordance with the well-known principles in *House v The King* (1936) 55 CLR 499.[3] If I find that the sentence imposed was 'unreasonable or plainly unjust', or if the Magistrate erred in law, acted upon a wrong principle, took into account irrelevant matters, failed to take into account relevant matters, or mistook the facts, then I can exercise the sentencing discretion afresh.

[5] The complaints of the appellant are that the sentence, including the forfeiture and prohibition orders, was excessive, and that the Magistrate erred in his application of the legislation when making the forfeiture order.

Circumstances of the offences

[6] The maximum penalty for each of the 29 charges of breaching a duty to care for an animal, contrary to section 17 of ACAPA, was a fine not exceeding 300 penalty units, or up to one years' imprisonment. The maximum penalty for each of the two offences of animal cruelty, contrary to section 18, was a fine not exceeding 2,000 penalty units, or up to three years' imprisonment.[4] The sentence hearing proceeded on an agreed statement of facts.[5] The statement is summarised below.

[7] The appellant resided at her mother's 160-acre property during the offending period and was solely responsible for providing care to all the horses at the property. Between 11 December 2018 and 1 April 2019, the appellant failed to provide adequate feed for 29 horses in her care. Such feed was necessary to supplement the meagre pasture growth on the property. Inspectors from the Department attended the property in August 2018 and again in November that year. They observed that there were about 60 horses on the property. There appeared to be a noticeable deterioration in the body condition of some horses in between the two visits. The horses were graded according to the Carroll and Huntington Body Condition Scoring System. This is the accepted standard for describing the health status of horses and allocates a score between 0 and 5, with a score of three considered to indicate reasonable health. All horses at the property received scores of zero or one.

[8] Following receipt of a further complaint, inspectors attended the property again in December 2018 and issued an Animal Welfare Direction to the appellant. Subsequent compliance checks revealed horses with unacceptably low body condition scores. There was minimal or no pasture growth present in the paddocks. The lack of adequate pasture required the appellant to provide the horses with supplementary feed. The

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3 *Teelow v Commissioner of Police* [2009] 2 Qd R 489.

4 At the time a penalty unit was $130.55, such that the maximum fine for each of the breach of duty offences was $39,165. For each of the cruelty offences the maximum fine was $261,100.

5 T.1-12.20-30.

appellant told Inspectors she had purchased some bales of hay, but it was not an adequate amount to feed all the horses.

[9] During a visit on 8 March 2019, Inspectors saw discarded car parts, rubbish, debris, and broken fences in the horse paddocks. These posed an injury risk to the horses. One horse, "Desire", had been stuck in a barbwire fence and injured sometime in March 2019. Another horse, "Tully", had been kept in a small yard with loose tin and metal objects. On 4 April 2019 Tully was seen to have a 3cm long laceration on the right hind leg with purulent discharge and necrotic tissue.

[10] In the weeks between 8 March 2019 and 1 April 2019, six horses had died at the property. Prior to their death, inspectors observed that four of the six deceased horses were in emaciated body condition and the other two were in very poor body condition. On 1 April 2019, the inspectors seized 24 horses from the appellant's property, 16 of which were owned by the appellant. The evidence established the following 31 offences with which the appellant was charged.

Charges 1-26 and 29-31

[11] Between 11 December 2018 and 1 April 2019, the appellant was in charge of 29 horses, and she breached the duty to care for them because she failed to provide appropriate feed in contravention of section 17 of ACAPA.

Charges 27 and 29

[12] Between 11 December 2018 and 4 April 2019, the appellant was cruel to two horses in her care in contravention of section 18 of ACAPA. Her cruelty was described as "unjustifiable, unnecessary, and unreasonable". The appellant starved the horses by failing to provide adequate feed. She also failed to look after the physical ailments of the two horses and failed to provide them with adequate veterinary treatment, causing each horse unnecessary pain. Each of the horses Body Condition Scores deteriorated to zero and both horses were euthanised on 4 April 2019 to alleviate their pain.

The hearing before the Magistrate

[13] The prosecution submitted that an appropriate sentence was a fine order of $20,000, a prohibition order, and an order for the forfeiture of the seized horses. The prosecution also sought the recovery of $300,000, said to be the costs of keeping the seized horses. It was acknowledged that the appellant had no prior convictions for offences under ACAPA, or any other criminal history. The prosecution did not submit for a conviction to be recorded. The Magistrate was referred to four decisions which were said to aid in deciding an appropriate sentence. In respect of the forfeiture order, the prosecution at first urged that all the seized horses should be forfeited. This included five horses owned by the appellant's mother, but which were in the care of the appellant at the time of the offending. Addressing the appellant's culpability, the prosecution referred to her qualifications in horse husbandry, submitting that she knew how to properly care for the animals and understood the harm her actions caused.

[14] The appellant did not contest the prohibition or fine orders. She resisted a forfeiture order and the recovery of costs by the Department. The appellant sought to explain her offending by reference to the difficult personal and financial situation she faced at the

time, including the death of her father in early 2019. Addressing the prospect of forfeiture, the appellant advised that her partner had agreed to help her pay for feeding and caring for the animals. The appellant admitted that she knew the horses needed more feed. She claimed to have been taking steps to address their needs when the horses were seized just two weeks later. The appellant also claimed that she had begun to destock the property and change the configuration of the paddocks to better provide for the horses. She said that at the time of the seizure she was attempting to rehome, sell or give-away horses but had been unable to do so because of difficulties moving horses during a drought. The appellant submitted that she was in paid employment and could pay for the care of the horses, though at the time of the sentence hearing she was on maternity leave. The appellant was at the time a single mother of four, her youngest son having only recently been born.

The Magistrate's decision

[15] The Magistrate referred to the purposes of ACAPA, including the object of protecting animals from unjustifiable, unnecessary, or unreasonable pain. The Magistrate observed it must have been obvious that the horses were very malnourished, and that the property could not support the number of horses kept by the appellant in drought-like conditions. His Honour noted that "it was a lack of funding rather than a lack of love" that led to the poor condition of the horses, while also noting this did not excuse the appellant from ensuring the horses had adequate feed. General deterrence was said to be of significance. The Magistrate compared the appellant's conduct to that of the defendants in the cases to which he was referred. In compliance with section 48 of the *Penalties and Sentences Act 1992* (Qld) ("PSA"), his Honour noted that the appellant was employed and could pay a fine over time. The Magistrate also had regard to the statutory criteria relevant to the forfeiture order. He declined to order the forfeiture of any horses that were not owned by the appellant.

[16] His Honour also had regard to the provisions of ACAPA that permitted the Department to recover its costs of keeping the horses pending the finalisation of the proceeding.[6] He considered the amount of $300,000 sought by the Department as excessive and decided that $40,000 was the amount that was "just … in the circumstances of the particular case". The figure of $40,000 was arrived at by considering the practice of the Magistrates Court that contested matters should be brought to trial within 49 days of the commencement of the proceeding and disallowing costs after this period. The Magistrate also noted that it would be unjust to order any more than the amount directly attributed to the 16 horses owned by the appellant.

[17] As discussed below at [30], the Magistrate was probably in error in discounting the costs in this way. But even if that was so, the decision was favourable to the appellant and the respondent has not challenged the decision of the Magistrate.

The submissions of the parties on appeal

[18] As noted, the appellant's complaints are that the penalty was manifestly excessive, and that the Magistrate erred in making the forfeiture order. At the hearing of the appeal, counsel for the appellant also submitted that it was not just in the circumstances to make the prohibition order.

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6 ACAPA, Chapter 7, Part 3.

Was the fine excessive?

[19] The appellant submits that having regard to the totality of the sentence and its effect, the fine was manifestly excessive. The appellant submits that, having regard to matters in mitigation and the appellant's circumstances, a fine of $2,000 would have been appropriate. Emphasis was placed on the appellant's circumstances as a single mother of four with limited financial resources. The appellant referred to the schedule of comparable decisions that had been tendered at sentence. These cases demonstrate a wide range of approaches have been taken in response to offending constituted by failing to feed or provide veterinary treatment to animals. Of course, no two cases are alike and a close comparison of the circumstances of the present case to other decided cases is unlikely to be helpful in deciding if the sentence is excessive.[7] Rather, the better approach is to consider the nature of the appellant's offending, the applicable maximum penalties and the sentencing principles that applied.

[20] The appellant starved 29 horses by failing to provide adequate feed. She did so when it must have been apparent to her that she could not provide adequate feed and after the relevant authorities had intervened. Inspectors first visited the appellant in August 2018. In December they issued her an Animal Welfare Direction. These interventions must have brought home to the appellant her obligations concerning the horses. The appellant also failed to provide veterinary treatment to two injured horses, causing each of them unnecessary pain and suffering. As a result of the appellant's cruelty or neglect, six horses died on the property and others were euthanised. It was right for the Magistrate to conclude the appellant's offending was worse than the conduct in the cases to which the Magistrate was referred. There was nothing forcing or compelling the appellant to keep the 60 odd horses on the property when it was clear that she could not adequately feed them all. The appellant's claim that it was only in March 2019 that she was told the horses required 20 bales of hale a day can be seen as disingenuous. Her experience in horse husbandry must have made it obvious to her the horses required a substantial increase in feed. The same may be said for her claims to be attempting to destock. It is the fact that, even months after the Department had intervened, the appellant had not improved the circumstances of the horses on her property.

[21] The appellant did plead guilty before a trial commenced and in doing so cooperated in the administration of justice. She was otherwise of good character and, it was said, the horses who remained on her property at the time of sentence were in good condition. From this it might be inferred that the appellant had "learnt her lesson" and was unlikely to offend in a similar way in the future. These matters were taken into account by the Magistrate.

[22] Having regard to the value of a penalty unit,[8] the notional maximum penalty, if separate fines were imposed for each offence, exceeded $1,500,000. Of course, a penalty approaching this theoretical maximum could not conceivably have been imposed. But the maximum penalty says something of the seriousness with which parliament regards offending of this kind. It is a measure against which the appellant's offending may be

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7 *R v Hart* [2008] QCA 199, Keane JA at [16].

8 At the time of the offences a penalty unit was just over $130. At the time she was sentenced it was just over $133. There was no mention of the value of a penalty unit in the proceeding before the Magistrate, and therefore no decision about which value applied to the sentence. But the parties agreed that the difference of $3 per penalty unit was inconsequential as far as this appeal was concerned.

assessed. The purpose of ACAPA is to ensure that when people have the care or treatment of animals, they take the necessary steps to safeguard the animals and protect them from any unreasonable or unnecessary suffering. The offences committed by the appellant did not involve any intention on her part to harm the horses. Indeed, and as the Magistrate accepted, the cruelty resulted from a lack of funding rather than an absence of love. But that does diminish the harm that in fact resulted from her neglect of the animals. The serious consequences of the appellant's offending, committed as they were over some months and after she had been directed by the Department about the care of the horses, called for denunciation and a deterrent sentence. These sentencing principles were of greater significance than the appellant's personal circumstances.

[23] Having regard to these matters, I am not persuaded that the single fine of $20,000, imposed to reflect all the appellant's offences, was so severe that it was unreasonable or plainly unjust. This complaint has not been made out.

Did the Magistrate fail to consider a relevant matter?

[24] The appellant raised a separate argument that the Magistrate did not comply with section 48 of the *Penalties and Sentences Act 1992* (Qld). The section relevantly provides

> **48 Exercise of power to fine**
>
> (1) If a court decides to fine an offender, then, in determining the amount of the fine and the way in which it is to be paid, the court must, as far as practicable, take into account—
>
> (a) the financial circumstances of the offender; and
>
> (b) the nature of the burden that payment of the fine will be on the offender.
>
> (2) The court may fine the offender even though it has been unable to find out about the matters mentioned in subsection (1) (a) and (b) .
>
> (3) In considering the financial circumstances of the offender, the court must take into account any other order that it or another court has made, or that it proposes to make—
>
> (a) providing for the confiscation of the proceeds of crime; or
>
> (b) requiring the offender to make restitution or pay compensation.

[25] It was submitted by the appellant that subsection (3) required the court to have regard to the amount of $40,000 she was ordered to pay as the costs of the Department keeping her horses before the proceeding was finalised. The Magistrate did not have regard to this amount when deciding to impose a fine of $20,000. But to succeed on this ground, the appellant must show that the order was one "requiring the offender to make restitution or pay compensation" so as to engage section 48(3) of the PSA. It may immediately be observed that the order of the Magistrate was not to make restitution or pay compensation, as is provided for in section 35 of the PSA. The order of the Magistrate was made pursuant to Chapter 7, Part 3 of ACAPA. Chapter 7 is titled "Evidence and Legal Proceedings". Part 3 is titled "Remedies" and contains sections 189, 190, 191 and 192.

[26] Section 189 of ACAPA provides

> **189 RECOVERY OF SEIZURE, COMPLIANCE OR DESTRUCTION COSTS**
>
> (1) This section applies if the State or a prescribed entity has incurred a cost for an inspector employed or engaged by it to do 1 or more of the following acts in relation to an animal—
>
> (a) if the animal has, under chapter 6, part 2, been seized—
>
> (i) taking possession of, or moving, the animal; or
>
> *Example for subparagraph (i)—*
>
> the costs of mustering, unloading or yarding cattle
>
> (ii) taking action to restrict access to the animal; or
>
> (iii) providing it with accommodation, food, rest, water or other living conditions; or
>
> (iv) arranging for it to receive veterinary or other treatment;
>
> (b) if an animal welfare direction given in relation to the animal has not been complied with—taking action to ensure the direction is complied with;
>
> (c) if the animal has been destroyed under section 162 —destroying it.
>
> (2) The State or entity may recover the cost from the animal's owner or former owner if the incurring of the cost was necessary and reasonable—
>
> (a) in the interests of the animal's welfare or to destroy it; or
>
> (b) if the animal has been destroyed under section 162 —for the destruction.
>
> (3) However, if a cost mentioned in subsection (1)(a)(iii) or (iv) was for a period during which the animal was kept under section 152(2)(e), it may be recovered only if the animal's retention was reasonably required as evidence.

[27] Section 190 is concerned with ordering a person convicted of an animal welfare offence to pay compensation to, or the costs of, a person who is not the State of Queensland or a "prescribed entity".[9] Section 191 permits a person to claim compensation from the State in certain limited circumstances.

[28] Section 192 of the ACAPA provides

> **192 GENERAL PROVISIONS FOR ORDERS UNDER PT 3**
>
> (1) Compensation or costs that may be recovered under this part may be claimed and ordered in a proceeding—
>
> (a) brought in a court of competent jurisdiction; or
>
> (b) for an offence against this Act to which the claim relates.
>
> (2) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
>
> (3) In considering whether it is just to order compensation, the court must have regard to any relevant offence committed by the claimant.

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[9] A "prescribed entity" is the RSPCA (Qld) or another entity prescribed under regulation.

(4) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.

Note—

See also sections 9 (Act does not affect other rights or remedies) and 204 (2) (Particular powers about seizure or forfeiture).

[29] As may be seen from section 192(1), an order permitting the State to recover costs from the owner of a seized animal does not depend upon the conviction of an offender, or even on there being a proceeding for an offence against ACAPA. It is also to be noted that sections 192(2), (3) and (4) relate only to orders for compensation. It follows that the statutory criteria for the recovery of costs are those contained in section 189 and do not include a requirement that the court be "satisfied it is just to make the order".

[30] These provisions were recently considered by Barlow QC DCJ in *Wilson v Barraud & Anor* [2021] QDC 223, which was argued the day of this sentence hearing and in which judgment was delivered after the present appeal had been commenced. His Honour dealt with the very issue raised by the appellant in this appeal. His Honour reached the conclusion that an order for the recovery of costs was not relevant to the sentence. It is helpful to set out some passages from the decision in *Wilson* (footnotes omitted).

> [120] The appellant submitted that, in determining the penalty to impose, the magistrate ought to have taken into account the proposed order for recovery of the RSPCA's costs of keeping the animals. It is clear that he did not take that order into account, as he dealt with the sentences for the offences separately from and prior to dealing with the respondents' application for recovery of the costs.
>
> [121] I disagree that the order for recovery of the costs was a factor in sentencing the appellant for the offences. It was not concerned with the offences themselves and was not an aspect of punishment for the offences. It was a separate remedy that did not even depend on the appellant having been convicted. The fact that, during and after his release, the appellant would owe such a debt is simply a result of the particular right and obligation given by the Act separate to and discrete from the criminal penalties for which the Act provides. Indeed, the RSPCA could have sought to recover those costs in a separate civil proceeding, rather than as an adjunct to the criminal proceeding. I consider that it was therefore not relevant to the sentence.
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> …
>
> [126] The order to repay the RSPCA, having been made under s 189, was not made in order to punish the appellant. It was an order for the recovery of the costs it had incurred in caring for the relevant animals pending the determination of the proceeding. Subsection 189(2) gives the RSPCA a right to recover those costs from an animal's owner. That right is different to the separate power in a court, to order a person convicted of an animal welfare offence to pay compensation to persons other than the State and a prescribed entity, that is available under s 190. Tellingly, s 192(2) permits a court to order payment of compensation only if it is satisfied that it is just to make the order in the circumstances of the particular case. That requirement does not apply to an order for the recovery of costs incurred by a prescribed entity.
>
> [127] A court must, of course, act judicially in considering an application for an order for recovery of costs by a prescribed entity. But, in doing so, its task is not to

> consider whether it is just in the circumstances to make the order. Rather, it is to consider whether the entity has demonstrated an entitlement to recover the costs. The entity will do so if it demonstrates, on the balance of probabilities, that it incurred the costs in doing one or more of the things listed in s 189(1) and the costs were necessary and reasonable (relevantly) in the interests of the animal's welfare, as required by s 189(2)(a).
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> …
>
> [130] In contrast [to a party's legal costs], these costs arise under a discrete entitlement specifically provided for by s 189(2) of the Act. Indeed, given that the Act provides for that entitlement, there is no discretion in a magistrate to reduce the amount ordered to be recovered below the amount of the costs that have been proved and have been shown to meet the criteria of the section (being necessary and reasonable in the interests of the animals' welfare). Having regard to these matters, the magistrate's decision to reduce the costs would have been made in error, beyond his power, except that the RSPCA conceded that they were appropriate reductions and thereby abandoned its claim for recovery of those items. The power to make an order for the recovery of costs once proved is not a discretionary power. However, as I said, the RSPCA did not submit to the contrary before his Honour and (not surprisingly, given its concessions below) it has not crossappealed from that decision.

[31] I respectfully agree with his Honour's analysis. An order for the recovery of costs pursuant to section 189 of the ACAPA is not an order "requiring the offender to make restitution or pay compensation" for the purpose of section 48(3) of the PSA.

[32] Of course, the Magistrate was still required by section 48(1) of the PSA to have regard to the appellant's financial circumstances in deciding the amount of the fine and how it was to be paid. In my view he did so. The appellant detailed her circumstances when making submissions to the Magistrate.[10] The Magistrate took this into account when deciding that because the appellant had paid employment, she could pay the fine over time. No doubt this also informed his Honour's decision to exercise the power given by section 51(b) of the PSA to order the particulars of the fine be given to the State Penalties Enforcement Registry for administration and recovery under the *State Penalties Enforcement Act 1999* (Qld).

[33] In my view the appellant has not demonstrated any error in the approach of the Magistrate to the imposition of the fine.

Did the Magistrate err in making the prohibition order?

[34] The Magistrate's order prohibited the appellant possessing or owning any horses other than the 25 named in the order for a period of five years. The appellant submitted that the Magistrate could not have been satisfied that it was just to make the prohibition order There is a second complaint that his Honour did not provide reasons for the making of the order. At the hearing the appellant made it clear that she did not contest the prohibition order, a draft of which she had apparently been given in advance.[11] Of course, it remained for the Magistrate to be satisfied that it was "just to make the order in the circumstances".

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10 Transcript of hearing, p. 36.

11 Transcript of hearing, p. 38; transcript of the decision, p. 4.

[35] Section 183 of ACAPA defines a prohibition order. It is preceded by the definition in section 182 of a disposal order, which permits the forfeiture of an animal that was the subject of an offence. Section 185 of ACAPA then provides

> **185 CRITERIA FOR MAKING DISPOSAL OR PROHIBITION ORDER**
>
> (1) The court may make a disposal or prohibition order against a person only if the court is satisfied, on the balance of probabilities, it is just to make the order in the circumstances.
>
> (2) In considering whether it is just to make the order, the court must consider each of the following—
>
> (a) the nature of the animal welfare offence to which the hearing relates;
>
> (b) the effect of the offence on any animal that was the subject of, or used to commit, the offence;
>
> (c) the welfare of the animal and any other animal owned by the person;
>
> (d) the likelihood of the person committing another animal welfare offence;
>
> (e) if an interim prohibition order is in effect against the person—the person's compliance or otherwise with the order.
>
> (3) Subsection (2) does not limit the matters the court may consider.
>
> (4) The court may make the order, to the extent it relates to an animal, whether or not it considers another animal welfare offence is likely to be committed in relation to the animal.

[36] On the facts before the Magistrate, (e) was irrelevant. Of the remaining criteria, a consideration of (a), (b) and (c) in light of those facts could only compel the conclusion that it was just to make a prohibition order. The nature of the offences was extremely serious. While the appellant did not intend to cause harm to the horses, serious harm did result because of her prolonged neglect. As to (b) and (c) I would note that the two horses the subject of the cruelty charges died, as did other horses that she neglected. Still more horses were seriously unwell but seem to have recovered. All of these were matters that strongly favoured the making of a prohibition order. When addressing (d), it may be thought there was no great likelihood of the appellant committing a further animal welfare offence. But this consideration is not such that it was unjust for the Magistrate to make a prohibition order. The other consideration is that the order was not opposed by the appellant. While it remained for the Magistrate to consider the circumstances, it is difficult for the appellant to now argue that it was unjust to make an order she did not argue against.

[37] This is sufficient to deal with the appellant's second complaint as well. It was not incumbent on the Magistrate to give detailed reasons for the making of the prohibition order where the appellant did not contest the order.

[38] This ground of appeal also fails.

Did the Magistrate err in making the forfeiture order?

[39] The appellant submits she was denied procedural fairness as she had no opportunity put on evidence about the criteria in section 185 of ACAPA. To deal with this submission it

is necessary to say something more about the position when the appellant came to be sentenced. The decision to seize the horses in April 2019 was the subject of an internal review initiated by the appellant pursuant to Chapter 7, Part 4 of ACAPA. The internal review confirmed the decision, after which the appellant appealed against this decision to the Magistrates Court, pursuant to section 199 of ACAPA. This proceeding was extant when the appellant came to be sentenced. It had been stayed by another Magistrate while the criminal charges were pending.[12] The sentencing Magistrate was exercising a different power, one given to the court by sections 182, 185 and 186 of the ACAPA. The criteria for the exercise of the power were to be found in section 185, as they were for the prohibition order.

[40] The Magistrate was aware of the other proceeding. It was discussed during the prosecutor's submissions. There was no statutory requirement for the sentencing Magistrate to defer a decision on the forfeiture application, which was one that pursuant to section 186(1)(b) could be "made at any time". The appellant made submissions to the Magistrate about why the forfeiture order should not be made.[13] She was obviously aware that the order was sought by the Department. It is true, as the appellant now submits, that she was not expressly asked if she wanted to rely upon evidence about any of the criteria in section 185. But in my view it was not necessary for the Magistrate to do so. The appellant was given ample opportunity to address the issue. Her submissions, so far as they went to facts, were not challenged by the prosecutor, and were considered by the Magistrate. The appellant has not identified, in this appeal, any evidence that she says she was denied the chance to present, or how that might have produced a different result.

[41] In these circumstances I am not persuaded that the appellant was denied the chance to properly present her arguments. The Magistrate carefully addressed the criteria in section 185 as they related to the forfeiture order before reaching the conclusion that the order was just in the circumstances.[14] I can detect no error in his Honour's decision. This ground of appeal also fails.

Conclusion

[42] I have concluded that the appellant has not made out any of her complaints. It follows that her appeal cannot succeed. In the circumstances there is no point in granting an extension of time to commence the appeal. The orders will be

1. The application for an extension of time within which to appeal is refused; and
2. The appeal is dismissed.

[43] The respondent seeks its costs of the appeal fixed in the amount of $1,800. The appellant indicated it would be hard to resist such an order.[15] I would invite the parties to consider if they can reach agreement as to the costs of the appeal. If the parties agree they may provide a draft order to my associate. In the event the parties cannot reach agreement I will decide the question "on the papers" and each party has leave to file

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12 Transcript of hearing, pp. 26-27.
13 Transcript of hearing, pp. 39-49.
14 Transcript of the decision, pp. 4-6.
15 Transcript of appeal hearing, T.1-37.34.

written submissions addressing the issue, not exceeding 4 pages, on or before 3 June 2022.