

## LEGAL ASPECTS

### LEGAL ASPECTS OF TRAPPING FERAL ANIMALS

Johnson Kitto

*Cats and foxes are decimating our native wildlife and their removal is often recommended in our Land for Wildlife reports. Whilst foxes will take 1080 meat baits, cats are more wary of the dried bait and we often have to resort to trapping before disposing of them. Trapping, however, carries certain legal responsibilities. LFW member and lawyer Johnson Kitto has suggested the following guidelines from his reading of the Prevention of Cruelty to Animals Act.*

**L**AND FOR WILDLIFE'S understanding of the law regarding the trapping of feral animals (as stated briefly in WW 6/2 on p 15) is, I think, correct.

Specifically, section 24 of the *Prevention of Cruelty to Animals Act* provides:

"Any person who sets, or causes or procures to be set, any spring trap, snare, or other device, for the purpose of catching any marsupial, dingo or wild dog, foxes or vermin, or which is so placed as to be likely to catch any such animal, shall inspect, or cause some competent person to inspect, the trap, snare or other device at reasonable intervals of time, and, if any person shall fail to comply with the provisions of this section, he shall be guilty of an offence under this Act."

This provision by implication suggests that trapping itself is not illegal provided the trap is regularly inspected, and I think that an inspection of no less than 24 hours would comply with the statute in this regard. Small mammal traps, folding tin box (elliott) traps or pit traps may have to be inspected more frequently, especially if the weather (eg hot, or heavy rain) will present a risk to any animal caught. Ideally, most traps should be set in the late afternoon and inspected early the following morning to avoid heat stress/hypothermia on any animal caught.

The *Animal Welfare Bill 1999* is not yet law but if and when it becomes so, it defines at section 19 (and following) those acts and the penalties relating to cruelty (including trapping).

At the present time however, the only relevant act is the *Prevention of Cruelty to Animals Act 1920*. This act has statewide application, however specific local government regions such as shires and towns may have their own by-laws which affect trapping. It will therefore be necessary for Western Wildlife readers to check with their local authority in this regard.

To further complicate matters, certain species may be protected within some areas, but may be regarded as disposable in others. A good example of this is the galah and the 28 parrot, which, as I understand it, may be lawfully culled in certain regions due to their over population, but may be protected in other regions.

Without looking at the matter in detail I can only advise each reader to consult their Local Government Authority before conducting trapping operations. I bear in mind that LFW is a statewide scheme and the law will obviously be different in urban and semi-urban areas (eg Mundaring, Wanneroo etc which border rural shires) and in the rural areas themselves.

Under the existing *Prevention of Cruelty to Animals Act* it is an offence for a person to ill-treat, fail to supply with sufficient food or water and protection against weather, cause unnecessary pain or suffering, needlessly slaughter or to generally knowingly commit cruelty to any animal (section 4(1)). In fact, section 4 (1) of the *Prevention of Cruelty to Animals Act* proscribes all sorts of conduct in relation to animals which is illegal but I have limited my summary of this section to only those parts I think relevant to this issue, namely the trapping and disposal of feral animals. Section 4 also provides, however, that if a person is charged with administering poison or leaving out poisoned grain etc., the person can defend the charge if he or she establishes that it was done for the purpose of destroying rats, mice or other vermin and that every reasonable precaution was taken to prevent access to the poison by dogs, cats, chickens or other domestic animals.

Of most interest however to LFW participants is the exemption provided at section 6 of the *Prevention of Cruelty to Animals Act* which relevantly provides:

"Accept as hereinafter provided nothing in this Act shall render unlawful: ... the extermination of rabbits, marsupials, wild or stray dogs or cats, foxes or vermin or ... the hunting, snaring, trapping, shooting or capturing of any animal not in a domestic state, etc."

#### Disposal of trapped animals

An issue related to trapping is the release or disposal of any animals caught in a trap. Again, this is not a clear-cut legal area. Take the example of a LFW member living in a semi-urban area who catches, on his or her own property, what appear to be feral cats.

Technically, if the person destroys or retains possession of the cat, he or she may be unlawfully stealing the animal, if the cat could be described as:

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"A tame animal, whether tame by nature or wild by nature and tamed, which is the property of any person," or if the cat could be described as:

"Wild by nature, of a kind which is not ordinarily found in a condition of natural liberty in Western Australia which is the property of any person, and which is usually kept in a state of confinement;" (section 370, *Criminal Code of Western Australia*)

Section 370 however, also provides that "wild animals in the enjoyment of their natural liberty are not capable of being stolen". So presumably this relates to a feral cat which could not be described as someone's pet.

From a purely legal perspective, the fact that a household pet wanders onto the land of a person who traps it and disposes of it, does not provide any defence to the person because the criminal act attaches to the trapping and disposal of the animal, not the reason as to how the animal came into the trapper's possession.

To further complicate matters however, the trapper would have a defence against any prosecution brought by the owner of the beloved but destroyed cat, if the trapper could establish that the cat appeared to be feral (eg by it's characteristics, lack of identification, size and condition etc). The trapper in this circumstance would be able to rely on the general criminal code defence of "mistake of fact" which provides that a person is not criminally liable for an act done under an honest and reasonable but mistaken belief of fact, to any greater extent than if the belief was true. Applying this general defence to our hypothetical example, if a person trapped and humanely shot a pet cat, but honestly and reasonably believing that the cat was either feral, or tame but not the property of any person (ie a stray), then the person would have a defence to the charge of stealing.

The position with any other form of pet caught in a trap would be the same, and the test would be whether the caught animal could be described as "feral" or "non-feral but not the property of anybody". In these cases the animal could be lawfully destroyed, provided it was done so humanely. If no-one owns the animal (whether it be tame, wild, feral or otherwise), the trapper would not be guilty of stealing the animal and could dispose or retain the animal as he or she saw fit.

Confused yet?

### Dogs

Dogs fall into a special category by virtue of the *Dog Act 1976*.

Section 35 of the *Dog Act* provides:

"Where a person, reasonably and in good faith, lawfully takes measures for the purpose of destroying vermin or dogs wandering at large, whether by means of traps, poison or otherwise, in conformity with the provisions of any Act or the regulations made thereunder, and as a consequence of a dog wandering at large those measures result in that dog suffering death, injury or

harm, that person shall not be liable therefore in any proceedings, whether civil or penal."

However, a person who wilfully and without lawful excuse kills, poisons, injures or causes unnecessary pain or suffering to any dog commits an offence and is liable to a \$10,000.00 fine or 12 months imprisonment or both (section 47 *Dog Act*).

### Summary

As you can see, the legal aspects of trapping and disposing of feral animals are not clear, however, I suggest the following guidelines:

- 1 Any traps used should be humane and operate by capturing the animal without injuring it. Traps which mutilate or strangle or otherwise injure the animal (eg old style rabbit traps, wire snares etc) must not be used.
- 2 The trap must be regularly inspected and any captive animal released, humanely destroyed, or removed to a sustainable environment.
- 3 Dogs, cats or any type of animal kept as a pet, must not be destroyed and should be returned to it's owner if the owner can be identified.
- 4 Feral animals, or non-feral animals which do not have owners, may be released or destroyed at the trapper's discretion.
- 5 The destruction of any animal, if lawfully permitted, must be humanely performed, and I suggest done so with minimum distress to the animal and the environment.
- 6 If a trapper is in any doubt as to whether an animal is the pet or property of anyone else, then the trapper must use all reasonable endeavours to find out and make enquiries, before destroying the trapped animal.
- 7 Generally, a land owner is entitled to destroy vermin or "dogs wandering at large" whether by means of traps, poison or otherwise (eg firearms lawfully used etc) provided the land owner has reasonable belief that the animal destroyed was either vermin or a dog wandering at large, and does so in good faith.
- 8 Any person considering trapping or destroying animals must check with their local authority as to which species may be protected, and also check whether there are any local government by-laws prohibiting the trapping of cats, dogs or pets, etc.

*This article is contributed by Johnson Kitto, a partner of Kitto & Kitto Barristers & Solicitors, 19 Howard Street, Perth. Johnson is also a Land for Wildlife participant, and with his brother Grantham (also a lawyer), manages "Euretta" at Kojonup. This article is not a substitute for legal advice and readers are cautioned to obtain their own legal advice on their particular circumstances before trapping or destroying animals.*