

The Animal Law Toolkit

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Introduction

Animal law is a cutting edge area of law which is rapidly expanding. In recent years there has been a proliferation in scholarly writing on the subject, an increased demand for animal law courses in universities and the founding of numerous organisations whose sole aim is to promote the protection of animals. The President of the Australian Law Reform Commission, Professor David Weisbrot AM, summed up these changes when he described animal law as ‘potentially the next great social justice movement’.¹

In recognition of the growing interest in animal law, Voiceless has prepared this ‘Animal Law Toolkit’ to introduce students, academics, legal practitioners, law firms and animal protectionists to key issues in the field. The Toolkit is intended to provide:

- individuals with information about key animal law issues;
- students with the tools to request animal law courses at their university; and
- law firms and legal practitioners with reasons to expand their practice areas to include animal law matters, with a view to facilitating the administration of justice for animals.

We hope that as debate and discussion about the institutionalised suffering of animals gathers momentum, this Toolkit will serve as a helpful starting point for those seeking to provide animals with the justice they deserve.

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1. What is Animal Law?

1.1 Animal Law

As our understanding of animal behaviour and intelligence has increased, there has been broad acceptance that animals are sentient creatures who should be able to live free from suffering and abuse. Unfortunately, we live in an era where more animals are suffering than ever before. The law has an important role to play in protecting animals from exploitation and cruelty. However, the current legal regime is proving grossly inadequate.

Both the common law and Australian statute law classify animals as ‘things’.² This is the same classification given to objects or pieces of property. People, on the other hand, are classified as legal persons. This distinction is crucial as it determines who ‘counts’ for legal purposes.³ Only legal persons are given a voice in our legal system and afforded protection through the possession of legal rights. ‘Things’, being unable to possess rights, are the property of legal persons and can therefore be subjected to gross abuse and exploitation.

In recognition of this problem, two streams of law have developed that aim to provide animals with greater protection:

1. Animal welfare law

Animal welfare is a philosophy which is concerned with regulating the use of animals to reduce unnecessary pain and suffering. ‘Animal welfarists’ do not seek to question the status of animals as property.⁴ Rather, welfarists argue that animals should be treated humanely within the existing paradigm of animal use.⁵ To this end, the primary goal of welfarists is to improve existing anti-cruelty legislation to reduce unnecessary suffering.

2. Animal rights law

Animal rights law seeks to question animals’ well-entrenched status as property, with a view to securing fundamental rights for (at least some) animals.

Animal rights lawyers do not argue that animals should be given the same rights as humans. Rather, different animals require different rights depending on their needs and capabilities.⁶ The fundamental tenet of animal rights law is that the law should not treat animals as mere ‘things’. This is based on the assumption that unless animals have rights, they will continue to be treated by society as resources to satisfy human wants and needs.

1.2 Practice Areas in Animal Law

Animal Law is a diverse field which requires practitioners to draw on many legal disciplines. Some potential areas of practice are outlined below.

Administrative Law

Challenging ministerial and departmental decisions and agency rules and regulations that affect the interests of animals.

Companion Animals

Representing ‘death row’ dogs that are deemed a danger to the community.

Criminal Law

Defending animal activists accused of criminal activity and prosecuting breaches of anti-cruelty legislation.

Constitutional Law

Defending activists’ freedom of political communication.

Consumer Protection Law

Pursuing acts of misleading or deceptive advertising by companies that sell animal-derived products.

Estate Planning

Helping with estate planning for pets.

Family Law

Assisting in pet custody disputes.

Freedom of Information

Accessing documents which may facilitate our understanding of the extent and manner in which animals are suffering.

Intellectual Property

Working on disputes related to ‘patented’ animals.

Litigation

Running cases to protect farm animals, companion animals, wild animals or animals used for sport, entertainment or scientific purposes.

Product Liability Cases

Running cases that concern the death or disablement of animals.

Tort Law

Defending animal activists or assisting in veterinary malpractice suits.

2. What are the Key Issues that Animal Law Seeks to Address?

2.1 Issues in Animal Law

The following provides examples of some of the key issues in animal law; however, it is by no means exhaustive. More issues are addressed in the books and articles listed in section 5.4.

Animals As Property

The law's relegation of animals to the category of property is arguably a key issue in their abuse and exploitation. As such, many animal lawyers argue that animals should be given legal personhood. Personhood for animals is not impossible; legal persons do not have to be human.⁷ Furthermore, the fact that animals are already regarded as property would not prevent them being reclassified. Slaves used to be regarded as property but have since gained personhood.⁸ Some animal lawyers argue that such a step is necessary for animals as 'personhood is the legal shield that protects against human tyranny; without it, one is helpless'.⁹

Animals used in Agriculture Factory Farming

In Australia close to half a billion animals are confined in intensive or 'factory farms'¹⁰ where they are routinely mutilated and denied the ability to perform many of their natural behaviours. The law condones this institutionalised abuse by classing animals as property and by failing to provide adequate protection through existing anti-cruelty statutes. In NSW, for example, s 9 of the *Prevention of Cruelty to Animals Act 1979* (NSW) makes it an offence to not provide an animal with adequate exercise. However, animals such as cattle, sheep, goats, deer, pigs and poultry (known as 'stock animals') are expressly exempt from this requirement.¹¹

In addition, the fact that cruelty offences can only be established where an act or omission was unreasonable, unnecessary or unjustifiable¹² serves as a potential shield for factory farmers. The law often deems cruel farming practices both reasonable and necessary in order to provide people with cheap animal food products. Thus, when it comes to farm

animals, it would seem that the very laws designed to prevent cruelty actively facilitate it. This is an area where animal lawyers are seeking significant reform.

Federal Model Codes of Practice for Animal Welfare

Although all Australian states and territories have anti-cruelty statutes, these afford little protection to farm animals for a number of reasons, including the operation of Codes of Practice ('Codes'). Many animal advocates have identified that the Codes:

- entrench factory farming standards for raising and keeping livestock; and
- sanction many cruel practices involving the mutilation of farm animals, such as teeth clipping of pigs, de-horning of cows and beak trimming of chickens.

The Codes function as significant exceptions to animal welfare legislation, as compliance with a Code of Practice may operate as a defence to a cruelty prosecution.¹³ This means farm animals are afforded less legal protection than companion animals through a process of institutionalised cruelty.

The Codes are currently under review due to concerns about their different legal status in each jurisdiction. Animal Health Australia, an initiative of federal, state and territory governments and major livestock industries, has been charged with updating and converting the Codes into Welfare Standards and Guidelines.¹⁴ This process, which is expected to take a few years to complete, is intended to harmonise state and territory animal welfare laws and increase compliance. It is unclear whether the reforms will ultimately improve the lives of animals, as the lack of animal welfare input into the process may result in inadequate 'minimum standards' that entrench animal suffering.

Gathering Evidence for Cruelty Prosecutions

It is difficult to bring actions against factory farming operations as the majority of potential cruelty takes

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place on private property away from the public eye.¹⁵ Most anti-cruelty statutes require an inspector to believe on reasonable grounds that a cruelty offence is occurring before they can enter premises.¹⁶ As Kotzman points out, it is hard to satisfy this requirement unless a whistleblower or trespasser is involved.¹⁷ Consequently, gross cruelty can remain undetected and unpunished. In recognition of this, some jurisdictions give inspectors a power to routinely inspect commercial premises.¹⁸ However, the effectiveness of such provisions is limited by the fact that inspectors are generally required to give reasonable notice before an inspection is to take place.¹⁹

Labelling of Animal-Derived Food Products

It is not mandatory for animal products to be labelled by production system, except in the case of eggs in the ACT and Tasmania.²⁰ This presents problems for consumers wishing to make ethical choices about the food they purchase; especially as many factory farmed products carry slogans and images that arguably imply high welfare standards.²¹

Some animal lawyers have sought to address existing deficiencies in the legislation by initiating proceedings against companies whose labelling amounts to misleading and deceptive conduct and by campaigning for law reform.²²

Live Animal Export

Over the last 30 years, millions of animals have been sent from Australia on ships to be slaughtered in other parts of the world.²³ So far more than two million animals have died en route²⁴ due to the conditions they are exposed to. On arrival, those that do survive may experience substantial suffering as many of the importing countries do not have animal welfare legislation.²⁵

It has been argued that the *Australian Standards for the Export of Livestock* do little to help these animals as they are frequently not complied with, cannot influence what happens to animals in importing countries, and effectively institutionalise cruelty.²⁶ Accordingly, some animal protectionists have facilitated cruelty complaints against live exporters and are petitioning for a national ban.²⁷

Intensive Livestock Production and Climate Change

The livestock sector contributes significantly to some of the more serious environmental problems, including climate change. According to the UN Food and Agriculture Organisation, animal production is presently responsible for 18% of all human-induced greenhouse gas emissions.²⁸ Some animal advocates argue that 'only a reduction in meat consumption and intensive livestock production can effectively address the issue of global warming and slow

the pace of climate change'.²⁹ Given the seeming resistance by farming industries to be part of an emissions trading scheme,³⁰ it is likely that there will continue to be tension between the agriculture sector and environmentalists.

Animals used for Scientific Purposes

Many animals suffer abuse and exploitation in the name of scientific 'progress'. This is sanctioned by the law. As Sharman points out:

Despite the increased availability of alternatives, laws and policies continue to be used as shields by those who gas, burn, confine, clone, infect, mutilate, force-feed, starve, poison and kill healthy animals in nations everywhere.³¹

Australian legislation regulating the use of animals in research conforms to the existing paradigm that animal suffering is justified so long as it is not 'unnecessary'. The concern for many animal advocates is that when weighing up the interests of a person versus a 'thing', any experiment can be made to seem 'necessary'. For example, the *Australian Code of Practice for the Care and Use of Animals for Scientific Purposes* provides categories for ethics committees to assess whether an experiment is necessary. As Sharman notes, the categories 'are so broad that it is hard to think of an example of an experiment that would not fall within them'.³²

Animals used for Entertainment Circuses

Circus animals spend much of their lives travelling in cramped conditions and can lawfully be subject to cruel training regimes to ensure performance on the basis that such regimes are 'necessary, reasonable and justifiable'. Due to the suffering involved in animal circuses numerous local councils in Australia have now banned them.³³ There is scope for animal lawyers to litigate against circus cruelty, petition for further bans Australia-wide and to support community groups already involved in seeking to ban animal circuses.³⁴

Zoos

Although zoos claim that their primary aims are to conserve wildlife and educate the public, they are also arguably designed as a form of entertainment. Lawyers have an important role to play in challenging the legitimacy of the importation of animals to zoos, campaigning for high welfare standards and promoting in situ conservation through strong environmental protection laws.

Pets

Pet Custody

People are increasingly regarding their companion animals as valued members of the family. However, the law considers them 'mere chattels' when it comes to dividing property after relationship breakdowns.³⁵ Since the 'future care and welfare' of a sentient creature is at stake, animal lawyers argue that treating animals the same as any other piece of property is simply inadequate.³⁶ Cases addressing the issue of pet custody have reached US courts but do not appear to have developed in Australia at this stage.³⁷

Sale of Animals in Pet Shops

Pet shops that sell animals arguably perpetuate the view that animals are commodities with no interests of their own. They encourage 'impulse buying', support 'puppy farms' and contribute to the number of unwanted animals in shelters.³⁸ The Mayor of Sydney, Clover Moore, recently introduced a Bill to prohibit the sale of dogs and cats in NSW pet shops.³⁹ While the Bill was ultimately defeated, it succeeded in raising community awareness about the suffering associated with pet overpopulation and mass breeding practices. Advocating for legislative reforms is an important step towards protecting companion animals.

'Pests'

Non-native or 'pest' species such as rabbits and foxes are often killed using methods that would be considered inhumane if applied to dogs or cats. For example, 'pests' may be poisoned, infected

with disease, hunted or caught in steel-jawed traps in some jurisdictions.⁴⁰ These actions often fall outside the scope of anti-cruelty legislation. Species deemed 'pests' may be specifically excluded from the operation of the legislation, be the subject of a defence under the legislation, be regulated through a Code of Practice or their harm may be authorised by another Act.⁴¹ Many animal lawyers argue that non-lethal methods of control, such as fertility control are preferable to the cruelty inflicted by existing laws.⁴²

Fish and Crustaceans

The Commonwealth has no direct Constitutional power to enact legislation on animal welfare. Thus, animal welfare is primarily regulated at the state level. This raises issues as not all jurisdictions define the term 'animals' in the same way.⁴³ Significantly, the animal welfare statutes of Western Australia and South Australia do not include fish in the definition of 'animals'.⁴⁴ This is problematic as anatomical, physiological and behavioural studies show that fish possess a similar ability to experience pain as many mammals.⁴⁵ Crustaceans also receive inadequate protection as in some jurisdictions they are only considered animals when kept at a place where food is sold.⁴⁶

Wild Animals Culling

A number of Australia's wild animals are subject to commercial culling operations, including our national icon, kangaroos. Commercial culling of macropods, including kangaroos, is governed by the *National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Commercial Purposes*. Despite its title, the Code clearly sanctions animal suffering. Section 5, for example, provides that orphaned joeys must be slaughtered either by decapitation with a sharp blade,⁴⁷ a forceful blow to the skull⁴⁸ or a shot to the brain or heart.⁴⁹ Additionally, there are concerns that the remote locations where 'the slaughter takes place has made it virtually impossible to ensure effective monitoring of animal welfare'.⁵⁰

Traditional Hunting

In Queensland, Aboriginal and Torres Straight Islanders who practice traditional hunting are exempt from prosecutions for animal cruelty.⁵¹ Unfortunately, many traditional hunting practices cause substantial pain and suffering. Harpooned dugongs may struggle for 15 to 20 minutes before they are pulled in and drowned.⁵² Turtles, often kept alive until they are needed, may have their flippers cut off to prevent escape or be flipped onto their backs, where they can be left to suffer for weeks.⁵³ The legislative regimes in other Australian jurisdictions do not provide outright exemptions for traditional hunting; however, poor enforcement mechanisms mean people are rarely prosecuted for such cruel practices.⁵⁴ Despite the political sensitivity of this issue, it is one that animal advocates seek to address.

Animal Welfare Legislation Differing Standards of Protection for Certain Animals

It could be argued that domestic animals receive the most 'protection' under Australia's animal welfare legislation and that farm animals and 'pest' species are not so lucky. Although most of these animals are physically and emotionally complex beings with a similar capacity to suffer and experience pain as companion animals, economic imperatives have led parliaments to exempt them from some basic protections. For example, in NSW it is legal to castrate young cattle, sheep, goats and pigs without anaesthetic.⁵⁵ This is an area of the law in need of significant reform.

Enforcement of Anti-Cruelty Statutes

Although police have the power to enforce anti-cruelty statutes, a considerable proportion of animal law enforcement in Australia is carried out by the RSPCA. This can be problematic as the RSPCA is a private organisation which some animal advocates have argued is 'largely unaccountable to the public and parliament'.⁵⁶ It is under no statutory obligation to

investigate or prosecute cruelty offences and cannot be compelled to do so.⁵⁷ Additionally, the RSPCA does not receive adequate funding to effectively carry out its inspection and prosecution function, relying largely on charitable donations.⁵⁸ This means it may be reluctant to readily pursue test cases.⁵⁹

Another key body responsible for enforcing anti-cruelty statutes is the Department of Primary Industries, or its equivalent in each jurisdiction. Animal advocates have identified a potential conflict of interest with this Department as its main function is often to foster the growth of primary industries which is largely incompatible with animal welfare.⁶⁰ This has prompted some animal advocates to argue that the responsibility of enforcement should be given to an independent department.⁶¹ Until these issues are addressed, some lawyers have argued that a significant public interest statute will continue to go largely un-enforced.⁶²

'Unreasonable', 'Unnecessary' and 'Unjustifiable' Suffering

Australian animal welfare legislation generally prohibits the infliction of unreasonable, unnecessary or unjustifiable pain and suffering on an animal.⁶³ This raises the problem of determining what is reasonable, necessary and justifiable. As Sharman suggests:

Is it necessary to castrate a stock animal without anaesthetic? Is it necessary to use a pack of dogs to chase a rabbit down its warren before the warren is crushed by a bulldozer? Is it necessary to raise billions of animals in unnatural, arguably painful conditions to achieve economies of scale?⁶⁴

Animal lawyers have an important role to play in arguing that it is not reasonable, necessary or justifiable for animals to suffer for human convenience, profit or pleasure.

Penalties

Cruelty offences against animals have often not been treated with the seriousness that they deserve. As Seymour notes, despite shocking examples of wanton cruelty and neglect, the courts have not imposed anywhere near the maximum penalties against

offenders found guilty before them.⁶⁵ Animal lawyers seek to address this issue by pushing for appropriate penalties to reflect the fact that animals are sentient creatures and cruelty against them should be taken seriously. One group actively involved in this campaign is BLEATS, a Brisbane-based group advocating tougher sentences for animal cruelty.⁶⁶

Standing Prosecutions Under Animal Welfare Legislation

Any person can commence a prosecution for breach of a public interest law, provided there is no statutory prohibition.⁶⁷ Thus, individuals in the ACT, the Northern Territory, Queensland, South Australia and Tasmania can commence cruelty proceedings under their respective Acts.⁶⁸ However, in NSW, Victoria and Western Australia the right of individuals to initiate private actions has been curtailed by legislation.⁶⁹ In NSW, for example, individuals can only commence proceedings with the permission of the Minister or the Director-General of the Department of Primary Industries.⁷⁰ This imposes a significant hurdle for animal protectionists, which is undesirable given the significant deficiencies in the current enforcement regime, outlined above.

Common Law Rules of Standing

Animal protectionists are often hindered by the common law rules of standing. The current test of standing was articulated in *Australian Conservation Foundation v Commonwealth of Australia* (1980) 28 ALR 257.⁷¹ Here the court held that a person must have a special interest in the proceedings to have standing. Gibbs J [at 270] described an interest as follows:

An interest, for present purposes, does not mean a mere intellectual or emotional concern. A person is not interested within the meaning of the rule, unless he is likely to gain some advantage, other than the satisfaction of righting a wrong, upholding a principle or winning a contest, if his action succeeds or to suffer some disadvantage, other than a sense of grievance or a debt for costs, if his action fails. A belief, however strongly felt, that the law generally, or a particular law, should be observed, or that conduct of a particular kind should be prevented, does not suffice to give its possessor locus standi.

It is difficult for animal protection groups and individuals to argue around this rule as the interest they wish to protect is not their own but that of animals. In considering issues of standing, the High Court case of *Onus v Alcoa of Australia Ltd* (1981) 149 CLR 27, which addresses 'special interests' may also be instructive. Ultimately, more 'creative' lawyering is needed to ensure that animal protectionists are able to advocate for the interests of animals.

Free Speech

The ability of animal protection organisations and individuals to speak out against animal cruelty is an important element in lifting the veil of secrecy which conceals how countless animals are lawfully treated. One potential threat to free speech is the emergence of strategic litigation against public participation (SLAPP) suits. These may occur where proceedings are commenced against animal protectionists for speaking out about animal cruelty. The effect of a SLAPP suit is to 'silence protest and financially penalise those subject to it. It serves to tie up the time and money of those named, distracting attention from their cause'.⁷² To date, only one jurisdiction in Australia has introduced anti-SLAPP legislation.⁷³ Some animal lawyers argue that similar law reforms are required in other states and territories.

2.2 Examples of Animal Law Cases

The following list provides examples of animal law cases in Australia and overseas. The list is not exhaustive but serves to highlight the diversity of issues that an animal lawyer might encounter.

Administrative Law

Importation of zoo elephants

Re The International Fund for Animal Welfare (Australia) Pty Ltd and Ors v Minister for Environment and Heritage and Ors [2006] AATA 94, 93 ALD 625

Facts

The International Fund for Animal Welfare, Humane Society International and RSPCA Australia challenged the Federal Environment Minister's decision to

allow the importation of eight Asian elephants into Australia to be kept at Taronga and Melbourne zoos ('the zoos'). They argued that the importation breached the *Convention on International Trade in Endangered Species* and would be detrimental to the welfare of the elephants.

Outcome

The Administrative Appeals Tribunal allowed the importation; however, it imposed numerous welfare conditions not provided for in the original permit. These included (but were not limited to) providing the elephants with more comfortable sleeping quarters, removing electric shock wiring from trees to allow the elephants to scratch and forage, providing the elephants with resting mounds, mud wallows and adequate exercise and monitoring the elephants via closed circuit TV. The zoos were also required to give undertakings to the Minister to the effect that they would comply with the conditions.

Fisheries

Nature Conservation Council of NSW Inc v Minister for Environment and Water Resources (2007) 98 ALD 334, [2007] AATA 1876.

Facts

The Nature Conservation Council of NSW ('NCC') sought review of the Minister's decision to declare the NSW Ocean Trap and Line Fishery an approved Wildlife Trade Operation under s 303FN of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). The Act provides that the Minister must not approve a Wildlife Trade Operation unless satisfied that it will not be detrimental to the survival of a taxon. The NCC argued that the fishery was detrimental to the survival of the critically endangered grey nurse shark and sought review of the conditions imposed on it.

Outcome

The Administrative Appeals Tribunal held that there were many factors impacting on the survival of grey nurse sharks and concluded that compared with other

“orphaned joeys must be slaughtered either by decapitation with a sharp blade, a forceful blow to the skull or a shot to the brain or heart.”



factors the fishery was not so damaging as to warrant changing the conditions imposed on it. The decision of the Minister was therefore affirmed.

Kangaroo Culling

Animal Liberation v Conservator of Flora and Fauna [2009] ACAT 17

Facts

Animal Liberation sought review of the Conservator's decision to allow the Department of Defence to kill 7000 eastern grey kangaroos on land occupied by the Department. Animal Liberation argued that the Conservator had failed to take into account relevant considerations regarding the threat posed by the kangaroos and the carrying capacity of the land and had taken irrelevant considerations into account on these issues. Animal Liberation further argued that any decision regarding culling should be postponed until a public consultation process regarding the ACT Kangaroo Management Plan was completed.

Outcome

The Tribunal affirmed the Conservator's decision to allow the culling. The Tribunal held that overgrazing by kangaroos had caused severe damage to endangered ecological communities and the habitat of threatened species within the contested area [at 115]. The Tribunal concluded that the number of kangaroos had increased beyond the carrying capacity of the area and further culling was 'the only practical option to restore a better balance between the kangaroo population and the ecology of the area' [at 117]. The Tribunal noted that there was a significant degree of urgency in the case and it would therefore be 'inappropriate to delay a decision until preparation of the ACT Kangaroo Management Plan has been finalised' [at 121].

Animal Welfare Laws

Mens Rea

Bell v Gunter (unreported judgment of the Supreme Court of NSW, 24 October 1997, BC 9708066)

Facts

The defendant was charged with an aggravated cruelty offence towards a cow under the *Prevention of Cruelty to Animals Act 1979* (NSW). This issue was whether *mens rea* was an element of the offence.

Outcome

Dowd J held that the offence was one of strict liability. That is, it did not require *mens rea* to be proven but the defence of honest and reasonable mistake of fact was available.

Mens Rea

Pearson v Janlin Circuses Pty Ltd [2002] NSWSC 1118

Facts

Animal Liberation took action against Stardust Circus in relation to the treatment of their elephant, Arna. Arna had been kept by the circus for a number of years without any contact with other elephants. In 2000 the circus authorised three elephants to be kept in close proximity to her for a number of hours. The elephants were then removed.

Animal Liberation argued that as a result of this act Arna was unreasonably, unnecessarily or unjustifiably abused, tormented, infuriated or inflicted with pain in contravention of s 5(2) of the *Prevention of Cruelty to Animals Act 1979* (NSW). At first instance the magistrate dismissed the proceedings on the basis that *mens rea* was not established. Animal Liberation appealed.

Outcome

Windeyer J of the NSW Supreme Court followed *Bell v Gunter* and held that *mens rea* was not an element of the offence; rather the offence was one of strict liability. His Honour ordered the matter to be reheard according to law. However, upon rehearing the case was dismissed.

See: www.animal-lib.org.au for further details.

“... former High Court Judge, The Honourable Michael Kirby AC CMG, launched Australia’s first animal law textbook: *Animal Law in Australasia: A New Dialogue*. This book is a testament to the continued growth of the animal law movement and its popularity among students, academics and practitioners.”

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Standing

Animal Liberation Ltd v National Parks and Wildlife Service [2003] NSWSC 457

Facts

Animal Liberation sought an injunction to restrain the proposed aerial shooting of feral goats in a national park. The injunction was sought on the basis that the shooting would cause cruelty to the animals and therefore breach the *Prevention of Cruelty to Animals Act 1979* (NSW).

Animal Liberation argued that if the animals were shot and not immediately killed, they would be left to suffer for a protracted period before dying.

Outcome

Hamilton J ordered interlocutory relief, granting an injunction restraining the cull for a period of four to six weeks pending His Honour’s request for further information from both parties. The National Parks and Wildlife Service did not contest the plaintiff’s standing.

Note: Animal Liberation subsequently withdrew its application because of legal cost limitations and the absence of witnesses; however it independently managed to negotiate conditions for the culling.⁷⁴

Standing

Animal Liberation Ltd v Director-General, Department of Environment & Conservation [2007] NSWSC 221

Facts

This is a further case in which Animal Liberation sought an injunction to prevent the aerial shooting of goats and pigs in two nature reserves.

Outcome

In addition to expressing concerns about the evidence relating to the likelihood of cruelty arising from the shoot, Hamilton J relied on the test of standing laid down in *Australian Conservation Foundation v The Commonwealth* (1980) 146 CLR 493 and held that Animal Liberation had no standing. It was not enough that they were concerned for the welfare of the animals. To establish standing Animal Liberation needed to show that they would be personally advantaged or disadvantaged by the outcome of the case.

Live Export

Department of Local Government and Regional Development v Emanuel Exports Pty Ltd & Ors (Perth Magistrates Court, 8 February 2008)

This judgment can be accessed at www.liveexport-indefensible.com/facts/case.php

Facts

Emanuel Exports were prosecuted for three counts of cruelty to animals. The prosecution arose from their business of exporting live sheep to the Middle East. It was argued that the way the sheep were transported and confined caused unnecessary harm.

Outcome

Magistrate Crawford found that the cruelty charges relating to transport were proven. However, Her Honour held that there was an operational inconsistency between the *Animal Welfare Act 2002* (WA) and Commonwealth legislation regulating live export. She concluded that the Act was invalid to the extent of the inconsistency and accordingly the accused were acquitted.

Note: Initially authorities were reluctant to investigate Animals Australia’s cruelty complaint. Consequently, the organisation filed a writ of mandamus against the Director-General of the Department of Local Government and Regional Development which prompted the Government to investigate.

After the judgment was handed down the Director-General instructed the WA State Solicitor to lodge an appeal on the grounds that the Magistrate made an error of law. However, the appeal was subsequently withdrawn under direction of the Minister for Local Government (see article by Animals Australia at www.liveexport-indefensible.com).

Civil Law

Trade Practices Act, Part IV Restrictive Trade Practices

Rural Export & Trading (WA) Pty Ltd v Hahnheuser [2007] FCA 1535

Rural Export & Trading (WA) Pty Ltd v Hahnheuser [2008] FCAFC 156

Rural Export & Trading (WA) Pty Ltd v Hahnheuser [2009] FCA 678

Facts

Mr Hahnheuser fed ham to a group of sheep in an attempt to prevent their live export to the Middle East. The ham made the sheep unacceptable to Muslim countries which require halal slaughter. Civil proceedings were brought against Mr Hahnheuser under s 45DB of the *Trade Practices Act 1974* (Cth) (‘TPA’) for hindering trade.

Outcome

Section 45DD(3)(a) of the TPA provides a defence to hindering trade if it is for the dominant purpose of ‘environmental protection’. Gray J of the Federal Court held that the defence was made out, stating [at 64] that:

Farm animals are as much a part of the environment as are wild animals, feral animals and domestic animals. There is no reason why the protection of the conditions in which farm animals are kept should be excluded from the concept of environmental protection.

This interpretation was overruled on appeal. The full Federal Court found that the protection of sheep did not amount to environmental protection (*Rural Export & Trading (WA) Pty Ltd v Hahnheuser* [2008] FCAFC 156) and ordered the case to be reheard on the question of damages.

On rehearing, Gray J held that Rural Export & Trading (who arranged for the transport of the sheep) were not entitled to damages as their trade was not hindered by Mr Hahnheuser’s actions. While it was accepted that they had to spend more money feeding the sheep for a longer period, this did not satisfy the test for a substantial hindrance of trade or commerce.

Furthermore, Rural Export & Trading were not involved in trade or commerce ‘involving the movement of goods between Australia and places outside Australia’ (s 45DB(1)). They were only involved in matters antecedent to this. Thus, they did not fall within the section [at 14-15].

However, Samex (the exporter) were entitled to damages as they had purchased sheep for export and were unable to export them due to Mr Hahnheuser’s

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actions. Mr Hahnheuser was ordered to pay damages exceeding \$72,000. This covered the cost of purchasing the sheep and having them processed into meat products when they could no longer be exported, less the proceeds of the sale of the meat. Mr Hahnheuser was also ordered to pay Samex's court costs.

Note: Mr Hahnheuser was also charged with criminal offences under the *Crimes Act 1958* (Vic) which provided that it was an offence to contaminate goods with the intent to cause economic loss. Mr Hahnheuser argued that his intention was to prevent animal suffering not to cause economic loss. He was cleared by a jury in the Geelong County Court.⁷⁵

In response the Victorian Parliament amended the Crimes Act to make it an offence to recklessly cause economic loss. This amendment makes it easier for activists like Mr Hahnheuser to be convicted.⁷⁶

Trade Practices Act, Part IV Restrictive Trade Practices

Australian Wool Innovation Ltd v Newkirk [2005] FCA 290, 22 March 2005

Australian Wool Innovation Ltd v Newkirk (No 2) [2005] FCA 1307 (16 September 2005)

Australian Wool Innovation Ltd v Newkirk (No 3) [2005] FCA 1308 (16 September 2005)

Facts

People for the Ethical Treatment of Animals (PETA) commenced a campaign to boycott Australian wool due to the Australian wool industry's continued use of the practice of mulesing. Australian Wool Innovation Ltd initiated proceedings against PETA for hindering trade in contravention of s 45D and 45DB of the *Trade Practices Act 1974* (Cth).

Outcome

The case was never tried on the merits as it was settled out of court.

Defamation, Nuisance and Freedom of Political Communication

Animal Liberation (Vic) Inc v Gasser [1991] 1 VR 51

Facts

Animal Liberation conducted demonstrations outside a circus to protest against the use of animals. They also published materials highlighting the alleged cruelty the circus inflicted on animals. The circus commenced proceedings in defamation and nuisance. It was granted an injunction to prevent the protests and publication of such material. Animal Liberation appealed.

Outcome

The Supreme Court of Victoria held that the injunction against publishing the material could not stand as appropriate weight had not been given to Animal Liberation's right to free speech, or 'to the importance to the community of exposing acts of cruelty to animals' [at 56].

The court overturned the injunction that prevented Animal Liberation from performing demonstrations on the basis that it was too uncertain. However, the court granted a more specific injunction to curtail the demonstrations as it found their intimidating nature amounted to the tort of nuisance.

Constitutional Law

Freedom of Political Communication

Australian Broadcasting Corporation v Lenah Game Meats [2001] HCA 63

Facts

Animal protection activists broke into a brush-tail possum processing facility and filmed the stunning and killing of possums. The ABC intended to broadcast the footage. The Supreme Court granted an interlocutory injunction to prevent the broadcast. The ABC appealed to the High Court.

Outcome

The injunction was set aside. Gaudron [at 61] and

Gummow and Hayne JJ [at 105] held that broadcasting the tape would not infringe any legal or equitable right; while Kirby J concluded [at 220] that proper weight had not been given to the appellant's constitutional freedom of political communication. Importantly, for the animal protection movement, Kirby J [at 217] acknowledged that animal welfare issues are legitimate matters of public debate in Australia.

Freedom of Political Communication

Levy v State of Victoria (1997) 189 CLR 579

Facts

Levy, an animal protection activist, entered a duck-shooting area to be filmed protesting about duck shooting and collecting and rendering veterinary assistance to injured birds. Charged with entering a hunting area under the *Wildlife (Game) (Hunting Season) Regulations 1994* (Vic), he commenced proceedings alleging that the regulations were invalid because they interfered with his constitutionally protected freedom of political communication.

Outcome

The High Court found that the graphic televised images that Levy had hoped to present were within the constitutionally protected realm of political communication. However, applying the test of validity from *Lange v Australian Broadcasting Corporation* (1997) 145 ALR 96, the court held that the regulation was valid as it was appropriate and adapted to serving the legitimate end of enhancing public safety.

Criminal Law

Trespass

Mark, Stoner, Setter and Pearson v Henshaw (1998) 155 ALR 118

Facts

Animal activists entered a battery hen facility in the ACT to provide the hens with medical assistance and generate publicity. They chained themselves to the cages and called the police to investigate allegations of cruelty. They were prosecuted for trespass.

At first instance the Magistrate found in favour of the activists on the basis that they had a reasonable excuse to enter the premises.

Outcome

On appeal, Gallop, O'Loughlin and Finn of the Federal Court held [at 120] that reasonableness must be determined objectively, with reference to community standards. They held that the activists entered the premises for the dominant purpose of advancing their cause against battery hen farming. They concluded that this did not qualify as a reasonable excuse, as to find otherwise 'would mean that any dissident might be at liberty to enter his or her opponents' premises in pursuit of a cause' [at 122].

Environmental Law

Whaling

Humane Society Inc v Kyodo Senpaku Kaisha Ltd [2008] FCA 3

Facts

Humane Society International sought an injunction against the Japanese whaling company, Kyodo Senpaku Kaisha Ltd, to prevent it hunting whales in the Australian Whale Sanctuary.

Outcome

Allsop J of the Australian Federal Court granted the injunction on the basis that the whaling breached sections of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Note: Despite the outcome, whaling is still continuing in the Australian Whale Sanctuary as the Federal Government has refused to enforce the court order (see article by the Human Society International at www.hsi.org.au/index.php?catID=336).

International Cases

Animal Welfare Laws

Legality of Foie Gras Production

'Noah' (The Israeli Federation of Animal Protection Organisations) v The Attorney General, The Minister for

Agriculture, The Egg and Poultry Board, Moshe Benishty and 31 Colleagues, (Supreme Court of Israel, August 2003.) ('Israeli Foie Gras Case').

Available at www.animallaw.info/policy/poisraelmaterials.htm

Facts

An Israeli animal protection group challenged a regulation which controlled the force-feeding of geese on the basis that it breached clause 2(a) of the *Animal Welfare (Animal Protection) Law 1994* which provided that 'no one shall torture an animal, treat it cruelly or abuse it in any manner'.

Outcome

The majority found that there is a distinction between basic foods and delicacies according to their necessity. It was held that there was no proportionality between the harm inflicted on the geese and the purpose of that harm. After careful analysis of animal protection philosophies and legislation, the Supreme Court of Israel held, by majority, that the regulation did not comply with the statute. Accordingly, the court held that the regulation was annulled and the practice of force-feeding of geese was to be phased out.

Note: Subsequent attempts by the Ministry of Agriculture to alter this decision were unsuccessful (see article by CHAI: Concern for Helping Animals in Israel at www.chai-online.org/en/compassion/foiegras/food_foiegras.htm).

Consumer Protection Unfair and Deceptive Conduct (USA)

Animal Legal Defense Fund Boston Inc v Provimi Veal Corporation (1986) 626 F.Supp. 278

Facts

The Animal Legal Defense Fund ('ALDF') brought an action against the Provimi Veal Corporation under a Massachusetts consumer protection statute. The ALDF argued that Provimi Veal acted unfairly and deceptively by not alerting consumers to the

conditions under which veal calves were raised, including being confined in small, dark pens and being fed iron-deficient diets to induce anemia. They further argued that consumers should be warned that the veal might be unhealthy as it comes from calves that are fed antibiotics sub-therapeutically.

Outcome

The court held that consumer protection legislation was not the appropriate mechanism to deal with cruelty to animals, as it does not create a private right to enforce anti-cruelty statutes. The court suggested the ADLF should instead concentrate on urging public officials and designated animal protection organisations to take proper action.

The court further held that it was the intention of federal legislation to 'occupy the field' on antibiotic regulation. They concluded that since federal legislation does not require meat to contain a warning about sub-therapeutic antibiotic use, the ALDF could not use consumer protection legislation to impose a requirement additional to the federal requirements.

False and Deceptive Advertising (USA)

People for the Ethical Treatment of Animals Inc v California Milk Producers Advisory Board (2005) 125 Cal.App. 4th 871, ('Happy Cows Case')

Information about the case, including appeal documents, can be obtained at www.unhappycows.com

Facts

People for the Ethical Treatment of Animals ('PETA') sued the California Milk Producers Advisory Board, claiming that their 'happy cows' advertising campaign breached California's Unfair Competition Law ('UCL') as it was false and deceptive. The advertisements featured cows grazing on spacious, grassy pastures and had the slogan 'Great cheese comes from happy cows. Happy cows come from California'. PETA argued that in contrast, most of California's dairy cows are kept in conditions materially different from those depicted in the advertisements.

“The High Court held that the graphic televised images that Levy had hoped to present were within the constitutionally protected realm of political communication.”

Outcome

The Californian Court of Appeal affirmed the trial court's decision that public entities, including the California Milk Producers Advisory Board, are not 'persons' who can be sued under the UCL. This decision was reached through a process of statutory construction and the merits of the lawsuit were never addressed.

Defamation Animal Cruelty Claims and Defamation (UK)

McDonald's Corporation and McDonald's Restaurants Ltd v Steel and Morris [1997] EWHC QB 366. ('McLibel') Available at www.mcspotlight.org/case/index.html

Facts

McDonald's sued two individuals for defamation in relation to a number of claims published in a leaflet they distributed. The leaflet suggested that McDonald's supported cruel farming practices.

Outcome

Justice Bell held that a number of the farming practices McDonald's supported were cruel. These included:

1. Battery cages

Justice Bell found the severe restriction of movement imposed on hens in battery cages as well as calcium deficiency resulting in osteopaenia to be cruel.

2. Broiler (meat) chickens

Justice Bell found the following practices in relation to broiler chickens to be cruel:

- The severe space restrictions that broiler chickens are subject to in their last few days of life;
- The fact that some broilers are still fully conscious when they have their throats cut;
- Restricting broiler breeders' feed, with the result that they go hungry;
- Leg problems in broilers bred for weight;
- Rough-handling of broilers taken for slaughter; and
- Pre-stun electric shocks suffered by broilers on the way to slaughter.

3. Sow stalls

Justice Bell found the restriction of movement imposed on pregnant pigs (sows) in stalls to be cruel.

These findings were upheld on appeal.

3. What is the State of the Animal Law Movement?

3.1 The Movement

The animal law movement is growing rapidly both in Australia and overseas. Due to the educational and awareness raising initiatives of groups such as Voiceless, there are now nine Australian universities that offer, or which have offered, a course in Animal Law, and more than 120 universities internationally who offer the course.⁷⁷ Prominent legal organisations have been established in Australia that deal specifically with animal law issues, including the Barristers Animal Welfare Panel, Lawyers for Animals, NSW Young Lawyers Animal Law Committee and Brisbane Lawyers Educating and Advocating for Tougher Sentences. In the United States there are at least 30 barrister groups that focus exclusively on animal protection.⁷⁸ Additionally, there are now five international journals and one Australian journal dedicated to animal law.

A key indicator of the growth of animal law in Australia in recent years has been the continued expansion and success of Voiceless's annual Animal Law Lecture Series. The Series, which ran for the third year in May 2009, features a leading international animal law scholar or practitioner who participates in a series of lectures at law schools, law firms and professional associations across the country. As part of the 2009 lecture series, former High Court judge, The Honourable Michael Kirby AC CMG, launched Australia's first animal law textbook: *Animal Law in Australasia: A New Dialogue*. This book is a testament to the continued growth of the animal law movement and its popularity among students, academics and practitioners.

3.2 Legal Organisations Focusing on Animal Protection Issues

Australia

- Voiceless, the animal protection institute
- Barristers Animal Welfare Panel
- Animal Welfare Community Legal Centre (Tasmania)
- NSW Young Lawyers Animal Law Committee
- Lawyers For Animals

- Brisbane Lawyers Educating and Advocating for Tougher Sentences (BLEATS)
- Pro Bono Animal Law Service or PALS@PILCH (a national organisation with offices in NSW and Victoria)

United States of America

National

- American Bar Association, Torts, Trial & Insurance Practice Section (TIPS) Animal Law Committee
- Animal Legal Defense Fund
- Animal Legal and Historical Webcenter
- Centre for Animal Law Studies
- Centre for Wildlife Law
- Humane Society (HSUS) (Animal Protection Litigation Section)
- International Institute for Animal Law

State

- Arizona Bar Animal Law Section
- Connecticut Bar Animal Law Section
- Florida Bar Animal Law Committee
- Animal Law Bar Section Georgia
- Indiana State Bar Association Animal Law Committee
- Louisiana State Bar Animal Law Section
- Massachusetts Bar Association's Animal Law Practice Group
- Maryland State Bar Animal Law Section
- Massachusetts State Bar Animal Law Section
- State Bar of Michigan Animal Law Section
- Animal Law Section of the Minnesota State Bar Association
- Missouri Bar Animal Law Committee
- New Jersey State Bar Association Animal Law Committee
- New York State Bar Association Special Committee on Animals and the Law
- Oregon Animal Law Section
- Pennsylvania Bar Animal Law Committee
- Texas Bar Animal Law Section
- Washington Bar Animal Law Section

3.3 Courses in Animal Law

The following Universities offer or have offered an animal law course.

Australia	Cornell University (New York)
Australian National University (ACT)	DePaul University (Illinois)
Bond University (QLD)	Duke University (North Carolina)
Flinders University (SA)	Emory University (Georgia)
Griffith University (QLD)	Florida Coastal School of Law (Florida)
Southern Cross University (NSW)	Florida State University (Florida)
University of Melbourne (VIC)	Fordham University (New York)
University of NSW (NSW)	George Mason University (Virginia)
University of Sydney (NSW)	George Washington University (Washington DC)
University of Wollongong (NSW)	Georgetown University (Washington DC)
Canada	Golden Gate University (California)
Dalhousie University (Nova Scotia)	Gonzaga University (Washington)
McGill University (Quebec)	Hamline University (Minnesota)
University of Alberta (Alberta)	Harvard Law School (Massachusetts)
University of Ottawa (Ontario)	Hastings College of the Law (California)
University of Quebec (Quebec)	Hofstra University (New York)
University of Toronto (Ontario)	Indiana University (Indiana)
University of Victoria (British Columbia)	The John Marshall Law School (Illinois)
New Zealand	Lewis & Clark Law School (Oregon)
Massey University (Manawatu-Wanganui)	Loyola Law School (California)
University of Auckland (Auckland)	Loyola University New Orleans School of Law (Louisiana)
University of Canterbury (Canterbury)	Marquette University (Wisconsin)
United States of America⁷⁹	Massachusetts School of Law (Massachusetts)
American University (Washington DC)	Mercer University (Georgia)
Arizona State University (Arizona)	Michigan State University Detroit College of the Law (Michigan)
Barry University (Florida)	New England School of Law (Massachusetts)
Benjamin N. Cardozo School of Law (New York)	New York Law School (New York)
Boston College Law School (Massachusetts)	New York University (New York)
Boston University (Massachusetts)	Northeastern University (Massachusetts)
Brooklyn Law School (New York)	Northwestern University (Illinois)
California Western School of Law (California)	Nova Southeastern University (Florida)
Case Western Reserve University (Ohio)	Pace University (New York)
Chapman University (California)	Pennsylvania State University (Pennsylvania)
Chicago-Kent College of Law (Illinois)	Pepperdine University (California)
Cleveland Marshall College of Law (Ohio)	Quinnipiac University (Connecticut)
Columbia Law School (New York)	Rutgers University (New Jersey)

Santa Barbara and Ventura Colleges of Law (California)	University of New Mexico (New Mexico)
Santa Clara University (California)	University of Oregon (Oregon)
Seattle University (Washington)	University of the Pacific, McGeorge School of Law (California)
South Texas College of Law (Texas)	University of Pennsylvania (Pennsylvania)
Southern Methodist University School of Law (Texas)	University of Pittsburgh (Pennsylvania)
Southern New England School of Law (Massachusetts)	University of San Diego (California)
Southwestern University (California)	University of San Francisco (California)
St. Thomas University (Florida)	University of Tennessee (Tennessee)
Stanford University (California)	University of Texas (Texas)
Stetson University (Florida)	University of Virginia (Virginia)
Suffolk University (Massachusetts)	University of Washington (Washington)
Temple University (Pennsylvania)	University of Wisconsin (Wisconsin)
Texas Wesleyan University (Texas)	Valparaiso University (Indiana)
Thomas Goode Jones School of Law (Alabama)	Vanderbilt University (Tennessee)
Thomas Jefferson School of Law (California)	Vermont Law School (Vermont)
Thomas M. Cooley Law School (Michigan)	Villanova University (Pennsylvania)
Tulane University (Louisiana)	Wake Forest University (North Carolina)
University of Arizona (Arizona)	Washington & Lee University (Virginia)
University of Arkansas School of Law (Arkansas)	Western State University (California)
University of Arkansas Little Rock School of Law (Arkansas)	Whittier Law School (California)
University of Baltimore (Maryland)	Widener University (Delaware)
UC Berkeley, Boalt Hall School of Law (California)	William Mitchell College of Law (Minnesota)
UC, Los Angeles School of Law (California)	Yale Law School (Connecticut) – student reading group only
University of Chicago (Illinois)	Other International
University of Cincinnati (Ohio)	Interdisciplinary Centre Herzliva (Israel)
University of Connecticut (Connecticut)	International Animal Law Website (Online Course ⁸⁰)
University of Denver (Colorado)	John Moores University (England)
University of Georgia (Georgia)	Kingston University (England)
University of Houston (Texas)	Northumbria (England)
University of Kansas (Kansas)	Rishon Lezion College (Israel)
University of Kentucky (Kentucky)	University of Aberdeen (Scotland)
University of Maryland (Maryland)	University of East Anglia (England)
University of Miami (Florida)	University of Leeds (England)
University of Michigan (Michigan)	University of Science and Technology (China)
University of Missouri, Kansas City Law School (Missouri)	University of Vienna (Austria)
University of Montana (Montana)	

3.2 Continued

Regional

- Chicago Bar Association Animal Law Committee
- Animal Law Committee of the Cuyahoga County Bar
- Houston Bar Association Animal Law Section
- Kansas City Metropolitan Bar Association Animal Law Committee
- Los Angeles County Bar Association Animal Issues Committee
- Nassau County Bar Association Animal Law Task
- Association of the Bar of the City of New York, Committee on Legal Issues Pertaining to Animals
- San Diego County Bar Association Animal Law Section
- San Francisco County Bar Association Animal Law Committee
- St. Louis Bar Animal Law Committee
- Suffolk County Bar Association Animal Law Committee
- Tulsa County Bar Association Animal Law Committee
- Animal Law Committee of the D.C. Bar Energy, Environment & Resources Section

Source: Animal Legal Defense Fund, *Bar Associations, Animal Law Sections & Committees* <www.aldf.org/article.php?id=277> at 17 November 2009.

International

- Animal Rights Legal Advocacy Network (New Zealand)
- Foundation for the Animal in the Law (Switzerland)
- Association of Lawyers for Animal Welfare (UK)

Source of US State and Regional Bar Association Listings: Animal Legal Defense Fund, *Bar Association Animal Law Sections and Committees* <www.aldf.org/article.php?id=277> at 18 November 2009.

3.4 Animal Law Course Outlines

The University of Sydney

Animal Law

This unit of study examines the ways in which the law defines and regulates the relationship between humans and animals. It introduces students to the key issues, debates and documents in this area whilst encouraging a critical examination of these sources. The unit begins with a discussion of the status of animals as property and the implications

of this approach and then moves to providing an overview of the moral and ethical arguments supporting an animal protection position and the case for animal rights. The focus of the unit is on the regulatory frameworks which apply to interactions between humans and animals, both domesticated and wild. The following topics will be considered: animal welfare legislation and its enforcement; issues of standing; the role of agricultural codes of practice; wildlife conservation; international law issues including whaling and free trade constraints on improved standards for animal welfare; trade in endangered species and the role of zoos; the use of animals in research (including the responsibilities of institutions and animal ethics committees); regulation of companion animals; and current issues in animal law, such as live export.

Source: Sydney University, *Animal Law* <www.usyd.edu.au/courses/index.php?uos=1&uos_sef_id=LAWS3088_Animal_Law__seminar__9942> at 25 September 2009.

The University of Melbourne

Animals and the Law

This subject will examine the history, philosophy and ethical foundation of humanity's treatment of animals and ask whether the animal welfare model operates in accord with our stated goal of preventing unnecessary cruelty to animals. It will also consider whether a new legal framework is required in order to give proper recognition to animal interests. The subject will focus on farming, where the vast majority of animals are used, but will also use examples from other contexts.

Principal topics will include:

- Animals and their role in society: How do people regard animals?
- Animals as property
- Utilitarianism: The welfare construct in history
- The animal welfare system
- Shortcomings of the welfare system: Operational and legal difficulties
- Animals in research: Experimentation

- The code process: Using subordinate legislation to exempt cruelty
- Animal rights: A new legal construct.

Source: Melbourne University, Animals and the Law <www.masters.law.unimelb.edu.au/index.cfm?objectid=3A45C705-1422-207C-BA6886C167CEB45F&view=overview&sid=4179> at 25 September 2009.

3.5 Objectives of Legal Organisations Focusing on Animal Protection Issues The Barristers Animal Welfare Panel

The Barristers Animal Welfare Panel comprises some 90 barristers (including over 20 silks from the commercial and criminal bars) who have come together to:

- represent and advise litigants in matters of public interest affecting animal welfare on a pro bono or reduced fee basis, instructed under the auspices of PILCH or direct by different law firms;
- advise or appear on that basis in the prosecution of companies or persons for cruelty offences (ranging from large numbers involved in, for example, live animal exports or intensive livestock production through to more individual cases of inhumane care or treatment) in order to encourage greater enforcement of existing animal protection laws;
- advise or appear on that basis in the defence of protesters;
- challenge publicly or otherwise the existing deficient animal protection legal regime in Australia, where most animals are exempt from its protective reach, and for this purpose, to formulate and prosecute proposals for law reform;
- promote the adoption by law schools of animal law as a subject; and
- encourage the participation by other legal professionals, law students or persons interested in animal welfare in our programs and cases.

Source: The Victorian Bar Association, *Barristers Animal Welfare Panel* <www.vicbar.com.au/e.l.12.asp> at 25 September 2009.

American Bar Association's Torts Trial & Insurance Practice Section (TIPS) Animal Law Committee

The mission of the Torts Trial & Insurance Practice Section (TIPS) Animal Law Committee is to evolve our thinking on animal issues for both the United States and the world. By attracting the best and brightest lawyers in this country, with a wide variety of perspectives, we will look at animal-related problems and issues today, and think about new ways to define, manage, and solve them. Utilizing problem-solving strategies, we will also look at the law as it exists today - fragmented around the country - and envision what it could be. The TIPS ABA Animal Law Committee will be the instrument of a paradigm shift, and will bring to the table and address legitimate business and economic interests, and humane concerns.

Source: American Bar Association, *Animal Law Committee* <www.abanet.org/tips/animal/about.html> at 25 September 2009.

New York State Bar Association's Committee on Animals and the Law

The Committee on Animals and the Law is a legal resource for Members and the Public about non-human, animal related humane issues, which arise from and have an effect upon our legal system. Among the activities of the group, Committee Members:

- (a) monitor and provide comment on relevant legislation and policy-making decisions at various levels of government;
- (b) offer continuing legal education as well as programs for the lay public on animal law;
- (c) compile and provide access via the NYSBA website and other means to a current compendium of relevant statutes, court decisions, and administrative determinations, reports and treatises;
- (d) respond to requests for information from the public and attorneys related to animal law issues; and

- (e) encourage law student interest in animal law by sponsoring a legal writing competition and co-sponsoring programs with law student organizations.

The Committee ascertains the needs and interests of NYSBA members and their constituents with respect to animal humane-related issues and develops programs to disseminate resource information to address those needs and interests. Where appropriate, the Committee solicits expertise and assistance of NYSBA committees and sections whose Members and Constituents are affected by these humane-related issues.

To maximize effectiveness, the Committee invites participation by professionals in animal health care, animal welfare, wildlife conservation, animal behavior, and other related fields in animal-law and humane-related work, such as veterinarians, biologists, educators, humane law enforcement officers and non-attorney government officials.

Source: New York State Bar Association, *Mission Statement of the Committee on Animals and the Law* <www.nysba.org/AM/Template.cfm?Section=Mission_Statement7> at 25 September 2009.

3.6 Journals Focusing on Animal Law Australian

Australian Animal Protection Law Journal

This is Australia's first law journal dedicated solely to animal law. It is a peer-reviewed, biannual publication which was launched in 2008.

International

Journal of Animal Law and Ethics

Published by the University of Pennsylvania Law School, Philadelphia, USA.

Animal Law Review

Published by the National Centre for Animal Law, Lewis & Clark Law School, Portland, Oregon, USA.

Journal of Animal Law

Published by Michigan State University College of Law, Michigan, USA.

Journal of Animal Law and Policy

Published by Stanford University, Stanford, USA.

Journal of Animal and Environmental Law

Forthcoming publication of The University of Louisville Brandeis School of Law, Kentucky, USA.

3.7 Australian Conferences Focusing on Animal Law

Voiceless/UNSW Animal Law Lecture Series

Each year the Series features a leading international scholar or practitioner in animal law who is invited to Australia and New Zealand to deliver a series of lectures to lawyers, academics, students, and the broader community. The Series also involves panel discussions, seminars and a variety of other activities that seek to foster advocacy for animals.

'From Paddocks to Pleadings – Farm Animals and the Law'

This May 2007 conference provided lawyers, barristers, in-house counsel, legal academics and law students with an introduction to a range of legal issues which affect farm animals. It was an extremely popular conference funded by Voiceless and hosted by the Law Society of NSW.

'The Future of Animal Law in Australia'

This July 2007 conference, organised by NSW Young Lawyers, was a sell-out, attracting academics, solicitors, barristers, members of government departments and law students from across Australia. It had numerous speakers and stimulating panel discussions.

'Minding Animals'

This July 2009 conference, organised by The Animals and Society (Australia) Study Group was held in Newcastle in July 2009. It focused on promoting an interdisciplinary approach to animal protection issues, and included a number of sessions on animal law.

Source: Voiceless, Animal Law Seminar <www.voiceless.org.au/Law/Lecture_Series/Animal_Law_Seminar.html> at 25 September 2009; NSW Young Lawyers Animal Law Committee, Animal Law Conference 2007 <www.lawsociety.com.au/about/YoungLawyers/Committees/AnimalLaw/AnimalLawConference/index.htm> at 25 September 2009 Minding Animals Australia <www.mindinganimals.com> at 17 November 2009.

3.8 Australian Animal Lawyers Practitioners

Malcolm Caulfield, principal lawyer, Animal Welfare Community Legal Centre (Tasmania).

David Crocker, Adelaide-based barrister with an interest in animal law an expertise in civil and commercial law.

Joana Fuller, Adelaide-based barrister with an interest in animal law and a specialization in criminal law. Previously represented Animal Liberation in criminal and civil proceedings.

Tracy-Lynne Geysen, principal lawyer, TLG Lawyers - Family and Animal Law.

John Mancy, Sydney-based barrister who edits the *Australian Animal Law Protection Journal* and has run cases in Animal Law.

Graeme McEwen, Melbourne-based barrister and Chair of the Barristers Animal Welfare Panel.

Paul O'Donnell, Sydney-based barrister with an interest in animal law and a specialization in criminal law. Regularly assists RSPCA NSW with cruelty prosecutions.

Graeme Page SC, Brisbane-based barrister and Honorary Patron of Brisbane Lawyers Educating and Advocating for Tougher Sentences (BLEATS).

Dr Melissa Perry QC, Sydney-based barrister with an interest in animal law and expertise in international, constitutional, administrative and federal environmental law.

Angela Radich, Senior Solicitor at Pro Bono Animal Law Service, Public Interest Law Clearing House NSW (PALS@PILCH).

Michelle Sharpe, Melbourne-based barrister and Secretary of the Barristers Animal Welfare Panel.

Steven White, consultant, TLG Lawyers - Family and Animal Law.

Ian Weldon, Perth-based barrister with an interest in animal law and author of *Criminal Law Western Australia*.

Legal Counsel for Australian Animal Protection Groups

Katrina Sharman, Corporate Counsel for Voiceless.

Ben Johns, Operations Manager, RSPCA (SA) Inc.

Jed Goodfellow, Prosecutions Officer, RSPCA (SA) Inc.

“There are many opportunities to let politicians and the public know about the treatment of animals and the problems with existing laws. Write a letter to your local, state or federal MP expressing your concerns about an animal law issue.”

4. How can I become more involved in the animal law movement?

There are many ways for students, practitioners, law firms, law schools and academics to become more involved in the animal law movement. Ten easy suggestions are provided below.

4.1. Join Voiceless Law Talk

A great way to learn more about animal law and keep abreast of recent developments is to join Voiceless Law Talk. This is an online forum which allows members to discuss and find out about animal law cases, legislation, philosophy, events, competitions, courses and much more. To register simply visit: www.voiceless.org.au/Law/Law_Talk/Register_and_Log-in.html

4.2. Join or establish an animal law group

Joining an animal law group is a fantastic way to meet other animal advocates, learn more about animal law and start putting theory into practice. A list of animal law groups can be found in section 3.2 of this document. If there is no group in your area consider establishing one at your university or within your State or Territory Law Society or Bar Association.

4.3. Study or teach animal law

Taking a course in animal law is one of the best ways to gain knowledge and skills in this area. A list of universities that offer or have offered a course in animal law can be found in section 3.3 of this document. If your university does not offer an animal law course you may wish to request them to do so. A sample petition can be found in section 5.5. Further information about requesting an animal law course can be found on the Voiceless website: www.voiceless.org.au/Law/Law_Students/Request_Animal_Law.html

If you are a legal academic or practitioner consider teaching a course in animal law. With the growth in the animal law movement, animal law lecturers will be an asset to any law school.

4.4. Write an article on animal law

Writing an article on animal law is a great way to voice your opinion on a topic that concerns you. You can submit your article to one of the animal law journals listed in section 3.6 for publication. Alternatively, try a journal that specialises in your topic area. For example, a criminal law journal would be suitable for articles on animal cruelty, while a family law journal would be ideal for articles on pet custody disputes.

Sample topic ideas can be found on the Voiceless website: www.voiceless.org.au/Law/Law_Students/Animal_Law_Essay_Ideas.html

4.5. Enter, establish or sponsor an animal law competition

A great way for law firms and law schools to become more involved in animal law is to establish or sponsor an animal law competition, such as a moot, witness examination or negotiation competition. For budding writers, the NSW Young Lawyers Animal Law Committee already holds an annual animal law essay competition. To enter visit: www.lawsociety.com.au/about/YoungLawyers/Committees/AnimalLaw/AnimalLawEssayCompetition/index.htm

4.6. Run an animal protection campaign

Select an issue that is of particular concern to you and run a campaign to foster change within your local community, workplace or university, or on a larger scale. More than 300 universities in the United States no longer serve cage eggs as a result of the 'cage-free campus' campaign run by students. There are many opportunities to push for law reform, changes in consumer behaviour and changes in peoples' attitudes in Australia.

Further information about cage-free campus initiatives can be found on the Voiceless website: www.voiceless.org.au/Education/ex-VAA/_Cage-Free_Campaign.html

4.7. Advocate for more vegetarian and vegan food options at your university or workplace

A powerful way to say no to animal cruelty is to reduce the amount of animal products in your diet. You can assist others to make this choice by advocating for more vegetarian and vegan food options at university or work functions, law society meetings, food outlets, conferences and events.

4.8. Volunteer your services to an animal protection group

Many animal protection groups accept volunteers or interns. If you are a law student at the University of New South Wales or the University of Melbourne you can apply to intern at Voiceless and receive course credit through your university's internship scheme. Voiceless also accepts legal volunteers from other law schools. Positions are usually advertised on Voiceless Law Talk. There are also many other animal protection groups that accept volunteers. See the list of animal protection groups in section 5.3 and visit their websites for more information.

If you work at a large or middle-sized law firm you may be able to become involved in animal law through your law firms' pro bono scheme. Let your pro bono co-ordinator know that this is an area that interests you. Alternatively, you may wish to offer your services to the Animal Welfare Community Legal Centre, the Northern Rivers Community Legal Centre's Animal Law Project or PALS@PILCH. For more information visit the Voiceless website: www.voiceless.org.au/Law/Misc/Legal_Advice.html

4.9. Attend, host, sponsor or speak at an animal law conference

Attending an animal law conference is a great way to find out about the latest issues and progress in animal law. Law firms and law schools can play an important role by hosting or sponsoring such events. Academics, practitioners and students can become more involved by speaking at conferences or helping

with their organisation. In addition to the increasing number of animal law conferences being arranged in Australia, you may also consider attending an overseas conference to gain a different perspective and learn about litigation and law reform strategies that might be applied domestically.

4.10. Speak out about animal law

There are many opportunities to let politicians and the public know about the treatment of animals and the problems with existing laws. Write a letter to your local, state or federal MP expressing your concerns about an animal law issue. Put together a petition demanding better treatment of animals. Send in a submission to an animal law inquiry. Contact a newspaper or radio station to voice your concerns about the treatment of animals. Initiate an education campaign at your university or workplace.

These are just some of the ways you can become more involved in the animal law movement. For more ideas visit the Voiceless website: www.voiceless.org.au

5. Additional Reading and Resources

5.1 Australian Legislation

The following table provides a non-exhaustive list of relevant Australian animal law Acts.

Readers are encouraged to verify the currency of the Acts listed and consider relevant Regulations.

New South Wales

Prevention of Cruelty to Animals Act 1979 (NSW)
Animal Research Act 1985 (NSW)
Companion Animals Act 1998 (NSW)
Exhibited Animals Protection Act 1986 (NSW)
Game and Feral Animal Control Act 2002 (NSW)
National Parks and Wildlife Act 1974 (NSW)
Rural Lands Protection Act 1989 (NSW)
Threatened Species Conservation Act 1995 (NSW)

Australian Capital Territory

Animal Welfare Act 1992 (ACT)
Domestic Animals Act 2000 (ACT)
Pest Plants and Animals Act 2005 (ACT)
Nature Conservation Act 1980 (ACT)

Northern Territory

Animal Welfare Act (NT)
Territory Parks and Wildlife Conservation Act 1977 (NT)

Queensland

Animal Care and Protection Act 2001 (QLD)
Exotic Diseases in Animals Act 1981 (QLD)
Racing Act 2002 (QLD)
Stock Act 1915 (QLD)
Fauna Conservation Act 1974 (QLD)
Nature Conservation Act 1992 (QLD)

South Australia

Animal Welfare Act 1985 (SA)
National Parks and Wildlife Act 1972 (SA)
Wilderness Protection 1992 (SA)

Tasmania

Animal Welfare Act 1993 (TAS)
Threatened Species Protection Act 1995 (TAS)
Nature Conservation Act 2002 (TAS)
National Parks and Wildlife Act 1970 (TAS)

Victoria

Prevention of Cruelty to Animals Act 1986 (VIC)
Domestic Animals Act 1994 (Vic) *Wildlife Act 1975* (VIC)

Western Australia

Animal Welfare Act 2002 (WA)
Dog Act 1976 (WA)
Wildlife Conservation Act 1950 (WA)
Conservation and Land Management Act 1984 (WA)

Commonwealth

Australian Meat and Livestock Industry Act 1997 (CTH)
Environment Protection and Biodiversity Conservation Act 1999 (CTH)
Export Control Act 1982 (CTH)

5.2 Federal Model Codes of Practice for Animal Welfare

The following codes are available for download from the CSIRO publishing website (www.publish.csiro.au/nid/22/sid/11.htm)

DAFF, *Model Code of Practice for the Welfare of Animals: Animals at Saleyards* (1991) Primary Industries Report Series 31

DAFF, *Model Code of Practice for the Welfare of Animals: Cattle 2nd ed.* (2006) Primary Industries Report Series 85

DAFF, *Model Code of Practice for the Welfare of Animals: Domestic Poultry 4th ed.* (2002) Primary Industries Report Series 83

DAFF, *Model Code of Practice for the Welfare of Animals: Farmed Buffalo* (1995) Primary Industries Report Series 52

DAFF, *Model Code of Practice for the Welfare of Animals: Farming of Ostriches* (2003) Primary Industries Report Series 84



DAFF, *Model Code of Practice for the Welfare of Animals: Feral Livestock Animals* (1992) Primary Industries Report Series 34

DAFF, *Model Code of Practice for the Welfare of Animals: Husbandry of Captive-Bred Emus* 2nd ed. (2006) Primary Industries Report Series 90

DAFF, *Model Code of Practice for the Welfare of Animals: Intensive Husbandry of Rabbits* (1991) Primary Industries Report Series 33

DAFF, *Model Code of Practice for the Welfare of Animals: Land Transport of Cattle* (2000) Primary Industries Report Series 77

DAFF, *Model Code of Practice for the Welfare of Animals: Land Transport of Horses* (1997) Primary Industries Report Series 62

DAFF, *Model Code of Practice for the Welfare of Animals: Land Transport of Pigs* (1998) Primary Industries Report Series 63

DAFF, *Model Code of Practice for the Welfare of Animals: Land Transport of Poultry* 2nd ed. (2006) Primary Industries Report Series 91

DAFF, *Model Code of Practice for the Welfare of Animals: Livestock at Slaughtering Establishments* (2001) Primary Industries Report Series 79

DAFF, *Model Code of Practice for the Welfare of Animals: Pigs* 3rd ed. (2008) Primary Industries Report Series 92

DAFF, *Model Code of Practice for the Welfare of Animals: The Camel* 2nd ed. (2006) Primary Industries Report Series 86

DAFF, *Model Code of Practice for the Welfare of Animals: The Farming of Deer* (1991) Primary Industries Report Series 30

DAFF, *Model Code of Practice for the Welfare of Animals: The Goat* (1991) Primary Industries Report Series 32

DAFF, *Model Code of Practice for the Welfare of Animals: The Sheep* 2nd ed. (2006) Primary Industries Report Series 89

DAFF, *Model National Guidelines for Beef Cattle Feedlots in Australia* 2nd ed. (1997) Primary Industries Report Series 47

5.3 Websites of Australian Animal Protection Groups

Animal Liberation (ACT)

www.al-act.org

Animal Liberation (NSW)

www.animal-lib.org.au

Animal Liberation (QLD)

www.animalliberationqld.org.au

Animal Liberation (SA)

www.animalliberation.org.au

Animal Liberation (VIC)

www.alv.org.au

Animal Welfare Community Legal Centre

www.animalwelfareclc.org.au

Animal Welfare League

www.animalwelfareleague.com.au

Animals Australia

www.animalsaustralia.org

Brisbane Lawyers Educating and Advocating for Tougher Sentences

www.bleats.com.au

Humane Society International

www.hsi.org.au

International Fund for Animal Welfare

www.ifaw.org

Lawyers for Animals

www.lawyersforanimals.org.au

NSW Young Lawyers Animal Law Committee

www.lawsociety.com.au/page.asp?partid=6153

RSPCA Australia

www.rspca.org.au

Barristers Animal Welfare Panel

www.vicbar.com.au/e.1.12.asp

Voiceless, the animal protection institute

www.voiceless.org.au

WIRES

www.wires.org.au

World Society for the Protection of Animals

www.wspa.org.au

5.4 Books and Journal Articles

The following table provides a non-exhaustive list of relevant books and journal articles. Book titles appear in bold and publications are categorised by subject matter.

Text Books

Bryant, Taimie L; Huss, Rebecca J and Cassuto, David N, (eds), ***Animal Law and the Courts: A Reader*** (Thomson, 2008).

Favre, David S, ***Animal Law: Welfare, Interests and Rights*** (2008, Aspen Publishers Inc).

Frasch, Pamela D; Waisman, Sonia S and Wagman, Bruce A, ***Animal Law*** (4th edition, 2009, Carolina Academic Press).

Gandhi, Maneka; Husain, Ozair and Panjwani, Raj, ***Animal Laws of India*** (3rd edition, 2006, Universal Law Publishing Co. Pty Ltd).

Sankoff, Peter and White, Steven, ***Animal Law in Australasia: A New Dialogue*** (2009, The Federation Press).

Sunstein, CR and Nussbaum, MC (eds), ***Animal Rights: Current Debates and New Directions***, (2004, Oxford University Press)

Access to Justice

Nussbaum, Martha C, ***Frontiers of Justice: Disability, Nationality, Species Membership*** (2006, The Belknap Press of Harvard University Press).

Pollard, Ruth, 'Animals, Guardianship and the Local Courts: Towards a Practical Model For Advocacy' (Summer 2007/08) 91 *Reform* 48.

Seymour, George, 'Animals and the Law: Towards a Guardianship Model' (2004) 29(4) *Alternative Law Journal* 183.

Winders, Delcianna J, 'Confronting Barriers to the Courtroom for Animal Advocates' (2006) 13(1) *Animal Law* 1.

Animals in Agriculture

Akers, Keith and Bagaric Mirko, 'No Absence of Malice Towards the Gallus' (2001) 18(5) *Environmental and Planning Law Journal* 505.

Caulfield, Malcolm, 'The Law and Pig Farming' (Summer 2007/08) 91 *Reform* 25.

Ibrahim, Darian M, 'A Return to Descartes: Property, Profit, and the Corporate Ownership of Animals' (2007) 70 *Law and Contemporary Problems* 87.

Pearson, Alan; Plowman, Kathleen and Topfer, John, 'Animals and the Law in Australia: A Livestock Industry Perspective' (Summer 2007/08) 91 *Reform* 25.

Sharman, Katrina, 'Lifting the Veil of Secrecy on Animal-Derived Food Products' (Summer 2007/08) 91 *Reform* 40.

Wolfson, David, 'McLibel' (1999) 5 *Animal Law* 121.

Animals in Entertainment

Allars, Margaret, 'To Breed or To Exhibit: The Asian Elephants Case and Reasons For Regulatory Failure' (2007) 24(5) *Environmental and Planning Law Journal* 329.

Animal Experimentation

Dandie, Geoff, 'Research, Animal Biotechnology and Regulation in Australia' (2008) 16(8) *Australian Health Law Bulletin* 129.

Donnellan, Laura, 'Animal Testing in Cosmetics: Recent Developments in the European Union and the United States' (2007) 13(2) *Animal Law* 251.

Gjerris, Mickey and Sandoe, Peter, 'Ethical Perspectives in Animal Biotechnology' (Summer 2007/08) 91 *Reform* 37.

Kramer, Marcia Goodman, 'Humane Education, Dissection, and the Law' (2007) 13(2) *Animal Law* 281.

LaFrance, Arthur Birmingham, 'Animal Experimentation: Lessons from Human Experimentation' (2007) 14(1) *Animal Law* 29.

Ludlow, Karinne, 'A Clone with Your Fries? The Regulation of Cloned Farm Animals in Australia' (2006) 23(3) *Environmental and Planning Law Journal* 185.

Sharman, Katrina, 'Opening the Laboratory Door: National and International Legal Responsibilities for the Use of Animals in Scientific Research - An Australian Perspective' (2006) 2 *Journal of Animal Law* 67.

Animal Rights

Bagaric, M, 'Humanising Animals - Civilising People' (2008) 4(1) *Original Law Review* 1.

Bartlett, Steven J, 'Roots of Human Resistance to Animal Rights: Psychological and Conceptual Blocks' (2002) 8 *Animal Law* 143.

Donovan, Nichola, 'Is Common Law the Key to Upholding an Animal's Right Not to Suffer?' (Summer 2007/08) 91 *Reform* 43.

Francione, Gary L, ***Animals, Property, and the Law*** (1995, Temple University Press).

Francione, Gary L, ***Rain Without Thunder: The Ideology of the Animal Rights Movement*** (1996, Temple University Press).

Francione, Gary L, ***Introduction to Animal Rights: Your Child or the Dog?*** (2000, Temple University Press).

Hilden, Julie, 'Contractarian View of Animal Rights: Insuring against the Possibility of Being a Non-Human Animal' (2007) 14(1) *Animal Law* 5.

Regan, Tom, 'The Day May Come: Legal Rights for Animals' (2004) 10 *Animal Law* 11.

Wise, Steven M, 'Dismantling the Barriers to Legal Rights for Nonhuman Animals' (2001) 7 *Animal Law* 9.

Wise, Steven M, ***Rattling the Cage: Toward Legal Rights For Animals*** (2000, Perseus Publishing).

Wise, Steven M, ***Drawing the Line: Science and the Case for Animal Rights*** (2002, Perseus Publishing).

Wise, Steven M, ***An American Trilogy: Death, Slavery, and Dominion on the Banks of the Cape Fear River*** (2009, Da Capo Press).

Wise, Steven M, 'The Basic Rights of Some Non-Human Animals Under the Common Law' (Summer 2007/08) 91 *Reform* 11.

Animal Welfare Laws

Caulfield, Malcolm, *Handbook of Australian Animal Cruelty Law* (2008, Animals Australia).

Jamieson, P, 'The Legal Status of Animals Under Animal Welfare Law' (1992) 9 *Environmental and Planning Law Journal* 20.

Sankoff, Peter, 'Flawed Logic Impedes Animal Welfare Act Sentencing' (2004) *New Zealand Law Journal* 357.

Sharman, Katrina, 'Sentencing Under Our Anti-Cruelty Statutes: Why Our Leniency Will Come Back to Bite Us' (2002) 13(3) *Current Issues In Criminal Justice* 333.

White, Steven, 'Legislating For Animal Welfare: Making the Interests of Animals Count' (2003) 28(6) *Alternative Law Journal* 277.

International Perspectives

Adam, Rachelle, 'The Japanese Dolphin Hunts: In Quest of International Legal Protection for Small Cetaceans' (2007) 14(2) *Animal Law* 133.

Araújo, Fernando, 'Recent Development of Portuguese Law in the Field of Animal Rights' (2005) 1 *Journal of Animal Law* 61.

Cook, Kristin, 'Inhumanity of Foie Gras Production - Perhaps California and Chicago Have the Right Idea' (2007) 2 *Journal of Animal Law and Ethics* 263.

Dillard, Carter, 'False Advertising, Animals, and Ethical Consumption' (2004) 10 *Animal Law* 25.

Favre, David, 'Integrating Animal Interests into Our Legal System' (2004) 10 *Animal Law* 87.

Hughes, Elaine L and Meyer, Christiane, 'Animal Welfare Law in Canada and Europe' (2000) 6 *Animal Law* 23.

Kim, Rakhyn E, 'Dog Meat in Korea: A Socio-Legal Challenge' (2007) 14(2) *Animal Law* 201.

Linzey, Andrew, 'The Ethical Case for European Legislation Against Fur Farming' (2006) 13(1) *Animal Law* 147.

Linzey, Andrew, 'Ethical Critique of the Canadian Seal Hunt and an Examination of the Case for Import Controls on Seal Products' (2006) 2 *Journal of Animal Law* 87.

McNabb, Megan, 'Pets in the Eye of the Storm: Hurricane Katrina Floods the Courts with Pet Custody Disputes' (2007) 14(1) *Animal Law* 79.

Nattrass, Kate M, "'Und Die Tiere" Constitutional Protection for Germany's Animals' (2004) 10 *Animal Law* 283.

Sankoff, Peter, 'Five Years of the "New" Animal Welfare Regime: Lessons Learned from New Zealand's Decision to Modernise Its Animal Welfare Legislation' (2005) 11 *Animal Law* 7.

Sharma, Charu, 'Chinese Endangered Species at the Brink of Extinction: A Critical Look at the Current Law and Policy in China' (2005) 11 *Animal Law* 215.

Smith, Rob Roy, 'At a Complex Crossroads: Animal Law in Indian Country' (2007) 14(1) *Animal Law* 109.

Stevenson, Peter, 'The World Trade Organization Rules: A Legal Analysis of their Adverse Impact on Animal Welfare' (2002) 8 *Animal Law* 107.

Striwing, Helena, 'Animal Law and Animal Rights on the Move in Sweden' (2002) 8 *Animal Law* 93.

Philosophy

Cavaleri, Paola and Singer, Peter (eds), *The Great Ape Project: Equality Beyond Humanity* (1993, St Martins Press).

Gaard, Greta 'Vegetarian Ecofeminism: A Review Essay' (2002) 23(3) *Frontiers* 117.

Kalof, Linda and Fitzgerald, Amy (eds), *The Animals Reader: The Essential Classical and Contemporary Writings* (2007, Berg Publishers).

Regan, Tom, *The Case for Animal Rights* (1988, Routledge).

Singer, Peter, *Animal Liberation* (1995, Pimlico).

Singer, Peter and Regan, Tom (eds), *Animal Rights and Human Obligations* (1989, Prentice Hall).

Pet Custody

Bogdanoski, Tony, 'The Marriage of Family Law and Animal Rights: How Should Australian Family Law Approach the Rise of 'Pet Custody' Disputes?' (2006) 31(4) *Alternative Law Journal* 216.

Newell, Barbara, 'Animal Custody Disputes: A Growing Crack in the "Legal Thinghood" of Nonhuman Animals' (2000) 6 *Animal Law* 179.

Stroh, Heidi, 'Puppy Love: Providing for the Legal Protection of Animals When Their Owners Get Divorced' (2007) 2 *Journal of Animal Law and Ethics* 231.

Property Status of Animals

Bearup, Brooke J, 'Pets: Property and the Paradigm of Protection' (2007) 3 *Journal of Animal Law* 173.

Francione, Gary L, ***Animals, Property, and the Law*** (1995, Temple University Press).

Nosworthy, Jane, 'The Koko Dilemma: A Challenge to Legal Personality' (1998) 2 *Southern Cross University Law Review* 1.

St.Pierre, Derek W, 'The Transition From Property to People: The Road to the Recognition of Rights for Non-Human Animals' (1998) 9 *Hastings Women's Law Journal* 255.

Wise, Steven, M 'The Entitlement of Chimpanzees to the Common Law Writs of Habeas Corpus and De Homine Replegiando' (2007) 37 *Golden Gate University Law Review* 219.

The Animal Law Movement

Bryant, Taimie L, 'Trauma, Law and Advocacy for Animals' (2006) *Journal of Animal Law and Ethics* 61.

Cao, Deborah, **Animal Law in the West** (2007, The China Law Press).

Favre, David, 'The Gathering Momentum' (2005) 1 *Journal of Animal Law* 1.

Frasch, Pamela D, 'Finding our Voice: Challenges and Opportunities for the Animal Law Community' (2007) 14(1) *Animal Law* 1.

Glasgow, David, 'The Law of the Jungle: Advocating For Animals in Australia' (2008) 13(1) *Deakin Law Review* 181.

Katz, Richard J; Blumm, Michael C and Gibbons, Holly Anne, 'Origins of Animal Law: Three Perspectives' (2004) 10 *Animal Law* 1.

Ogle, Greg 'Beating a SLAPP Suit' (2007) 32(2) *Alternative Law Journal* 71.

Pacelle, Wayne, 'Law and Public Policy: Future Directions for the Animal Protection Movement' (2005) 11 *Animal Law* 1.

Sharman, Katrina, 'An Emerging Field' (2006) 31(4) *Alternative Law Journal* 227.

Sherman, Brian, 'Animal law: Peering Over the Gap or Daring to Close It?' (2006) 31(4) *Alternative Law Journal* 226.

White, Steven, 'The Emergence of Animal Law in Australian Universities' (Summer 2007/08) 91 *Reform* 51.

Sankoff, Peter 'Charting the Growth of Animal Law in Education' (2008) 4 *Journal of Animal Law* 105.

Wild Animals

McEwen, Graeme, 'The Challenge Posed by Feral Animals' (Summer 2007/08) 91 *Reform* 30.

Shah, Anuj and Miller, Alyce, 'Invented Cages: The Plight of Wild Animals in Captivity' (2005) 1 *Journal of Animal Law* 23.

Thiriet, Dominique, 'In the Spotlight: The Welfare of Introduced Wild Animals in Australia' (2007) 24(6) *Environmental and Planning Law Journal* 417.

Thiriet, Dominique, 'Out of the 'Too Hard Basket': Traditional Hunting and Animal Welfare' (2007) 24(1) *Environmental and Planning Law Journal* 59.

Thiriet, Dominique, 'Traditional Hunting: Cultural Rights v Animal Welfare' (2006) 31(2) *Alternative Law Journal* 57.

Thiriet, Dominique, 'Tradition and Change – Avenues for Improving Animal Welfare in Indigenous Hunting' (2004) 11 *James Cook University Law Review* 159.

5.5 Sample Petition

Support for Adding an Animal Law Course to The Law School Curriculum

We, the undersigned, are writing to request the addition of an animal law course to the law school curriculum.

Animal law is a cutting edge area of law that looks at the treatment of non-human animals in our legal system. It covers a variety of issues relating to the treatment of animals in society, drawing on legislation and case law. Most animal law courses draw upon student's existing knowledge of administrative law, contract law, tort law and property ownership, although philosophical and ethical questions relating to the treatment of animals in society may also be explored. Animal law is becoming increasingly popular amongst students and would be a welcome addition to the law school curriculum.

Animal law is currently being taught (or has been taught) at both undergraduate and graduate level by nine Australian universities, including the University of Sydney, the University of Melbourne, the University of New South Wales and the Australian National University. Animal law is also offered by more than 130 universities internationally, including the highly regarded Harvard, Boalt, Duke and Stanford Law Schools. The discipline is becoming so popular that Australia's first journal dedicated to animal law was launched in 2008, followed by the release of Australia's first animal law textbook in 2009.

Additionally, prominent legal organisations have been established to focus on animal law including the Barristers Animal Welfare Panel, Lawyers for Animals, the NSW Young Lawyers Animal Law Committee and the Animal Welfare Community Legal Centre. The President of the Australian Law Reform Commission, David Weisbrot AM, summed up animal law when he described it as 'potentially the next great social justice movement'.⁸²

As this movement grows it is increasingly intersecting with traditional areas of law such as

tort, criminal, property, family, administrative and constitutional law. Examples of such intersection include pet custody disputes, criminal proceedings for animal cruelty, veterinary malpractice suits, housing disputes involving 'no pets' policies and constitutional cases involving activists' rights to free speech. As students seeking academic excellence and leadership opportunities, we seek to engage in informed discussion and debate about these issues.

We are hopeful that you will provide students with the opportunity to learn more about animal law by developing an animal law course. The law school and law students – including animal advocates, the philosophical, the curious, the indifferent and the dissenters - would greatly benefit from a thought-provoking forum in which to debate the issues. Former High Court Judge, The Honourable Michael Kirby AC CMG, recently remarked: 'If only the people knew the pain, the unkindness, the cruelty that is done to sentient animals I think they would demand action'.⁸³

We would value the opportunity to learn more about animal law so we can take action. Thank you for your time and for considering this request.

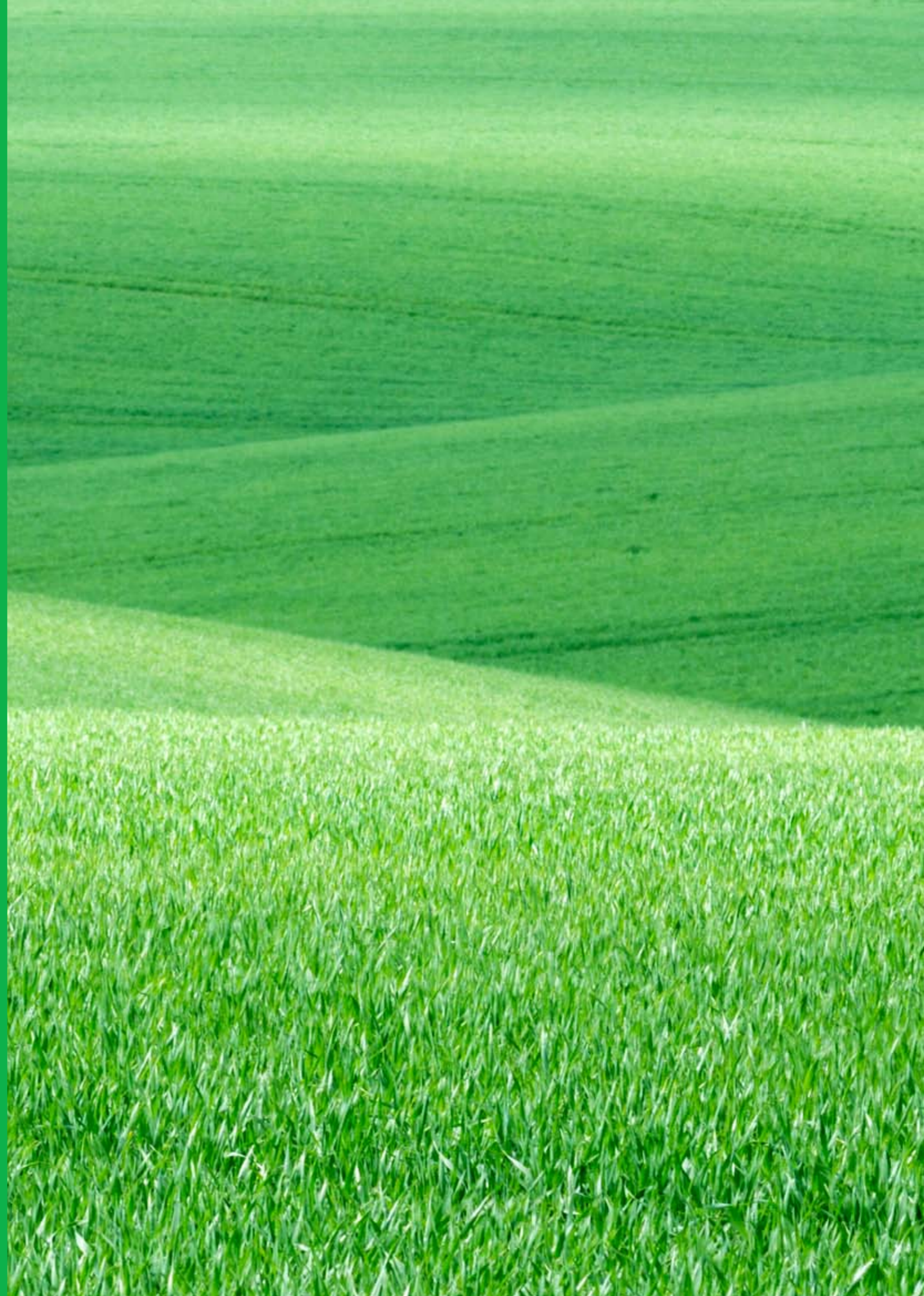
Sincerely,

The Undersigned.

35 “For a long time it was left to two groups to speak up in defence of animals: on the one hand, philosophers; on the other hand, animal welfare people and animal activists. Now, in the last few years, it has been heartening to see a third group enter the fray: lawyers. There has been a blossoming of conferences and symposia on the place of animals in our legal systems, courses on animal rights at law schools, books and articles everywhere. Philosophers are full of ideas, activists full of energy. Lawyers add a third necessary quality. They are astute, good at working out where in practice to apply ideas for maximum effect. Together thinkers, lawyers and activists make a good team.

“Voiceless, through its legal component, has been at the forefront in the struggle to advance animal rights in Australia. The way has not been easy and will perhaps get even more difficult. The animal exploitation industries have huge resources behind them, and have the ear of government. But it is impossible to believe that, in the end, justice and compassion will not triumph.”

This piece was written by Voiceless's patron J. M. Coetzee and spoken by Hugo Weaving at the 2007 Voiceless Awards Event on 3 December 2007.





Other publications produced by Voiceless and available from:

www.voiceless.org.au/publications, include:

- *From Paddocks to Prisons – an analysis of farming practises relating to pigs in New South Wales, Australia (December 2005);*
- *From Label to Liable: Scams, Scandals and Secrecy – lifting the veil of secrecy surrounding animal-derived food product labelling in Australia (May 2007); and*
- *From Nest to Nugget: an exposé of Australia's chicken factories (November 2008).*

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