



Animal law

By John Mancy

The Australian Law Reform Commission journal *Reform* devoted its summer issue (91 2008) to animal welfare and animal rights – perhaps ‘the next great social justice movement’.¹

‘As with other social justice issues,’ ALRC President Professor David Weisbrot wrote, ‘activists are seeking to push the existing boundaries and achieve law reform through a range of strategies, including:

- ◆ lobbying for legislative change;
- ◆ utilising targeted and test case litigation;
- ◆ undertaking community and professional education campaigns; and
- ◆ harnessing the power of consumers in the marketplace’.

Professor Weisbrot suggested some legal strategies that might ‘offer people of good will the ability to act on their consciences’:

- ◆ development of good food labelling laws that address and reward the ethical and humane treatment of animals: ‘A task for law reformers would be to determine how to integrate and balance animal welfare issues with public health concerns and industry economics in the setting and enforcing of food standards’, he wrote.
- ◆ reform to provide greater clarity and protection to consumers seeking to exercise an informed choice’ when, for example, confronted with shelves of ‘factory-produced eggs misleadingly stamped ‘farm fresh’, ‘all natural’, ‘barn raised’ and so on’.
- ◆ ‘Another useful law reform exercise would be to examine the effectiveness of the legislation covering animal welfare and anti-cruelty (which in Australia is a matter for the states and territories) – both in terms of policy and practice,’ Prof. Weisbrot wrote.

For example, s530(1) of the Crimes Act 1900 (NSW) is fairly typical of such laws insofar as it prohibits ‘serious animal cruelty’, an offence committed where a person, ‘with the intention of inflicting severe pain:

- (a) tortures, beats or commits any other serious act of cruelty on an animal, and
- (b) kills or seriously injures or causes prolonged suffering to the animal’.

On its face, this would appear to provide more than adequate protection, especially since the maximum penalty for breach is imprisonment for up to five years. However a major loophole is provided in subsection (2), according to which persons are not criminally responsible if they have acted in accordance with ‘routine agricultural or animal husbandry activities, recognised religious practices, the extermination of pest animals or veterinary practice’, or with legal authority under the Animal Research Act 1985 (NSW).

And, ‘perhaps not surprisingly,’ Professor Weisbrot added, ‘given the size, influence and economic importance of the agriculture and livestock industry in Australia, such practices as factory farming and battery egg production are regarded as ‘routine activities’ for the purposes of the law’.



Following a relatively unheralded amendment late last year, the right to bring a private prosecution under the *Prevention of Cruelty to Animals Act 1979* (NSW) (POCTAA) and its associated Regulations was effectively removed. Prior to the amendment, neither the Act nor the Regulations specified who had the authority to prosecute. So that, by virtue of s14 of the *Criminal Procedure Act 1986* (NSW), a private prosecution was an available avenue for any animal protection law organisations or individuals.

The right to institute proceedings for an offence under s34AA of the amended POCTAA, or the regulations, is now restricted to two charitable organisations, the RSPCA and the NSW Animal Welfare League; the police; the responsible minister; the director-general of the Department of Primary Industries; or a person who has the written consent of the minister or the director-general. The privately funded Animal Liberation (founded in 1976) and Voiceless, the fund for animals, are no longer able to initiate proceedings under POCTAA.

In the United States the discipline of animal law is well established and taught in almost 100 law schools. Three specialist law journals are published. Since 1979, the Animal Legal Defense Fund has fostered the field of animal law among legal professionals and in law schools; worked with law enforcement and prosecutors to seek maximum penalties for animal abusers and continually filed ‘cutting-edge lawsuits to stop the abuse of companion animals, and animals abused in industries including factory farming and the entertainment business’. There about 25 state and national professional bar association sections and committees in the US.

In Australia, the teaching of animal law courses is a far more recent phenomenon. The first course was offered by the University of NSW in 2005. Since then, courses have been offered also at Southern Cross in northern NSW, Griffith University in Brisbane and (this year) at Wollongong University. Courses are scheduled in 2009 for Sydney University, Monash University, Bond University and Flinders University.



The inaugural issue of Australia's first animal law journal, *The Australian Animal Protection Law Journal*, a peer-reviewed biannual, is due out in June.²

The only professional animal law group in NSW is the Young Lawyers Animal Law Committee which last year staged Australia's first Animal Law Conference.

Victoria has a Barristers Animal Welfare Panel. Melbourne-based Lawyers For Animals Inc. is a volunteer-based organisation which 'seeks to strengthen Australia's protection of animals through education and law'. And, in Queensland, there is BLEATS – Brisbane Lawyers Educating and Advocating for Tougher Sentences in animal cruelty cases.

Professor Weisbrot, in the 'Animals' issue of Reform concludes:

Just as we now look back on the past 40 years with some bewilderment – and embarrassment – that we were so slow to recognise the human rights of indigenous people, children, people with a disability, older people and others, it is intriguing to wonder whether our children will look back in 40 years and wonder how we possibly failed for so long to take animal rights seriously.

Endnotes

1. In the view of speakers at the 2006 Australasian Law Reform Agencies Conference who were trying to identify the 'over the horizon issues' that would occupy them in the coming decades.
2. The author of this article is the editor.