



Lawyers for Animals Newsletter: June

LFA News

Closure of the Bureau of Animal Welfare (Vic)

Nichola Donovan, **LFA President**

Sometime during the week of 26-30 June 2014, the Bureau of Animal Welfare in Victoria was structurally dismantled and further subsumed within the Department of the Environment and Primary Industries, under Government direction. There was no Government media release. No mainstream media reporting (that we know of). It disappeared with barely a whisper.

Formerly one of the three 'inspectors' of animal cruelty empowered by the *Prevention of Cruelty to Animals Act 1986* (Vic), along with the RSPCA and the Police; the "BAW" as we knew it, no longer exists. It fulfilled several critical functions:

- Provide administrative and technical support to the Victorian Animal Welfare Advisory Committee (AWAC), Domestic Animals Management Implementation Committee (DAMIC), Wildlife and Small Consultancies Animal Ethics Committee and the Animal Ethics Committee Advisory Committee.
- Resolve issues raised by animal welfare agencies and organisations responsible for animal welfare and management.
- Facilitate the operation of the *Prevention of Cruelty to Animals Act 1986* (Vic), *Prevention of Cruelty to Animals Regulations 2008* (Vic), the *Domestic Animals Act 1994* (Vic), the *Domestic Animals Regulations 2005* (Vic), *Impounding Livestock Act 1994* (Vic) and the *Impounding Livestock Regulations 2008* (Vic).
- Review and develop codes of practice, guidelines and standards for the protection and promotion of good welfare for all animals.
- Provide advice to Municipalities to facilitate their implementation of the above Acts and Regulations.
- Regulate the use of animals in research and teaching.

[Extracted from: <http://www.depi.vic.gov.au/agriculture-and-food/animal-health-and-welfare/animal-welfare/bureau-of-animal-welfare>]

Apparently, the Bureau's staff have now been divided between four teams: the Chief Veterinary Office; Domestic Animals; Prevention of Cruelty to Animals; and the Scientific Division. Former manager of BAW, Dr. Stephen Tate, has been moved to the position of Principal Veterinary Officer Animal Welfare, Biosecurity Division, Department of Environment and Primary Industries. For the time being, he appears to be handling general animal welfare queries.

Lawyers for Animals have attempted to obtain further details about how the functions of the BAW will now be undertaken and under whose authority.

We note the apparent conflict of interest in Primary Industries and/or Environment staff overseeing animal welfare enforcement and reform, especially for farm and non-native wild animals. This conflict of interest certainly existed before the BAW was axed, however, the Office did provide a level of independent thought and advice that will now probably be diluted, if not lost.

Lawyers for Animals have been advised (verbally) that the Victorian Labor Party's policy is to create an Office of Animal Welfare under the Department of Justice, thereby reducing conflict of interest.



Ag-gag laws emerging in Australia?

Nichola Donovan, **LFA President**



Source: The Thomas Jefferson Centre

In *Rural Export & Trading (WA) Pty Ltd v Hahnheuser* [2008] FCAFC 156 (2008) 169 FCR 583, the Full Federal Court overturned an earlier decision by Justice Gray that an animal activist who had fed pigmeat to sheep set to be exported live aboard ship, was an 'environmental activist', and thus protected from being sued under the secondary boycott provisions of the (then) *Trade Practices Act*. The Full Court found that Mr. Hahnheuser was not an 'environmental activist' because [at paragraphs 36-37]:

Domestic animals bred for the production of food, just as crops bred for that purpose, form part of the environment. But, in their ordinary and natural meaning of "environmental protection" as used in s 45DD(3), the prevention of movement of

those animals or crops to a particular new location (being a location which was itself not threatened with harm by the introduction of the animals or crops) could not, realistically be connoted.

Rather, the context in which the artificial introduction of human activity, such as the breeding of plants or animals for food, shows that particular part of the environment has been created for a particular purpose from which it does not need protection. It is not naturally occurring or individually unique (such as, perhaps, an historic building). In any event historic buildings would not be, in the ordinary course, used in the course of exporting goods and services from Australia in a way that could be such as would invoke notions of environmental protection.

Mr. Hahnheuser was eventually ordered by Justice Gray to pay damages of around \$72,000, with each party required to bear their own costs.

Last month, Federal Agriculture (and Animal Welfare) Minister, Barnaby Joyce, reportedly launched a crack down on "... people putting cameras in piggeries, in dairies, coming in at night, stirring up the animals ... using illegally obtained footage then putting it on the internet". [See:

<http://www.smh.com.au/environment/animals/animal-cruelty-activists-targeted-by-tough-new-biosecurity-measures-20140615-zs8jt.html>]

Some commentators have suggested that the *Surveillance Devices Bill 2014* (SA), reintroduced to South Australia's parliament on 5 June 2014, will impede the use of surveillance devices by animal activists on 'public interest' grounds by requiring that a court order be obtained before such a device is used [See eg: <https://www.voiceless.org.au/content/animal-law-spotlight-sa-bill-acts-%E2%80%99Cag-gag%E2%80%99D>]

In LFA's view, such a requirement to obtain a Court Order before using a surveillance device 'in the public interest' is not apparent within the Bill. However, if the Bill passes, it will be an offence for animal activists to use surveillance devices unless they do so in the public interest, and some cases may well come to Court to test the 'public interest' defence, in contemplation of counter-claims of biosecurity interests, for instance. It will also be an offence to publish material unlawfully obtained.

Perhaps more concerning is the Proposed Framework for a NSW Biosecurity Act [see: <http://www.dpi.nsw.gov.au/biosecurity/legislative-review>], on which some animal organisations have made informative and constructive submissions [see eg: <http://www.lawsociety.com.au/cs/groups/public/documents/internetyounglawyers/877307.pdf>].

Other developments

Australia set to resume live export to Iran after 40 years



Source: Xinhua/Landov/Barcroft Media

The ABC and The Guardian have recently reported that according to Agriculture Minister, Barnaby Joyce, Australia and Iran have agreed on "health protocols" that will pave the way for the export of Australian animals to Iran.

According to the ABC, exporters can now seek to have feedlot and abattoir facilities in Iran approved under Australia's Exporter Supply Chain Assurance System (ESCAS) rules. Once ESCAS-compliant supply chains are in place, exports can begin.

See the following link for further details:

<http://www.abc.net.au/news/2014-05-28/iran-australia-livex-agreement/5484528>.

Events

Animal law seminar in Brisbane – 10 July

BLEATS (Brisbane Lawyers Educating and Advocating for Tougher Sentences) is running an animal law seminar in Brisbane on 10 July 2014 from 6 – 7pm.

The program will include:

- Background on BLEATS
- Benefits of BLEATS to RSPCA
- Practical aspects of animal law advocacy for Barristers

PROGRAM	
Chair:	Graeme Page QC, Patron and President, BLEATS
Presenters:	Annabel Buchanan, Chief Inspector, RSPCA Qld Michael Byrne QC, Fullagar Chambers Mark Townend, CEO, BLEATS and panel
Venue:	Gibbs Room, Bar Association of Queensland, Ground Floor, Inns of Court, 107 North Quay, Brisbane

The Regulation and Ethics of Zoos

By Mila Dragicevic, LFA Volunteer



The assumption that animals are without rights and the illusion that our treatment of them has no moral significance is a positively outrageous example of Western crudity and barbarity. Universal compassion is the only guarantee of morality.

Arthur Schopenhauer, *The Basis of Morality*

Zoos should be completely abolished. The benefits of animal captivity often referred to in defence of zoos, including research and conservation, are insufficient to compensate for the mental and physical detriments that creatures suffer whilst captive. Zoos do not have the capacity to replicate the true landscape and habitat that wild animals come from, and this contributes to the detriments suffered. Further, the environmental enrichment activities implemented by zoos in an effort to replicate animals' normal living conditions are insufficient. As long as animals are kept in captivity, they will continue to suffer many mental and physical health issues. Consequently, zoos should be outlawed, as these feeling and breathing beings are suffering. There is also the issue of morality. Just as humans cannot be held captive (apart from a criminal basis), it only seems just that animals who feel as humans do, should have the right to live freely in the wild. Currently though, it does not appear that abolition of zoos is on the government agenda. This being the case, zoos must be more tightly regulated in the meantime, providing for more stringent standards of care, and harsher penalties for the harm of animals in captivity. Australian laws and codes barely provide protection to animals or animals in captivity. The law must keep in touch with social norms and standards, by providing animals with the benefits of protection from harm.

Law and Regulation

The Commonwealth provides for minimal protection of animals in captivity. Zoos are mainly regulated by the States and Territories. However, the Australian

Consumer Law, as controlled by the Commonwealth, has defined animals as 'objects'¹. This reflects a long tradition of common law designation of animals as personal property. This definition of animals is a cause for concern amongst animal activists, as it assumes that animals are not living and feeling beings. Consequently, certain treatment of animals, which would be considered immoral, is acceptable under the law whose role it is to keep up with moral and ethical beliefs. An amendment of the definition of animals under the law would be an extremely powerful mechanism to initiate significant reviews of the legality of animals in captivity. Regrettably, until such amendments are made, animals will remain voiceless creatures, incapable of living a life of freedom.

Each State and Territory has implemented legislation for the management of animals in captivity. In Victoria, the *Zoological Parks and Gardens Act*² establishes the Zoological Parks and Gardens Board of Victoria and provides for the management and administration of zoos. The Board is responsible for governing the Melbourne Zoo, Healesville Sanctuary and Werribee Open Range Zoo, and to encourage the role of the parks in the conservation and research of animals, and the education of society. Further, the *Wildlife Act*³ plays an important role in regulating the use of wildlife and zoos in the State, and establishing the authority of certain individuals to obtain the right to use wildlife for the purposes of exhibition, including acquisition of a licence. The Act imposes sanctions on those who unlawfully take or harm wildlife, including penalty units and terms of imprisonment. Lastly, the Code of Practice for the Public Display of Exhibition Animals⁴ has been implemented by the Bureau of Animal Welfare, and provides guidelines that zoos should follow in maintaining the health and welfare of animals. Whilst this code provides guidelines on the minimum standards of care for animals in captivity, non-compliance with the Code will not, in itself, constitute a breach of the law. Rather, compliance with the Code provides a full defence against potential prosecution for 'cruelty' under the *Prevention of Cruelty to Animals Act 1986* (Vic). Whilst certain Codes of Practice for the care of animals in Victoria now take the form of mandatory Regulations, the Code of Practice for the Public Display of Exhibition Animals is not yet one of them.

It is clear that blatant animal abusers in zoos can be prosecuted⁵. However, the fact that animals are being allowed to be held in captivity at all, with the known detrimental effects that such imprisonment causes is concerning. According to Jamieson in "Against Zoos", zoos are generally warranted as they provide for research, conservation, education and entertainment.⁶ However, it seems that the detriments of zoo-keeping far outweigh the benefits of it, particularly as animals' mental and physical wellbeing is being jeopardised. Animals are clearly living, breathing and feeling beings. One of the most basic human rights is that of liberty. It is concerning that the law does not extend this protection to those who cannot speak or petition for themselves.

Liberty

It is clear from scientific studies that animals feel just as humans do. Consequently, the concept of caging an animal in an unnatural habitat is inconceivably oppressive. These extraordinary creatures are living, breathing beings, and feel the same pain, isolation and sadness as humans do. The concept of caging innocent creatures in zoos is synonymous with the concept of sending an innocent human being to prison. Whilst the intention to conserve, breed and care for the animals may be good in some circumstances, the concept of zoos are unethical as voiceless creatures are being held captive against their will, with no hope of escape. As noted previously, animals are treated as inanimate objects, and are defined as 'goods' in the Australian Consumer Law⁷. Consequently, animals are not afforded the right to liberty under the law, nor are they regarded as living beings. Whilst the law protects animals from suffering to a limited extent, it does not prevent their enclosure, and this is inadequate as the creatures suffer irrespective of this. Peter Singer, an Australian philosopher noted that:

if a being suffers there can be no moral justification for refusing to take that suffering into consideration...The principle of equality requires that its suffering be counted equally with the like suffering of any other being.⁸

Singer's statement refers to the fact that whilst animals will not be on a complete equal ground to humans (they will never be able to vote, provide evidence in court, and so on), their rights must be improved, so as to afford them the same fundamental right of liberty and freedom from harm. In order for an animal's right to liberty to be recognised by law, their recognition by the law of property must be amended. It is the role of the law to keep in touch with changing social, moral and international standards, and this amendment is far overdue. On the contrary, the law also provides that animals must not be victims of unreasonable suffering and torture, and this is protected to an extent by section 9(1) of the *Prevention of Cruelty to Animals Act*, which also provides penalties for causing such harm.⁹ This provides for ambiguity in the law. Only living beings can suffer pain and must be protected from this, and yet the consumer and property law regard animals as objects, which do not ordinarily feel or suffer pain. If animals cannot be abused under the law, then the legislation must change so as to recognise them as living beings.

Environmental Enrichment

A study by Universities Federation for Animal Welfare 2003 estimated that 85 million animals worldwide, being held captive in zoos, farms and laboratories, displayed some form of abnormal behaviour.¹⁰ In order to prevent the development of these behaviours, an animal's environment must be enriched.¹¹ This includes physical, social, feeding and conditioning enrichment. This can be difficult for zoos to achieve due to the high expenses of such husbandry.¹² In

terms of physical enrichment, the area of captivity should be increased, so as to imitate their natural environment. Many zoos cage animals in confines which are too small to nurture their development.¹³ These confined living arrangements contribute to a large percentage of abnormal behaviours in animals.

Cramped living conditions are of a particular concern for elephants and other large animals who live in spaces which do not allow them to roam and travel, a natural and inborn practice. Social enrichment includes increasing the group size of animals, and encouraging the development of long term bonds.¹⁴ Social and physical enrichment, or lack thereof, share a strong link with the development of mental illness and stress behaviours. As mentioned previously, the Code of Practice for the Public Display of Exhibition Animals provides recommendations for the minimum care and health standards of animals in captivity. They include guidelines as to the size of enclosures, and the keeping of mammals in a social group. However, this is insufficient as zoos are not required to implement these guidelines.¹⁵ The law does little to regulate how animals are cared for in captivity.

Animal Wellbeing

Several studies have illustrated overwhelming evidence of animals exhibiting abnormal and stress behaviours, in comparison to their wild counterparts.¹⁶ A study of Chimpanzees living in zoos from the University of Kent found that these creatures display abnormal behaviours including 'repetitive rocking, drinking of urine, or self-mutilation', and these behaviours are not replicated by wild Chimps.¹⁷ Further, it appears that these behaviours are merely symptoms of an unrevealed psychological illness.¹⁸ The study found a strong link between these abnormal behaviours, and maternal separation and social deprivation.¹⁹

Another study has established that many elephants suffer from post-traumatic stress disorder, when they are taken from the wild and placed in captivity.²⁰ Most often this disorder is caused by the trauma of being separated from their mother and families from a young age.²¹ Further, the elephants are often separated from each other when captured in groups and taken to different zoos, and cannot retain any bonds which are crucial to maintaining their mental wellbeing.²² This in turn leads to social isolation. The elephants also face severe stress from being moved to an environment which is not their own, which is enclosed and restricted. This trauma that elephants must endure has a major impact on the development of their brains.²³ In 2012, a young Asian elephant in the Sydney Taronga Zoo seriously injured a trainer, due to the anxiety she was suffering.²⁴ This provides a clear illustration of the abnormal behaviours that develop amongst usually gentle and intelligent animals that are not living within their natural habitat. The stress that animals suffer in zoos also correlates with physical disease.

In terms of physical health, stress particularly reduces reproductive success and the lifespan of animals, similar to the response of humans suffering from

prolonged stress.²⁵ A study of elephants found that in terms of impaired reproduction, this also impacts upon the baby elephants, as they are often born with a low birth weight.²⁶ Consequently, a cycle of health issues develops, and is passed on to each generation. The same study also found that stress can cause premature death, as it causes oral and gastric ulcers, fungal infections, skin boils and Herpes sores, and infectious diseases caught through colds and influenza.²⁷ Whilst this study was conducted on elephants, it was concluded that these ailments are suffered by animals of all species in captivity. These diseases can also be amplified by poor diet and exercise. Animals living in the wild must hunt for their own food and learn to survive on their own. Consequently, it is important that feeding enrichment activities are implemented by zoos, such as hiding food. The Code of Practice for the Public Display of Animals does provide that food should be scattered around the enclosure, so as to promote normal hunting methods. However, the size of the enclosures do not replicate that of the animals' natural habitat. In comparison to their natural habitat, the food does not take nearly as long to find, leading to the development of obesity, and an array of diseases caused by it.²⁸ Elephants in the wild spend up to sixteen hours per day feeding, and they must consequently spend much of their time walking and searching for food and water.²⁹ Further, as mentioned previously, the Code merely provides for recommended minimum standards, and implementation is not mandatory. Whilst enrichment activities can be implemented by zoos, these practices will never be sufficient to equate to living conditions in the wild.

Research, Conservation and Education

There are also issues in relation to scientific research. Jamieson noted that most zoos do not conduct scientific research.³⁰ Of those that do, scientists often study wild animals rather than those in the zoo. Research that is conducted on animals in zoos can be divided into studies of behaviour and anatomy.³¹ Behavioural research is extremely controversial. Whilst observations can be made, it is difficult to determine the natural behaviour of animals who are not living in their natural habitat. Further, if animals have developed mental and physical illness due to their captivity, the task of researching and understanding an animal's normal behaviour becomes nearly impossible. Research is also conducted for a general understanding and knowledge of animals.³² Whilst it is important for people to have knowledge about animals, in order to understand and respect them, it is immoral to keep them in captivity in order to provide this education. This further defeats the purpose of building up respect and an appreciation of animals, as humans merely view them as an object, as the law does, that has no rights or feelings. Whilst several claims have been made that zoos 'inspire people',³³ during Diesking's literature review, it was found that 'no systematic research has been conducted on the impact of visits to zoos and aquariums on visitors' conservation, knowledge, awareness, effect or behaviour'.³⁴ Most people that visit zoos do not leave wanting to make a change to

their lifestyle, such as limiting animal products in their diet, or volunteering in wildlife conservation. Individuals could learn more by watching animal documentaries of creatures living in their natural habitat, or reading books and researching. Merely watching animals walk around confined spaces in a state of stress will not teach humans about the true nature and beauty of these creatures.

Most supporters of creatures being held in captivity argue that animals face many dangers living in the wild, such as lack of food and water and poaching. Whilst this is true, if animals are to be considered beings, like humans, they must be free to live their lives naturally and in their own environment. Animals live, die and face hardships as humans do. Evidence of their abnormal and stress behaviours in captivity indicate a desire to live freely and in their habitat, rather than knowing where their next meal will be coming from. Just as humans are taught by their parents to take care of themselves, this same process occurs in the animal kingdom. What happens from that point on is called life, and all beings must be free to experience it. In the words of Mokokoma Mokhonoana, 'the zoo kills the 'wild' in wild animal', and that is a tragedy.

¹ *Competition and Consumer Act* 2010 (Cth), Sch 2 s2: "goods" are defined to include, among other things, "animals, including fish".

² *Zoological Parks and Gardens Act* 1995 (Vic).

³ *Wildlife Act* 1975 (Vic).

⁴ *Code of Practice for the Public Display of Exhibited Animals*, 2001.

⁵ *Prevention of Cruelty to Animals Act* 1986 (Vic), s9(1).

⁶ Jamieson, D 2006, 'Against Zoos', in P Singer, *In Defense of Animals*, Blackwell Publishing, United Kingdom.

⁷ Above n 2.

⁸ Singer, P, "The Animal Liberation Movement" (Old Hammond Press, 1985).

⁹ Above n 6.

¹⁰ Universities Federation for Animal Welfare, 'Science in the Service of Animal Welfare', Universities Federation for Animal Welfare, < <http://www.ufaw.org.uk/pdf/annualreport-2003.pdf> >.

¹¹ Tribe, A, "Zoos and Animal Welfare", (nd), University of Queensland <<http://www.australiananimalwelfare.com.au/app/webroot/files/upload/files/Zoos%20and%20animal%20welfare.pdf>>.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Above n 4.

¹⁶ Birkett, L, Newton-Fisher, N, "How Abnormal Is the Behavior of Captive, Zoo-Living Chimpanzees?" (June 16, 2011), University of Kent <<http://eds.a.ebscohost.com.ezproxy-m.deakin.edu.au/eds/pdfviewer/pdfviewer?vid=3&sid=ad0ea141-0e53-4d7e-94c0-c67799848293@sessionmgr4004&hid=4210>>.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Bradshaw, G, Linder, L, "Post-Traumatic Stress and Elephants in Captivity", (nd), The Elephant Sanctuary.

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Walkden-Brown, J 2013, ‘*Animals and Entertainment*’, in P Sankoff, S White, C Black (2nd ed.), *Animal Law in Australia*, The Federation Press, Sydney, pp. 129-150.

²⁵ Mason, G, Veasey, J, “*How Should the Psychological Well-Being of Zoo Elephants be Objectively Investigated*” *Zoo Biology*, vol. 29, pp. 237-255.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Posta, B, Huber, R, Moore, D, “*The Effects of Housing on Zoo Elephant Behavior: A Quantitative Case Study of Diurnal and Seasonal Variation*”, *International Journal of Comparative Psychology*, vol. 26, pp. 37-52.

²⁹ Ibid.

³⁰ Above n 6.

³¹ Ibid.

³² Ibid.

³³ Hancocks, D 2007, “*The Future and Ethics of Zoos*”, Abstract presented at the Museums Australia National Conference.

³⁴ Diesking L D, K Burtnyk, J H Falk, (2006) ‘*Visitor learning in zoos and aquariums*’, Institute for Learning, Annapolis, Md.

Lawyers for Animals



REG NO A0047100G
ABN 74 557 651 569