

Animal Law 101

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Clayton Utz

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Structure of today's presentation

1. Intro to the philosophy of animal rights & its parallels with human rights
2. Outline of Australian/Victorian animal law
3. Legal standing and international examples
4. Rural animal laws (2 examples)
 - (a) farm animals
 - (b) wild animals
5. Q&A discussion

Disclaimer & recommendation to seek legal advice

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1. Common ground between the human and animal rights movements



Racism = the prejudice that some humans practise toward other humans based on their differing physical appearance and culture; deliberately ignoring physiological and emotional similarities

Common ground between the human and animal rights movements



Sexism = the prejudice that some humans practise toward other humans based on their gender; deliberately ignoring physiological and emotional similarities

Common ground between the human and animal rights movements



Photo courtesy of Animals Australia
www.animalsaustralia.org

speciesism = the prejudice that most humans practise toward other animals based on their differing physical characteristics and behaviour; deliberately ignoring their physiological and emotional similarities (eg. the common capacity to feel)

Philosophy of the animal rights movement



Jeremy Bentham (1748-1832)

“... a full-grown horse or dog, is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day or a week or even a month, old. But suppose the case were otherwise, what would it avail? the question is not, Can they reason?, nor Can they talk? but, Can they suffer?”

Introduction to the Principles of Morals and Legislation (1789)

The 'property' parallel to human rights

Just as slaves, women and children once were; animals are still regarded as 'property' under Australian common law, having no (recognised) legal rights.

Human legal guardianship of animals – as for legally incompetent humans – seems a logical next step. In 2007 an attempt was made via Courts in Austria to obtain legal guardianship of a chimpanzee. This case has been appealed to the European Court of Human Rights.

[See: <http://www.vgt.at/publikationen/texte/artikel/20080118Hiasl.htm>]

The basic rights of animals

The Five Freedoms:

Freedom from Hunger and Thirst

Freedom from Discomfort

Freedom from Pain, Injury or Disease

Freedom to Express Normal Behaviour

Freedom from Fear and Distress

2. Outline of Australian animal law

Division of powers under Australian Constitution:

- animals not mentioned, so mainly within 'residual powers' of the States – **but** Australian Animal Welfare Strategy (AAWS) is now centralising power by consent
- environment power gives C'th power to regulate native animals and non-native animals impacting it.
- trade power gives C'th power to regulate import/export of animals (can clash with State cruelty laws – eg. R v Emanuel Exports, 8 Feb 2008, Perth MC)
- health power gives C'th power to regulate use of animals in medical research

A sample of animal laws applicable in Victoria

Australian Meat and Livestock Industry Act 1997 (C'th)

Catchment and Land Protection Act 1994 (Vic)

Dairy Act 2000 (Vic)

Domestic Animal Management Act (Vic)

Domestic (Feral and Nuisance) Animals Act 1994 (Vic)

Export Control Act 1982 (C'th)

Flora and Fauna Guarantee Act 1988 (Vic)

Fisheries Act 1995 (Vic)

Food Act 1984 (Vic)

Impounding of Livestock Act 1994

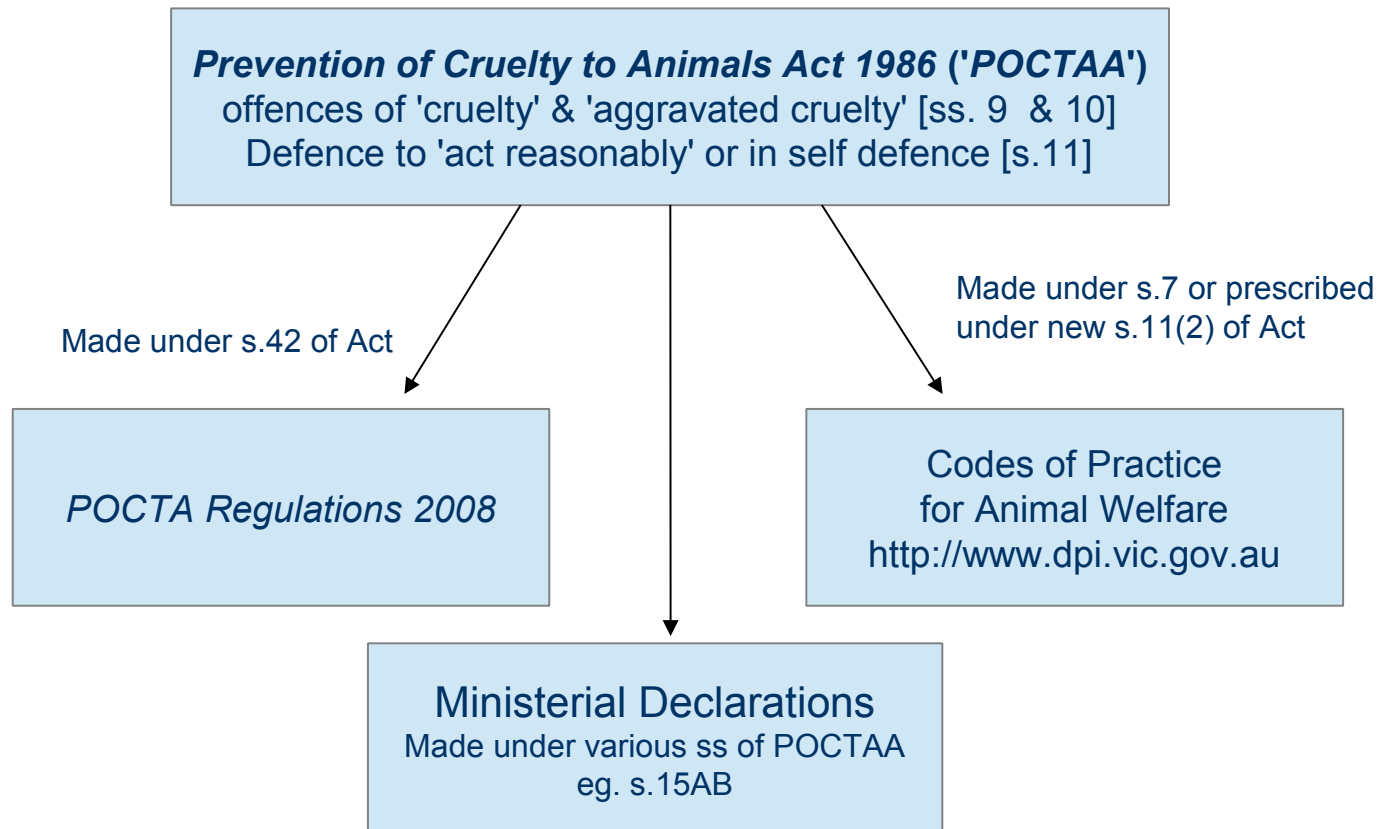
Livestock Management Act 2010 (Vic)

Meat Industry Act 1993 (Vic)

Prevention of Cruelty to Animals Act 1986 (Vic) ('**POCTAA**')

Victoria Racing Club Act 2006 (Vic)

Sample layering of Victorian animal laws



3. Legal standing in animal cases

Since animals cannot represent themselves in Court, the legal standing of any plaintiff claiming to act on behalf of an animal is essential if the animal's rights are to be enforced/honoured.

The current tests of 'special interest/more than a mere intellectual or emotional concern' for standing were articulated in ACF v Commonwealth [1980] and Onus v Alcoa [1981]. Since successfully invoked by two environment groups [North Coast Environmental Council v Minister for Resources (1994 Fed Ct); and Environment East Gippsland v VicForests (2010 Vic SC); but unsuccessfully by an animal group [Animal Liberation v Dept of Environment and Conservation (2007 NSW SC)].
Awaiting a strong animal test case...

Legal standing and international cases

In the US, some endangered animals are granted standing by environmental legislation [eg. Palila v Hawaii IV]. US Courts claim that animal rights are also granted by welfare legislation i.e. through enforcement of cruelty provisions against perpetrators [Cetacean Community v Bush]. But are such laws really designed to protect animals or merely to protect human sentiments and aspirations? Their inconsistent application (eg. to companion, not farm animals) suggests they only exist where human interests are the primary objective.

Recent internationally significant animal law cases

In Tilikum v Seaworld [USA 2012], PETA sought protection for 'enslaved' orcas under the Constitution (13th Amendment – anti-slavery); but Court found the Constitution and Amendment apply only to humans because 'slavery' (supposedly) relates only to humans, so no Court jurisdiction to decide case and no standing for PETA.

On 2 December 2013, the Non-Human Rights Project filed three writs of habeas corpus in New York State on behalf of four chimpanzees whom they claim are being illegally detained. All three cases were quickly refused. They were appealed in January 2014. If they are again refused, the Non-Human Rights Project plans to appeal them to the New York Court of Appeals. The key issue: whether the chimpanzees are legal persons at law.

4(a) Farm animal law



The Orwellian-named Australian Animal Welfare Strategy (AAWS) is a C'th initiative to prepare Australian Animal Welfare (Livestock Management) Standards and Guidelines for farm animals.

These are intended to be implemented consistently across all States & Territories. In Victoria they are/will be prescribed as Regulations under s.63 of the *Livestock Management Act 2010 (Vic)*

AAWS changes in 2014

AAWS drafting was overseen by its Advisory Committee including welfare groups, vets and (mainly) industry representatives. In Nov 2013 the new Federal Minister for Agriculture (and Animal Welfare!), Barnaby Joyce, announced that funding for this body would be cut, with the Dept of Agriculture taking over.

While the Advisory Committee was far from 'progressive' – being stacked with industry reps – it did offer some degree of consultation/engagement to animal welfare groups, resulting in small improvements to revised Codes; but at what cost?

Sample exemptions from animal cruelty prosecution under POCTAA:

Torture/mistreatment of farm and domestic animals, provided this occurs in accordance with a Code of Practice or (for farm animals only) an Australian Standard [POCTAA s.6(1)(b) & (c)]

It is a full defence to an offence under POCTAA if the person was carrying out a regulated livestock management activity and acting in compliance with a prescribed livestock management standard [*Livestock Management Act 2010* (Vic) s.4(3)]

More exemptions from animal cruelty prosecution



Slaughter of animals under the *Meat Industry Act 1993* (Vic) – including when conscious (without pre-stunning) – or on-farm 'humanely' for personal consumption [POCTAA s.6(1)(a)&(f)]

Photo courtesy of Animals Australia

www.animalsaustralia.org

Democratic oversight lacking – conflict of interest concerns

Section 1 of POCTAA states:

The purpose of this Act is to—

- (a) prevent cruelty to animals; and
- (b) to encourage the considerate treatment of animals;
and
- (c) to improve the level of community awareness about
the prevention of cruelty to animals.

Failure by Scrutiny of Acts and Regulations Committee

'The Scrutiny Committee **may** report to each House of the Parliament if the Scrutiny Committee considers that any statutory rule laid before Parliament— ...

(c) appears to be inconsistent with the general objectives of the authorising Act...' [*Subordinate Legislation Act 1994*, s.21(1)]

SARC may recommend disallowance (in whole or in part) or amendment. There does not appear to have been any such recommendation concerning the Pig Welfare Standards and Guidelines (Regulations under LM Act), despite continuance of sow stalls

How many more years of this?



Photo courtesy of animalsaustralia.org.au

More exemptions from animal cruelty prosecution:

Any treatment, provided it is for the purpose of promoting an animal's health or welfare, by or in accordance with the instructions of a veterinary practitioner [s.6(1)(e)]

POCTA Regulations do not apply to any act or practice with respect to the farming, transport, sale or killing of any farm animal if that act or practice is carried out in accordance with a Code of Practice [s.42(3) of POCTA Act]

4(b) Wild animal laws

From a practical legal perspective, there are three classes of wild animals in Australia:

(A) native, endangered animals – eg. some wombats; Tassie devils; spotted quolls; orange-bellied parrots etc...

(X) native, less endangered animals perceived to compete with human financial or other interests – eg. dingoes; kangaroos; koalas; cockatoos; flying foxes; ducks etc...

(Z) non-native animals – eg. feral dogs; feral cats; foxes; rabbits; feral goats; feral deer; brumbies; birds etc...

Wild animals laws

Class A are protected under State and C'th conservation laws. They are generally not allowed to be directly killed and their habitat is better preserved from human development (though still far from perfect)

Wild animal laws



Class X are nominally protected under State and C'th conservation laws (only a few States for dingoes), requiring a permit to kill them. In reality, permits are rarely refused; culls of dubious necessity are routine and destruction of habitat continuous. Kangaroos killed in Victoria cannot be used for commercial purposes, unlike other States.

Wild animal laws

Group Z are not protected by either State or Federal laws – even cruelty provisions are unlikely to be enforced in relation to their destruction. Efforts to control and eradicate them are well-funded, but not if they involve non-violent, non-lethal or laborious means, such as fertility control or cage-trap and euthanase programs.

In its 'bait and bounty' approach, the Victorian Government openly blurs the definition of 'wild-dog', including all hybrid-dingoes, no matter whether they look and behave as pure and fulfil the vital environmental role of native apex predator, suppressing meso-predators (foxes and feral cats).

More exemptions from animal cruelty prosecution:

Poisoning (baiting) provided this occurs under the:

- *Catchment and Land Protection Act 1994*
- *Wildlife Act 1975*
- *Drugs, Poisons and Controlled Substances Act 1981*
[POCTAA s.9(1)(j)]

All fishing activities authorised by and conducted in accordance with the *Fisheries Act 1995*

Anything done in accordance with the Catchment and Land Protection Act 1994

Dingo conservation overridden – begging legal challenge?

DEPI (Vic)'s website currently states:

“In Victoria, the Dingo (*Canis lupus dingo*) is a threatened species that has been listed as ‘Threatened’ under the Flora and Fauna Guarantee Act 1988 and as a result is protected under the Wildlife Act 1975.

Dingoes often occur in areas inhabited by wild dogs, appear morphologically similar to wild dogs and are extremely difficult to differentiate from wild dogs. This means that wild dog control programs have the potential to directly impact on Dingoes.

To allow for the protection and conservation of Dingoes in remote areas, as well as provide for the legal control of wild dogs, Dingoes have been declared unprotected under the Wildlife Act

1975 (except when kept in captivity) on: all private land in Victoria; [and substantial areas of] public land [including leaseholds]

Q & A



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