



Photo courtesy of Animals Australia - www.animalsaustralia.org

I wish to acknowledge the traditional custodians of this land: the Wurundjeri people of the Kulin nation, who lived here in relative harmony with the ecosystem for tens of thousands of years.

To begin, I'd like to outline why Lawyers for animals happily accepted the invitation to participate in this event, despite the fact that our organisation is not prescriptively vegan. Lawyers for Animals welcomes among our members lawyers and non-lawyers – anyone who shares our interest in better protecting animals under law. We welcome vegans, vegetarians, meat-eaters and all manner of people in between. One of our aims is to broaden people's awareness of animal suffering and how to reduce it, and we consider this World Vegan Day event a great chance to do so. We also really appreciate the opportunity to speak to those of you who have already taken significant steps not to harm animals, about how you can increase your positive impact on the world. I am hopeful that following this talk, those of you who are not already working to end the suffering of animals, may choose to do so.

To illustrate my points, I will be using pictures that depict animals in Australia in disturbing, but legal situations, and quoting from Codes of Practice. For your benefit (as well as mine), I have deliberately avoided using more shocking images and descriptions of 'illegal' animal cruelty. Those images and descriptions can be traumatising and potentially distracting from the fact that much of what we consider horribly cruel, remains lawful in Australia. However, children may find the content of the second part of my talk disturbing, and parents are advised to exercise discretion – especially with children under the age of 16.

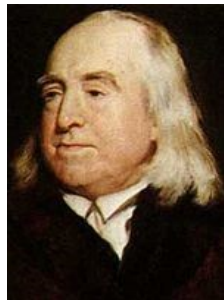
I will divide my talk into 3 parts.

1. First, I will speak about the underlying philosophy of the animal rights movement which appears to have gained momentum in recent years. I'll examine 'anti-speciesism', and the potential analogies that may be drawn between this movement and major human rights movements. I'll refer to a couple of cases, by way of illustration.
2. Second, I'll outline the basic structure of animal law in Australia, with specific reference to the Orwellian-named 'Codes of Practice for Animal Welfare'.
3. Third, to conclude, I'll offer some suggestions to those of you who have an urge to act in response to the information I have presented in this talk.

For those of you who are interested, a written copy of this talk should soon be available on

the Lawyers for Animals website: lawyersforanimals.org.au

Okay...I believe it will be useful to begin by examining the philosophical underpinning of the animal rights movement: so that you can better understand where we come from.



"... 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?"
Jeremy Bentham (1748-1832) - Introduction to the Principles of Morals and Legislation (1789)

Around 1789, in the context of the anti-slavery (or Abolition) debate in Britain; a utilitarian philosopher named Jeremy Bentham argued that it is the capacity to suffer, rather than the capacity to reason, which determines how all living creatures should be treated. These were truly words of wisdom. However, unfortunately, for the animals (whose cause Bentham championed) it has taken almost 200 years for the animal rights movement to emerge, and it will likely take several decades more, before this movement achieves its goals. Strong analogies may already be drawn between the comparatively new animal rights movement, and other social justice movements during the last 250 years, in particular: abolition; feminism; children's rights and disability rights. Although different, each of these movements shared a starting point when (not so long ago) the oppressed subject – be they slave, woman, child or disabled person – was considered to be the 'property' of another. For this reason, they were denied basic rights, much like today, when animals are considered the 'property' of people or the State, and denied their basic rights.

Here is a term some of you may not be familiar with: 'Speciesism'. It was coined by the British psychologist, Richard Ryder, in 1973. It gained greater prominence when Professor Peter Singer expounded on it in his 1975 book: 'Animal Liberation'. Speciesism may be defined as the prejudice that humans practise toward other animals, based on their differing physical characteristics; which ignores their physiological, intellectual and emotional similarities.

We can compare the definition of Speciesism to its siblings: Sexism and Racism.



Sexism and Racism are closely related to Speciesism because they all express prejudice without rational foundation, but while Sexism and Racism express prejudice against a

gender or ethnic group, based on their physical attributes, Speciesism expresses that prejudice against all non-human species, also based on their physical attributes. Speciesism, Racism and Sexism all feed on our fear of that which is different to us, which may be instinctive, but which is easily overcome.

Unfortunately, Speciesism still thrives in our world. There are people in all cultures who continue to deny what is obvious from simple observation: that animals feel; that they express emotions; that they think, they love, they experience pleasure, they feel hurt, they fear and they suffer. Sadly, speciesism causes people to ignore the psychological similarities between humans and other animals, rather than to acknowledge the similarities. Just like Sexism and Racism, Speciesism is a state of mind – or a paradigm – that guides people in the decisions they make in life, and guides Governments in the laws they make.

Professor Singer's ground-breaking theory that most of the world's human population is afflicted by 'speciesism' does not imply that should equate human intelligence with animal intelligence, but then again, not all humans are equally intelligent. A perfect example of Speciesism is the way that society dictates we should treat an intellectually disabled person, with say, a level of mental functioning around that of an average sheep. Based on their species, we consider it unthinkable to treat an intellectually disabled person in the same way that our society treats sheep. We feel morally compelled to grant such disabled people basic rights. Why? Perhaps because we realise that in our ability to experience pain, fear, sadness, and pleasure, all humans are equal. So why not extrapolate this morality to animals? As Ingrid Newkirk of the animal rights group PETA puts it: "In their capacity to feel fear, pain, hunger, and thirst, a pig is a dog is a bear is a boy". It is both philosophically and morally inconsistent not to give the same basic rights to animal species who experience pain, fear, sadness and pleasure in a similar way. In the same way that we are gradually overcoming Racism and Sexism, we can choose to subvert the Speciesist paradigm, and create a more just world.

Based largely on this premise, the 'Five Freedoms' for were developed. They are a list of basic animal rights generally thought to be attributable to all 'conscious' animals – such as mammals, fish, birds, reptiles and perhaps even honey bees. Let me list them for you:

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

It seems that the philosophical divide between animal rights and animal welfare largely lies in how these freedoms are interpreted. For instance, the RSPCA and others at the 'welfare' end of the animal rights spectrum, think that The Five Freedoms exclude the right to life, whereas most others in the animal rights movement view the right to life of all conscious animals as fundamental. There is also some difference of opinion over 'where to draw the line' between animals that are 'conscious' - and therefore require the protection of The Five Freedoms - and those that are not. Despite these differences, the spectrum of animal rights groups that form the animal rights movement are substantially united in their opposition to speciesism – choosing, instead, to subscribe to a theory of justice where 'like' is treated as 'like'.

In order to have practical value, the rights of animals (for eg. The Five Freedoms) must be enshrined in law, or at least, be acknowledged by the Courts. The history of human rights teaches us that Parliaments are slow to act, and that test cases in Common Law Courts can spur the recognition of new legal rights by Legislatures, if only by highlighting particularly unjust outcomes.

Take, for instance, the 1857 case of slave, Dred Scott v Sandford. In that case, the United States Supreme Court held that no African American was entitled to the rights of American citizenship, whether they be a slave or free, and that all African Americans were (and I quote):

'[b]eings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior that they had no rights which the white man was bound to respect.'

This appalling outcome proved a catalyst for the America's Abolition movement, with slavery finally being abolished in the USA some 8 years later, following 4 years of Civil War.

Of course, courts also serve a very important purpose in enforcing the law, which can mean giving practical effect to rights granted under legislation, which might otherwise be ignored by law enforcement officers such as the police or the RSPCA Inspectorate.

So how can we improve the situation for animals? Personally, I believe animal guardianship is the answer. Just as intellectually disabled people, who would otherwise be judged 'incompetent' to represent themselves in Court or make legal decisions, can have legal guardians appointed to represent or make decisions for them; so too, animals need legal guardians. If common law – that is, law which is made by the Courts - is to contribute to the adequate recognition of animal rights, just as it has to the development and enforcement of human rights, then I would argue: animals need their day in Court.

A recent legal test case in Austria, provides an example of an unsuccessful effort to seek the protection of common law for animals, through the avenue of guardianship. Despite its lack of success, this case is worthy of consideration.



Information and photo courtesy of Verein Gegen Tierfabriken - www.vgt.at

In February 2007, Dr. Martin Balluch of the Austrian 'Association Against Animal Factories' (VGT) applied for a guardianship order in relation to Matthew 'Hiasl' Pan.

Hiasl, then a 26 year-old chimpanzee, had been abducted from his home in the jungles of Sierra Leone in 1982 and brought to Austria for the purposes of medical research, from which he was (fortunately) spared. In January 2007, the sanctuary where Hiasl was living declared bankruptcy. A private benefactor donated about 5000 euro to Hiasl and to Dr.

Balluch (as his co-beneficiary) on the proviso that they **both** decide how this money be spent. Since Hiasl is not legally competent to make that decision, a legal guardian was sought to be appointed to do this on Hiasl's behalf.

Hiasl's status as a chimpanzee was not disclosed in the original guardianship application, but some 50 pages of expert evidence attesting to the 'legal personhood' of Hiasl (and all other chimpanzees) was subsequently filed in support. This included reports by eminent scientists who believe that chimpanzees and humans are so closely related, that they ought be classified within the same 'genus'. Since February 2007, there have been a series of unreported Austrian court rulings and appeals dealing with the question of this Chimpanzee's status. I understand that this case is currently being appealed to the European Court of Justice, partly on the grounds that the Austrian Courts denied Hiasl a fair trial. This case helps to illustrate the possibilities of animal guardianship.

On a more positive note for the future of legal guardianship for animals, since 1992 in Zurich, Switzerland, there has been a State-sponsored Legal Guardian for animals, who intervenes in cases where animal welfare is an issue, and effectively represents the interests of the animals, concerned.

Back in Australia, The Victorian Greens recently adopted a new Animals policy which includes among its goals: 'The recognition that animals have legal rights that can be protected by human guardians.'

I believe they are the first political party in Australia to adopt this goal.

Having considered the underpinning of the animal rights movement, and where it may be heading; I now move on to the second part of my talk, in which I'll attempt to explain the basic structure of animal law in Australia with specific reference to the most misleadingly named 'Codes of Practice for Animal Welfare'.

Currently, in Australian law, animals are effectively regarded as 'property' – that is, things that are owned, whether by individuals, corporations or the Crown. The animals, themselves, have no inherent rights at law. However, following the historical path of protections given to slaves; women; children; the disabled and the mentally ill – all of whom, as I earlier noted, were once regarded as 'property' – animals are now at the stage of being accorded special protections in law, which prohibit people from mistreating them in certain ways. These prohibitions are generally enshrined in State and Territory '*Animal Welfare*' or '*Prevention of Cruelty to Animals*' Acts (and *Regulations*), which I'll call 'POCTAAs', for short.

You may be familiar with the POCTAAs and their laws against 'cruelty' and 'aggravated cruelty'. What you might not know is that the POCTAAs protect only small number of Australian animals from relatively few cruel acts. The vast majority of Australia's animals, being farm animals, are effectively excluded from the prohibitions under the POCTAAs. For instance, in Victoria:

Section 6, Sub-section (1) of the *Prevention of Cruelty to Animals Act 1986* (Vic) states that the Act does not apply to:

“Any act or practice with respect to the farming, transport, sale or killing of any farm animal which is carried out in accordance with a Code of Practice” nor does it apply to **“... the keeping, treatment, handling, transportation, sale, killing, hunting, shooting, catching, trapping, netting, marking, care, use,**

husbandry or management of any animal or class of animals ... which is carried out in accordance with a Code of Practice”.

A Code of Practice is a policy document endorsed by a Minister, which is not subject to any democratic vote within Parliament, unless an MP calls for a vote on whether the policy should be disallowed or scapped. By following the particular instructions within a Code of Practice, farmers who would otherwise be committing cruelty offences under the POCTAAs, are given full protection against prosecution. This legal amnesty is more or less mirrored in the POCTAAs of other States and Territories, as are the numerous Codes of Practice.

So the question of which animals are covered by Codes of Practice becomes important. In most States and Territories, there are Codes of Practice covering the following: amphibians; caged birds; cats; cattle; deer; dogs; foxes; gamebirds; goats; horses; pigs, poultry, sheep and rabbits – whether they be captive or wild – as well as captive emus and reptiles. There are also Federal Codes of Practice for 'the care and use of animals for scientific purposes' and 'for the humane shooting of Kangaroos'.

Even more important than the question of which animals are covered by Codes of Practice, is the question 'what standards are required by those Codes?' – or to put it more bluntly: what level of cruelty is permitted under law? I've assembled a small sample of such 'lawful cruelties' for your consideration.



Photos courtesy of Animals Australia - www.animalsaustralia.org

First let's look at Bobby Calves: not many people realise it, but dairy is a meat industry. Milking cows are kept pregnant in order to stimulate high milk production and bobby calves are their surplus young – mostly male but some female. These calves are forcibly separated from their mothers within 12-24 hours of their birth. They are almost entirely unwanted by farmers, who suffer financial loss by having to feed them during their first few days of life. But most farmers are squeamish about killing the calves (on farm) at birth. So instead, the calves are sold cheaply, sometimes to become veal for human consumption, but more usually for immediate slaughter and processing into pet food. According to the RSPCA, around 600,000 bobby calves will be slaughtered this year in Victoria, alone. [http://www.rspcavic.org/campaigns_news/campaigns_bobby_calves.htm]

- Under the applicable Code of Practice calves presented for sale must be at least 4 days old and over 23 kg liveweight
- Under the applicable Code of Practice bobby calves 'should [not must] be fed at least once every 24 hours' and '[t]he time interval from farm to abattoir should [not must] ensure slaughter at an abattoir by the next day'. That means calves may be transported for up to about 36 hours. Can you imagine the condition of 4-6 day old calf that have been trucked for (at least) 24 hours without a drink - especially in hot weather?

Now let's examine the fate of chickens, and broiler chickens, in particular. Broiler chickens are meat chickens and about 96% of all broiler chickens produced in Australia are factory farmed, so only about 4% are free-range. Factory farmed chickens are often advertised as 'free to roam' and 'hormone free' – but don't be fooled: they are not free-range.

- The minimum space allowance for meat (broiler) chickens is 1 square metre per 40kgs of birds. With an average adult chicken weighing 2kgs by the time it is ready to be taken to slaughter, only around 22 x 23cm of space is given to each adult bird (that's less than the size of an A4 page).
- 40,000-60,000 birds are grown in an average shed – so how can the individual welfare of each bird be assured? The answer is, it isn't. Around 2% of these chickens die in the sheds, from a multitude of injuries and illnesses. Dead and dying birds can be cannibalised by other birds.

Now, for a few home truths regarding Kangaroos. In 2007 alone more than 2.98 million kangaroos were shot and killed for commercial purposes. 70% (or more) of these were female. When female kangaroos are shot, they often have 2 young in the pouch (one small and hairless) and another at foot. Joeys remain dependent on their mothers for survival for between 18 months and about 3 years. If the shooter does not kill them too, these dependent joeys will die of starvation, exposure, dehydration or predation. So shooting a mother kangaroo, will often result in the deaths of 2 or 3 dependant joeys.

- According to the 2008 National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Commercial Purposes: furred pouch young must be killed by a '[s]ingle forceful blow to the base of the skull sufficient to destroy the functional capacity of the brain', or, if they fit within the palm of the hand, they may be killed by '[s]tunning, immediately followed by decapitation by rapidly severing the head from the body with a sharp blade.'

Despite its jurisdictional confinement to limited areas of animal law, in recent times, the Federal Government has been co-ordinating what they call the 'harmonisation' of animal laws and policies between States and Territories, through their artfully named 'Australian Animal Welfare Strategy'. When I first discovered that this initiative was (for the most part) applying a 'lowest common denominator' approach to homogenising the Codes of Practice, I couldn't help recalling Sir Humphrey Appleby's pearl of wisdom in 'Yes, Minister': "Always dispose of the difficult bit in the title – it does less harm there than in the text."

In essence, the 'Australian Animal Welfare Strategy' consists of efforts to establish 'Model Codes of Practice for Animal Welfare' for unanimous endorsement by all States and Territories, to replace the existing Codes of Practice that currently vary slightly from State to State. While it would be unfair not to admit that some progress has been made in some areas of animal law, the signs are that 'welfare' is being eagerly sacrificed on the altar of legal consistency - the new Model Code of Practice for the Welfare of Pigs, being a prime example.

To conclude my presentation, I'd like to present you with a few options, should you choose to become part of the solution in relation to Australian animal welfare. You may choose to have a direct impact on both animal welfare and the environment through your dietary choices: by choosing 'free-range' eggs and meat; or by either reducing or eliminating your consumption of meat and dairy. Ask any vegetarian or vegan: it's not hard to make a difference you can feel good about.

You might choose to empower yourself through direct or indirect political action;

whether by joining a group, writing letters and submissions, public speaking or just giving financial support to a group that does these things. Like us, they probably really need it!

For those who are already doing what you can to help animals, I want to thank you, and thanks to all of you for giving me your attention, today. The aim of my talk was to generate your interest in the field of animal rights, provide you with an overview of Australian Animal Law, and maybe, just maybe, to inspire you to act.

Thank you

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