



Précis Paper

Animal Law and Strategic Litigation

A discussion of how to use strategic litigation in cases of animal welfare, with case examples.

Discussion Includes

- The Animal Law Institute
- Strategic litigation for animals
- Puppy Farms: Nala's case
- Alternate strategies
- Implications for rescue societies and charities
- Other areas of law that can be used to protect animals
- Disadvantages of strategic litigation cases for animals
- What's next for the Animal Law Institute?

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Animal Law and Strategic Litigation

1. In this edition of BenchTV, Giulia Prosperi-Porta (Vice Chair, NSW Young Lawyers Animal Law Committee) and Amanda Richman (Senior Lawyer, Animal Law Institute) discuss ways of using strategic litigation in cases of animal welfare.

The Animal Law Institute

2. The Animal Law Institute is a non-profit community legal centre that is dedicated to protecting animals and advocating for their interests through the Australian Legal System.

Strategic litigation for animals

3. Many things that are ostensibly cruel to animals are perfectly legal.
4. For example, battery cages are indefensible when you look at the animal welfare science, and are hugely out of step with community expectations.
5. To date, animal agriculture industries have been able to write their own laws and ignore the science and community expectations.
6. The productivity commission's 2017 report into the regulation of agriculture in Australia raised these very same issues and called for the establishment of an independent office of animal welfare.
7. The enforcement of NSW animal cruelty laws is largely left up to the RSPCA, which is a charity which in part relies on donations from the public.
8. The combination of these issues mean that Australian animal welfare laws are falling behind comparable jurisdictions.

Puppy Farms: Nala's case

9. A young couple decided to buy a dog together after they saw an advertisement online. They went to the seller's house and chose a puppy which they named Nala. Within a few days of bringing her home, Nala was very sick and she was diagnosed with having a very severe worm infestation. Nala now has life long health problems.
10. In Australia there is a problem with what is colloquially known as 'puppy farms', which are intensive dog breeding facilities. The dogs are bred in objectively horrible conditions.
11. Puppy farms are ubiquitous.

12. Breeders may use a suburban home as a front so as not to reveal the appalling breeding conditions.
13. The RSPCA in the various states has done great work in finding and investigating some of the worst puppy farms in Australia, rescuing the animals and prosecuting the people involved.
14. The problem is that the puppy farms are so prevalent and difficult to find, that the RSPCA does not have the resources to find and stop them all.

Alternate strategies

15. The Animal Law Institute is seeking to challenge the business model of intensive breeders to create a disincentive to cutting corners in animals breeding.
16. They are seeking to do this by trying to establish a precedent that when breeders or pet shops sell unwell dogs to an unsuspecting consumer, they are liable for veterinary fees that are incurred by the consumer in subsequently treating the dog's condition.
17. They rely on two principles in the Australian Consumer Law. (1) You cannot, in trade or commerce, engage in misleading or deceptive conduct.
18. (2) When consumers buy certain goods, they come with a guarantee that those goods are of an acceptable quality.
19. Strategic litigation is about using the law as it currently is to achieve social change.
20. The Animal Law Institute argues that (1) dogs are goods under the Australian Consumer Law (2) when a dog with certain medical conditions is sold to an unsuspecting consumer, the dog is not of acceptable quality and (3) even though animals are property under the law, the law should recognise that they are a special type of property, and that it is reasonably foreseeable that owners will spend more than the purchase price to 'repair' that property.

The Commissioner for Consumer Protection v Armstrong - [2012] WASC 206

21. In this case the consumer purchased from a breeder a dog that, unknown to her, had parvo virus. Treatment for the virus is rarely effective, but the purchaser elected to have the dog treated and spent over \$1000. Unfortunately, the treatment failed and the dog passed away.
22. The Commissioner took the breeder to court for breach of an undertaking, as the breeder had previously given an undertaking that she would not sell dogs to consumers unless they had been checked for and vaccinated against parvo virus. The Court ruled that there had been a breach, but it also ruled that the breeder had to compensate the consumer for the costs of the veterinary treatment.

23. Although this case relies on an enforceable undertaking rather than guarantees, the Animal Law Institute believes that it demonstrates in principle that if a consumer unknowingly purchases a sick pet and spends money on treatment, that expenditure is reasonably foreseeable loss for which the consumer is entitled to be compensated.

Implications for rescue societies and charities

24. If you are buying an animal from a rescue organisation, you know that the rescue organisation might not have the full medical history of that animal.
25. What a reasonable consumer might consider an acceptable quality when buying an animal from a breeder or a pet shop might be quite different to what they expect when buying from a rescue organisation.
26. However medical issues that are known at the point of sale but are not disclosed, or are symptomatic at the point of sale and not disclosed, could in theory be the basis on which a consumer could bring an action against a rescue organisation.

Other areas of law that can be used to protect animals

27. Administrative law is important. In a context where there is reason to be concerned over industry influence over decision makers, going to court can be a great way to get an impartial, non-politicised assessment.
28. Other areas of law include Evidence law, particularly around questions of the admissibility of undercover footage of animal cruelty.
29. Constitutional law: the implied constitutional right of freedom of political communication could potentially be used to challenge laws that seek to stifle the activities of animal activists.
30. Human rights law: there is an organisation in the USA – the Non-Human Rights Project – which is seeking to establish legal personhood for certain animals using the writ of habeas corpus.

Disadvantages of strategic litigation cases for animals

31. Strategic litigation is resource intensive, there is the risk of an adverse costs order, and there is the risk you could lose, which would legitimise and reinforce a negative law or practice, potentially setting your cause back decades.
32. The main disadvantage is that wins in the court room can be so easily undermined in Parliament.
33. Strategic litigation works as part of a broader campaign for change, that includes public awareness, political pressure and commercial pressure.

What's next for the Animal Law Institute?

34. The Animal Law Institute would like to try run some puppy cases in other tribunals, such as NCAT in NSW.
35. Cases in tribunals don't establish precedent.
36. Ultimately they are aiming to run a case in Court. The difficulty is that tribunals have jurisdiction in these sorts of consumer matters. There are a few ways to get a case into the court. For instance, a tribunal decision could be appealed, but that is not as good as a first instance jurisdiction.
37. A case could be run that involves a claim over \$40,000, which is above the limit of NCAT's jurisdiction - however, that might hit the upper limit of what is reasonably foreseeable loss, so it would be high risk.
38. The case of *Burns v Corbett* [2018] HCA 15 found that state tribunals like NCAT do not have jurisdiction where the matter involves individuals that are residents of different states.
39. If there was a matter where, for example, a seller in Victoria sold a puppy to someone in NSW, it would be out of the tribunal's jurisdiction and in the Federal Court.

BIOGRAPHY

Giulia Prosperi-Porta

Vice-Chair, NSW Young Lawyers Animal Law Committee, Sydney

Giulia was admitted as a lawyer in the Supreme Court of New South Wales in 2018, and currently works in the public sector. She is Vice-Chair of the New South Wales Young Lawyers Animal Law Committee, which aims to educate the legal profession and wider community about the importance of defending animals from abuse and neglect through the law. Previous to studying law, Giulia worked as a journalist for about six years at regional newspapers in South Australia and Victoria.

Amanda Richman

Senior Lawyer, Animal Law Institute, Sydney

Amanda is a volunteer senior lawyer with the Animal Law Institute. She is also an ethics analyst at Australian Ethical Investment. She was a senior associate at Allens in the competition and consumer law team, and Chair of the NSW Young Lawyers Animal Law Committee from 2015 to 2017.

BIBLIOGRAPHY

Cases

Burns v Corbett [2018] HCA 15

State of Queensland (Department of Agriculture and Fisheries) v Humane Society

International (Australia) Inc [2019] FCAFC 163

The Commissioner for Consumer Protection v Armstrong - [2012] WASC 206

Legislation

Prevention of Cruelty to Animals Act 1979 No 200 (NSW)

Australian Consumer Law, Schedule 2 of the Competition and Consumer Act 2010 (Cth)