



# Précis Paper

## Principles of Animal Welfare Law

A discussion of the principles of Animal Welfare Law, its history, and areas that require reform.

### Discussion Includes

- What is Animal Welfare Law?
- What is considered 'humane'?
- History of Animal Welfare Law
- Structure and core elements of animal welfare legislation
- How does the law define 'cruelty'?
- Animals in commercial settings
- Deficiencies in current Australian animal welfare law
- What reforms are necessary?

# Précis Paper

## Principles of Animal Welfare Law

1. In this edition of BenchTV, Jed Goodfellow (Senior Policy Officer, RSPCA Australia) and Giulia Prosperi-Porta (Vice-Chair, NSW Young Lawyers Animal Law Committee) discuss the principles of Animal Welfare Law, its history, and the areas that require reform.

### What is Animal Welfare Law?

2. Animal Welfare Law concerns the regulation of our conduct towards animals. It seeks to codify what society deems to be acceptable and unacceptable treatment of animals in general recognition of the fact that animals are sentient and that their interests are morally relevant.
3. While Animal Welfare Law seeks to protect the welfare interests of animals, it doesn't go further than that.
4. It doesn't protect the life of animals, meaning an owner can lawfully end the life of their animal 'property' at any time they wish, so long as it is done humanely.
5. Animal Welfare Law may regulate the manner in which an animal is killed, but does not prohibit the actual killing of the animal.
6. Animals are still property under the law.
7. Animal Welfare Law doesn't prohibit causing pain and suffering to animals, only pain and suffering that is deemed to be 'unnecessary' in the circumstances.

### What is considered 'humane'?

8. If an animal is killed in a way that causes it a prolonged death, causing severe pain and suffering, that is likely to be an offence.
9. Each state and territory has its own legislation covering animal welfare.
10. The legislation does not recognise the animal's interest in continued existence.
11. There is environmental legislation that may protect animals, but that is for the purpose of environmental protection and conservation, usually focusing on the species as a whole rather than the individual animal.

### History of Animal Welfare Law

12. Animal Welfare laws have been around for several centuries. The first were enacted in Ireland and the American state of Massachusetts, in the 17th Century. However these were only obscure single provisions proscribing certain acts of animal cruelty.
13. The first Animal Welfare Act was passed in England in 1822. This was at a time of discernible animal cruelty, including the rising popularity of certain bloodsports and the poor treatment of horses used for transport.
14. This first Act – the *Act to Prevent the Cruel and Improper Treatment of Cattle* – regulated the treatment of livestock.

### Structure and core elements of animal welfare legislation

15. Animal Welfare is primarily a state-based responsibility, but each state and territory legislation does largely the same thing.
16. The legislation establishes certain duties of people who have care, custody and control of animals, which they owe to those animals, such as appropriate food and water, appropriate veterinary treatment, appropriate shelter and living conditions, and appropriate exercise.
17. The legislation prohibits certain forms of animal cruelty, listing specific acts that constitute animal cruelty together with a general catchall provision of animal cruelty.
18. Animal cruelty is defined by the legislation as causing an animal unnecessary or unjustifiable pain and suffering.
19. The legislation establishes enforcement provisions, such as the appointment of inspectors; powers for entry; powers for search and seizure of evidence and animals, and directions to owners about the ongoing care of their animals.
20. Legislation outlines procedural provisions around initiating legal proceedings and prosecutions under the Act, and powers for courts to impose certain orders on defendants found guilty of animal cruelty and neglect.
21. It also provides for the powers and conditions upon the creation of regulations and other subordinate legislation.

### How does the law define 'cruelty'?

22. Different people will have different opinions on what constitutes animal cruelty. Some cases will be clear cut, such as hurting animals for sadistic purposes, while others will be less determinative, such as painful procedures performed for some kind economic gain.
23. Early animal welfare legislation provided little guidance to the courts on what was meant by the term animal cruelty. The seminal case of *Ford v. Wiley* (1889) 23 QBD 203 (UK) was one of the first cases to consider this point. It involved a cattle producer who was dehorning his

cattle in a particularly painful way by sawing through the horns close to the skull. This particular producer was prosecuted for animal cruelty. The defendant argued that by dehorning his cattle in this way, he was able to fit more into his sale yards, gaining a greater economic return, and that because of this reason, the procedure could not be said to amount to animal cruelty within the meaning of the Act. In determining whether the procedure amounted to animal cruelty, the Court applied a proportionality analysis.

24. This analysis first examined the legitimacy of the purpose for the harm-causing practice, then looked at the means used to achieve that purpose. Crucially, when looking at the means used, considerations of the degree and duration of the pain and suffering were relevant to the analysis.
25. Hawkins J outlined the proportionality analysis in a succinct way:

*'...the beneficial or useful end sought to be attained must be reasonably proportionate to the extent of the suffering caused, and in no case can substantial suffering be inflicted, unless necessity for its infliction can reasonably be said to exist.'*

26. The Court also took into account the evidence that other cattle producers were not dehorning in this particular way and were instead employing the less painful practice of tipping the ends of the horns. The Court held that even though the producer was carrying out the procedure for an economic purpose, which is generally seen to be a legitimate use of one's animal property, the degree of pain and suffering caused in this instance was disproportionate to the economic benefit sought to be attained, and therefore the practice amounted to animal cruelty.
27. This methodology is still applied today in many common law jurisdictions. It provides a more consistent basis and objective standard on which to assess certain conduct alleged to be cruel, while still providing for flexibility in its application.

#### Animals in commercial and agricultural settings

28. The application of the proportionality test is restricted in the case of farmed animals and other animals in commercial settings, because of the operation of various defences and exemptions that are built into Australian animal welfare Acts.
29. In the 1980s, due to growing concern around certain agricultural practices and the growth of the animal rights movements, the livestock industries decided to develop industry based codes of practice for animal welfare that would essentially act as a shield to this growing concern and increasing scrutiny.

30. Under today's animal welfare framework, if a person complies with an industry code of practice or a standard and guideline that is adopted under the Act, they cannot be charged with either an animal cruelty offence or a breach of duty established under the Act.
31. For instance, hens in a battery cage cannot express normal behaviours, so if it was not for the exemptions this practice could be challenged, either for causing unnecessary harm or under the duty provisions which require a person to allow an animal under their control to exercise or express normal behaviours.
32. Similar exemptions may also apply to animals that are hunted, used in racing industries, and those used in scientific research.
33. This creates a kind of two-tiered system whereby animals kept in a domestic companion context are afforded relatively strong welfare protections, while those used in commercial and industrial settings are afforded relatively few protections, despite the fact that the animals in each scenario may be equally sentient.

#### Deficiencies in current Australian animal welfare law

34. There is no consistent principle running through Australia's animal welfare legislative framework.
35. This is reflected in a level of incoherence between the principal animal welfare Acts and the subordinate legislation created under those Acts, which permit practices that contradict the general duties and prohibitions outlined in the principal Act.
36. Australia delegates the responsibility for administering, developing and enforcing animal welfare standards and law to agricultural institutions such as ministers for agriculture and departments of agriculture.
37. These institutions generally prioritise the basic biological functioning, physical health, and productivity of the animal over the animal's affective state or mental wellbeing. Under this framework, so long as the animal is physically healthy and producing, the animal is deemed to be in a good state of welfare by the institutions who are in control. For instance, a hen inside a battery cage is deemed to be in an acceptable state of welfare because she continues to lay an egg every day.
38. These arrangements contribute to creating a greater gap between community expectations around animal welfare, and what the law actually permits, particularly in commercial environments.
39. The Productivity Commission recommended the establishment of an independent Australian commission for animal welfare to undertake those standard setting and policy development functions.
40. Australia recently received a 'D' ranking in the World Animal Protection Index rating, due, in part, to these deficiencies.

41. This rating highlights the democratic disconnect: while Australia is generally known for being a nation of animal lovers, with high expectations around how animals should be treated this is not being translated into our laws and standards.

What reforms are necessary?

42. Improve the principled consistency and legislative coherence within the animal welfare legislative framework. A good way to do that would be to expressly recognise the sentience of animals in the objects provisions and purpose provisions of the state and territory animal welfare acts, which would help to guide interpreters of the legislation.
43. Tightening the proportionality test. In Australia, there still isn't a lot of guidance on what is 'unnecessary' pain and suffering. Codification of the common law's approach would assist.
44. Placing further conditions on the development of subordinate legislation, including the consideration of scientific knowledge and the expectations of the community would improve the transparency and accountability of the current ad hoc standards development process.
45. Promoting greater independence in our governance arrangements for animal welfare, including the development of independent statutory authorities to administer our animal welfare laws.
46. At a Federal level, the recommendations of the Productivity Commission should be acted upon, with the development of an independent animal welfare commission.

## **BIOGRAPHY**

### Jed Goodfellow

Senior Policy Officer, RSPCA Australia, Canberra

Jed has over 20 years' experience working in the animal welfare sector in various roles including enforcement, prosecutions, advocacy, policy and political liaison. He is currently Senior Policy Officer at RSPCA Australia with a focus on legislative and regulatory issues affecting animal welfare. Jed has a PhD in animal welfare law from Macquarie Law School (2015) and has taught Animal Law at Macquarie on an annual basis since 2012.

### 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. She previously worked as a journalist for six years at regional newspapers in South Australia and Victoria.

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