

RSPCA Australia introduction and background

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The advent of the new millennium provides us with an obvious opportunity to pause and assess the status of animal welfare in Australia, and speculate on what progress may be made in the future. This paper introduces the theme of today's Seminar and outlines two important emerging issues affecting animal welfare in Australia in the years ahead.

The history of animal welfare in Australia is reflected in the development of the RSPCA movement which began, and is still based, at the state and territory level. RSPCA Australia is the federal body of the RSPCA and exists to ensure that it has a national focus, however each state and territory body retains its autonomy. Differences in the function of these member Societies are due partly to differences in legislation between states and territories and partly to underlying demographic, cultural, political, climatic, and geographical differences.

The protection of animals in Australia is provided via the various state and territory Animal Welfare, or Prevention of Cruelty to Animals Acts, and their accompanying regulations. This legislation varies considerably between states and territories in its detail, penalties, and enforcement provisions. In addition there are also some major differences between states and territories in other laws and regulations affecting animals. These are discussed with examples from the areas of companion animals, feral animals, agriculture, and the protection of wildlife.

The second part of this paper discusses how the development of a national approach to animal welfare in Australia is likely to be significantly affected by two emerging issues. These are: the increasing power of supermarkets and consumers as a force in dictating animal welfare standards, and the influence of the World Trade Organisation on national and international standards in animal welfare.

There is increasing consumer demand in Australia for transparency in the food production industry. Consumers expect to be able to make informed choices based on methods of food production such as the use of genetically modified foods, the use of chemicals, and the way in which food animals are reared. Australia has yet to fully realise the force of supermarkets and consumers, however examples from Europe can provide a taste of things to come.

Australia, along with many other nations, has adopted legislation to protect animals from cruelty and unsustainable exploitation. Such legislation often has implications for trade. In many fields it is almost impossible to adopt measures to increase protection for animals that are economically neutral for producers and consumers. As a result, the progress of animal welfare is being seriously threatened by the World Trade Organisation, even when measures to protect animals are motivated by genuine concerns and not to gain domestic trade advantages. Australia should support the development of an international trading system that will allow consumers and policy makers to make product choices on the basis of animal welfare concerns, while ensuring that we, and other countries, can maintain and raise welfare standards without suffering a competitive disadvantage.

Animal welfare legislation for the future - what scope is there for a national approach?

Neil Dwyer, Senior Associate, Corrs Chambers Westgarth, Lawyers

Introduction

This paper raises threshold legal questions requiring consideration by the RSPCA (or similar interests) if it seeks to bring about universal animal welfare legislation throughout Australia. The paper identifies a significant constitutional difficulty at Commonwealth level but suggests a more administratively and politically complex legal option may be available on a State by State basis.

Options

There are two basis paths from which to choose:

- The Commonwealth Parliament enacts legislation providing a basis animal welfare legal framework;
- The six States and two Territories each pass identical animal welfare legislation.

Considerations

There is a basic difficulty in the first option because the Constitution (s. 51) gives the Commonwealth Parliament specific (therefore limited) powers. There is no such thing as an "animal welfare" power. To pursue this option, it would be necessary to enact a law providing for animal welfare but which law could also be characterised as a valid law under an existing head of power. The scope is limited but there may be possibilities under the external affairs power (s. 51(xxix)) if there is an appropriate treaty or under the trade and commerce power (s. 51(i)). There may be other options such as referral of powers by States (s. 51 (xxxvii)) or use of the incidental power (s. 51(xxxix)). In summary, my conclusion is that this option would be legally very difficult to pursue.

The second option is, legally, the potentially simpler one although politically and administratively problematical. If the political will for uniform legislation existed across the nation it would be achievable. There are, however, inherent legal difficulties arising from the fact that each jurisdiction has its own Courts system and there could be no certainty that identical words will be interpreted identically by judges. It may, however, be possible to set up a truly national scheme such as that which supports the Corporations Law. This brings us back to political will.

Though not legal issues, there will be questions such as whether basic definitions and minimum standards of animal welfare will be agreed on by all jurisdictions. There is also a broad policy issue for bodies such as the RSPCA of how extensive the scope of a proposed national approach should be.

Animal welfare policy and legislation in practice: examples from the old and the new

Ian Cowie, Director, Local Government Development, Department of Local Government, Western Australia

Western Australia currently operates under a Prevention of Cruelty to Animals Act which was passed in 1920. As we reach a new millennium, this legislation is in need of significant revision to ensure it reflects today's attitudes and beliefs.

The talk will address a number of specific deficiencies and weaknesses associated with the 1920 legislation, such as the limited number of animal species which are covered by the Act and the limited types of enforcement option available.

It will also identify the process followed in Western Australia to develop a new Animal Welfare Bill to replace the Prevention of Cruelty to Animals Act. This Bill was introduced into the Western Australian Parliament in late 1999. Key proposals within the Bill will be outlined, including a substantial increase in the level of penalties and the broadening of the legislation to cover the use of animals for scientific purposes.

Comparisons will then be made between the RSPCA's model Prevention of Cruelty to Animals Act and the Western Australian Bill. There are a number of differences between the two and the reasons behind the Bill's departure from the model will be explained.

The political process associated with the development of legislation will also be analysed. This process will differ between States and Territories because of different political structures and over time as the composition of the political parties changes.

In Western Australia, the Upper House, called the Legislative Council, is not controlled by a single party or coalition. Instead, minor parties and an independent hold the balance of power. The implications of this situation for the Western Australian Animal Welfare Bill will be considered.

The Welfare of Animals in Agriculture

Malcolm Foster, immediate past President Australian Lot Feeders' Association

The primary role for animals in agriculture is for the production of food and fibre. The demand for animal protein is increasing and this trend will continue as development increases throughout the World. This growing demand for animal protein will come from intensive production systems rather than extensive ones due to factors of efficiency and environmental sustainability.

The concept of animal welfare as a consideration in its own right, unrelated to an animal's productivity or value did not enter into the early management of animals in agriculture. The early radical approaches of some animal liberation groups incensed farmers who already considered they were taking a responsible approach to the animals in their care. This conflict set back the cause of animal welfare groups genuinely interested in improving the welfare of animals in agriculture.

In the early 1980's the Australian Agricultural Council, set up a sub committee on animal welfare whose role was to develop model codes of practice for the welfare of animals in agriculture. Because industry associations had been involved in the formulation of the codes, there was for the first time, a level of ownership and responsibility accepted by them.

The real breakthrough with respect to industry becoming involved in setting and policing animal welfare standards came in the early 1990's with the introduction of quality assurance to agriculture. The feedlot industry was one of the leaders in this field and others are now following including the live export industry. Incorporating appropriate animal welfare considerations as part of quality assurance procedures ensures animal welfare become a part of day to day management. These quality assurance schemes are third party audited to ensure compliance.

The future direction proposed is for a co-regulation model where State and Federal legislation supports these industry quality assurance schemes. The legislative backing supports industry efforts at self regulation and at the same time protects the interests of the community should the industry scheme fail to provide adequate control

Animal welfare standards should be set jointly by industry and animal welfare groups. These standards need to be scientifically based and not coloured by human values and perceptions. These standards should then be incorporated in codes of practice that form the basis of the industry quality assurance schemes. This will effectively place the responsibility for appropriate animal welfare practices, where it belongs, firmly in the hands of individual farmers and the industry organisations that represent them.

Setting and enforcing animal welfare standards for native animal management

Dr Martin Denny, Mount King Ecological Surveys

Too often the management of native animals has involved approaches that result from an 'out of sight, out of mind' mentality. Controlling native (and feral) animal populations when they have been designated as pests can involve measures that may include inhumane elements. Taking the case of macropods (kangaroos and wallabies), there have been numerous measures used over the last 200 years that can only be described as cruel. These include kangaroo and wallaby drives, the use of dogs, battues, poisoning, 'pig-sticking' and deliberate shooting to maim. Although laws prevent many of these measures and the Code of Practice for the Humane Shooting of Kangaroos has set out guidelines for the harvesting industry, there are still instances of inhumane practices accepted under the guise of 'pest management'. Often there is a demonization of a species that can lead to actions that would otherwise be condemned by society. Examples of this approach to animal management will be described and will include the use of poisons such as 1080, the legal culling of wallabies and possums in Tasmania, the use of the Finlayson Trough and the 'shoot and let lie' component of current management programmes.

Incorporating animal welfare concerns into pest (feral) animal control programs

Clyde McGaw, Policy Officer (Pest Animals), Land Protection, Department of Natural Resources, Locked Bag 40, Coorparoo Delivery Centre Qld 4151, email: clyde.mcgaw@dnr.qld.gov.au

In this presentation I will describe how animal welfare has been, is and could be further incorporated in vertebrate pest control activities. I will rely on my Queensland experiences to provide examples on how this might be achieved.

The incorporation of animal welfare concerns into vertebrate pest control programs can and has taken many forms ie legislation, policy, codes/guidelines. I will describe how they can and have already been incorporated into these and discuss how codes or guidelines can be used to provide positive outcomes and recognise the other issues related to vertebrate pest management.

There is general consensus that pests need to be controlled. This consensus is in legislation and policy of both pest control and animal welfare agencies, but these are framed in very broad terms. Complication arises at the practitioner and law enforcer level as this broad and sometimes obscure legislation and policy makes it difficult for these people to go about their business confidently.

It is at the practitioner and law enforcer level that codes or guidelines will provide the greatest benefit.

The management of pests must take into consideration many issues, one of which is animal welfare. The production of codes or guidelines will aid in the decision making process in choosing and using a control method and aid in the consideration of animal welfare relative with the other issues.

A national perspective on protecting the welfare of research animals. Refinements to the system: eight legal frameworks and one Code

Dr Mike Calford, Chair Animal Welfare Committee of the NHMRC (and Division of Psychology, Australian National University)

Legislation associated with animal welfare operates separately in Australia's eight states and territories. However, with regard to animal experimentation the various systems are aligned by adoption of a common code - the Australian code of practice for the care and use of animals for scientific purposes. The mechanism of adoption of this Code varies but it is mostly as a regulation associated with a legislative act. The fundamental principle of the Code is that each institution that undertakes animal-based experimentation is required to set up an ethics committee (AEC) which considers research protocols for pre-approval. An important aspect of the Code is the specification that AECs must consist of at least 1/3 membership combined from the categories of lay-persons and animal-welfarists. Those who have served as animal-welfarist members should be pleased that their input has brought about many demonstrable refinements in experimental techniques and in animal housing. In addition, they should know that their influence on other committee members and on the scientists who submit protocols has brought about a recognition and knowledge of animal welfare issues amongst Australian biomedical researchers which is unequalled in other countries. A byproduct of the system, is that Australian biomedical researchers have direct and frequent contact with animal welfarists. Aside from the formal contact, the informal aspects of this interaction have been quite influential. My own observation (from ethics sessions at international meetings and the like) is that the younger generation (in particular) of Australian biomedical scientists show an understanding of, and a respect for, the views of animal welfarists to a far greater extent than do their American, European or Asian counterparts. It is thus a great pity that this influence and interaction is under threat as some sections of our major animal welfare organisations have withdrawn (or threatened to withdraw) support for their members to sit on AECs. The general view of the NHMRC has been to take the concerns of these organizations very seriously and examine whether there are problems with the Code and AEC system which need to be changed. Our assessment is that the system mostly works exceptionally well. However, instances where it is not working well are difficult to detect and have the potential to damage the overall effectiveness of the system. In only one State is there both a legislative framework and sufficient resources for extensive reviewing of the operation of the Code in institutions. Where detailed reviews are not undertaken the NHMRC favours the introduction of formal 3-yearly reviews. The details of the review proposal will be presented at the meeting.

Development of a National Animal Welfare Strategy

Dean Merrilees (Animal Health Programs and Welfare Branch, National Office of Plant and Animal Health, AFFA)

The aim of this presentation is to outline the reasons for developing a national animal welfare strategy, the aims of such a strategy, the form it will take and the process being followed to develop it.

The presentation will provide an overview of the Australian animal welfare scene, ie community concerns and expectations, the processes for setting animal welfare standards, the processes for dealing with animal welfare problems and the role of bodies such as the National Consultative Committee for Animal Welfare (NCCAW).

The strategy will recognise the fundamental point that animal welfare concerns the humane use and care of animals, it is something everyone should be interested in, it is not the preserve of those who oppose the eating of meat or have particular agendas.

Australia is seen to have contemporary and comprehensive animal welfare legislation and standards and good mechanisms to involve industry, animal welfare bodies and governments in improving that legislation and those standards. Australia, however, has not done well in communicating these facts domestically and overseas.

NCCAW has strongly endorsed the development of a national animal welfare strategy to address market access and trade issues and to address the need for:

- animal welfare standards to be evidence and scientific based
- international benchmarking of animal welfare outcomes
- better communication of Australian animal welfare initiatives and policies.

Anticipated benefits of a national strategy include:

- efficient and effective use of resources
- the process of developing a strategy will itself improve communication, awareness and broad ownership
- facilitation of international debate and negotiation
- integration of animal welfare standards and industry QA initiatives
- avoid discrimination against Australian products.

Development of the strategy is being coordinated by the National Office of Animal and Plant Health and will involve extensive consultation with community groups, industry and a wide range of government bodies. The aim is to complete the development process in time for submission of a strategic plan, an 8 to 10 page document, for endorsement at the August 2000 meeting of the Agriculture and Resource Management Council of Australia and New Zealand.