



April 2006

## **ANIMAL LAW SUBJECT PROPOSAL**

### **Background**

Until recently, Animal Law has been overlooked by Australian law schools in determining their curricula. It is not, however, a 'novel' concept. In the United States sixty law schools teach Animal Law, including Harvard. In that jurisdiction Animal Law is not only a highly developed area of jurisprudence (e.g. a google search on 'animal law' returns approximately 116,000,000 hits; there is a dedicated Institute of Animal Law, Animal Law journals and specialist Animal Law firms) – but it also has a great deal of *practical* significance.

By way of example of the practical significance of Animal Law, and how Animal Law can be utilised by lawyers, consider the work undertaken by the US organization, the Animal Legal Defence Fund ('ALDF'). This was established in 1979 and has more than 100,000 dedicated lawyer members who apply their skills in a number of ways in order to protect the lives and advance the interests of animals through the legal system. For instance, the 'Litigation Program' files cutting-edge lawsuits to stop the abuse of companion animals, and animals abused in industries including factory farming and the entertainment business; while the 'Criminal Justice Program' works with law enforcement and prosecutors to seek maximum penalties for animal abusers. ALDF has also been at the forefront of law reform in respect of stronger enforcement of anti-cruelty laws and more humane treatment of animals.

In addition to the above work, those with skills and knowledge in the area of Animal Law could also apply it to work in other specific areas of law, e.g. Property Law, Administrative Law, Constitutional Law, Tort Law, Intellectual Property, Biotechnology, Contracts and Wills.

Finally, Animal Law has an important role to play in generating law reform. Over the last few decades there has been a dramatic increase in our understanding of animal intelligence and behaviour and a broad acceptance that animals are sentient beings that have a right to live free of suffering. This has led to the recognition that the existing legal system has failed to provide animals with access to justice. Lawyers are uniquely equipped to understand how the law operates in these regards and therefore they can play a vital role in overcoming any such barriers and in devising appropriate law reform strategies.

## **Animal Law in Australia**

Animal Law has tremendous potential to become a highly important area of jurisprudence in Australia, just as Environmental Law has increasing relevance. Hundreds of millions of animals live in Australia, while the extent of the problems they face in co-existing with humans is well documented. In order to improve the status quo for animals in Australia, lawyers have a role to play in undertaking careful scrutiny of the regulatory regimes governing them, and ensuring that those regimes are both bona fide responses to the public interest in animal welfare and that they are adequate in terms of ensuring animal welfare.

Animal Law was taught for the first time in Australia in 2005 at the University of NSW, where Geoffrey Bloom runs a Masters Course. Geoff has indicated that there has been substantial interest in this course, and that he would be interested in discussing Animal Law with anyone in Victoria who is interested in running a similar course.

Following a proposal by Lawyers for Animals, Paula Gerber will be teaching Animal Rights Law as an undergraduate course at Monash University for the first time in 2007.

## **What's involved in an Animal Law course?**

Animal Law could be taught at both a postgraduate and undergraduate level. In general terms the course could cover the regulation of animal welfare and / or animal use in Australia; and the various views associated with the animal rights movement and those of the primary production industries and how these have shaped the status quo.

Particular aspects of the law could be contextualised by focusing on current issues, such live export, reviews of Codes of Practice and the debate that surrounds these issues. Particular legal issues, such as the conflict between the *Prevention of Cruelty to Animals Act* (Vic) and the NHMRC *Code of practise for the care and use of animals for scientific purposes* could also form the basis of discussion around the ethics of animal use, their status as property under the law and how the law could or should be reformed.

The course could encourage (and indeed would be likely to generate) a variety of views from people on either end of the 'animal rights' v 'animals uses' spectrum. However, the aim should be to foster and facilitate general discourse about animal rights and the human/animal relationship; rather than simply providing a 'platform' for one particular view. In other words, students with a particular interest in, say, the agriculture industry, should be able to approach the subject in the same way that they can approach, for example, Environmental Law, that is, with a view to simply improving their understanding of that area of law. This is not to say that the course should not critically assess where the law is inadequate in providing welfare protection to animals and how it might be reformed in that regard.

## **Suggested course outline**

Note that there are many possible ways of constructing this course. The following is but one example of a possible course structure and it has been provided simply to demonstrate the breadth and depth of the legal issues that could be considered. Each component could take more than one class, depending on the availability of resources and the designated length of the course.

## **PART ONE – OVERVIEW**

### **Week 1: Status of animals under the law**

This could focus particularly on Steven M. Wise's discussion in *Rattling the Cage: Toward Legal Rights for Animals*, Perseus Press, 2000, on the history of animals as property and how various social and religious factors have contributed to their status today as 'things' with no apparent legal standing.

Comparison could be drawn here with the development of human rights jurisprudence, particularly in relation to those who historically have had no legal standing or who have been viewed as property under the law (women, slaves, children). Readings could include cases which considered the standing of slaves, i.e:

- *Somerset v Stewart*, 20 Howell's State Trials 1 (K.B. 1772). In this case Lord Mansfield, Chief Justice of the King's Bench withdrew support to slavery from the common law by freeing slave James Somerset through a writ of *habeas corpus* brought on his behalf by his lawyer; or in contrast
- *Dred Scott v Sandford*, 60, U.S. (19 How) 393, 403 (1856). In this case Chief Justice Taney of the United States Supreme Court wrote that negroes were beings of such an inferior order that they had 'no rights which white man was bound to respect' and they could, therefore, be 'lawfully reduced to slavery', 'bought and sold, and treated as an ordinary article of merchandise or traffic, whenever a profit could be made of it' (much like animal chattels).

What scope is there under the law to provide animals with legal standing or an equivalent outcome? Can any comparison be drawn with the way guardianship legislation operates?

### **Week 2: Animal welfare in Australia today**

This could follow on from the previous discussion, and examine how the States and Territories have developed *Prevention of Cruelty to Animals Acts* ('PROCTA') and how these operate.

In particular, this would introduce students to the concept of Codes of Practice and the inconsistencies in the animal welfare regime in Australia. I.e. Compliance with a Codes of Practice is a defence to acts or omissions which could otherwise be prosecuted under the PROCTA. A particular focus of this discussion could be whether the Codes are *ultra vires* (this is an issue lawyers in each of the States and Territories are currently looking at on behalf of Animals Australia).

This part of the course could also look at current developments in animal welfare in Australia, such as the National Animal Welfare Strategy, an initiative of the Primary Industries Ministerial Council, which involves designating 'standards' for different types of animal use. What informs these standards and how will they be applied?

### **Week 3: International standards**

What protection or regulation, if any, is offered through international instruments? How do these affect the operation of our domestic laws, and which animals are covered? What is the relevance of the World Organisation for Animal Health?

Students could consider the utility of instruments such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora [1976] ATS 29 and Convention on Wetlands of International Importance especially as Waterfowl Habitat [1975] ATS 48 and the relationship between these instruments and domestic laws dealing with similar subject matter.

A key focus in this part of the course could also be around the issue of international trade, and in particular, the issue of live export. What are the legal implications of exporting our cattle to Egypt where they endure their tendons being slashed, eyes stabbed etc before slaughter without stunning, when those practices are unlawful in this jurisdiction?

Further discussion could focus on a comparison with other foreign jurisdictions' animal welfare regimes - e.g. a recent amendment to the German Constitution provides that laws must now be consistent with the 'inherent dignity of humans and animals'; while in Egypt there is no apparent regulation of the slaughter of animals for meat.

#### **Week 4: 'Animal rights' versus 'animal welfare'**

This part of the course could open up broader philosophical discussion around the meaning of 'animal welfare' versus 'animal rights' (i.e. the difference between paternalistic benevolence and a recognition of an inherent 'right' – similar to what is argued for in respect of humans).

Key questions include: What is the extent of our obligations, legal or moral or otherwise towards animals? What is the meaning of rights, legal or otherwise? Do 'rights' really exist in the sense of natural law; or is the issue really about equal consideration for all sentient beings (which could be viewed as a positivist interpretation of the issue)?

There is a great deal of jurisprudence around this and the lecturer could focus on a few key texts, i.e. P. Singer's *Animal Liberation*, (2nd Ed) Pimlico 1995, Gary L. Francione's *Animals, Property and the Law* and Cavalieri, Paola, 'For An Expanded Theory of Human Rights', in Armstrong, Susan & Richard G Botzler (Eds), *The Animal Ethics Reader*, Routledge, 2003 (many more references like this available from Lawyers for Animals).

General rights philosophy could also be considered, i.e. Bentham, J, D G Ritchie, J S Mill, H L A Hart, etc. to consider its implications for the notion of 'animal rights'.

#### **Week 5: Animal Litigation**

This part of the course could examine how animals have been considered by the courts, and under the common law; whether it be in relation to property disputes, duties of care, freedom of speech and other kinds of animal activism, or the prosecution of cruelty offences.

A focus could include litigation techniques and strategies. I.e. what types of problems can be addressed by existing law, and how can novel approaches to the predicament of animals help bring issues of animal protection into the courts?

This part of the course lends itself well to the inclusion of guest speakers. For example, long-time activist and Animal Liberation President Patty Mark, who has been involved in several cases in relation to her activist work with battery hens and pigs.

Laurie Levy could also provide some excellent commentary in relation to the laws around duck shooting and the high profile cases he has been involved in; e.g. *Levy v The State of Victoria & Ors* [1997] HCA 31.

Another excellent guest speaker would be Animals Australia's Communication Director Lyn White. Lyn recently appeared on 60 Minutes to discuss live export to Egypt and slaughter practices in Egypt. In 2003 she also documented the *Cormo Express* disaster, where 58,000 sheep drifted at sea in abject conditions for over 77 days before being inhumanely butchered in Eritrea.

In particular Lyn could discuss the writ of mandamus brought on behalf of Animals Australia in WA in response to the Government's failure to investigate alleged violations of the law in respect of live export. This application was ultimately withdrawn after the West Australian Police (acting on behalf of the West Australian Government and the Office of the WA State Solicitor) laid animal cruelty charges against a leading WA live export company for various breaches of the WA *Animal Welfare Act*: s19(1): a person must not be cruel to an animal, s19(3)(a): transporting an animal in a way that is likely to cause it harm; s(3)(b): confining an animal in a way that is likely to cause it unnecessary harm and s(3)(d): not providing proper food.

### **Week 6: Activists and the law**

This part of the course could take into account some case studies on the activities of animal rights activists seeking to effect changes in the law, and how the law has responded to their activities. Discussion should also include a focus on the difficulties of balancing producer and consumer interests against welfare interests.

For example, recently the Victorian Government amended s249 of the *Crimes Act 1958* in response to the case in WA where an animal rights activists contaminated the feed of sheep due for live export with pork. This section now provides a person must not contaminate goods with the intention of causing, or being reckless as to whether or not the contamination would cause (inter alia) economic loss through public awareness of the contamination. While this amendment was clearly a 'crackdown' on activism, is that an appropriate Government response over and above amending the PROCTA to address the cruelty issues associated with live export? Are there any 'legitimate' avenues for activism?

The United Kingdom also provides some interesting case studies. In that jurisdiction a large number of dedicated animal rights activists have been successful in shutting down various 'farms' where animals have been bred for vivisection. How should the law respond to some of their methods, such as 'naming and shaming' individuals involved in the breeding or animal research? Many of these activists are now focusing their attention on Europe's largest contract testing laboratory, Huntingdon Life Sciences. They have been successful in practically driving that

organization into the ground in the UK through various tactics, including harassment, which has resulted in their being prosecuted for various criminal offences. What are the issues the law needs to weigh up in responding to this sort of situation? I.e. what relevance does freedom of speech have to this situation? Consider *Levy v The State of Victoria & Ors* [1997] HCA 31.

Also useful to consider here some prominent cases in other jurisdictions, e.g. *Imutran Ltd v. Uncaged Campaigns Ltd & Anor* [2001] EWHC Ch 31, which considered an application for an injunction restraining the respondent activists from 'misusing' confidential information or from infringing the copyright of the pharmaceutical company applicant. The respondents argued that it was in the 'public interest' to allow them to divulge (in a *Daily Mail* newspaper exposé) information regarding the applicant's laboratory practices and a particular series of experiments relating to xenotransplantation (where organs from one species are transplanted or grafted on to another). Compare with *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* [2001] HCA 63.

## **PART TWO – PARTICULAR ANIMALS AND THE LAW**

Lecturers could choose which species to focus on depending on what is topical. For instance:

### **Week 7: Farm Animals**

These approximate more than 500 million animals in Australia, and they have no protection whatsoever under PROCTA, as they are exempt from the Act's operation. This means that confined animals such as cattle in feedlots, sheep kept for fine wool and pigs and poultry subject to intensive or battery production, are all exempt from legislative protection. They are supposedly 'governed' by Codes of Practice', but what is the legal status of these Codes? How are they regulated or enforced? Is the treatment of these animals in effect 'beyond the law'?

This part of the course could also focus on current developments in respect of particular types of farm animals. For example, from time to time the national Codes are reviewed as they are considered 'evolutionary' – insofar as advances in understanding of animal physiology and behaviour and technological changes in animal husbandry and community expectations render them no longer appropriate. The National Animal Welfare Committee ('AWC'), which comprises representatives of State and Federal Departments with responsibility for animal welfare, prepares the codes for the Primary Industries Standing Committee, a national body. Currently the national *Code of accepted farming practice for the welfare of pigs* is under review. The Department of Primary Industries in Victoria is due to release a Regulatory Impact Statement ('RIS') on the new Code and will be seeking feedback on it before the new Code is finalised and endorsed by States & Territories. The RIS is pursuant to the Cth equivalent of the *Subordinate Legislation Act 1994* (Vic); however DPI Victoria is taking the lead on collating responses. Students could study the RIS with a view to writing a submission to DPI on it.

Questions to be considered in this part of the course include whether there should be equity amongst animals, a right we claim for our own species, or whether legislation which permits the various non-human animals species to be treated differently is simply an unjust law.

### **Week 8: Endangered Species**

What governs endangered species? How do they develop such a status? What are the international instruments that deal with this?

A particular focus of discussion could be on law reform in this area, and how more could be achieved to protect endangered species and prevent the list from growing. Discussion could also focus on the intersection between modern environmental factors and natural habitats and how this is currently managed. Relationship with Environmental Law / EPA case law.

### **Week 9: Domestic and Feral Animals**

How do we define what is a 'feral' animal? What is the status of 'domestic' animals? What governs them? What is the extent of the problem with feral animals and how can the law be reformed to rectify this situation?

This part of the course could consider recent amendments to the *Domestic and (Feral & Nuisance) Animals Act 1994* (Vic) regarding compulsory micro-chipping and registration. This would involve a consideration of the issues raised in the RIS for the amending Act and the Business Impact Assessment that was circulated by the Victorian Department of Primary Industries. These document the extent of the problem regarding unwanted animals requiring euthanasia and the cost to the community for same.

Students could consider whether the law has gone far enough to regulate these animals and prevent the problem of strays and the creation and perpetuation of feral populations.

### **Week 10: Animals used for experimental purposes**

What governs animals used for experimental purposes? How does the NHMRC *Code of practise for the care and use of animals for scientific purposes* interact with the PROCTA? What is the extent of this use? (Answer: more than 6 million animals were experimented on in the 2003-2004 year alone). Students could consider DPI's statistics on types of animal experiments and relevant numbers, licensing requirements and components of the above Code of Practice and their legal implications.

In particular, a focus could be on what the '3Rs' mean in practice. These are mandatory requirements under the above Code, to 'replace, reduce and refine the use of animals in scientific procedures' (Clauses 1.8 to 1.26) – but what happens in practice? Does the law provide sufficient incentive to implement this requirement? How does the law deal with a research institution's failure to implement the 3Rs?

Students could also consider the ethics of animal experimentation. This leads to discussion around biotechnology and the law and whether animal use for experimental purposes should be given greater scrutiny by the public and not subject to the protections normally afforded under the law to 'confidential information' and trade secrets. Consider *Imutran Ltd v. Uncaged Campaigns Ltd & Anor* [2001] EWHC Ch 31.

Another focus could be on new technologies involving animals, i.e. xenotransplantation (animal to human transplants). See for example McLean S. & Williamson L, *Xenotransplantation: Law and Ethics*, Ashgate, 2005.

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*Other focuses in this Part of the course could include:*

- *Animals in zoos*
- *Hunting*
- *Animals used for sport*