Issues concerning animals are a daily staple of the media, including reports of animal cruelty, offences, problems of unwanted companion animals, intensive farming of animals and other farming practices, the use of animals in research, the threats to wild animals, especially endangered native animals, posed by urban development and climate change, action by animal activists, and so on. Underpinning all of these issues is a complex legal framework, the subject of an important, emerging area of the law, ‘animal law’. This article provides an introduction to what is still a novel legal discipline in Australia.

Emergence of animal law in Australia

Law relating to animals has been in place for a very long time in Australia. For example, the first Australian anti-cruelty legislation was enacted in Van Dieman’s Land in 1837. New South Wales enacted legislation of this type next, although not until 1850. After separation from New South Wales in 1859, the New South Wales anti-cruelty legislation remained in force in Queensland until 1901, with the passage of the Animal Protection Act 1901 (Qld).

However, it is only in very recent times in Australia that a distinct legal discipline of animal law has emerged. The first animal law course in Australia was taught at a masters level at the University of New South Wales in 2005. Since that time, undergraduate courses have been offered at the Australian National University, Bond University, Griffith University, Southern Cross University and the University of Wollongong. In the second half of 2009, undergraduate courses will be offered at Flinders University and the University of Sydney, and a masters level course will be conducted at the University of Melbourne.

The development of animal law courses within Australian law schools has been accompanied by increased research and writing in the area. In early 2008, the Australian Law Reform Commission dedicated an entire issue of its leading journal, ‘Reform’, to issues concerning the treatment of animals. In June 2008, Australia’s first specialist animal law journal was launched, the ‘Australian Animal Protection Law Journal’. Two books on animal law have recently been published, the ‘Handbook of Australian Animal Cruelty Law’ (by Dr Malcolm Caulfield) and ‘Animal Law in Australasia: A New Dialogue’ (edited by Peter Sankoff and Steven White). ‘Animal law in Australasia’ was launched at Sydney Law School in May 2009 by Michael Kirby AC CMG, former justice of the High Court of Australia.

The legal profession has been playing an increasingly important role in addressing the interests of animals. Barristers in Victoria and New South Wales have formed specialist animal welfare panels, and lent their time and expertise to assisting with animal law-related cases. In Queensland, an organisation called BLEATS (Brisbane Lawyers Educating and Advocating for Tougher Sentences) has established a panel of barristers and solicitors prepared to work pro bono to assist RSPCA Queensland with prosecutions under the Animal Care and Protection Act 2001 (Qld). BLEATS is also committed to raising the awareness of magistrates about the significance of animal welfare, and the need for fairer sentencing outcomes in line with increased penalties for animal cruelty. Community-based legal organisations have also been established, such as Lawyers for Animals in Victoria, and the Animal Welfare Community Legal Centre in Tasmania. Voiceless, a philanthropic organisation based in Sydney, has played a key role in galvanising the legal community, especially through an annual grants system which has funded a wide range of animal-related projects, including animal law projects. Finally, TLG Lawyers, opening its doors in Brisbane in August 2009, is the first legal firm in the country to specialise in animal law (along with family law).

The development of animal law in Australia in the past few years – across the legal profession and academia – has therefore been profound, and looks set to continue.

Some key issues in animal law

The scope of animal law is potentially very wide. As Peter Sankoff has suggested, in writing about the development of animal law in Australasia (chapter 17 in ‘Animal Law in Australasia’):

“In contrast to many other emerging subjects – such as, for example, environmental law or international trade law – there is no particular ‘area’ of law related to animals exclusively. Rather, animal law issues cut across a host of legal disciplines. Animal law involves property law, because animals are formally designated as property. It relates to criminal and regulatory law, because cruelty statutes that protect animal welfare are treated as imposing penal sanctions. Tort law plays a role as well, because transgressions against animals in the civil realm raise difficult questions about negligence and the law of damages . . . [Animal law] also encompasses a large measure of legal theory and jurisprudence, asking fundamental questions about the nature of a legal interest, and the manner in which the law often creates or entrenches power imbalances.” (pp 391-392)

Given the wide range of potential topics which could be addressed under the rubric of ‘animal law’, the following presents just a sample, even if these are among the most common to be addressed in animal law courses in Australia to date.

Why do animals matter?

The issue of why we should be concerned about animals is a broad one, extending well beyond the confines of legislation and case law. It requires a consideration of the moral significance of animals, and the obligations we owe to...
them. Why and to what extent do animals deserve protection from suffering? Why and to what extent do they deserve the opportunity to live a fulfilling life in accordance with their capabilities? On what basis should some animals be singled out for greater legal protection than others? At one level, these are highly abstract questions, but the ways in which they are answered have very concrete consequences. This is because the manner in which the law regulates the treatment of animals arguably reflects, even if imperfectly, society’s moral regard for animals. The answers to these sorts of questions may cause us to question the adequacy of prevailing law, if that law permits harm to animals in circumstances which do not stand up to ethical scrutiny.

What is an animal in law?

It might be thought that the question of what constitutes an ‘animal’ in law is easily answered. In fact, the answer is not necessarily straightforward. Different Australian jurisdictions have different statutory definitions of ‘animal’. For example, fish are defined in animal welfare legislation as animals in Queensland, but not in Western Australia. This has potentially significant consequences, since designation as an ‘animal’ may bring significant protection, not extended to ‘non-animals’. Scientific advances also complicate the definition of an animal, including advances in a range of techniques involving the mixing of human and animal cells, tissues and/or organs (eg xenotransplantation, genetic engineering, cloning techniques, and stem cell research).

What is the legal status of animals? Should it be changed, and if so how?

In strict legal terms, animals are a form of personal property. As ‘Halsbury’s Laws of Australia’ puts it, “domestic animals, like other personal and moveable chattels, are the subject of absolute property’ (vol 1(2) (21 March 2007) ‘20 Animals’, para [20–50]). The idea of animals being the personal property of humans suggests that there are no constraints on the ways in which humans may deal with animals. It is highly doubtful that a court today would be willing to hold that the owner of an animal has, at common law, an unfettered right to abuse that animal. This point has not been tested though – in practice, parliamentary intervention, in the form of animal welfare statutes, places limits on the rights of absolute property that humans may exercise in relation to animals.

Despite the introduction of animal welfare legislation, there remain concerns that animals are still exposed to harm on the basis that they are commodities, especially outside a companion animal context. The issue of whether the property status of animals requires reform is a complex one. Some legal writers argue that the property status of animals needs to be abolished, with legal personhood bestowed on animals. Others argue that the property status of animals serves an important protective role, on the basis that people best protect what they own. Still others argue that it might be possible to incrementally reform the property status of animals by, for example, moving to a ‘guardianship’ model. Again, these are not abstract questions. For example, the property status of animals is being challenged through pet custody disputes, admittedly much more common in North America than in Australia. In these disputes, parties to a relationship breakdown have been going to court seeking orders for custody or access rights to the family pet, in the same way that such orders are sought in relation to children.

To the extent courts have awarded such orders, the outcome is inconsistent with the idea of an animal being just another chattel to be distributed between the parties.

Regulation of the treatment and management of companion animals

A prominent legal issue in the area of companion animals is the investigation, prosecution and sentencing of animal cruelty offenders under the Animal Care and Protection Act 2001 (Qld). Particular matters of concern are whether there are adequate resources and expertise to vigorously enforce the legislation, and whether the sentencing decisions in animal cruelty cases have paid sufficient regard to increases in maximum penalties under the legislation. Other legal issues concerning companion animals include veterinary liability for malpractice, estate planning for pets, regulation of ‘dangerous dogs’, body corporate exclusion of pets, and the management of unwanted dogs and cats (addressed in the Animal Management (Cats and Dogs) Act 2008 (Qld), which commenced 1 July 2009.

Regulation of the treatment of farmed animals

The application of animal welfare legislation to farmed animals is highly complex. In practice, the treatment of most farmed animals is regulated through non-statutory codes of practice, and not directly by animal welfare legislation. As part of this scheme, a range of farming practices may cause considerable harm to animals, yet be legally sanctioned (in circumstances where the same acts, if committed against a companion animal, would leave an owner liable to prosecution for cruelty). Is this justified, given the economic significance for Queensland, and Australia more generally, of the farming industry? Or is there a need for change in farming practices and, if so, what role should the law play in this process?

Regulation of the use of animals in research

Use of animals in scientific research is one of the most highly controversial areas in animal law, since it may involve severe suffering imposed on animals, on the basis that the results of research may bring considerable benefits for humans. In Australia, a national code of practice regulates the use of animals in research, with individual institutions (such as universities, commercial research laboratories and so on) responsible for vetting all research involving animals through animal ethics committees (AECs). AECs are designed to be representative bodies, including members who are researchers, veterinarians, animal welfare advocates and members of the broader community.

Reform of the law

Lawyers may seek reform of the law directly, including through litigation testing the boundaries of existing law. An example here might be cases in which it is argued an animal welfare organisation should have standing to bring a case on behalf of an animal, even though that organisation has not itself suffered direct harm. Lawyers also play an important role in advising animal advocacy organisations, such as the RSPCA, Animals Australia and Voiceless, in their campaigns to change the law. Lawyers may also act for animal advocates facing legal action.

A key debate here is the sort of change that lawyers should be seeking: should the emphasis be on extensive change (such as removing the property status of animals) which may have little prospect of immediate success, or incremental reform, including the more effective enforcement of existing legal protection of the interests of animals?
There are many more topics which could be mentioned here, including the use of animals in zoos, entertainment and sport, and the very significant area of wild animals.

**Future directions in animal law**

It seems likely that the legal profession will continue to become more active in addressing the interests of animals through the legal system. This may result in increased litigation, especially in areas which test the limits of the law. With animal welfare organisations making greater use of pro bono/public interest lawyering there is likely to be increased awareness of animal welfare issues on the part of the legal profession more generally, including magistrates and judges. Although animal welfare does not currently rank highly on the agenda of any of the major political parties, this may change as government departments and others are forced to become more publicly accountable, through legal action, for their management of animal welfare issues.

Finally, on the policy front, there is likely to be a continuation of efforts to bring greater national consistency to the regulation of animal welfare. There are currently significant differences in the regulation of animal welfare across the state and territory jurisdictions, one of the issues to be addressed as part of the federal Government’s agenda for animal welfare, the Australian Animal Welfare Strategy. The federal Government will also play a role in international developments in animal welfare, including the current campaign for the United Nations to adopt a Universal Declaration on Animal Welfare.

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