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FOREWORD

ANIMAL LAW: PRINCIPLES AND FRONTIERS

Graeme McEwen, with Adam Ray and Gian-Maria
Antonio Fini

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THE HON. MICHAEL KIRBY AC CMG^{*}

At the close of this book, the principal author concludes, by reference to a recent vote in a Swiss referendum on an aspect of animal rights, that the cause of animal protection is “on the march”. Certainly, this book shows that, along with many failures, inadequacies and disappointments, a lot is happening in the field of animal welfare law. It is not before time.

The book comes at a most interesting moment in the development of Australian law. Within a few years, a number of texts have been published exploring different aspects of the protection of animals from unacceptable cruelty, torment, confinement and premature death. Amongst the most important of the Australian texts have been:

- * Peter Singer, *Animal Liberation* (1975).
- * Peter Sankoff and Steven White (eds.), *Animal Law in Australasia* (2009).
- * Malcolm Caulfield, *Handbook of Australian Cruelty Law* (2009).
- * Brian Sherman and Ondine Sherman (eds.), *The Animal Law Toolkit, Voiceless* (2009).
- * Deborah Cao, *Animal Law in Australia and New Zealand* (2010)
- * Mirko Bagaric and Keith Akers, *Humanising Animals – Civilising People* (2012).
- * Fiona Probyn-Rapsey and Jay Johnston (eds.), *Animal Death* (2012).

^{*} Patron of Voiceless. Onetime Justice of the High Court of Australia and President of the International Commission of Jurists.

Now comes this book, offering a fresh and different perspective. I welcome it. The field of attention to animal welfare law has been too long neglected. The time is ripe for urgent consideration of many topics. Inevitably, there is some overlap between the texts. And a great deal of concurrence and a shared sense of urgency is found at their heart. But this book is different. That is an extra reason to welcome it to the fold.

Peter Singer's trail blazing analysis in 1975 was written substantially from his perspective, as a philosopher and public ethicist, but with a long-standing interest in moral questions extending to the biosphere and non-human animals, including his later co-authored text *The Great Ape Project* (1993).

The books by Peter Sankoff and Steven White and by Deborah Cao, each select Australia and New Zealand as the focus for analysis of community and expert attention to animal welfare. Launching the book by Sankoff and White brought me to an epiphany. Reading the essays in their book confronted my mind with knowledge that I had safely tucked away in the farthest corner, concerning the realities of corporatised animal slaughter. Since the night of that launch, organised by Voiceless (the body dedicated to animal welfare law), I have eaten neither meat nor fowl.

I had the privilege of writing the foreword to Deborah Cao's excellent text which built upon, and extended with sharp legal analysis, the life-changing work by Sankoff and White. Malcolm Caulfield gives the reader not only a great deal of legal information. He also provides perspectives from the viewpoint of persons on the frontline of protecting animal welfare: those in the veterinary professions and in civil society. His life is caught up in advancing their causes. He has helped notch up several important wins. His advocacy was part of the background to the announcement, in May 2012, by the Tasmanian Minister, that the government of Tasmania will

introduce measures to ban battery cages in the State, a long time objective of the Animal Welfare Community Legal Centre that Malcolm Caulfield directs.

The new book by Mirko Bagaric and Keith Akers, painstakingly and argumentatively collects a mass of Australian legal materials. It is beautifully presented – with the usual clarity and simplicity of the CCH Australia publishing style. Thus, step by step, progress is being made.

The book by Fiona Probyn-Rapsey and Jay Johnston presents a collection of essays, many of them disturbing, about aspects of the death of animals. Some are horrific. It is by vivid imagery and knowledge, coldly reported, that the conscience of Australians will be pricked and demands will be made on the law makers to rectify the defaults in the current legal regimes.

Of course, in addition to the foregoing local texts, there are many books written overseas. Several have been produced by animal welfare organisations and by civil society groups. One or two (not many) have been authored by writers with a theological perspective who reject the anthropocentrism of traditional Judeo-Christian-Islamic theology. Notable amongst these is a work by Andrew Linzey and Dan Cohn-Sherbok, *After Noah: Animals and the Liberation of Theology* (London, Continuum, 1997). In a moving address at Westminster Abbey, the Rev'd Professor Linzey castigated the obsessive attention of so many religious leaders towards relative insignificant subjects and controversies. And their moral blindness to other concerns that really matter:

“The truth is that we are spiritually blind in our relations to other creatures, as blind as men have been to women, whites have been to blacks, and straights have been to gays.”

The present book does not adopt any of the foregoing perspectives. It is its differentiation that makes it especially valuable. The book has been written from the particular perspective of practicing lawyers. It is sometimes said that the law sharpens the mind by narrowing its focus. That may be so. I know from my own life that there is nothing that concentrates the mind so acutely as looking across a table at a client with a problem. And puzzling as to how the client's interests can be advanced to improve the legal, reputational, financial and emotional situation of the client. Law cannot always deliver these objectives. But the role of the practicing lawyer is to puzzle out the way, within available rules and remedies, to pursue the client's interests. This Graeme McEwen and his colleague have attempted to do.

In some of the chapters of this book, there are hints of the broad sweep, great principles, social ethics and international engagements that one can find in the other books. Woven through this text is an undercurrent of the passion for a righteous cause that has always been in the background of those who seek to use law to advance the dignity and protection of minority human beings and non-human animals. Professor Linzey points out that many of those who founded the RSPCA in England (including Wilberforce and Shaftesbury) were also leaders in the contemporaneous moves to mandate the Royal Navy to end the global slave trade and to enliven the British public, through the NSPCC, to the plight of monstrous cruelty to children. It was an Anglican priest, Arthur Broome, who first set up the RSPCA in Britain in 1824. But all too often religious leaders in Australian society, as in Britain, have been strangely silent about the ethical issues of animal welfare. This has left a moral vacuum to be filled by philosophers, secular ethicists and lawyers.

Because of the specifically practical and legal focus that Graeme McEwen and his contributors have adopted, this book plunges quickly into the detailed provisions of Australia's federal, State and Territory laws, principally the statute book where is now found the majority of the laws binding upon us in our nation. This does not always make for easy reading. But this is certainly the way that the practicing lawyer has to operate. Generalities and high principles may afford a context and the motivation.

But winning cases depends upon a mastery of detailed laws and a command of the relevant procedures.

It is because my life's experience has convinced me that the best civil rights lawyers are those with a sound training in the 'black-letter' of substantive and procedural law, that I applaud this book and the efforts that Graeme McEwen and his colleagues have poured into it. Thus, it is vital for those who seek to advance the cause of animal welfare in Australia to be well aware of the procedural and other obstacles that often stand in the way of success:

- * The demands on those who invoke courts and tribunals to first demonstrate that such bodies have relevant jurisdiction;
- * The need for the applicant to show the requisite standing to bring the complaint to a legal forum;
- * Where remedies by way of injunction to prevent cruelty are sought, the need to indicate a capacity to argue that undertakings to accept liability for damage suffered as a result of the grant of interim orders should either be moderated or an exemption sought from their requirement;
- * The peril of costs to which the idealistic litigant may be subjected and must be aware of;
- * The evidentiary rules that govern the use of confidential, and sometimes illegally obtained, evidence, because great cruelty is often executed in secret;
- * The bureaucratic connivance in wrongs that can sometimes constitute a determined obstacle to success;
- * The complexity of overlapping legal jurisdiction; and
- * The uncertainty that can arise in pushing forward the boundaries of law into new and previously unexplored territory.

I pay respects to Graeme McEwen and his co-authors. And also to the 120 members of Bar Associations throughout Australia, including 25 senior counsel, who have offered pro bono assistance in this initiative.

The point of this book is that the enterprise is not only of considerable philosophical and ethical argumentation. It is not only one of gathering ever-shifting empirical facts. It is not only one of engaging with literature, moving film and other images of horror to spread the epiphany of a new-found sensibility to millions of human beings, with the power to improve the current condition of animals. It is also a realm of law. And the law is sometimes hostile, often untrodden and frequently uncertain and perilous.

For their painstaking and original work devoted to this text, including their invocation to Australian lawyers to think in terms of international as well as national law, I say a citizen's grateful thanks. Animal welfare law is now being taught in increasing numbers of Australian law schools – nearly a quarter of the 34 law schools. It is reassuring to me, towards the end of my legal career, to see the passion and dedication of young lawyers in a cause that lawyers have so long neglected but are now embracing as one of their own. I thank them for this. I praise them for having the insight that, distracted, I so long lacked

Sydney,

Michael Kirby

22 June 2012