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ANIMAL LAW IN AUSTRALIA
BY DEBORAH CAO AND OTHERS
FOREWORD

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This is the third edition of this excellent book. Attention to the laws on animals and their welfare has expanded in number and contents. Legal encyclopaedias, such as *The Laws of Australia* have introduced new titles to recognise the legitimacy of animal law as a subject worthy of specialised attention and legitimate debate. Such developments reflect the increased teaching of animal law in Australian law schools.

Increasing numbers of legal professionals and law students have perceived the utility of instruction on the law as it affects animals, animal welfare and related topics. Civil society organisations realise the role that law reform can play in securing the enactment of new laws and the stimulation of greater public enlightenment about topics sometimes uncomfortable. These include the protection of sentient animals from unacceptable practices that have hitherto prevailed in the slaughter of animals for consumption of their body parts as food, mostly for human beings. The extension of legal regulation beyond the protection of domestic animals helping to attract passionate feelings about the province of law and its role in shape enlightened social attitudes.

For the growing enlightenment on animal welfare law much is owed to the writing of the distinguished Australian philosopher and ethicist, Peter Singer.

He holds professorial chairs of Philosophy in Australia and the United States. His books are amongst the most published works of any Australian author. His early book, *Animal Liberation*,¹ has burrowed away into the popular imagination. Its strength lies in a global movement that it helped to promote. That has given rise to significant consequences, including in the form of this book.

Contrary to some of his critics, Peter Singer is not a fanatic or extremist. He does not seek to convert the unwilling. He recognises that many people are at different stages of their journeys on the issue of animal welfare. An end to flesh-eating will not come soon. Apart from anything else, there is a huge global industry in animal farming, transport, slaughter, marketing and consumption. But we now know that the animals killed in this way often suffer greatly. They proliferate and consume huge resources. They produce quantities of methane gas that contribute to the very serious problem of global climate change. Some people in the Western world who have not abandoned eating animal parts altogether, have nevertheless reduced their intake. Others have turned in recent times to vegetarian copies of meat, having remarkable similarities in taste and texture. Yet at the same time, in many developing countries, meat, which was once a relatively rare and expensive food has become more readily available. Cruelty to animals has proliferated beyond earlier dimensions of slaughter, cruel entertainments and tragic indifference.

¹ Peter Singer, *Animal Liberation* (Random House/New York Review Book, New York, 1975/1995).

Most people in Australia rarely ever think about these issues. Eating meat and poultry has been part of their lives for generations. They feel no guilt, in part because they take no part in the actual acts of slaughter. When they think about it (which is rarely) they assume that the law lays down basic standards. This book is not a tract to convert students or other readers to vegetarianism. But it is an eye-opener.

Peter Singer is careful to point out that there is a long history of philosophical writing, going back to ancient times, that has endeavoured to convert unthinking human beings into an insistence (at the very least) upon reducing unnecessary cruelty to animals and (at the best) imposing legal rules to ensure that this will be done, including in the often fearful process of slaughter for food. In its early chapters of this book, the authors trace such opinions back to Homer and other writers in ancient Greece and Rome. The book picks up the story in recent centuries in the works of English philosophers like David Hume, Jeremy Bentham and the parliamentarian Richard Martin.

William Blackstone, a little earlier, had endorsed the original notion of English law that animals were no more than “things”, “objects” or “property” belonging to their owner or, if classified as ‘wild’, open to sport and recreational killing. Blackstone declared that it was “holy writ” that our “bountiful Creator gave to man dominion over all the earth, and over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth”. This divine gift allegedly rendered animals the products of human will. To a large extent, the common law withdrew from protection. It looked upon such

'beasts' as lesser things, undeserving of empathic respect let alone legal protection.

I doubt that most people in Australia today share such an attitude of indifference toward other living creatures. Too many of them live with domestic pets to be ignorant of the fact that many mammals, at least, can experience fear, pain, stress, affection for their young and other emotions that humans know all too well. Yet in Australia there is still widespread sporting killing of animals, apparently for little more than the brief thrill that it gives, sometimes masquerading under the excuse of 'essential culling'.

In all this, I do not overlook the historical realities of human evolution that awkward phenomenon for vegetarians. The Australopithecines, the predecessor of our human ancestors, encountered natural fires. They discovered that flesh was improved in taste and digestibility by the use of such fires. As well, such fires sometimes provided the beginnings of human society. Eating cooked meat may well have provided the nutrition that contributed to the expansion of the human brain. This led, in turn, to the ascent of man².

The fundamental issue of this book is not whether modern human beings should continue to eat animal parts for food. It takes as a given that this will occur and that the practice spills over into attitudes to sporting, performing, wild animals and others used for experimental purposes. It examines the

² See Richard Wrangham, 'Once You Had Communal Fires and Cooking and a Higher-calorie Diet, the Social World of our Ancestors Changed', *New York Times*, 21 April 2009, D.2. Professor Wrangham, of Harvard University, is himself a vegetarian.

philosophical and legal foundations for detailed rules to protect animals from needless pain, stress, fear, humiliation and suffering. And it does so only after it has laid a very firm foundation by analysis of why we have travelled, as a society, from large-scale legal indifference to animal welfare to an expanding concern, especially for the higher forms of animal life.

There is thus an excellent overview of animal law in Australia. It includes some key provisions of current animal welfare legislation. The authors then trace the way in which animal welfare law has been introduced into our society in a journey that commenced with special protection for companion animals; spread to a prohibition on senseless cruelty in sporting, circus and entertainment animals; and then more recently, has extended to the treatment of farm animals, exported animals, wild animals in nature and their counterpart, animals in corporations and laboratories subjected to painful testing for human benefit and protection.

For all that, a majority decision of the United States Supreme Court in 2010 demonstrated that lawyers have a long way to go in extending the law's protection to vulnerable animals³. A similar lesson may be derived from a recent decision of the High Court of Australia upholding the constitutional validity of a New South Wales law prohibiting the publication or communication of films or photographs of "private activities" (including intensive farming and slaughtering practices), including criminalisation of possession of such recordings. This was so although "whistle blowers"

³ *United States v Stevens* 559 US 1 (2010), decision of 20 April 2010 by the Supreme Court upholding 8-1 an appeal based on the First Amendment concluding that a federal law (18 USC §48) criminalising video depictions of animal cruelty for pleasure was overbroad and thus invalid under the US Constitution.

assessed that such laws had sometimes been enacted at the behest of politically powerful, economically strong, farming interests to prevent community and political debate and this falling within the ambit of constitutionally protected 'free speech'. such free speech is necessary to activate the democratic processes envisaged by the Constitution into stricter and better informed restrictions and regulation of needlessly cruel treatment of animals destined for slaughter and avoidable cruelty.⁴

The book adopts a moderate, factual and analytical style. This is essential because its readership is likely to be the growing body of university students, most of them studying in law faculties, who are increasingly electing to undertake courses in animal welfare law at institutions throughout Australia. Already, such courses are offered in ten Australian law schools. More are on the horizon. What, not so long ago, was regarded as an exotic topic of limited interest to lawyers is now a fast-growing curriculum subject taught with a real legal dimension⁵.

Why has this happened? Why has it happened now? In part, it is because writers like Peter Singer and the authors of earlier edition of this book re-kindled the ideas of earlier thoughtful observers and planted them in the minds of contemporary Australia. In part, it has happened because cruelty to animals happens in our midst and, as a community, we are responsible for it. In part, the ideas have found eloquent expositors. They include the

⁴ *Farm Transparency v New South Wales* [2022] HCA 23; (2022) 96 ALJR 655.

⁵ 'Animal Law Gets Teeth' describing the new course on animal law at the University of Melbourne Law School, *Law Institute Journal of Victoria*, April 2010, 20. See also O. Sherman, "Talking For The Animals", *Macquarie Matters* (Macquarie University), Spring 2009, 4.

authors of this book, who know that there is nothing so powerful in the world as an idea whose time has come.

A handwritten signature in black ink, appearing to read "L. Waitkin". The signature is written in a cursive style with a prominent dot above the 'i'.

Sydney

11 November 2022