

Episode 35: Summary

Episode name: Paw Regulation: Animal Law in Australia

Guest(s): Tess Vickery and Rishika Pai

What area(s) of law does this episode consider?

Tess and Rishika talk about the emerging area of animal law and recent developments in this area.

Why is this topic relevant?

In 2020 the RSPCA reported that there are over 29 million pets in Australia with at least one pet in over 61% of households, giving Australia one of the highest pet ownership rates in the world. However, our attachment to, and concern for the welfare of, the animals we share our homes with, does not necessarily extend to those animals outside our homes and families.

In recent years, the general public has certainly become more aware of the often cruel practices surrounding the treatment of animals, such as the battery farming of chickens, mulesing of sheep, live cattle and sheep exports, puppy farms, horse and greyhound racing and all manner of animal testing. Increased public awareness, thanks to the RSPCA, Netflix documentaries and media exposes means that animal rights are often considered in the context of law reform.

What legislation is considered in this episode?

Prevention of Cruelty to Animals Act 1979 (NSW)

- Section 5: 'Cruelty to animals' which creates a standard offence for an act of cruelty upon an animal and carries a maximum fine of \$5,500 and/or 6 months imprisonment.
- Section 6: 'Aggravated cruelty to animals' which carries a maximum fine of \$22,000 and/or 2 years imprisonment for individuals, and a maximum \$110,000 fine for corporations.

Criminal Code Amendment (Agricultural Protection) Act 2019 (Cth)

- Under section 474.46(1)(d) of this Act, an offender can be charged for recklessly engaging in conduct that encourages trespass, or trespassing themselves, on agricultural land that could cause detriment to a primary production business being carried out on the land. This offence carries a maximum imprisonment of 12 months.

Stronger Communities Legislation Amendment (Domestic Violence) Bill 2020 (NSW) – proposes to amend the *Crimes (Domestic and Personal Violence) Act 2007 (NSW)* with the following animal law related changes:

- identify in the objects of the Act 'the intersection between animal abuse and domestic violence';
- include conduct that causes reasonable apprehension of harm to an animal belonging to or in the possession of the protected person within the definition of "intimidation"; and

- amend the list of prohibitions taken to be specified in every apprehended violence order, to additionally prohibit a defendant from harming an animal belonging to or in the possession of a protected person or a person with whom the protected person has a domestic relationship.

ACCC v Snowdale Holdings Pty Ltd (No 2) [2017] FCA 834

What cases are considered in this episode?

- Snowdale, one of Western Australia's largest egg producers, was ordered to pay penalties totalling \$750,000 after the court determined that the 'free range' label on their products was misleading and deceptive. This conclusion was based on evidence of insufficient farming conditions, finding that most of the hens from Snowdale's sheds did not go outside, considering factors such as the numbers of pop holes, birds per metre of pop hole, flock size inside the shed and the shed size.

Australian Conservation Fund v Commonwealth (1980) 146 CLR 493

- This case is the leading authority for judicial standing in Australia and formed the current test of requiring a person to demonstrate that they have a 'special interest', which need not involve a legal or pecuniary right, but has to be more than a 'mere intellectual or emotional concern' in order to satisfy standing. In this case, ACF, a prominent environmental protection group, commenced proceedings for an injunction against the Commonwealth for approving the construction of a resort in Queensland on the basis that it did not comply with the Environmental Protection (Impact of Proposals) Act 1974 (Cth). The High Court held that ACF did not have a 'special interest' and therefore did not have standing.

Animal Liberation Ltd v Department of Environment & Conservation [2007] NSWSC 221

- Animal Liberation attempted to restrain a proposed operation involving aerial shooting of goats and pigs. Hamilton J in the Supreme Court of NSW discussed the principles in *Australian Conservation Fund v Commonwealth (1980) 146 CLR 493* (mentioned above) to conclude that Animal Liberation did not satisfy the 'special interest' test, and that even if they did, there was not a 'sufficient likelihood of the infliction of cruelty upon animals to justify the grant of injuncting relief.'

What are the main points?

- In Peter Singer's influential 1975 book 'Animal Liberation' he asserted that the way humans treat animals, such as for food entertainment and clothing, is a morally unjustifiable form of discrimination called speciesism. Speciesism differing treatment based on species membership.
- Due to increasingly high court costs, animal law reform advocates rarely engage in litigation and instead are limited to launching inquiries, investigations and making written submissions to policy makers and lawmakers in the hopes of improving the wellbeing of animals in Australia.
- Animal welfare in Australia currently operates under the principle of not causing 'unnecessary harm' to animals, except in approved practices of

farmed animals, which Dr Jed Goodfellow suggests is a result of 'regulatory capture.' Regulatory capture occurs when a regulatory agency acts in the interests of the industry it is designed to regulate in a manner inconsistent with the public interest the regulation is designed to serve.

- Animal law scholars today are concerned with the status of animals as 'property' because it hinders their ability to have specific rights, such as the right not to be killed. Other classifications for the status of animals have been suggested such as 'living property' or identifying a guardianship relationship between companion animals and their owners, or treating animals as legal persons, however for the meantime animals remain 'property' in all jurisdictions.

What are the practical takeaways?

- There are multiple agencies and organisations in Australia promoting animal welfare law reform, including but not limited to the RSPCA, the Animal Law Institute, Voiceless, the Animal Welfare Committee of NSW Young Lawyers. Many universities across NSW also offer animal law as an elective law subject.
- Animal law is important because it impacts on various areas of the law including criminal, property, securities, family, and environmental law and involves advocacy for victims who cannot represent themselves.
- Farmed animals receive less attention and less protection under current laws.
- There is a strong intersection between animal cruelty and domestic and family violence with 50% of women leaving these relationships claiming that their animals were also harmed. This is particularly problematic for women who own large animals such as horses and need to seek refuge in a shelter.

Show notes

[Non-human Rights Project client summary of 'Tommy'](#)

[Stronger Communities Legislation Amendment \(Domestic Violence\) Bill 2020 - Second Reading Speech in the Legislative Council](#)

[Gary L. Francione's 1996 article 'Animals as Property'](#)

['Dominion' – a documentary on animal agricultural practices in Australia](#)

[ACCC v Snowdale Holdings Pty Ltd \(No 2\) \[2017\] FCA 834](#)

[Animal Liberation Ltd v Department of Environment & Conservation \[2007\] NSWSC 221](#)

[The Animal Law Institute](#)