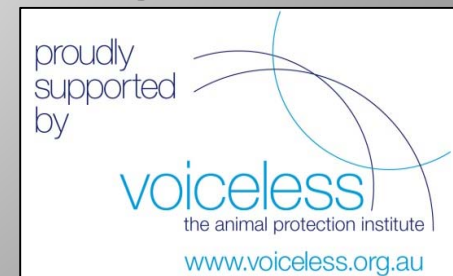


NSW Community Legal Centre Animal Law Education Forum



Using Law to Protect Animals: **Standing, Authority to Prosecute and Strategic Litigation**



Rationale



Their suffering is
intense, widespread,
expanding, systematic,
and socially sanctioned.
And the victims are
unable to organize in
defence of their own
interests.*

* Henry Spira *Fighting to Win*.
(In Peter Singer: *In Defense of Animals*. 1985)

Ben Isaac

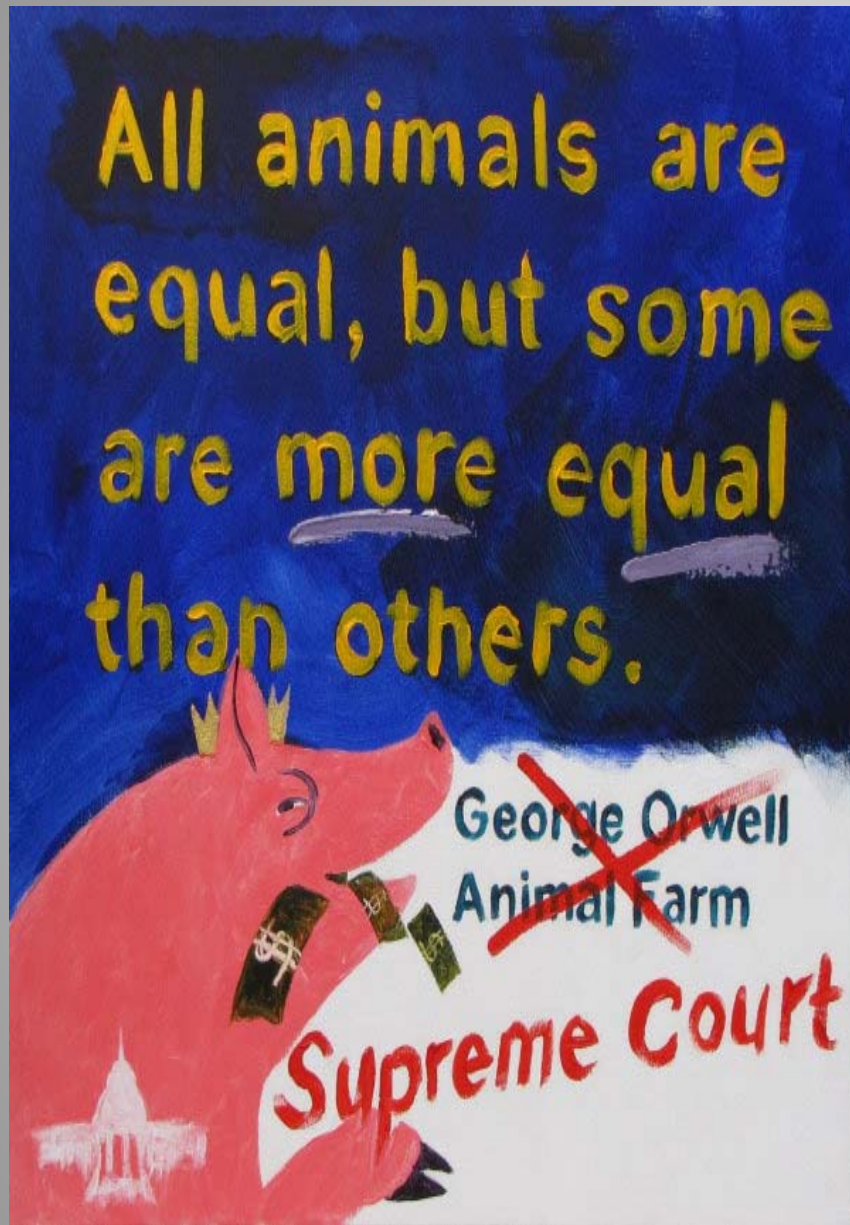
Standing





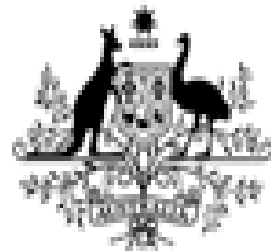
'If I see a dog being tormented and I cannot sue, it is not because I am not injured. It is because the court has decided that my injury is not a kind it feels is judicially cognizable.'

D. Cassuto, J. Lovvorn and K. Meyer, *'Legal Standing for Animals and Advocates'*, (2006-07) 13 *Animal Law* 61



Even where laws exist ostensibly to protect animals, animal advocates frequently lack the ability to assert those protections on an animal's behalf.

And in some cases, the agency authorised to monitor and enforce those protections is the same agency that works with industries which exploit animals, such as factory farm corporations.



Australian Government

**Department of Agriculture,
Fisheries and Forestry**

**AUSTRALIAN
ANIMAL
WELFARE
STRATEGY**

Animal Rights vs Animal Welfare

Animal Rights vs Animal Welfare

	The Rights Position	The Welfare Position
Morality	Using animals is morally wrong.	Using animals is morally right.
Benefits	We should not use animals to benefit ourselves.	We can use animals to benefit ourselves.
Interests	We should not invariably overrule the interests of animals with human interests.	Our interests are always more important than the interests of animals.
Pain	We should not inflict pain or death on animals.	We should not cause animals 'unnecessary' pain or death.
Humane Treatment	We should always treat animals humanely and eliminate the human made causes of animal suffering.	We should treat animals as humanely as convenient to us.

‘If corporations can be persons in the eyes of law, if ships can be persons in the eyes of the law, then the law should be able to figure out something for animals.’

Christopher Stone ‘Habeas corpus for animals? Why not?’

Washington Post, June 12, 2010





Animals are regarded as property under the law and thus lack the status of 'legal personhood' which enables them to be cited as a party to a legal action.

Individuals and organizations which attempt to bring legal actions *on behalf* of animals may find their suits dismissed due to their lack of standing or authority to prosecute.

Consequently, identifying who/what has standing and/or is competent to initiate proceedings is of great importance in animal law litigation.

As a general rule, plaintiffs are precluded from bringing actions to assert a third party's legal rights. Thus to argue that an animal - over which one has no 'property rights'- has been injured, exploited or threatened is not on its own adequate to establish standing.



Standing to bring an action

Standing refers to the capacity of individuals to bring legal proceedings when they are not personally affected by the law or regulations complained of.

While there no identifiable test for standing in Australia for public interest groups such as animal protection advocates, in determining whether or not a group should be accorded standing, the Australian courts tend to take the following considerations into account. A group must show that:

- **It is representative of a significant public concern, and**
- **It has an established interest in the subject matter of the proceedings.**

Factors for Standing

Factors which have been deemed relevant by the courts in determining whether a group has a representative nature and an established interest are:

- **Whether or not the group has some kind of relationship with or recognition by government**
- **Whether or not the group has some prior participation in the relevant area**
- **Whether or not there are other possible applicants for standing**
- **The ability (including resources) of the group to mount an effective challenge**
- **The constitution/objectives of the group**
- **The interests of the members of the group**
- **The significance of the issues at stake.**

Basic requirements for standing:

ॐ The plaintiff has to have an 'injury in fact': some kind of an injury that is caused by the illegal act that is being complained about

ॐ The injury that is being complained about must be fairly traceable to the illegal act that is being complained about.

ॐ In the case of actions pursuant to statute, the plaintiff's claim is within the zone of interests that the legislature intended the statute to protect.



These limitations create hurdles to the protection of animals. Since no direct 'harm' is committed against the group or individual bringing the action, actions brought to protect the interests of animals may be dismissed because the plaintiffs are unable to establish a direct injury 'in fact'.

Standing in Animal Advocacy

The bar to representing animal interests by animal protection advocates is perhaps higher than for other forms of litigation.

The following may limit the ability of animal activists to initiate legal action on behalf of animals:

ॐ Injury 'in fact,'

ॐ Causation

ॐ The capacity to redress the harm or injury

One problem is that the courts may not think that the injury for which redress is being sought is a 'real' injury, but that it is an emotional or subjective preference.

Animal advocates need to be strategic and may need to determine how to make whatever injuries they are talking about sound plausible to a judge trained in commercial litigation.

Specific tests for standing: Common Law

To pursue an administrative law remedy in a federal or state jurisdiction, such as an injunction, declaration and/or mandamus (for example, to compel relevant authorities to exercise their powers under applicable legislation), the applicant may be able to satisfy the general common law test for standing on the basis of having a 'special interest' in the subject matter:

- *North Coast Environment Council Inc v Minister for Resources* (1994) 36 ALD 533.

The applicant also has to establish a nexus between its objects and those of the legislation to which the action relates:

- *Right to Life Association (NSW) Inc v Secretary, Department of Human Services and Health* (1995) 128 ALR 238
- *Alphapharm Pty Ltd v SmithKline Beecham (Australia) Pty Ltd* (1994) 121 ALR 373.

Specific tests for standing: Administrative Appeals Tribunal

If a Federal Act provides for review of a decision to the AAT, a person or organization with 'interests affected' by the decision may seek an application for review.

Section 27 of the *AAT Act* 1975 (C'th) provides:

Persons who may apply to Tribunal

- (1) Where this Act or any other enactment (other than the *Australian Security Intelligence Organisation Act* 1979) provides that an application may be made to the Tribunal for a review of a decision, the application may be made by or on behalf of any person or persons ...whose interests are affected by the decision.
- (2) An organization or association of persons, whether incorporated or not, shall be taken to have interests that are affected by a decision if the decision relates to a matter included in the objects or purposes of the organization or association.
- (3) Subsection (2) does not apply in relation to a decision given before the organization or association was formed or before the objects or purposes of the organization or association included the matter concerned.

Re McHatten and Collector of Customs (NSW) (1977) 1 ALD 67

‘[I]n their context in ss 27 and 30 the words ‘interests are affected’ denote interests which a person has other than as a member of the general public and other than as a person merely holding a belief that a particular type of conduct should be prevented or a particular law observed. However, the interest affected need not be a legal interest ...The nature of the interest required in any particular case would be influenced by the subject matter and context of the decision under review.’ [Brennan J]

Specific tests for standing:
Administrative Decisions Judicial Review Act 1977 (C'th)

Subsection 3(4) of the *Act* provides:

In this Act:

- (a) a reference to a person aggrieved by a decision includes a reference:
 - (i) to a person whose interests are adversely affected by the decision, or
 - (ii) in the case of a decision by way of the making of a report or recommendation—to a person whose interests would be adversely affected if a decision were, or were not, made in accordance with the report or recommendation, and
- (b) a reference to a person aggrieved by conduct that has been, is being, or is proposed to be, engaged in for the purpose of making a decision or by a failure to make a decision includes a reference to a person whose interests are or would be adversely affected by the conduct or failure.

Relevant cases

Animal Liberation v Director General of National Parks & Wildlife Service [2003]NSWSC 457:

Animal Liberation sought an injunction to stop aerial culling of wild goats and standing was not contested by the defendant.

Animal Liberation Ltd v Department of Environment and Conservation [2007] NSWSC 221: Animal Liberation again sought an injunction to stop aerial culling of wild goats, however Animal Liberation's standing was contested by the defendant and refused by the court.

Criminal and Anti-Cruelty Legislation NSW

Authority to Prosecute:

Prevention of Cruelty to Animals

Act 1979

Criminal Procedure Act 1986

Crimes Act 1900



RSPCA Prosecutions

The RSPCA's approach to prosecution reflects the principles of the ***Code for Crown Prosecutors***. A case file must meet the following tests for a prosecution to proceed:

Evidential test: Is there sufficient evidence 'to provide a realistic prospect of conviction against each defendant and on each charge'?

Public interest test: Where there is enough evidence, is it in the public interest to prosecute?

The prosecutions team:

- Reviews the evidence in the case files submitted by inspectors
- Works with inspectors to resolve evidential or legal issues concerning cases
- Makes the decision whether or not to prosecute individuals accused of offences relating to animals
- Instructs independent solicitors and barristers where necessary to further advise and present cases at court.

RSPCA: National Complaints, Prosecutions and Convictions

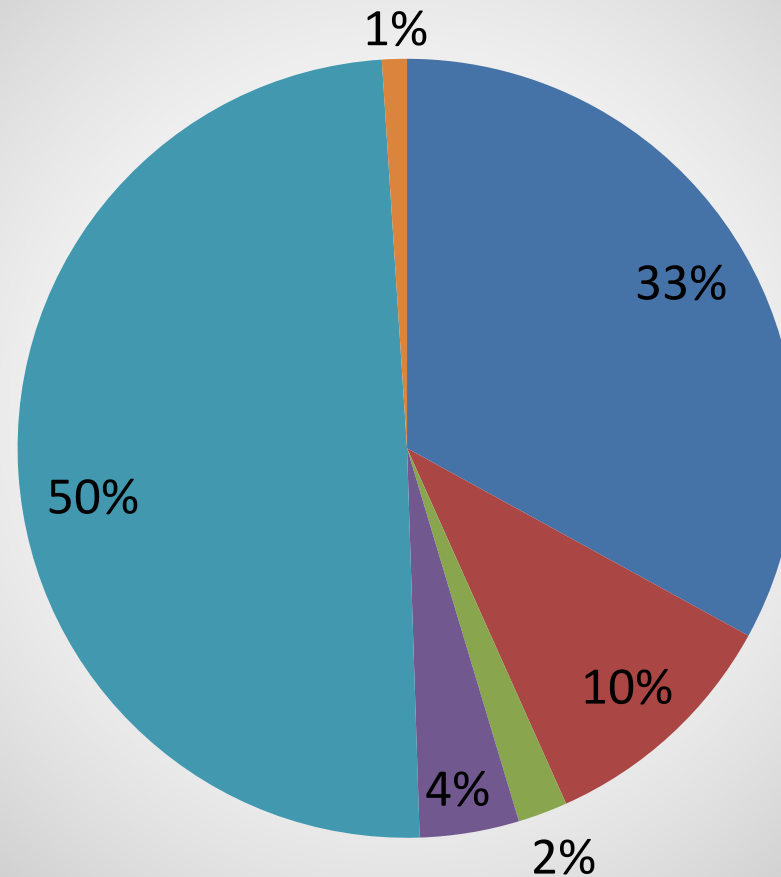
	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
Complaints	38,913	41,915	49,494	50,765	53,544	59,916
Prosecutions	377	352	266	259	247	275
Convictions	254	236	253	202	185	208

Source: RSPCA Australia National Statistics: 2010-11

http://www.rspca.org.au/assets/files/Resources/AnnualStatistics/Microsoft%20Word%20-%20Annual%20Statistics%202010_2011%20EXTERNAL%20ONLY.doc%20%2011.11.pdf

Breakdown of prosecutions by Animal Type: 2010-11

■ Dogs ■ Cats ■ Birds ■ Horses ■ Livestock ■ Wildlife



Source: *RSPCA Australia National Statistics: 2010-11*

http://www.rspca.org.au/assets/files/Resources/AnnualStatistics/Microsoft%20Word%20-%20Annual%20Statistics%202010_2011%20EXTERNAL%20ONLY.doc%20%202011.11.pdf

Prevention of Cruelty to Animals Act 1979

Authority to prosecute: s 34AA

- (1) Proceedings for an offence against this Act or the regulations may be instituted only by:
 - (a) an approved charitable organisation, or
 - (b) an inspector within the meaning of Division 2 of Part 2A, other than a police officer, or
 - (c) a police officer, or
 - (d) the Minister or the Director-General, or
 - (e) a person with the written consent of the Minister or that Director-General, or
 - (f) any other person or body prescribed by the regulations for the purpose of this section.
- (2) In proceedings for an offence against this Act or the regulations, a consent to institute the proceedings, purporting to have been signed by the Minister or the Director-General, is evidence of that consent without proof of the signature of the Minister or Director-General.

Note that the DPP has the authority to take over any prosecution of a criminal offence initiated by a person other than the DPP: s 9 DPP Act.

Relevant Cases

Pearson v Janlin Circuses Pty Ltd [2002] NSWSC 1118:

Animal Liberation successfully brought an action under the (then) open standing provisions of the *PoCtAA*.

Young v Wright (December 2011)

A Magistrate dismissed proceedings initiated by a private individual against the NSW President of the RSPCA, Peter Wright, alleging animal cruelty for lack of jurisdiction.

Under s 34AA of the *Prevention of Cruelty to Animals Act 1979*, private prosecutions can only be instituted by a person with the written consent of the Primary Industries Minister or the Director General.

The Magistrate dismissed the matter since the Minister refused her consent advising the complainant, Gary Young, to take his complaint to either the RSPCA, the Animal Welfare League or the police.

'approved charitable organisation' : s 34AA(1)(a)

charitable organisation means:

- (a) the Royal Society for the Prevention of Cruelty to Animals, New South Wales, and
- (b) any other organisation or association which has as one of its objects the promotion of the welfare of, or the prevention of cruelty to, animals, or any class of animals, and which is a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose.

Proposed statutory definition of 'charity'

Announced in May 2011 budget

Will apply to all Commonwealth law from 1 July 2013

Anticipated that it will be adopted by all States and Territories.

Charities Bill 2003

The Government intends to use the statutory definition contained in the *Charities Bill 2003* which contains the following requirements for an entity:

- Is a not-for-profit entity
- Has a dominant purpose that is charitable and is for the public benefit
- Does not engage in activities that do not further its dominant purpose
- Does not engage in conduct that constitutes a serious offence
- Is not an individual, a partnership, a political party, a superannuation fund or a government body

→ **Would animal welfare groups fit in the proposed definition?**

→ **Must have regard to the objects and activities of the group to determine if it may qualify**

Northern Rivers Community Legal Centre

Our aims are:

- To advocate for social justice, particularly for people who are socially or economically disadvantaged, and whose inability to access the legal system further aggravates or perpetuates their disadvantage.
- To provide and promote accessible legal services including advice, advocacy, client support, community legal education and to investigate and recommend law reform for the residents of the Northern Rivers region of New South Wales.
- To recognise and to promote the self-determination of Indigenous Australian peoples, their rights to their lands and all aspects of their culture, and their right to justice.

Our Vision:

The NRCLC provides access to quality legal information, advice, advocacy and education in order to achieve social justice for all **including animal and environmental protection.**

**Vision:**

That all animals in the Northern Rivers are protected from illegal practices.

Purpose:

To assist the Northern Rivers community to access legal advice and representation to advance animal welfare through the legal system, and engage in law reform and community education activities to improve the legal protections for animals.

Objectives:

- Act as a referral service to pro-bono legal assistance
- Assist in the development of law and policy reform to better protect animals
- Raise awareness and educate the public about animal welfare legal issues (via community education, promotional activities, workshops)
- Raise awareness among the legal profession about animal interest issues (via networking and liaison, and promotional activities)
- Increase understanding in the community of the legal avenues available to further protect animals
- Maintain up-to-date knowledge on animal interest issues, projects and the law
- Operate with a holistic approach to animal welfare legal issues and not represent the views of one particular group
- Effectively respond to the diversity of the Northern Rivers community

Private prosecutions for serious animal cruelty?

Crimes Act 1900

530 Serious animal cruelty

- (1) A person who, with the intention of inflicting severe pain:
- (a) tortures, beats or commits any other serious act of cruelty on an animal, and
 - (b) kills or seriously injures or causes prolonged suffering to the animal, is guilty of an offence.

Criminal Procedure Act 1986

14 Common informer

A prosecution or proceeding in respect of any offence under an Act may be instituted by any person unless the right to institute the prosecution or proceeding is expressly conferred by that Act on a specified person or class of persons.

49 Commencement of private prosecutions

- (1) If a person other than a police officer or public officer is authorised under section 14 of this Act or under any other law to commence committal proceedings against a person for an offence, the person may commence the proceedings by issuing a court attendance notice, signed by a registrar, and filing the notice in accordance with this Division.

Strategic Animal Advocacy

- Using *environmental protection legislation* to protect animals
- Using *consumer protection laws* to protect animals
- Challenging animal 'product' legislation
- **Administrative Law: Challenging the legality of legislative instruments and government decisions**

(and the
counter-challenge)



Animal Agriculture Alliance
9th Annual Stakeholders Summit
Truth, Lies and Videotape:
Is Activism Jeopardizing Our Food Security?

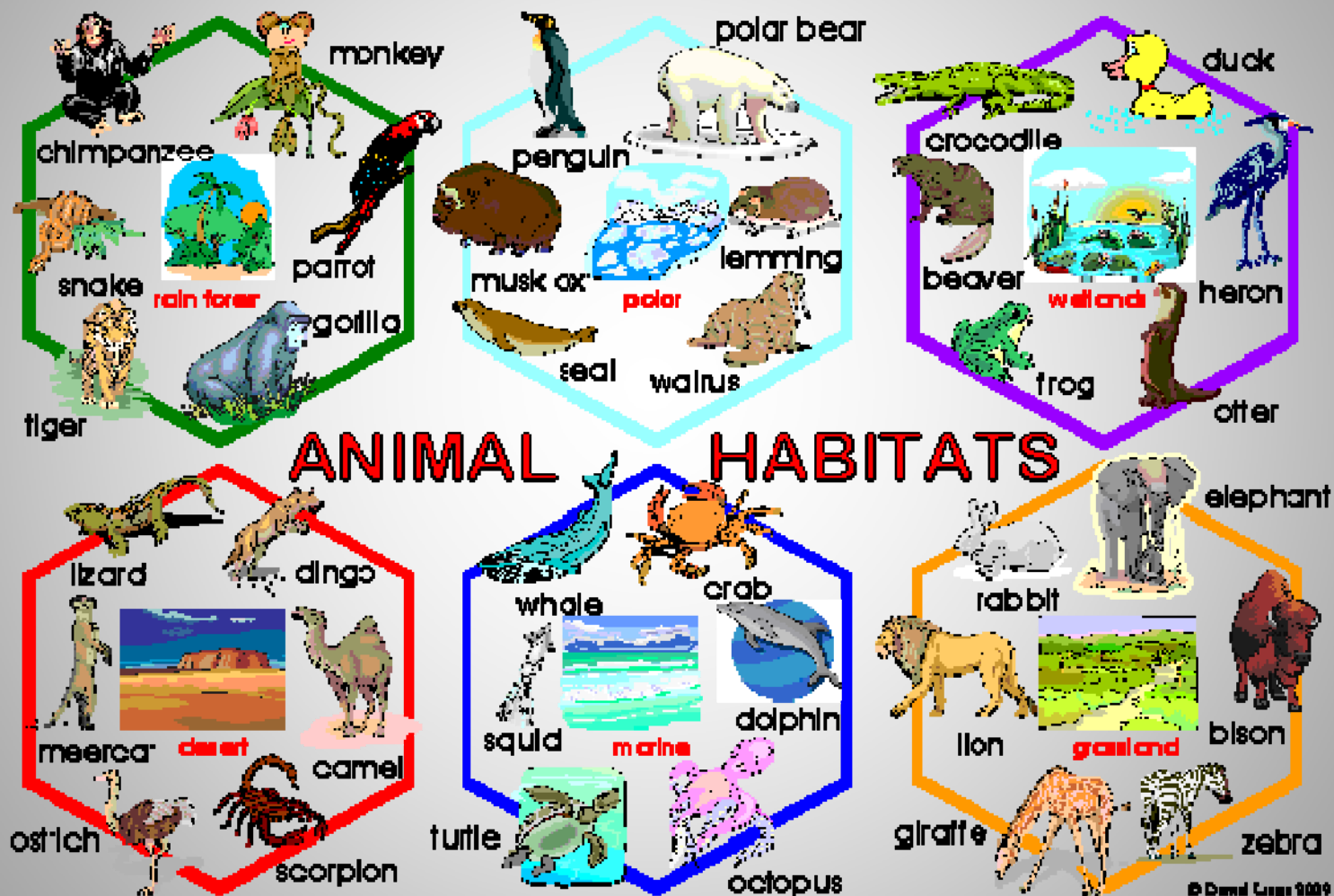


**Strategies for Coping with
“Animal Law” Claims**

John Simpson
Partner, Fulbright & Jaworski L.L.P.



Using Environmental Protection Legislation to Protect Animals



Environment Protection Legislation

International:

Convention on International Trade in Endangered Species of Wild Fauna and Flora

Commonwealth:

Environment Protection and Biodiversity Conservation Act 1999

Antarctic Marine Living Resources Conservation Act 1981

Antarctic Treaty (Environment Protection) Act 1980

Fisheries Management Act 1991

Great Barrier Reef Marine Park Act 1975

Environment Protection (Sea Dumping) Act 1981

Fisheries Management Act 1991

Great Barrier Reef Marine Park Act 1975

Environment Protection (Sea Dumping) Act 1981

New South Wales:

Marine Parks Act 1997

Protection of the Environment Administration Act 1991

Environmental Planning and Assessment Act 1979

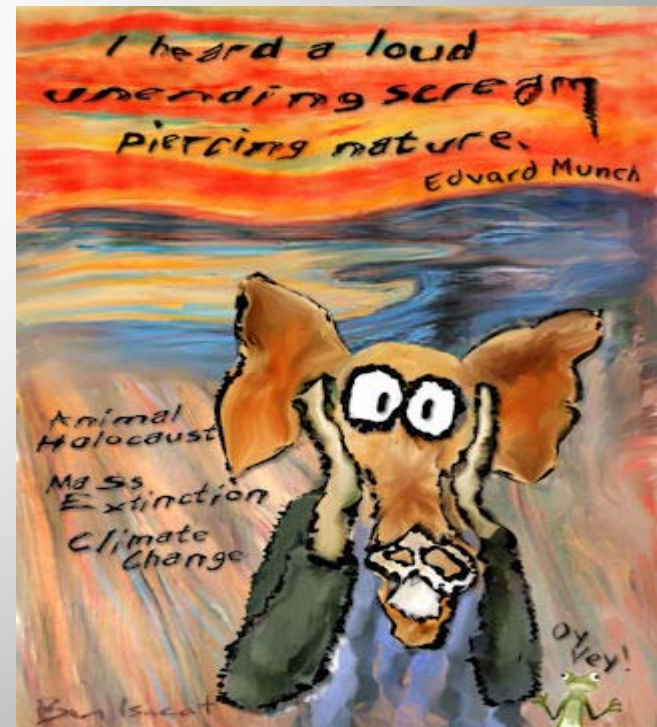
Wilderness Act 1987

Native Vegetation Act 2003

Threatened Species Conservation Act 1995

National Parks and Wildlife Act 1974

Water Management Act 2000



Protection of the Environment Administration Act 1991
Protection of the Environment Operations Act 1997

environment means components of the earth, including:

- (a) land, air and water, and
 - (b) any layer of the atmosphere, and
 - (c) any organic or inorganic matter and **any living organism**, and
 - (d) human-made or modified structures and areas,
- and includes interacting natural ecosystems that include components referred to in paragraphs (a)(c).

Threatened Species Conservation Act 1995 (NSW)

Section 141F provides that ‘any person’ may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of the Act or the regulations.

141F Restraint of breaches of Act or regulations

(1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act or the regulations, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.

(2) Proceedings under this section may be brought by a person on the person’s own behalf or on behalf of the person and other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.

National Parks and Wildlife Act 1974 (NSW)

Section 191 provides that only a person authorised by the Director-General of the NSW Department of Environment, Climate Change and Water or a police officer *can bring a prosecution for an offence* against a native animal or protected native plant. However, **s 193** provides that any person can bring *proceedings to remedy or restrain a breach* of the Act:

193 Restraint etc of breaches of Act or regulations

(1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act or the regulations, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.

(2) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of the person and other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.

Native Vegetation Act 2003 (NSW)

41 Restraint of contraventions of this Act

(1) In this section, ***contravention*** includes threatened or apprehended contravention.

(2) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a contravention of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that contravention.

(3) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of that person and on behalf of other persons (with their consent), or a body corporate or unincorporate (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.

Wilderness Act 1987 NSW

27 Restraint etc of breaches of this Act

(1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.

(2) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of the person and other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.

(

Water Management Act 2000 (NSW)

5 Water management principles

- (a) water sources, floodplains and dependent ecosystems (including groundwater and wetlands) should be protected and restored and, where possible, land should not be degraded, and
- (b) habitats, animals and plants that benefit from water or are potentially affected by managed activities should be protected and (in the case of habitats) restored, and

336 Restraint of breaches of this Act

- (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act or the regulations.
- (2) Any such proceedings may be brought whether or not proceedings have been instituted for an offence against this Act or the regulations.
- (3) Any such proceedings may be brought whether or not any right of the person has been or may be infringed by or as a consequence of the breach.
- (4) Any such proceedings may be brought by a person on the person's own behalf or on behalf of another person (with their consent), or of a body corporate or unincorporate (with the consent of its committee or other controlling body), having like or common interests in those proceedings

Environmental Planning and Assessment Act 1979 (NSW)

Section 123 provides that 'any person' may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of the Act or the regulations.

123 Restraint etc of breaches of this Act

(1) Any person may bring proceedings in the Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.

(2) Proceedings under this section may be brought by a person on his or her own behalf or on behalf of himself or herself and on behalf of other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.

Provisions such as these may be employed by animal activists as a form of ‘collateral attack’ to protect animals threatened by habitat disruption or destruction.

See s 5 *EPA Act*:

The following factors must be taken into account in development consents:

In the case of a threatened species, whether the action proposed is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,

In the case of an endangered population, whether the action proposed is likely to have an adverse effect on the life cycle of the species that constitutes the endangered population such that a viable local population of the species is likely to be placed at risk of extinction,

In relation to the habitat of a threatened species, population or ecological community:(i) the extent to which habitat is likely to be removed or modified as a result of the action proposed

Relevant case:

Gales Holdings Pty Limited v Tweed Shire Council [2001] NSWSC 1128

Case concerning the effect of land use on the habitat of the Wallum Froglet (*Crinia tinnula*), a vulnerable species under Schedule 2 of the *Threatened Species Conservation Act 1995* (NSW).

Environment Protection and Biodiversity Conservation Act 1999 (C'th)

A number of decisions made under the Act are reviewable in the AAT relating to the issue or refusal to issue, 'a permit relating to listed threatened species or ecological communities'

The following Acts provide for review by the AAT of particular decisions.

Animal advocates may strategically use this type of review as a form of ‘collateral attack’ on decisions having adverse effects on animals and/or their habitat

Environment Protection and Biodiversity Conservation Act 1999

Antarctic Marine Living Resources Conservation Act 1981

Antarctic Treaty (Environment Protection) Act 1980

Fisheries Management Act 1991

**European Union's *Directive on the conservation of natural habitats and of wild flora and fauna*
(Directive 92/43/EC)**

In 2005 Greenpeace made use of the European Union's *Directive on the conservation of natural habitats and of wild flora and fauna* (Directive 92/43/EC) to challenge the British government's decision not to ban trawling for sea bass within British territorial waters. In its claim Greenpeace sought 'judicial review of the failure of the Secretary of State to fulfill Britain's obligations under the Habitats Directive to ensure that incidental capture and killing of the common dolphin does not have a significant impact on the species.'

Using consumer protection laws to protect animals



Commonwealth:

Competition and Consumer Act 2010 (Cth)

Food Standards Australia New Zealand Act 1991

Imported Food Control Act 1992 (C'th)

Australia New Zealand Food Standards Code

New South Wales:

Food Act 2003



Misleading and Deceptive Conduct

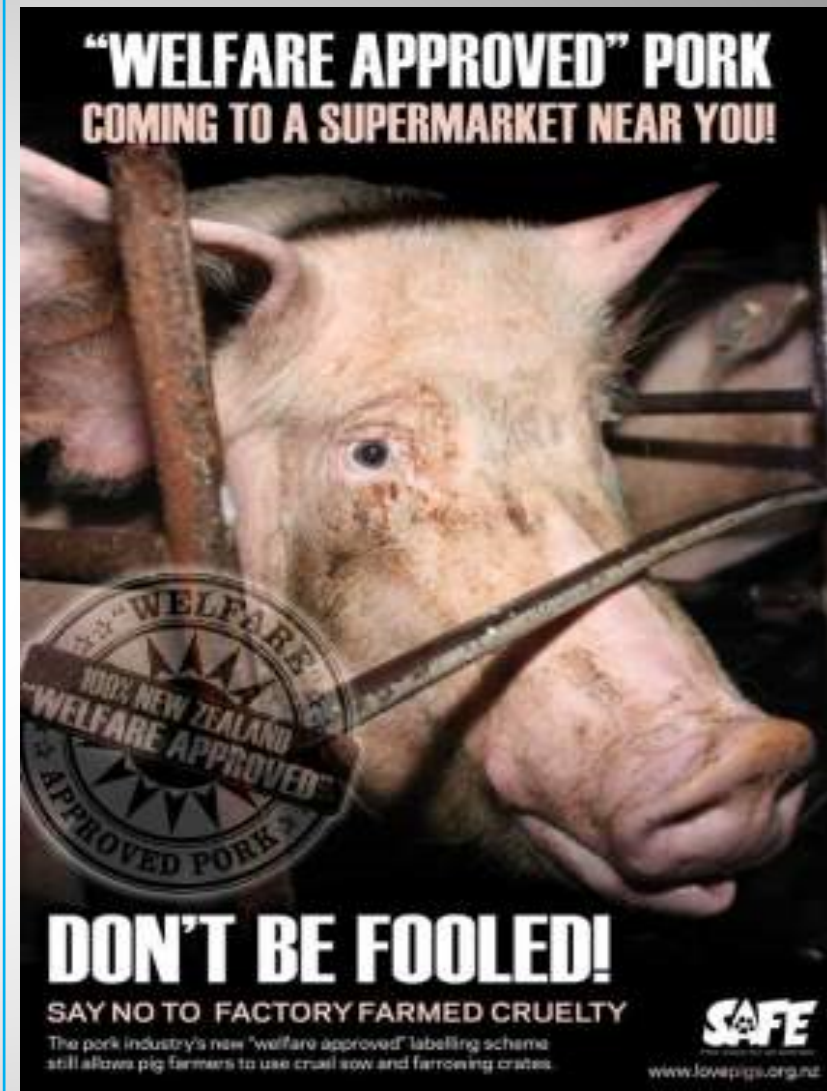
The *Competition and Consumer Act 2010* prohibits conduct by a corporation that is misleading or deceptive, or would be likely to mislead or deceive.

If the overall impression left by an advertisement, promotion, quotation, statement or other representation made by a business creates a misleading impression—such as to the price, value or the quality of any goods and services—then the conduct is likely to breach the law.

The law also says businesses must not make false or misleading claims about the quality, style, model or history of a good or service

- Any person or organisation can complain to the Australian Competition and Consumer Commission.
- If a loss has been suffered as a result of a business' misleading or deceptive conduct or misrepresentation, there may also be a private right of action under the legislation.
- Courts can order damages, injunctions and other orders against businesses found to have engaged in misleading or deceptive conduct.

In January 2012, *Humane Choice* lodged a complaint with consumer watchdog the Australian Competition and Consumer Commission against smallgoods manufacturer *Primo*, alleging its 'free range' meat label is misleading. The label has the RSPCA tick of approval, which is given to products that come from RSPCA approved farms. Humane Choice argues that current label would lead consumers to incorrectly believe that it is an RSPCA product, or endorsed as free range by the RSPCA when the RSPCA do not accredit free range farms.



Food Act 2003 (NSW)

22 False descriptions of food

(1) For the purposes of this Part, food that is falsely described includes food to which ... the following applies:

(e) any word, statement, device or design used in the packaging or labelling of the food, or in an advertisement for the food, would create a false impression as to the nature or substance of the food, or the commercial value of the food, in the mind of a reasonable person,


(f) the food is not of the nature or substance represented by the manner in which it is packaged, labelled or offered for sale.

Imported Food Control Act 1992 (C'th)

SECT 8A : Labelling offence

(1) A person may only deal with food imported into Australia if the food meets applicable standards relating to information on labels for packages containing food.

Challenging Animal 'Product' Legislation



We suffer from
pain, misery,
fear, diseases
and torture

We are voiceless

Captive for life
Enslaved since birth
Raped to produce
Slaughtered for taste
Sold for profit

We are the 99%

Commonwealth:

Export Control Act 1982

Australian Meat And Live-Stock Industry Act 1997

Australian Meat And Live-Stock Industry Act 1997

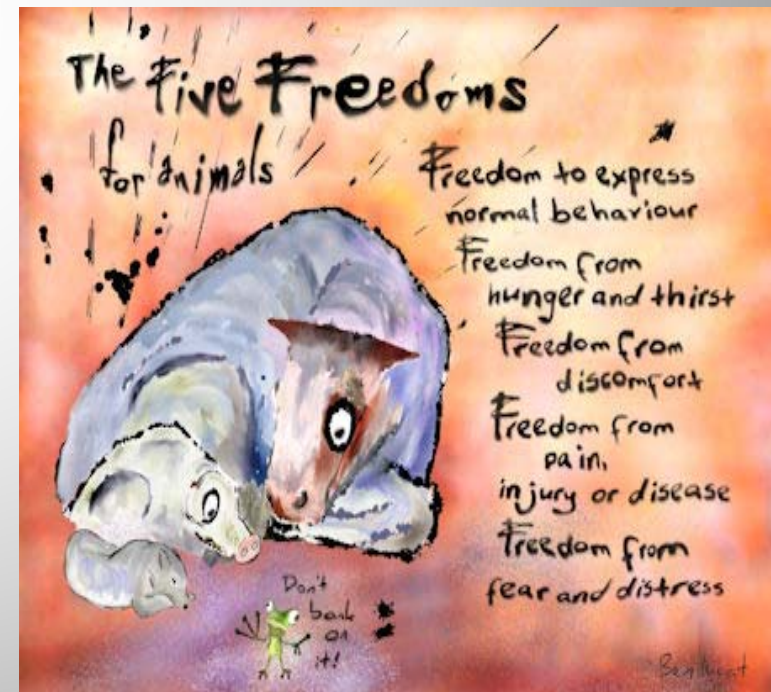
Australian Code for the Export of Live-stock

Imported Food Control Act 1992

Meat Inspection Act 1983

New South Wales:

Agricultural Industry Services Act 1998



Australian Meat And Live-Stock Industry Act 1997

Australian Code for the Export of Live-stock

(1) The Minister may determine, in writing, principles relating to the export of live-stock from Australia.

(2) The principles **must be taken into account by persons exercising powers and performing functions under this Act.**

(3) The principles are to be known as the ***Australian Code for the Export of Livestock*** .

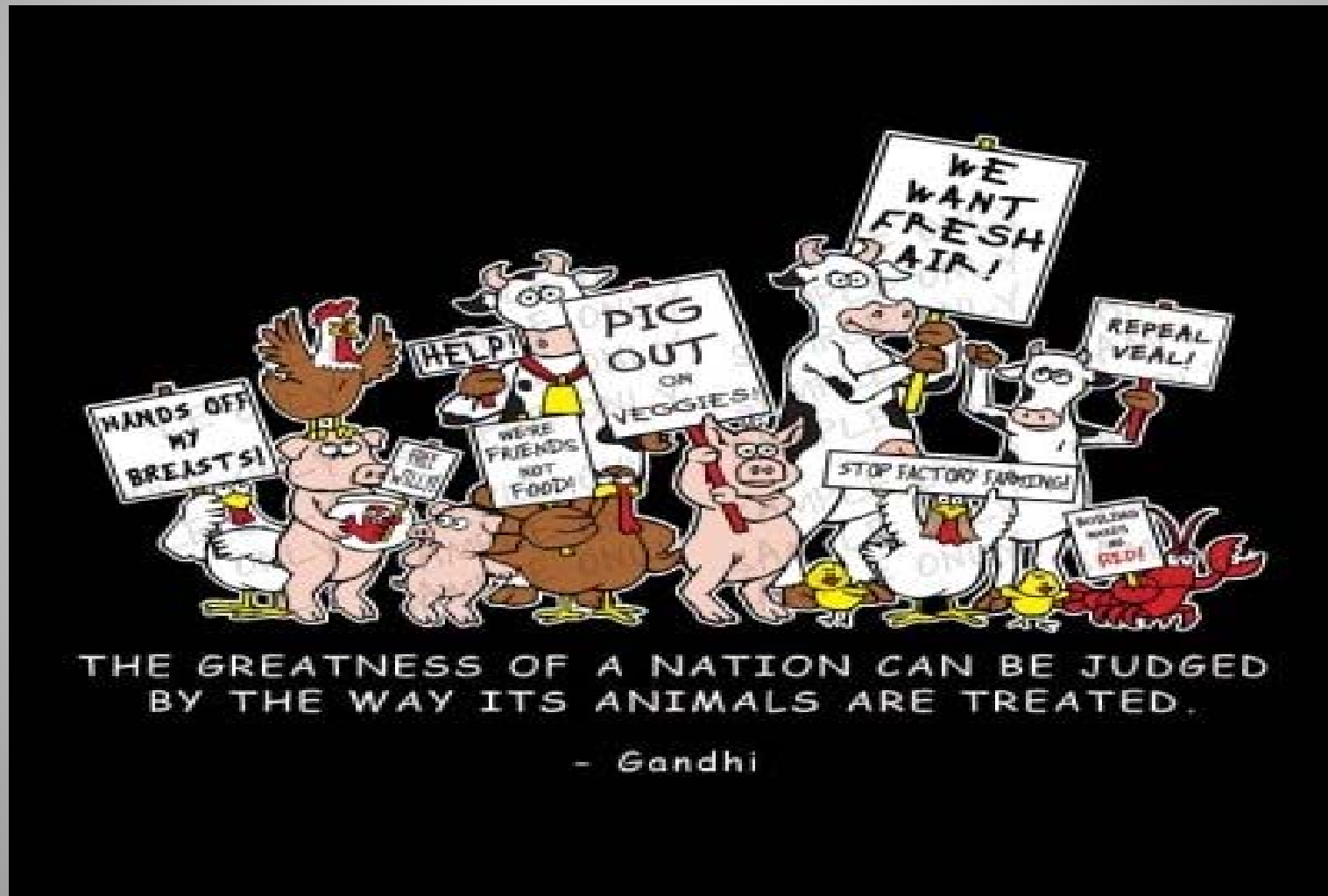
(4) Without limiting subsection (1), the principles may relate to any one or more of the following in relation to the export of live-stock from Australia:

- (a) the planning of activities involved in the export;
- (b) the source of the live-stock;
- (c) the feeding of the live-stock until their arrival at their overseas destination;
- (d) the treatment of the live-stock until their arrival at their overseas destination;
- (e) the transport of the live-stock within Australia;
- (f) the assembling of the live-stock before being loaded on to a vessel or aircraft for export from Australia;
- (g) the loading of the live-stock onto a vessel or aircraft for export from Australia;
- (h) the transport of the live-stock from Australia to their overseas destination;
- (i) any other matter relating to any stage in the process from the planning of the export of the livestock to their delivery at their overseas destination.

(5) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*



Administrative Law: Challenging the legality of legislative instruments and government decisions



THE GREATNESS OF A NATION CAN BE JUDGED
BY THE WAY ITS ANIMALS ARE TREATED.

- Gandhi

Commonwealth:

Ombudsman Act 1976

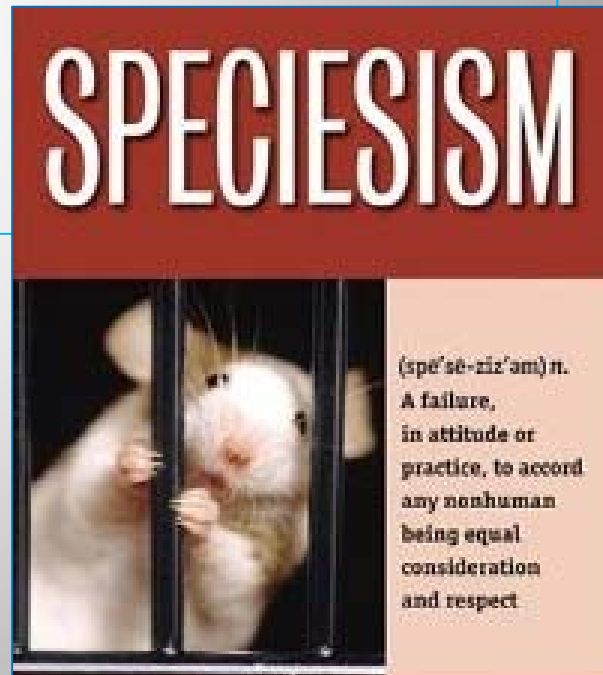
Administrative Appeals Act 1974

Administrative Decisions Judicial Review Act 1977

New South Wales:

Ombudsman Act 1974

Judicial review : Supreme Court of NSW



Relevant cases: Administrative Appeals Tribunal

***Wildlife Protection Association of Australia Inc & Ors and Minister for the Environment and Heritage & Anor* [2003] AATA 23**

Application for review of a decision of the Minister for the Environment and Heritage pursuant to s 10(1) of the [Wildlife Protection \(Regulation of Exports and Imports\) Act 1982](#) to declare the New South Wales Kangaroo Management Program 2002-2006 to be an approved Management Program for the purposes of that Act.

***Wildlife Protection Association of Australia Inc and Minister for Environment and Heritage and Ors* [2004] AATA 1383**

The Applicants challenged a decision of the Minister declaring the following Plans to be approved *Wildlife Trade Management Plans* for the purposes of section 303FO(2) of the *Environment Protection and Biodiversity Conservation Act 1999*:

The *Macropod Conservation and Management Plan* (SA)

The *Wildlife Trade Management Plan for Export – Commercially Harvested Macropods 2003-2007* (Qld)

The *Red Kangaroo Management Plan 2003-2007* (WA)

The *Western Grey Kangaroo Management Plan 2003-2007* (WA)

Relevant cases: Administrative Appeals Tribunal

Wildlife Protection Association of Australia Inc. and Minister for the Environment, Heritage and the Arts and Director-General of the Department of Environment and Climate Change (NSW) [2008] AATA 717

The Applicant sought a review of the Minister's decision pursuant to s 303 FO(2) of the [Environment Protection and Biodiversity Conservation Act 1999](#) that the 'New South Wales Commercial Kangaroo Harvest Management Plan 2007-2011' was an *approved wildlife trade management plan* as that expression is used in Part 13A of the *EPBC Act*.

Wildcare Queanbeyan Incorporated v Conservator of Flora and Fauna [2009] ACAT 31 (Australian Capital Territory Civil and Administrative Tribunal)

Appeal against decision of Conservator not to issue a licence to *Wildcare* to enable them to 'export' orphaned joeys (Eastern Grey Kangaroos) from the ACT to NSW

End

