

Animal Welfare Legislation in Australia

Blache, D.¹; Maloney, S.K.²

¹*School of Animal Biology M085, Faculty of Natural & Agricultural Sciences, The University of Western Australia, 35 Stirling Highway, Crawley, WA 6009, Australia.*

²*Physiology: Biomedical Biomolecular and Chemical Science, The University of Western Australia, 35 Stirling Highway, Crawley, WA 6009, Australia. E-mail: dbla@animals.uwa.edu.au*

Summary

This paper provides an overview of the Australian legislation for animal welfare. The structure of the legal system in Australia under the current Constitution, and the history of the Australian law for animal welfare, is briefly described. The eight states and territories comprising the Commonwealth of Australia have independent legislations and these are compared for their purpose, definitions, adopted codes of practice, and systems of enforcement. These comparisons help to highlight the strong features and the limitations of the Australian animal laws. Particular attention is given to the *Australian code of practice for the use of animals in teaching and research*. All states use this code as a framework for local legislation, and here we use it to illustrate the benefits of harmonisation and self-regulation. In the last section, the role of the Australian Animal Welfare Strategy in the enhancement of animal welfare is described to illustrate the importance of consultation in the process of legislation.

Key words: Code of ethics, regulation, animal ethics

Resumen

Legislación sobre Bienestar Animal en Australia

Este artículo da una visión de la legislación australiana sobre bienestar animal. Se describe la estructura del sistema legal en Australia bajo la Constitución actual, y la historia de la legislación australiana sobre bienestar animal. Los ocho estados y territorios que componen a la Commonwealth de Australia tienen legislaciones independientes y se comparan en cuanto a sus objetivos, definiciones, códigos de prácticas adoptados, y sistemas de aplicación. Estas comparaciones ayudan a remarcar los aspectos fuertes y las limitaciones de las leyes australianas sobre animales. Se da particular atención al *Código de práctica para el uso de animales en enseñanza e investigación*. Todos los estados usan este código como marco de referencia para la legislación local, y aquí ilustramos los beneficios de armonización y auto-regulación. En la última sección, se describe el rol de la Estrategia Australiana de Bienestar Animal en el aumento del bienestar animal para ilustrar la importancia de la consulta en el proceso de legislación.

Palabras clave: Código de ética, regulación, ética animal

Introduction

Since the first piece of animal welfare legislation was released in the UK in 1822, *The Act to Prevent the Cruel and Improper Treatment of Cattle* (22d July 1822), many countries, including Australia, have developed and adopted pieces of legislation that regulate the relationship between humans and other animals. The structures and format of the legislation has often been inspired by the original English legislation, such as *The*

Cruelty to Animals Act (1836) or the first ever anti-vivisection act, *The Cruelty to Animals Act* (1876). However, the laws concerning the relationship between humans and other animals in each country have been shaped by the history of the legal system in each country. In the present paper, we examine the strengths and limitations of the Australian legislations and regulations related to animal welfare. *The Code of Practice for the use of animals in research and teaching* is used to demonstrate the efficacy of a uniform legislation

developed through ongoing dialogue with stakeholders and multiple reviews. We conclude by presenting the role of the Australian Animal Welfare Strategy in the development of a framework in support of a National approach to the legislation of Animal Welfare.

The Australian legislation of animal welfare and animal cruelty

To better understand the structure of the Australian legislation related to animal welfare it is necessary to describe the structure of the Australian legal system. Since 1901, Australia has had a system of government that comprises the federal government and eight state and territory governments. Australia has six states and two main territories that have independent legislative power in all matters not specifically assigned to the federal government. As such, the Australian Constitution gives the legislative responsibility for animal welfare within Australia primarily to the state and territory governments. However, the Australian Federal Government has responsibility for trade and international agreements and as such, controls the legislation that covers the welfare of animals exported live or slaughtered in export registered establishments. The Australian Federal Government also has overall responsibility for the welfare of; 1) kangaroos killed for commercial purposes (Natural Resource Management Ministerial Council 2008a,b), 2) introduced animals managed under the National Threat Abatement Plan, and 3) wild animals managed and animals used in research on Australian Federal Government lands.

Over the years, all states and territories have developed comprehensive animal welfare legislations, the latest versions of which are dated between 1979 and 2002 (Table 1). However, the eight sets of legislation differ in their purpose or scope, definition of «animal», definition of cruelty, adopted codes of practice, penalties, and enforcement. These inconsistencies between states can make the regulation of activities involving animals across Australia difficult. Interestingly, they also illustrate how the legislation of the interaction between humans and other animals can differ. In one respect, the variety in the legislations is surprising because the subject of the law (animal) is identical, but does not have rights as such. On the other hand, animal welfare and the ethical treatment of animals are not well-defined concepts (Fraser, 2008) and so are

difficult to legislate. In fact, the state legislations have been redrafted several times as our concepts and knowledge about animal welfare, and concerns about the impact of human activities on animals, have changed (Table 1). The current Acts have been regularly amended since their first publication, except for that of the state of Tasmania for which no amendment has been published since its initial release in 1993 (Animal Welfare Act 1993).

The purpose of the legislation varies between jurisdictions from the prevention of cruelty to the promotion of animal welfare, and in most legislation both are encompassed (Table 1). For example, the word «welfare» is not present in the long title of the Acts of the Northern Territory, New South Wales, or Victoria (Table 1). Similarly, the long titles that do contain the word welfare indicate that the Act promotes animal welfare (ACT, QLD, SA)¹ or provides for the welfare of animals (WA)¹. It is interesting to note that only two state legislations (ACT and QLD) define «animal welfare» in their dictionary sections, while only one defines «welfare» (NT)¹. The definitions of animal welfare are centred on health, safety, and the wellbeing of animals, reflecting the difficulty in defining and assessing animal welfare (Fraser, 2008). To complicate the scene, the definition of an animal covered by the legislations differs between legislations, illustrating the difficulty in defining the criteria necessary for an animal to be considered (or protected) by the law. In none of the state legislations the animal is defined as a «sentient being». This contrasts with the European legislation (Anonymous, 1997). In only one state, Queensland, pre-natal or pre-hatched creatures in the second half of gestation are also considered as animals and therefore covered by law. The definition of animal covers vertebrates, with the obvious exception of humans. In some states, fish are explicitly separated from vertebrates, and not covered (SA and WA), while in NT fish are covered if they are kept captive and rely on a human for feeding. Cephalopods are included in the definition of animals in ACT, QLD, TAS and WA. The crustaceans represent an interesting case, they are included in the legislations of ACT, TAS, and VIC¹ but excluded in NSW¹ and NT unless they are live food kept at an establishment where food is prepared (Table 1). All large crustaceans (Class *Malacostraca*) are included in the legislation of QLD, only 3 decapod crustaceans in that of VIC and, in the legislation of ACT, NSW and NT, crustaceans are considered only if they are intended

¹ACT; Australian Capital Territory, NSW; New South Wales, NT; Northern Territory, QLD; Queensland, SA; South Australia, TAS; Tasmania, VIC; Victoria, WA; Western Australia.

Table 1. Acts for the different Australian State and Territory including the definition of animal welfare and animal (Animal Care and Protection Act 2001; Animal Welfare Act 1992; Animal Welfare Act 1993; Animal Welfare Act 1999; Animal Welfare Act 2002; Prevention of Cruelty to Animals 1985; Prevention of Cruelty to Animals 1986; Prevention of Cruelty to Animals Act 1979).

Jurisdiction	Act title	Year	Amendment		Long title	Definition Animal welfare	Animal
			No	Last			
Australian Capital Territory	Animal Welfare Act	1992	19	2009	An Act for the promotion of animal welfare, and for related purposes	Health, safety and welfare of: (a) animals in general; or (b) 1 or more animals in particular	(a) a live member of a vertebrate species (b) a live cephalopod (c) a live crustacean intended for human consumption.
New South Wales	Prevention of Cruelty to Animals Act	1979	6	2009	An Act for the prevention of cruelty to animals	Not defined	(a) a member of a vertebrate species (b) a crustacean but only when at a building or place (such as a restaurant) where food is prepared or offered for consumption by retail sale in the building or place.
Northern Territory	Animal Welfare Act	1999	5	2007	An Act to provide for the welfare of animals, prevent cruelty to animals and for related purposes	Limited to "welfare" means health, safety and well-being	(a) a live member of a vertebrate species including an amphibian, bird, mammal (other than a human being) and reptile; (b) a live fish in captivity or dependent on a person for food; or (c) a live crustacean if it is in or on premises where food is prepared for retail sale, or offered by retail sale, for human consumption;
Queensland	Animal Care and Protection Act	2001	3	2006	An Act to promote the responsible care and use of animals and to protect animals from cruelty, and for other purposes	Welfare, of an animal, means issues about the health, safety or wellbeing of the animal	(a) a live member of a vertebrate animal taxon (b) a live pre-natal or pre-hatched creature as follows if it is in the last half of gestation or development (c) a live marsupial young; (d) a live invertebrate creature of a species, or a stage of the life cycle of a species, from the class <i>Cephalopoda</i> or <i>Malacostraca</i> prescribed under a regulation for this paragraph.
South Australia	Prevention of Cruelty to Animals	1985	4	2006	An Act for the promotion of animal welfare; and for other purposes	Not defined	a member of any species of the sub phylum <i>vertebrata</i> except: (a) a human being; or (b) a fish, and includes any prescribed animal. The Act applies equally to all animals included in this regardless of their value, conservation or definition pest status.

Tasmania	Animal Welfare Act	1993	0	1993	An Act to prevent neglect of, and cruelty to, animals, to ensure the welfare of animals	Not defined	(a) any live vertebrate animal other than a human being; or (b) any other creature prescribed for the purposes of any or all of the provisions of this Act
Victoria	Prevention of Cruelty to Animals Act	1986	27	2009	An Act to discourage cruelty to animals	Not defined	(a) a live member of a vertebrate species including any: (i) fish or amphibian; or (ii) reptile, bird or mammal, other than any human being or any reptile, bird or other mammal that is below the normal mid-point of gestation or incubation for the particular class of reptile, bird or mammal; or (b) a live adult decapod crustacean, that is: (i) a lobster; or (ii) a crab; or (iii) a crayfish. Additional definition for farm animal (a) if kept for or used in connexion with primary production—cattle, sheep, pigs, poultry, goats and deer; and (b) horses other than horses kept for or used in connexion with sporting events, equestrian competitions, pony clubs, riding schools, circuses or rodeos;
Western Australia	Animal Welfare Act	2002	6	2007	An Act to provide for the welfare, safety and health of animals, to regulate the use of animals for scientific purposes, and for related purposes.	Not defined	(a) a live vertebrate other than a human or a fish; or (b) a live invertebrate of a prescribed kind,

for human consumption. The different status of crustaceans and fish across states probably reflects the importance of recreational fishing in Australia. For example, in 1999–2000, an estimated 3.4 million Australian recreational fishers spent about 1.8 billion dollars on recreational fishing related items (Henry and Lyle, 2003). If that is the case, then the exclusion of animals from the legislation is driven by socio-ecopolitical incentives, rather than the capacity of those animals to feel pain and as such having their welfare impacted on by human actions. In contrast, the inclusion of animal groups or species might be driven by a compromise between scientific knowledge (cephalopods consciousness; (Mather, 2008)) and public opinion (pre-natal suffering). Sometimes, however, because of the social pressure and different ethical viewpoints, scientific facts are ignored, as in the case of consciousness during pre-natal life (Mellor and Diesch, 2006). The definition of ‘animal’ in animal welfare laws is primordial and «animal» is often defined in relation to the perceived possibility of an organism suffering through the conscious perception of noxious stimuli (e.g. feeling pain). The notion of pain and suffering is central to deliberations because the legislation of human-animal interactions was historically, and still is, concerned centrally with «cruelty to animals». With the

exception of ACT, the notion of «prevention of cruelty to animals» is either mentioned in the short or long title of the act (NSW, NT, SA, TAS, VIC; Table 1) and/or in the objectives (or purposes) of the state legislations that have defined objectives (NSW, NT, VIC, WA). In addition, the different wording related to cruelty illustrates different aims of the legislation towards cruelty between the states. The legislation can be proactive, aimed to *prevent* (keep from happening; NSW, NT, SA, VIC) or to *protect from* (keep safe from; QLD), or prescriptively aiming to *prohibit* (forbid; WA) or persuasively aiming to *discourage* cruelty (persuade against; VIC).

The definition of cruelty varies in precision between the states. Pain and suffering is mentioned in the definition of cruelty in the legislation of all states except ACT and WA. ACT’s act does not define cruelty and WA’s act refers to «harm» instead of pain and suffering. When cruelty is explicitly mentioned, the level of detail given in the definition of cruelty varies between states; from none in ACT, to 20 short descriptions of acts of cruelty (VIC, WA). Amongst the descriptives, neglect is mentioned in 2 states (NT, SA) and neglect is eluded to in TAS’s act, to «omit to do any duty which causes or is likely to cause unreasonable and unjustifiable pain or suffering to an animal». In addition, another form of

neglect, mostly not taking reasonable action to alleviate pain, is also mentioned in few definitions of cruelty (NSW, NT, SA, WA). In a few states (SA, VIC, WA) it is clearly stipulated that not providing water or shelter is an act of cruelty to animals. This statement is very important in Australia, where climatic conditions can have a dramatic effect on the food available to livestock kept in extensive conditions. Throughout the different definitions, it can be seen that the act of cruelty towards an animal can be either intentional, an act of negligence, or circumstantial (but the owner, or person in charge, is still responsible).

In contrast to cruelty, the conditions for aggravated cruelty are fairly consistent between states. Aggravated cruelty acts are defined as acts of cruelty that cause death or serious injury to animals. In addition, being reckless or intending to cause death and serious injury are also an aggravated act of cruelty in ACT. It has to be stressed that any definition of cruelty written in the legislation does not limit the power of a court to define what is cruel.

Enforcement and penalties

In each state there is a state officer responsible for the application of the legislation. However, the enforcement is under the responsibility of private organisations in all states, namely the Royal Society for the prevention of Cruelty to Animals (RSPCA), acting with the police, has the right to act to stop acts of cruelty. The role of the RSPCA is somewhat compromised by the fact that RSPCA has relationships with animal industries or research institutions through grants and common programs, and its funding is somewhat limited. The description of what an inspector can do varies between states. Inspectors can act if they suspect on reasonable grounds that the welfare of an animal or animals has been compromised, i.e. an offense has been, is being, or is about to be, committed. Inspectors are empowered to 1) enter and search (in most states with the consent of the occupier), 2) examine and inspect animals, vehicle, containers, 3) gather evidence (photo, film, copy of document, demand name and address, take samples), 4) require assistance, 5) seize animals or carcasses and move the animals to a location where they will be cared for 6) take action to alleviate suffering such as providing animals with water, food, or treatment. The powers given to the inspector are adequate but the enforcement of the laws would be more efficient if they were part of a national or state enforcement agency, as

is the case for the enforcement of other laws such as taxation or custom laws.

The penalties differ between states but generally comprise monetary penalties or a period of imprisonment. The maximum monetary penalty ranges from AU\$5,000 (NSW) to AU\$100,000 (QLD), with an average of around AU\$10,000 in most states for a person, and up to 5 times these amounts for a corporation. The maximum period of imprisonment varies from 6 months (NSW) to 5 years (WA). The penalties are doubled for aggravated cruelty. The ranges of penalties between states illustrate that it is difficult to match penalties to offenses. It has to be noted that the penalties for aggravated cruelty are lower than those for cruelty to humans, because animals do not have an equal legal status to humans. Some lawyers and organisations have campaigned for some animals to be given rights (Francione, 1995), such as giving to great apes the right to life, liberty, and freedom from physical and psychological torture. If that was to happen, then the penalties will increase because an act of cruelty to animals with rights will then become a more serious offense.

Codes of practice

In support of the legislation, states and territories have adopted, in their regulations, Codes of Practice (COP) created by each individual state or Model Codes of Practice initiated by the Australian Federal Government (Table 2). In total 26 Model COPs have been developed. Most of them target the main farmed animals from the classical species, cattle, sheep, goat, poultry and pigs (Australian Agricultural Council, 1991b; Primary Industries Standing Committee, 2002; 2004a; 2006d,c) and more specific species such as emus, buffalo, deer, camels and ostrich (Australian Agricultural Council, 1991a; Agricultural Resource Management Council of Australia and New Zealand, 1995; Primary Industries Standing Committee, 2003; 2004b; 2006a), for cattle in feedlots (Agricultural Resource Management Council of Australia and New Zealand, 1997c), for the land transport of horse, pigs, poultry and cattle (Agricultural Resource Management Council of Australia and New Zealand, 1997a,b; 1999; Primary Industries Standing Committee 2006b), for animals at saleyards (Australian Agricultural Council, 1992) and for slaughtering establishments (Australian Agricultural Council, 2001). In addition, there is one national COP for feral livestock and two for the humane shooting of kangaroos

(Australian Agricultural Council, 1995; Natural Resource Management Ministerial Council, 2008a,b). The states and territories have adopted some of the Model COPs but in total 96 COPS have been created by the States (Table 2). Some of state COPS address the same issues as the Model COPS and some address specific issues identified by each state. The legislation of all the states, except South Australia, requires compliance with the COPs. South Australia is the only Australian jurisdiction that gives the Model Codes the force of law.

A role model: *The Australian Code of Practice for the Care and Use of Animals for Scientific Purposes*

The most widely adopted COP, which has been adopted by all states except TAS, is the *Australian Code of Practice for the Care and Use of Animals for Scientific Purposes* (NHMRC, 2004). This COP has a long history, arguably because of the long history of the public debate about the use of animals in research and teaching. The code has been an evolving document since its first edition in 1969 (NHMRC, 1969) and might provide the best example of what a COP should be, at least in the making of COP. The basis of the code provides a framework for the ethical decision making process required to allow animals to be used in research. The COP has been reviewed 7 times over the last 40 years to take into account the evolution of 1) our knowledge about the behaviour and physiology of animal welfare, 2) the community views, and 3) the field of animal welfare legislation around the world. It has to be noted that the scientific community initiated the first version. The first code addressed the need to prevent or minimize the pain and discomfort experienced by laboratory animals, and the need for good animal care standards and skills of animal care staff (NHMRC, 1969). The link between animal welfare and scientific outcomes was then already identified. In the second edition (NHMRC, 1978), the code addressed the responsibilities of all people involved in animal experimentation and teaching, indicating that animals «*should be treated with respect*». In addition, the code required justification for the use of animals and that the minimum number of animals be used that would allow researchers to gain solid scientific results. The last new requirement of this edition was the establishment of an Animal Experiment Ethics Review Committee (Animal ethics committee; AEC) at each research institution. The role of the AEC is to assess each scientific investigation against the accepted standards of animal welfare set out in the code (NHMRC, 1969). The next 3 editions in

1985, 1987 and 1990 were required because increasing public pressure and concomitant reviews of animal welfare, including that of experimental animals, were initiated by the Federal Government. Moreover, at that time, states introduced new legislation to regulate the use of animals in research, first in NSW, SA and VIC.

The principles of the 3 Rs originally described by Russell and Burch (1959) (replacement of animals when possible, reduction of number of animals used to the minimum necessary and, minimizing the impact on the welfare of animals – refinement) were included. The fifth edition set out clear guidelines on the roles of the AEC and the requirement for justification of the use of animals in each scientific project (NHMRC, 1990). In the next edition, a section on animal use in wildlife research was added, which was one of the first policies on wild animal welfare in Australia (NHMRC, 1997). In its latest edition, the code includes definitions of pain, distress, and wellbeing. The framework ensures that the welfare of animals can be assessed and managed to reach the highest ethical and welfare standards. Importantly, the code now requires a triennial review of the ethical review process for each institution. This review mechanism ensures that the institutions are accountable for the correct functioning of their AECs and that the facilities to keep animals are up to standard (NHMRC, 2004). The Code is a living document and has incorporated new elements over the years, but the principles of the code has not changed since the earliest edition: respect for animals, commitment to welfare, justification for the use of animals, promotion of the 3 RSs, and the links between good science and good animal welfare. In 2009, the national health & medical research council commenced a survey to amend the latest edition. *The Australian Code of Practice for the Care and Use of Animals for Scientific Purposes* is an illustration of how a national and consultative approach can develop an ethical framework that ensures 1) an efficient review of the use of animals, 2) regular auditing of the processes and 3) regular update of the codes. The history of this code could be seen as the blue print of the recent initiative of the federal government, the Australian Animal Welfare Strategy.

The Australian Animal Welfare Strategy (AAWS)

In 2004, the Australian government instigated the creation of the Australian Animal Welfare Strategy under the auspices of the Department of Agriculture, Fisheries

Table 2. Codes of Practice adopted by the Australian Government (Aust. Gvt.) and the states and territories. ACT; Australian Capital Territory, NSW; New South Wales, NT; Northern Territory, QLD; Queensland, SA; South Australia, TAS: Tasmania, VIC; Victoria, WA; Western Australia.

Code of practice for	Jurisdiction								
	Aust. Gvt.	ACT	NSW	NT	QLD	SA	TAS ^q	VIC	WA
Farmed animals									
Cattle	2*	1A ^a	2A	1A ^a	2A	1A ^a		1	1A ^a
Buffalo	1		A		A	A			A ^s
Domestic poultry	1	A	A	A	A	A		A	A ^s
Ostriches	1				A	A			
Emus	1				A	A		1	A
Sheep	1	1	A		A	A		1	A ^s
Goat	1	1	A		A	A		1	A ^s
Pig	1			A	A	A		1	A
Rabbits	1				A	A		1	A ^s
Camel	1				A	A			A
Deer	1	1	A		A	A		1	A ^s
Horses	1	2 ^b	1					A+3 ^s	
Companion animals		7 ^c	7 ^g	j		2 ^p		11 ⁱ	
Exhibited animals			10 ^h					1	1
Games								2 ^v	
Feral livestock	1			A	A	A			A ^s
Pest control	2§	2 ^d		2A					
Wildlife		1 ^e	1					1	
Rodeo			1	1 ^k		1 ^k	1	1	
Circuses			1	1 ^l	1	1			1
Transport									
Land	4#		1	1A ^m	4A	4A		4	3A+2 ^y
Sea	1					1A			
Air	1					1A			
Rail	1					1A			
Saleyards	1	1	A		A	A		1	A ^s
Slaughter	1				A	A			
Research	1	A	A	A	A	A	A ^r	A+2 ^w	A
Film & theatre			1		1			1	
Other		1 ^f	1 ⁱ	1 ⁿ				5 ^x	3 ^z
Adopted		3	9	8	20	22	1	3	16
Total	26	20	32	11	22	26	2	42	23

Notes: A: The state or territory has adopted the Model Codes of Practices developed by the department of Agriculture, Fisheries and Forestry, Australian Government. *: Cattle welfare, Beef cattle feedlots; §: two National codes of practice for the humane shooting of kangaroos and wallabies for commercial purpose, non-commercial purposes; #: four Codes for land transport of horse, pigs, poultry and cattle. ACT: a: Cattle welfare; b: riding, general welfare; c: amphibians in captivity, bird in captivity, animal boarding establishments, dog welfare, cat welfare, pet grooming, pet shop; d: foxes, kangaroos; e: kangaroos; f: greyhound. NSW: g: pet shop, breeding dogs, breeding cats, pet grooming, companion animals transport agencies, boarding establishments, trading bird; h: general, mammals, primates, seal, dolphin, carnivores, raptors, temporary establishments, mobile establishments (no-circuses), pinioning of bird; i: Security dogs. NT: j: two not adopted guidelines, caged birds and pet shops; k: National Consultative Committee on Animal Welfare (NCCAW) position statement No 39; l: NCCAW position statement No 26; m: cattle; n: NCCAW Position Statement No 37. SA: p: pet trade, bird trade. TAS: q: no code of practice have been adopted a set of guidelines is available but mandatory; r: To be licensed, the institution must agree to comply with the approved Code of Practice (7th edition of the Australian Code of Practice for the Care and Use of Animals for Scientific Purposes). VIC: s: general welfare, horse hire establishments, horse competing in bush races; t: amphibian, reptiles, boarding establishment, breeding and rearing establishments, shelters and pounds, pet shops, debarking of dogs, dog training establishments, private keeping of dogs, private keeping of cats, cage birds; v: general hunting, game bird hunting; w: housing of mice, rats, guinea pigs and rabbits, use of pounds animal in scientific procedures; x: tethering, small steel-jawed trap, responsible breeding of animals with heritable defects that cause disease, greyhounds, trapping of cats. WA: §: code based on a Model code but adopted to WA, y: Adopted for poultry pig horse, local codes for cattle, sheep; z: pigeon keeping and racing, harness rules of racing, Australian rules of racing.

and Forestry. The purpose of the AAWS is «*to provide direction for the development of future animal welfare policies, based on a national consultative approach and a firm commitment to high standards of animal welfare*» (Department of Agriculture Fisheries and Forestry, 2008). The AAWS was developed in conjunction with the National Consultative Committee on Animal Welfare (NCCAW), the governments of the 6 states and 2 territories, animal industries organisations, animal welfare groups and the general public. This wide consultation aimed to ensure that the Strategy has direct relevance for the entire Australian community. The AAWS aims to serve all Australians including «*persons in charge of an animals, animal users, the veterinary profession, livestock producers, processors and transporters, animal welfare bodies, researchers and teachers, governing bodies of sport and recreation organisations, educational facilities, consumers, government agencies and harvesters*» (Department of Agriculture Fisheries and Forestry, 2008). The AAWS covers all sentient animals and has defined a sentient animal as an animal «*that has the capacity to have feelings and to experience suffering*» (footnote page 7 in Department of Agriculture Fisheries and Forestry, 2008). This contrasts with current Acts which do not include the notion of sentience in their definition of

animals, while most Acts consider pain and suffering without defining cruelty.

To achieve these aims, the AAWS has established six working groups to develop new nationally consistent policies to deal with the welfare of companion animals, aquatic animals, animals in the wild, animals used for work, sport, recreation, or display and animals used in research and teaching. The AAWS considers both direct and indirect human-animal interactions and it has a holistic approach to Animal Welfare, aiming to be a «*cohesive national strategy*». In addition to the large array of animals covered by the strategy (see above and Figure 1), the AAWS integrates elements of the existing framework such as policies, legislation, codes, and community expectations (Figure 1). In addition, the AAWS has defined the roles and responsibilities related to animal welfare including that of understanding, a responsibility that is not mentioned in the current Acts. Its objectives and activities are driven by values, ethics, science, innovation, national and international benchmarks and, education, social and economic considerations (Figure 1). The strategy has been developed over the last five years and is meant to be enacted in the very near future. As such, its efficacy and relevance to the legislation of animal welfare in Australia is yet to be tested.

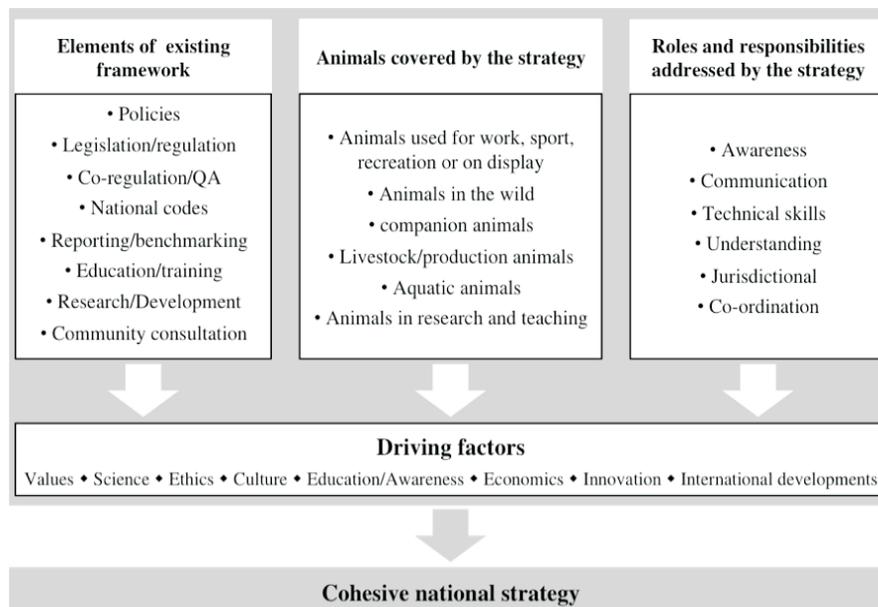


Figure 1. Structure of the Australian Animal Welfare Strategy showing the three main foundations (existing frameworks, animals covered, and roles and responsibilities) and the factors driving the development of the national strategy.

Conclusive remarks

The history of the Australian legislation of the human interactions with other animals, often called animal cruelty law or animal welfare law, illustrates how the intricacies of the legal system can affect the harmonisation of the law in a Federation of states. However, the differences between the eight independent legislations show that the animal welfare laws are discussed and based on compromises that allow the use of animals by human society. A way forward is demonstrated by the code of practice for the use of animals in experimentation and the work of the Australian Animal Welfare Strategy, demonstrating the importance of the constant public debate between all stakeholders, and more importantly, the need for a national consultation process to elaborate a framework so the law can serve all animals and all citizens.

Acknowledgements

We would like to thank the undergraduate students enrolled in the unit Animal Ethics and Welfare (ANIM3312), the postgraduate students of our laboratories, our colleagues for their comments and discussions about animal ethics and welfare and the law: they have motivated us to carefully explore the Australian legislation of animal cruelty.

References

- Act to Prevent the Cruel and Improper Treatment of Cattle - 22d July 1822.** In: The statutes of the United Kingdom of Great Britain and Ireland, His Majesty's Printers, London, pp. 403-405.
- Agricultural Resource Management Council of Australia and New Zealand.** 1995. Farmed buffalo, Model Code of Practice for the Welfare of Animals, CSIRO Publications, Collingwood, 27 p.
- Agricultural Resource Management Council of Australia and New Zealand.** 1997a. Land transport of horses, Model Code of Practice for the Welfare of Animals, CSIRO Publications, Collingwood, 23 p.
- Agricultural Resource Management Council of Australia and New Zealand.** 1997b. Land transport of pigs, Model Code of Practice for the Welfare of Animals, CSIRO Publications, Collingwood, 21 p.
- Agricultural Resource Management Council of Australia and New Zealand.** 1997c. National guidelines for beef cattle feedlots in Australia (2nd Edition), Model Code of Practice for the Welfare of Animals, CSIRO Publications, Collingwood, 56 p.
- Agricultural Resource Management Council of Australia and New Zealand.** 1999. Land transport of cattle, Model Code of Practice for the Welfare of Animals, CSIRO Publications, Collingwood, 23 p.
- Animal Care and Protection Act.** 2001. Queensland, Brisbane, 140 p.
- Animal Welfare Act.** 1992. Australian Capital Territory, Canberra, 119 p.
- Animal Welfare Act.** 1993. Tasmanian Government, Hobart, 35 p.
- Animal Welfare Act.** 1999. Northern Territory, Darwin, 39 p.
- Animal Welfare Act.** 2002. Western Australia, Perth, 50 p.
- Anonymous.** 1997. Protocol on protection and welfare of animals, Official Journal C 340, 10/11/1997.
- Australian Agricultural Council.** 1991a. Farming of deers, Model Code of Practice for the Welfare of Animals, CSIRO Publications, Collingwood, 10 p.
- Australian Agricultural Council.** 1991b. The goat, Model Code of Practice for the Welfare of Animals, CSIRO Publications, Collingwood, 13 p.
- Australian Agricultural Council.** 1992. Animals at saleyards, Model Code of Practice for the Welfare of Animals, CSIRO Publications, Collingwood, 18 p.
- Australian Agricultural Council.** 1995. Feral livestock animals: destruction or capture, handling and marketing, Model Code of Practice for the Welfare of Animals, CSIRO Publications, Collingwood, 17 p.
- Australian Agricultural Council.** 2001. Livestock at slaughtering establishments, Model Code of Practice for the Welfare of Animals, CSIRO Publications, Collingwood, 33 P.
- Department of Agriculture Fisheries and Forestry.** 2008. The Australian Animal Welfare Strategy, Commonwealth of Australia, Barton, ACT, 36 p.
- Francione, G.L.** 1995. Animals, property and the law. Temple University Press, Philadelphia. 349p.
- Fraser, D.** 2008. Understanding animal welfare : the science in its cultural context. Wiley-Blackwell, Chichester. 324 p.
- Henry, G.W. and Lyle, J.M.** 2003. The National Recreational and Indigenous Fishing Survey, Australian Government Department of Agriculture, Fisheries and Forestry, Canberra, 190 p.
- Mather, J.** 2008. Cephalopod consciousness: behavioural evidence. *Consciousness and Cognition*. 17, 37-48.
- Mellor, D.J. and Diesch, T.J.** 2006. Onset of sentience: The potential for suffering in fetal and newborn farm animals. *Applied Animal Behaviour Science*. 100, 48-57.
- Natural Resource Management Ministerial Council.** 2008a. National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Commercial Purposes, Commonwealth of Australia, Canberra, 13 p.
- Natural Resource Management Ministerial Council.** 2008b. National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Non-Commercial Purposes, Commonwealth of Australia, Canberra, 16 p.

- NHMRC.** 1969. Code of practice for control of experiments in animals, Commonwealth of Australia, Canberra, 28 p.
- NHMRC.** 1978. Code of practice for the care and use of animals in research in Australia, Commonwealth of Australia, Canberra, 44 p.
- NHMRC.** 1990. Australian code of practice for the care and use of animals for scientific purposes, Commonwealth of Australia, Canberra, 75 p.
- NHMRC.** 1997. Australian code of practice for the care and use of animals for scientific purposes - 6th edition, Commonwealth of Australia, Canberra, 82 p.
- NHMRC.** 2004. Australian code of practice for the care and use of animals for scientific purposes - 7th edition, Australian Government, Canberra, 84 p.
- Prevention of Cruelty to Animals.** 1985. South Australia, Adelaide, 24 p.
- Prevention of Cruelty to Animals.** 1986. Victoria, Melbourne, 129 p.
- Prevention of Cruelty to Animals Act.** 1979. New South Wales, Sydney, 21 p.
- Primary Industries Standing Committee.** 2002. Domestic poultry 4th Edition, Model Code of Practice for the Welfare of Animals, CSIRO Publications, Collingwood, 38 p.
- Primary Industries Standing Committee.** 2003. Farming of Ostriches, Model Code of Practice for the Welfare of Animals, CSIRO Publications, Collingwood, 15 p.
- Primary Industries Standing Committee.** 2004a. Cattle 2nd Edition, Model Code of Practice for the Welfare of Animals, CSIRO Publications, Collingwood, 30 p.
- Primary Industries Standing Committee.** 2004b. The camel (*Camelus dromedarius*) 2nd Edition, Model Code of Practice for the Welfare of Animals, CSIRO Publications, Collingwood, 18 p.
- Primary Industries Standing Committee.** 2006a. Husbandry of captive-bred emus 2nd Edition, Model Code of Practice for the Welfare of Animals, CSIRO Publications, Collingwood, 12 p.
- Primary Industries Standing Committee.** 2006b. Land transport of poultry 2nd Edition, Model Code of Practice for the Welfare of Animals, CSIRO Publications, Collingwood, 14 p.
- Primary Industries Standing Committee.** 2006c. Pigs 3rd Edition, Model Code of Practice for the Welfare of Animals, CSIRO Publications, Collingwood, 39 p.
- Primary Industries Standing Committee.** 2006d. The sheep 2nd Edition, Model Code of Practice for the Welfare of Animals, CSIRO Publications, Collingwood, 23 p.
- Russell, W.M.S. and Burch, R.L.** 1959. The principle of humane experimental technique. Methuen, London. 238 p.
- The Cruelty to Animals Act.** 1836. The statutes of the United Kingdom of Great Britain and Ireland, His Majesty's Printers, London. pp. 344-351.
- The Cruelty to Animals Act.** 1876. Public General Statutes passed in the Thirty-Ninth & Fortieth Years of the Reign of Her Majesty Queen Victoria, Her Majesty's Printers, London. pp. 459-464.