Assessment of the Legislative Framework
Addressing Factory Farmed Animals & Kangaroos in Australia

UTAS Animal Law Conference
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Ruth Hatten, Legal Counsel, Voiceless

Photo courtesy of Animals Australia
Overview

- The suffering that is prevalent in the factory farming and commercial kangaroo industries
- The legislative framework that exists to address the welfare of factory farmed animals and kangaroos, including recent cases
- Recent developments
Factory farming

- An industry that depends on cruelty for profit
- Over 500 million animals suffer each year
- Confinement, unnatural environment, prevents natural behaviour, enables suffering, ignores sentience
LIVESTOCK NUMBERS, at 30 June 2011

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th>2006</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dairy cattle(a)</td>
<td>3 217</td>
<td>2 788</td>
<td>2 570</td>
</tr>
<tr>
<td>Meat cattle and calves</td>
<td>24 504</td>
<td>25 605</td>
<td>25 936</td>
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<tr>
<td>Sheep and lambs</td>
<td>110 928</td>
<td>91 028</td>
<td>73 099</td>
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<tr>
<td>Pigs</td>
<td>2 748</td>
<td>2 733</td>
<td>2 285</td>
</tr>
<tr>
<td>Chickens for meat</td>
<td>77 231</td>
<td>78 448</td>
<td>77 633</td>
</tr>
<tr>
<td>Chickens for eggs(b)</td>
<td>14 276</td>
<td>15 936</td>
<td>13 111</td>
</tr>
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</table>

(a) Excluding house cows.
(b) Including hens in moult.

Source: Agricultural Commodities, Australia (cat. no. 7121.0)
http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/7106.0Main+Features42012
## LIVESTOCK SLAUGHTERINGS AND PRODUCTS

<table>
<thead>
<tr>
<th>Livestock slaughterings (no.)</th>
<th>2001</th>
<th>2006</th>
<th>2011</th>
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<tbody>
<tr>
<td>Cattle</td>
<td>'000</td>
<td>7 941</td>
<td>7 580</td>
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<tr>
<td>Calves</td>
<td>'000</td>
<td>1 038</td>
<td>821</td>
</tr>
<tr>
<td>Sheep</td>
<td>'000</td>
<td>16 628</td>
<td>11 830</td>
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<tr>
<td>Lambs</td>
<td>'000</td>
<td>18 629</td>
<td>18 666</td>
</tr>
<tr>
<td>Pigs</td>
<td>'000</td>
<td>5 016</td>
<td>5 370</td>
</tr>
<tr>
<td>Chickens(a)</td>
<td>'000</td>
<td>398 869</td>
<td>437 864</td>
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## Meat production (carcass weight)

<table>
<thead>
<tr>
<th>Meat production (carcass weight)</th>
<th>2001</th>
<th>2006</th>
<th>2011</th>
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<tr>
<td>Beef</td>
<td>'000 t</td>
<td>2 086</td>
<td>2 050</td>
</tr>
<tr>
<td>Veal</td>
<td>'000 t</td>
<td>33</td>
<td>28</td>
</tr>
<tr>
<td>Mutton</td>
<td>'000 t</td>
<td>348</td>
<td>244</td>
</tr>
<tr>
<td>Lamb</td>
<td>'000 t</td>
<td>367</td>
<td>382</td>
</tr>
<tr>
<td>Pig meat</td>
<td>'000 t</td>
<td>365</td>
<td>389</td>
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<tr>
<td>Chicken meat (dressed weight)(a)</td>
<td>'000 t</td>
<td>619</td>
<td>773</td>
</tr>
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</table>

## Wool receivals

<table>
<thead>
<tr>
<th>Wool receivals</th>
<th>2001</th>
<th>2006</th>
<th>2011</th>
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</thead>
<tbody>
<tr>
<td>'000 t</td>
<td>590</td>
<td>473</td>
<td>368</td>
</tr>
</tbody>
</table>

## Whole milk factory intake(b)

<table>
<thead>
<tr>
<th>Whole milk factory intake(b)</th>
<th>2001</th>
<th>2006</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>ML</td>
<td>10 546</td>
<td>10 089</td>
<td>9 101</td>
</tr>
</tbody>
</table>

(a) Excludes Tas., NT and ACT. Data for 2001 includes ACT.
(b) Data collection for 2006 and 2011 is based on farm location.

http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/7106.0Main+Features42012
The law

- Laws don’t protect animals from cruelty
- Farm animals receive the least protection
- Exemptions – “stock animals”, “farm animals”, “livestock”, “cattle”
- For example, stock animals excluded from requirement that all animals receive adequate exercise
9 Confined animals to be exercised

(1) A person in charge of an animal which is confined shall not fail to provide the animal with adequate exercise.

(1A) Subsection (1) does not apply to a person in charge of an animal if the animal is:

(a) a stock animal other than a horse, or

(b) an animal of a species which is usually kept in captivity by means of a cage.

…

(3) A person in charge of an animal (other than a stock animal) shall not confine the animal in a cage of which the height, length or breadth is insufficient to allow the animal a reasonable opportunity for adequate exercise.
• Provision of defences for cruel practices
• Subjective / vague language
• When is pain ever necessary?
• Inadequate penalties
• Minimum penalties ordered by the judiciary
Recent cases:

- **David Hadchiti**: aggravated cruelty & failure to provide proper and sufficient food, $580 fine plus $4464.36 costs (NSW, October 2012)
- **David Wakeling**: 3 counts each failing to alleviate pain & failing to provide veterinary treatment + 2 counts aggravated cruelty, $2,200 fine plus $81 costs and fingerprinting (NSW, April 2012)
- **Paul Albert Brook**: intent to commit larceny and killing with intent to sell meat, 300 hours community service (NSW, March 2012)
– Gavin O’Sullivan: failure to provide veterinary care, not humanely destroying animals and containing them in a manner likely to cause further harm, $10,000 without conviction (Vic, January 2012)
– William Carter: 5 charges animal cruelty, failure to provide sufficient food and neglect, $113,000 plus $50,000 costs plus 6 month suspended jail term, prohibition on owning animals (WA, August 2012)
Codes of Practice

- Model Code of Practice for the Welfare of Animals: Animals at Saleyards
- Model Code of Practice for the Welfare of Animals: Cattle
- Model Code of Practice for the Welfare of Animals: Domestic Poultry
- Model Code of Practice for the Welfare of Animals: Land Transport of Cattle
- Model Code of Practice for the Welfare of Animals: Land Transport of Pigs
- Model Code of Practice for the Welfare of Animals: Land Transport of Poultry
- Model Code of Practice for the Welfare of Animals: Livestock at Slaughtering Establishments
- Model Code of Practice for the Welfare of Animals: Pigs
• National codes of practice (‘Model Codes’)
• State-based codes of practice
• Model Codes developed in the 1980s
• Allow cruel practices, such as:
  – confinement
  – beak trimming or de-beaking with a hot iron or wire
  – castration
  – cutting or grinding the teeth of piglets
  – de-horning adult cattle
  – tail docking
  – mulesing

without pain relief
• Codes are generally unenforceable
• Where Codes are adopted, this means they are compulsory or admissible in proceedings and that they provide a defence to a charge of animal cruelty; differs State by State
• Lack of enforceability and lack of protection
• New Standards and Guidelines being developed
Recent investigations

• Hawkesbury Valley Abattoir
  – 9 Feb 2012: abattoir shut down due to Animal Liberation NSW footage
  – Showed possible breaches of the Food Regulation 2010 (NSW) and POCTAA such as slaughter of sheep, cattle, goats and pigs, including live pigs beaten with metal poles; fully conscious slaughter and torture of animals with electric prods
  – $5,200 fine and licence suspended
  – 9 March 2012: suspension lifted “under strict conditions”
  – 12 March 2012: operations recommenced
  – Voluntary installation of CCTV cameras
  – Prompted NSW Gov’t review
  – The RSPCA has served the abattoir with a notice to appear in court on 10 cruelty charges
Wally’s Piggery

- May – July 2012: footage captured by Animal Liberation ACT & NSW showing workers beating sows; throwing piglets across the room; cutting off the tails and teeth of piglets without anesthetic; buckets of dead piglets; cramped dirty conditions; sows left with open wounds
- 3 August 2012: Food Authority, RSPCA, AWL & local police investigate but Wally tipped off day prior
- RSPCA list of demands
- Some workers sacked
- All pigs sold or destroyed
- Investigation continues
- www.aussiepigs.com.au
- Vast number of breaches including:
  - Competence of stock person: 2.1 - 2.3
  - Food: 3.1.2, 3.1.5, 3.1.6
  - Water: 3.2.1 – 3.2.3
  - Accommodation systems: 4.1.1, 4.1.2, 4.1.3, 4.1.6, 4.1.11
  - Equipment: 4.2.1, 4.2.2, 4.2.5
  - Environment: 4.3.2
  - Protection: 4.4.4, 4.4.5
  - Waste control: 4.5.1
  - Health: 5.2.2 – 5.2.5
  - Boar management: 5.4.2
  - Moving pigs: 5.5.1
  - Castration: 5.6.6
  - Tail docking: 5.6.8
  - Clipping of teeth: 5.6.11
  - Emergency euthanasia: 7.1 – 7.3
Recent developments

• Phase out of sow stalls
  – Coles, 2013
  – APL, 2017
  – Tasmania, 2014

• Eggs (Tas/ACT/NSW/SA/WA)
  – *Truth in Labelling (Free-range Eggs) Bill 2011* (NSW)
  – *Food (Labelling of Free-Range Eggs) Amendment Bill 2012* (SA)
  – *Animal Welfare Legislation (Factory Farming) Amendment Bill 2012* (ACT) and Government buy out scheme of Pace Farms
  – *Free Range Eggs Labelling Bill 2012* (WA)
Tasmania announcement to phase out caged egg production, May 2012

Legislation to be drafted for truth in labelling for eggs sold in Tasmania

Coles announcement to stop selling caged eggs by 2013

• ACCC vs industry
  – ACCC v CI & Co Pty Ltd [2010] FCA 1511
  – ACCC v Turi Foods Pty Ltd (No 2) [2012] FCA 19
  – ACCC v Baiada Poultry Pty Ltd & Ors – Judgment reserved
  – CTM Applications, AECL and APIA
Australia’s commercial kangaroo industry

- Four mainland states – NSW, Qld, SA and WA
- Four species - Macropus rufus (Red Kangaroo), M. fuliginosus (Western Grey Kangaroo) M. giganteus (Eastern Grey Kangaroo) and M. robustus (Common Wallaroo)
• The world’s largest slaughter of land-based animals
• 28 million kangaroos and 8 million joeys killed in the last decade
• Approximately 3 million kangaroos killed each year
• Approximately 1 million joeys die each year as “collateral damage”
Regulatory framework

- State responsibility for wildlife management within State boundaries
- Commonwealth responsibility for exports: *Environmental Protection and Biodiversity Conservation Act 1999*
- Kangaroo Management Plans
  - Management Plan for the Commercial Harvest of Kangaroos in Western Australia 2008-2012
Code of Practice

• National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Commercial Purposes
• Endorsed by NRMMC in 2008
• Purpose = “to ensure that all persons intending to shoot free-living kangaroos or wallabies for commercial purposes undertake the shooting so that the animal is killed in a way that minimises pain and suffering”
• “conditions … must be met. Where [they] cannot be met, or where there is any doubt about achieving a sudden and humane death, shooting must not be attempted”
Conditions – methods of shooting

• When shooting a kangaroo or wallaby, the primary objective must be to achieve instantaneous loss of consciousness and rapid death without regaining consciousness. For the purposes of the Code, this is regarded as a sudden and humane death.

• Kangaroos and wallabies must only be shot with a combination of certain firearms and ammunition.

• The combination of firearms and ammunition selected … must ensure that sudden and humane death of the target animal is consistently achieved.

• Self-loading or semi-automatic rifles must not be used at any time.
• Kangaroos and wallabies must not be shot from a moving vehicle or other moving platform
• The target kangaroo or wallaby must be standing (injured animals excepted) and clearly visible… must be stationery and within a range specified… that permits accurate placement of the shot
• Shooters should avoid shooting female kangaroos or wallabies where it is obvious that they have pouch young or dependent young at foot
A shooter must aim so as to hit the target kangaroo or wallaby in the brain, not in any other part of the body; the shooter must be certain that each kangaroo or wallaby is dead before another is targeted.
Conditions – killing injured kangaroos

• If a kangaroo or wallaby is still alive after being shot, every reasonable effort must be made immediately to locate and kill it before any attempt is made to shoot another animal. The injured kangaroo or wallaby must be euthanased in accordance with [prescribed] methods.

• Injured animals must be killed by a method that will achieve a rapid and humane death, preferably by a shot to the brain. Under circumstances where a shot to the brain is impractical or unsafe, a shot to the heart is permissible. Where a shot to either the brain or heart is impractical or unsafe (such as when the animal is moving but not able to stand), a heavy blow to the base of the skull with sufficient force to destroy the brain is permissible. To ensure a humane kill, a suitably hard and heavy blunt instrument must be used.
Once a female kangaroo or wallaby has been killed then its pouch must be thoroughly examined and any pouch young must be euthanased in accordance with [prescribed] methods.

If the kangaroo or wallaby that is shot is female then any dependent young at foot must be shot as soon as possible to avoid dispersal, in accordance with [prescribed] methods:

- Small furless pouch young – single forceful blow to the base of the skull sufficient to destroy the functional capacity of the brain or stunning, immediately followed by decapitation by rapidly severing the head from the body with a sharp blade.
- All furred pouch young – single forceful blow to the base of the skull sufficient to destroy the functional capacity of the brain
- Young at foot – single shot to the brain or heart where it can be delivered accurately and in safety using the firearms and ammunition specified

• Where euthanasia is carried out using a blow to the head, the blow must be delivered with force sufficient to crush the skull and destroy the brain. The blow should be delivered with a suitably hard and heavy blunt instrument. The shooter must confirm that there has been lethal damage to the brain and that the animal is dead
• Immediately after euthanasia, the shooter is required to examine each animal to **confirm death**. The shooter must check that there is **no body movement, breathing and heartbeat** to indicate that the animal is alive. The shooter must also check that there is **no corneal reflex** (where this is observable).
Licence system

• Need licence or permit from relevant government agency
• Tags issued with each licence, must be attached to the carcasses of commercially-shot kangaroos
• Tags monitored to ensure quotas not exceeded
• Governed by each State’s conservation legislation:
  – SA – *National Parks and Wildlife Act 1972*
  – Tas – *Nature Conservation Act 2002, Wildlife (General) Regulations 2010*
Enforcement

- State environmental government departments = conflict
- Code gains enforceability via State legislation
  - *Nature Conservation (Macropod Harvesting) Conservation Plan 2005* (Qld), sections 8 (dependent young) and 14
  - *National Parks and Wildlife Act 1974* (NSW), section 133
  - *National Parks and Wildlife (Kangaroo Harvesting) Regulations 2003* (SA), Regulation 22
  - *Wildlife Conservation Regulations 1970* (WA), Regulation 6(3)
- Penalties are low
- Inspection of Code compliance insufficient
  - No regular inspection of shooters
  - Some inspection of processors and chillers
A comparison of inspectorial activities across the States (2010)

<table>
<thead>
<tr>
<th>Shooters</th>
<th>NSW</th>
<th>QLD</th>
<th>SA</th>
<th>WA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shooters</td>
<td>Total number licensed</td>
<td>Total number of inspections</td>
<td>Total number licensed</td>
<td>Total number of inspections</td>
</tr>
<tr>
<td>Shooters</td>
<td>?</td>
<td>?</td>
<td>?</td>
<td>0</td>
</tr>
<tr>
<td>Chillers</td>
<td>150</td>
<td>659</td>
<td>?</td>
<td>74</td>
</tr>
<tr>
<td>Processors</td>
<td>13</td>
<td>6</td>
<td>19</td>
<td>23</td>
</tr>
</tbody>
</table>

Source:
Keely Boom, Dror Ben-Ami, Louise Boronyak
*Kangaroo Court: Enforcement of the law governing commercial kangaroo killing*, page 47
How are breaches dealt with?

- Penalty infringement notices, written cautions, licence suspensions, prosecutions
- Most common breach – reporting requirements
- Most common outcome – written caution
- Rate of prosecutions very low, with only three relating to cruelty offences
Is the industry humane?

• Industry - “tight regulatory controls”, evidence of welfare outcomes based on RSPCA reports and “lack of evidence” of cruelty put forward by “radical animal liberationists”

• Regulatory controls far from tight, as discussed

• RSPCA reports often quoted:
  – “Incidence of Cruelty to Kangaroos” (1985)

• “If achieved correctly, kangaroo culling is considered one of the most humane forms of animal slaughter. An animal killed instantly within its own environment is under less stress than domestic stock that have been herded, penned, transported etc” (1985)
• “The dispatch of pouch young by professional shooters was generally by a sharp blow to the head or by decapitation. There is no reason to consider this as a cruel act” (1985)

• “These results demonstrate that there has clearly been an improvement in the humaneness of the commercial killing of kangaroos compared with that recorded in the 1985 report. In 1985 the overall proportion of head-shot kangaroos in Australia was estimated to be 86%. In 2000/2002, it was 95.9%” (2002)
• The industry ignores a number of findings
• “These [survey] results indicate that there are problems with compliance with the Code of Practice in terms of methods of killing kangaroos, although it is not possible to gauge from the survey how widespread these problems are” (2002)
• “It is estimated that 112,578 kangaroos presented to processors in 2000 would not have been head-shot. Although it is clear that there has been a significant reduction in the number of kangaroos that were body-shot by commercial shooters since 1985, given the size of the commercial kangaroo harvest, this is still a matter of considerable concern” (2002)
• “There is also some question over the appropriateness of the techniques recommended for killing pouch young” (2002)
• Qualifications on survey results “important” and “must be applied”:
  – Results only represent prevalence of head shots in kangaroos taken to processors = conservative estimate only
  – Sample does not include kangaroos shot, injured and left in the field
  – Results don’t take into account effect on dependent offspring of shot female kangaroos, who would have died as a result
• Animal Liberation NSW independent assessment – avg 40% kangaroos per chiller were neck shot
• Both studies limited due to results only being derived from chillers and meat processing plants – figures likely higher if data obtained from the field
Lack of evidence likely due to the nature of the kangaroo industry – kangaroos shot in the wild and at night, largely hidden from the public eye.

Evidence of atrocities does exist, some of which is recent.

Injured female left to die. Non-brain shot, pouch young taken by predator.
Joey amongst remains of mother and mob, after a commercial shooting event. Vet report states "The joey examined has no external or radiographic signs consistent with trauma and the skull is intact. There is no evidence to suggest the joey was euthanased."
Joey found after commercial shooting event.
Vet report - no external wounds, no fractures. Assumed that joey died of exposure.
Some commercial shooters speak out against the industry:

- "The mouth of a kangaroo can be blown off and the kangaroo can escape to die of shock and starvation. Forearms can be blown off, as can ears, eyes and noses. Stomachs can be hit expelling the contents with the kangaroo still alive. Backbones can be pulverized to an unrecognisable state etc. Hind legs can be shattered with the kangaroo desperately trying to get away on the other or without the use of either. To deny that this goes on is just an exercise in attempting to fool the public."

- David Nicholls
• Whether or not humaneness has improved, cruelty is still inherent
• Non-fatal body shots, causing horrific and painful injuries, are an unavoidable part of the industry
• Lack of industry monitoring makes establishment of accurate figures difficult
• Training theory-based, does not simulate realistic conditions nor is training provided as to correct manner to kill joeys
• Joeys one of the biggest signifiers of the inherent cruelty
In defence of industry

- Kangaroos are pests
- Kangaroos are humanely killed
- The industry is sustainable, heavily regulated and provides environmental benefits

Photo courtesy of Ray Drew
www.voiceless.org.au
Kangaroos are pests

• Historically kangaroos killed due to pest perception
• Concern about commercial use of Australian wildlife ➔ Senate Select Committee on Animal Welfare 1988
  – The kangaroo industry has institutionalised cruelty to kangaroos
  – Commercial killing needed due to kangaroo impact on farming income
• NSW Government-commissioned review 2006 ➔ kangaroos are not pests
  – Competition with livestock only during drought
  – Artificial watering points little impact on distribution / densities of kangaroo populations
Sustainable industry

- Scientists disagree on abundance of kangaroos
  - Estimated annual costs to farmers / graziers $44M vs $200M
- Industry value severely diminished
  - 2007 - $77M export value
  - 2011/2012 - $33.4M export value
  - Causes = Russia, China, Adidas
  - Effects = shooters quitting, industry concern / desperation
Environmental benefits

• Commercial killing of kangaroos is environmentally friendly
  – Too many kangaroos - disputed earlier
  – Kangaroos could replace livestock

• Livestock replacement theory debated due to commercial feasibility
  – No evidence of livestock replacement
  – Significant increase in human consumption of kangaroo needed
  – Ecologically unfeasible

• Increased consumption will increase risk of over-exploitation
Conclusion

• Regulation of the industry is complex
• Issues of Code compliance
• Prescribed methods for killing dependent young questionable
• Problems with enforcement
• The industry is not humane – institutionalised kangaroo cruelty
• Inadequate training
• Disputed science = further research needed
• Numerous animal welfare concerns
• These concerns will only increase with the growth of intensive systems and the possibility of Russia lifting its ban
• The laws fail to protect animals, especially factory farmed animals and kangaroos
“A lot more is tolerated towards animals in business and industry than would otherwise be tolerated say towards a domestic pet. For example, it’s difficult to imagine any circumstances where the use of a cattle prodder on a pet dog would ever be tolerated by anybody in society but it’s a different standard, with respect to industry and business ... [and] ... a lot more people find aspects of industry cruel but the politics of law doesn’t”.

- Magistrate Musk, Fremantle Magistrates Court

Department of Local Government and Regional Development v Gregory Keith Dawson (unreported, Freemantle Magistrates Court, Magistrate Musk, 22 July 2008)
Sow images courtesy of Animals Australia
Battery hen image courtesy of Diana Simpson
Feedlot image courtesy of Animal Liberation
Transport image courtesy of Animals Angels
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